SPB 7026 by **BI**; OGSR/Personal Information and Policy Numbers in PIP and Property Damage Liability Insurance Policies

SPB 7028 by **BI**; OGSR/Consumer Complaints and Inquiries/Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office

SPB 7030 by **BI**; OGSR/Unclaimed Property/Department of Financial Services

SB 610 by **Diaz de la Portilla**; (Similar to CS/H 0379) Captive Insurance

344004	D	S	FAV	BI, Bennett	Delete everything after	12/07 09:53 AM

SB 792 by **Gaetz (CO-INTRODUCERS) Rich, Latvala, Thrasher, Fasano, Oelrich, Negron, Ring, Benacquisto, Sobel, Richter, Lynn, Detert, Joyner, Gardiner, Gibson, Margolis, Hays, Evers, Diaz de la Portilla, Dean, Siplin, Garcia, Montford, Simmons, Flores, Braynon, Storms**; (Identical to H 0613) Financial Institutions

SB 578 by **Richter**; (Similar to CS/H 0245) Depopulation Programs of Citizens Property Insurance Corporation

475274	A	S	UNFAV	BI, Fasano	Delete L.152:	12/07 02:14 PM
769920	A	S	FAV	BI, Fasano	Delete L.161 - 164:	12/07 02:14 PM
556226	A	S	UNFAV	BI, Fasano	Delete L.166 - 167:	12/07 02:14 PM
914512	A	S	FAV	BI, Richter	Delete L.168 - 202:	12/07 02:14 PM
593788	A	S	WD	BI, Fasano	Delete L.169 - 173:	12/07 02:14 PM
252080	A	S	FAV	BI, Richter	Delete L.178 - 179:	12/07 02:14 PM
589860	A	S	FAV	BI, Richter	Delete L.187:	12/07 02:14 PM
721946	A	S	FAV	BI, Richter	Delete L.209 - 210:	12/07 02:14 PM
621564	A	S	FAV	BI, Richter	Delete L.291 - 292:	12/07 02:14 PM
205362	A	S	UNFAV	BI, Fasano	btw L.353 - 354:	12/07 02:14 PM
163542	A	S	FAV	BI, Richter	Delete L.354:	12/07 02:14 PM
777490	A	S L	WD	BI, Bennett	Delete L.25 - 28:	12/07 02:14 PM

SB 336 by **Richter (CO-INTRODUCERS) Gaetz**; (Similar to H 0067) Credit Counseling Services

324586	D	S L		BI, Richter	Delete everything after	12/07 08:13 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, December 7, 2011
TIME: 9:30 a.m.—12:30 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Richter, Chair; Senator Smith, Vice Chair; Senators Alexander, Bennett, Fasano, Gaetz, Hays, Margolis, Negron, Oelrich, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Discussion of Personal Injury Protection (PIP): The committee will receive testimony from stakeholders regarding potential PIP reform.		Discussed
2	**SPB 7026**	OGSR/Personal Information and Policy Numbers in PIP and Property Damage Liability Insurance Policies; Amending provisions relating to a public records exemption for personal identifying information and policy numbers in personal injury protection and property damage liability insurance policies; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc.	Submitted as Committee Bill
3	**SPB 7028**	OGSR/Consumer Complaints and Inquiries/Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; Amending provisions relating to a public records exemption for certain records from consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption, etc.	Submitted as Committee Bill
4	**SPB 7030**	OGSR/Unclaimed Property/Department of Financial Services; Revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.	Submitted as Committee Bill

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	**SB 610** Diaz de la Portilla (Identical CS/H 379)	Captive Insurance; Expanding the kinds of insurance for which a captive insurer may seek licensure; limiting the risks that certain captive insurers may insure; revising capitalization requirements for specified captive insurance companies; prohibiting the issuance of a license to specified captive insurance companies unless such companies possess and maintain certain levels of unimpaired surplus; authorizing a captive reinsurance company to apply to the office for licensure to write reinsurance covering property and casualty insurance or reinsurance contracts; specifying requirements and conditions relating to the capitalization or maintenance of reserves by a captive reinsurance company; requiring a captive reinsurance company to annually pay a specified tax amount, etc. BI 12/07/2011 Fav/CS BC	Fav/CS Yeas 10 Nays 0
6	**SB 792** Gaetz (Identical H 613)	Financial Institutions; Requiring a financial institution that is chartered in this state and that maintains certain accounts with a foreign financial institution to establish due diligence policies, procedures, and controls reasonably designed to detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities; requiring the Office of Financial Regulation to adopt rules establishing minimum standards for the due diligence policies, procedures, and controls; requiring the Office of the Chief Financial Officer to make the annual report available to the public on its website; authorizing the Office of Financial Regulation to impose a civil penalty against a financial institution that fails to make the annual certification required by the act, etc. BI 12/07/2011 Favorable BC	Favorable Yeas 10 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**SB 578** Richter (Similar CS/H 245)	Depopulation Programs of Citizens Property Insurance Corporation; Providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; authorizing information from underwriting files and confidential files to be released by the corporation to specified entities that are considering writing or underwriting risks insured by the corporation under certain circumstances; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status, etc. BI 12/07/2011 Fav/7 Amendments BC	Fav/7 Amendments (769920, 914512, 252080, 589860, 721946, 621564, 163542) Yeas 7 Nays 3
8	**SB 336** Richter (Similar H 67)	Credit Counseling Services; Requiring that debt management and credit counseling services be provided pursuant to a debt settlement plan; requiring a credit counseling agency to make certain disclosures to the debtor before a debtor consents to payment; prohibiting a credit counseling agency from making certain misrepresentations to a debtor; providing certain conditions that a credit counseling agency must meet before receiving payment; providing that a debtor may withdraw any account funds placed with a credit counseling agency at any time without penalty; authorizing a credit counseling agency to hold funds in order to allow the funds to accumulate, etc. BI 12/07/2011 Not Considered CM BC	Not Considered
	Other Related Meeting Materials		

Attorney's Fees in PIP Cases

WHAT IS THE DRIVING FORCE BEHIND PIP LITIGATION?

Since the legislative changes passed in the special session on PIP in October, 2007, that became effective January 1, 2008, no lawsuit for personal injury protection benefits can be filed unless all of the following first occur (all statutory notations are for section 627.736):

1. The insurance company has received valid notice of a claim (see subsection 4 for numerous defenses as to why receipt of a bill is not satisfactory notice of a claim) on a properly completed claim form (see the numerous requirements in subsection 5), in compliance with all other requirements of the No-Fault statute...and then

2. The insurance company who has received a valid notice of a claim then denies or rejects the claim, or makes only a partial payment... and then

3. 30 days has elapsed since the claim was submitted and the insurance company has not requested a tolling of the 30 days to pay statute, by, for example, tolling the time to pay by requesting discovery permitted by subsection 6... and then

4. The claimant has furnished the insurance company, by certified mail to the insurance company's designee, a 30-more-days-to-pay demand letter, that strictly complies with the requirements of subsection 10 (which is reprinted below), including providing the insurance company with "**the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. A completed form satisfying the requirements of paragraph (5) (d) or the lost-wage statement previously submitted may be used as the itemized statement.**

Upon receipt of the 30-days-more-to-pay letter, the insurance company evaluates the specific claim made in the demand letter and makes a decision to pay and avoid a lawsuit, or to continue to deny payment knowing a lawsuit can be filed and the insurance company will pay attorney fees if they lose.

If the insurance company pays the claim within 30 days of receiving the itemized statutory demand letter, the insurance company owes no atty fees. Here's the demand letter statute:

627.736(10) DEMAND LETTER.—
(a) As a condition precedent to filing any action for benefits under this section, the insurer must be provided with written notice of an intent to initiate litigation. Such notice may not be sent until the claim is overdue, including any additional time the insurer has to pay the claim pursuant to paragraph (4)(b).

(b) The notice required shall state that it is a "demand letter under s. 627.736(10)" and shall state with specificity:
1. The name of the insured upon which such benefits are being sought, including a copy of the assignment giving rights to the claimant if the claimant is not the insured.

2. The claim number or policy number upon which such claim was originally submitted to the insurer.

3. To the extent applicable, **the name of any medical provider who rendered to an insured the treatment, services, accommodations, or supplies that form the basis of such claim; and an itemized statement specifying each exact amount, the date of treatment, service, or accommodation, and the type of benefit claimed to be due. A completed form satisfying the requirements of paragraph (5)(d) or the lost-wage statement previously submitted may be used as the itemized statement. To the extent that the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, the claimant shall attach a copy of the insurer's notice withdrawing such payment and an itemized statement of the type, frequency, and duration of future treatment claimed to be reasonable and medically necessary.**

(c) Each notice required by this subsection must be delivered to the insurer by United States certified or registered mail, return receipt requested. Such postal costs shall be reimbursed by the insurer if so requested by the claimant in the notice, when the insurer pays the claim. Such notice must be sent to the person and address specified by the insurer for the purposes of receiving notices under this subsection. Each licensed insurer, whether domestic, foreign, or alien, shall file with the office designation of the name and address of the person to whom notices pursuant to this subsection shall be sent which the office shall make available on its Internet website. The name and address on file with the office pursuant to s. 624.422 shall be deemed the authorized representative to accept notice pursuant to this subsection in the event no other designation has been made.

(d) If, within 30 days after receipt of notice by the insurer, the overdue claim specified in the notice is paid by the insurer together with applicable interest and a penalty of 10 percent of the overdue amount paid by the insurer, subject to a maximum penalty of $250, no action may be brought against the insurer. If the demand involves an insurer's withdrawal of payment under paragraph (7)(a) for future treatment not yet rendered, no action may be brought against the insurer if, within 30 days after its receipt of the notice, the insurer mails to the person filing the notice a written statement of the insurer's agreement to pay for such treatment in accordance with the notice and to pay a penalty of 10 percent, subject to a maximum penalty of $250, when it pays for such future treatment in accordance with the requirements of this section. To the extent the insurer determines not to pay any amount demanded, the penalty shall not be payable in any subsequent action. For purposes of this subsection, payment or the insurer's agreement shall be treated as being made on the date a draft or other valid instrument that is equivalent to payment, or the insurer's written statement of agreement, is placed in the United States mail in a properly addressed, postpaid envelope, or if not so posted, on the date of delivery. **The insurer is not obligated to pay any attorney's fees if the insurer pays the claim or mails its agreement to pay for future treatment within the time prescribed by this subsection.**

So every lawsuit filed for PIP benefits is a lawsuit the insurance company decided it would prefer to litigate instead of paying the small amount in dispute. The insurance company is the actual gatekeeper of PIP lawsuits. The only lawsuits allowed by the gatekeeper insurance companies are those they choose to defend instead of paying the small amount of the submitted claim.

These business decisions by the gatekeeper insurance companies don't make sense, except for the fact the insurance companies know if they lose and pay attorney fees they can put that in the loss column of their profit and loss statement and ask for rates based upon those numbers...and then they can claim

what they pay in attorney fees affects premiums...and they can claim the need for more statutory PIP reform tilted against policyholders and in favor of insurance companies who deny insurance claims.

PIP LITIGATION WOULD HARDLY EXIST IF INSURANCE COMPANIES WERE PREVENTED FROM INCLUDING IN THEIR RATE REQUESTS ANY SUM THEY PAID AS ATTORNEY FEES FOR LOSING PIP CASES THEY SHOULD HAVE PAID UPON RECEIPT OF A 30 DAY DEMAND LETTER.

Insurance companies also know if they win, the attorney who filed the lawsuit against the insurance company gets no attorney fee for all time spent on the case and gets no reimbursement of all costs advanced on the case. Insurance companies have caused significant financial problems for attorneys who have litigated claims against them and lost. Additionally, insurance companies can file an offer of judgment pursuant to Florida Statute 768.79 in every PIP benefits lawsuit. If the judgment is 75% or less than the insurance company's offer of judgment, the claimant owes the attorney fees and costs of the insurance company. Insurance companies routinely file offers of judgment in PIP litigation for small amounts, such as $100, inclusive of attorney fees and costs (even though the costs alone exceed the amount of the offer).

The driving force behind PIP litigation is the decision of the insurance company in each case to continue to contest payment after receiving a 30-days to pay demand letter.

WHY ARE ATTORNEY FEES HIGH IN SOME CASES?

We know from the discussion above that insurance companies decide which PIP cases can result in lawsuits. We know the only time an insurance company would have to pay attorney fees for a claimant is when the insurance company chose to defend a lawsuit instead of paying a claim and then the insurance company lost the lawsuit. But why in some cases are the attorney fees so high?

Attorneys who agree to pursue PIP lawsuits against insurance companies do so on a "no recovery = no attorney fees or costs owed " basis. If there is no recovery the attorney gets nothing. If there is a recovery, the court can determine the attorney's reasonable attorney fee pursuant to Rule 4-1.5(b) of the Rules Regulating the Florida Bar, which reads as follows:

Rule 4-1.5(b) Factors to Be Considered in Determining Reasonable Fees and Costs.

(1) Factors to be considered as guides in determining a reasonable fee include:

(A) The time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(B) The likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(C) The fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;

(D) The significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;

(E) The time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;

(F) The nature and length of the professional relationship with the client;

(G) The experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(H) Whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

Based upon the above, a determination can be made by the court as to a reasonable attorney fee. An attorney requesting an attorney fee must provide opposing counsel with all documentation in support of the requested attorney fee. The parties can settle the attorney fee issue or allow the court to determine the amount. In the Orlando metropolitan area, most attorney fee claims are settled on an amount the insurance company agrees to pay. There are some that require a court determination.

Disputed attorney fee claims require the attorney making the claim to testify as to his/her reasonable number of hours expended on the claim and to present evidence in support of the attorney's hourly rate claim. The insurance company can present evidence and contest the testimony and evidence of the plaintiff's attorney. Either side may call expert witnesses to testify as to the reasonable amount (number of hours x hourly rate) of the attorney fees incurred.

In contested fee hearings, the insurance company expert almost always testifies the hours claimed to have been spent by plaintiff's counsel were unnecessary. The insurance company contests the need for the work the plaintiff's attorney performed to secure the victory. "He didn't have to spend all that time on the case and do all that work on the case to win it" is the common argument by the insurance company.

The judge is aware of the fact the plaintiff's attorney would get nothing for his time if he lost the case. The judge is aware of the fact the insurance company could have paid the claim at any time during the litigation and the moment the claim was paid the plaintiff's attorney is no longer entitled to an attorney fee paid by the insurance company for any time spent thereafter on the case. The insurance company is not only the gatekeeper for lawsuits filed, the insurance company also controls the clock as to how long the case is litigated.

Because the attorney fee clock stops when the contested claim is paid, all time spent arguing over the attorney fee amount is not compensable. The insurance company's obligation to pay stops as soon as it makes payment on the disputed benefits claim. What happens is insurance companies then contest attorney fee amounts, because they know the plaintiff's attorney gets no attorney fee for all time spent fighting for the amount of his or her attorney's fee. Both sides are aware of this inequity and it is used to get plaintiff attorneys to take less so they don't spend uncompensated time arguing over a fee amount.

Attorney fees that are disproportionate to the amount in dispute occur because many claims are for small amounts the insurance companies have denied or cut, hoping to get away with it by the claimant just accepting the denial or cut. For some insurance companies, the exact same small amount claims reductions occur tens of thousands of times a year. Some claimants are unwilling to accept small cuts, just as they would be unwilling to accept their boss paying them less every paycheck than they were owed. Insurance companies certainly will not agree to issue insurance policies for an amount less than the full amount owed to purchase and maintain and insurance policy.

The hourly rate for the plaintiff's attorney fee is determined by the qualifications of the individual attorney who won the case the insurance company decided to fight. To allow a flat rate hourly fee for plaintiffs for all PIP litigation would result in a newbie inexperienced attorney receiving the same hourly rate as a 35 year experienced litigator who has clients who pay him $400 an hour or more. But the real issue in large attorney fee awards is the number of hours reasonably expended. That number is controlled by the insurance company to the extent that once they pay a claim the number of hours stops accruing. The number of hours is also affected by the number of defenses asserted by the insurance company and the complexity of the defenses to payment raised by the insurance company. If the insurance company alleges twelve different defenses why a claim is not owed and then wins on any one of those defenses, the plaintiff can lose. (The axiom is it takes a carpenter to build a barn, but a jackass can knock it down).

Unfortunately, some insurance companies refuse to make smart decisions by their continuing to force the continued litigation knowing if they win the more hours the plaintiff's attorney spends on the case, the deeper the financial problem for the plaintiff's attorney who loses. Some plaintiff attorneys bail out and dismiss these cases when during the litigation they decide the risk vs. reward isn't worth the continued time and expense of pursuing the case. When a case is dismissed, the plaintiff's attorney gets nothing. The plaintiff's attorney has no incentive to spend time litigating on a case he or she will not win.

The only time an insurance company owes a plaintiff's attorney fees is when the insurance company chose to defend a lawsuit and lost. The time a plaintiff's attorney spends on a PIP case where the insurance company has lost is determined by how long the insurance company allowed the case to proceed before agreeing to pay the claim or before losing and having to pay the claim. Again, the result is large attorney fee wards are due to bad insurance company decisions to litigate instead of paying the small amount in dispute. Not all insurance companies make these bad decisions. Some make them much more than others.

Many business contracts have attorney fee clauses where a breach of the contract triggers attorney fees. Few businesses would litigate a small monetary amount with the possibility of paying disproportionate attorney fees if they lose the litigation. The reason it happens in PIP cases is the insurance companies hope to crush the plaintiff's attorney when the insurance company wins and if the insurance company loses, the insurance company can include in their profit and loss statements the attorney fee losses and the insurance company can make up for those losses with premium rate increases. This problem can be legislatively corrected by disallowing attorney fees paid for PIP lawsuit losses to be included in any rate request computations.

The PIP law has been changed in 2001, 2003, 2005, and 2007 to include greater tools to allow insurance companies to fully evaluate PIP claims and contest only the claims that are not valid. **Florida Statute 627.736(4)(b)** even allows an insurance company to pay a claim and later request a payback if the insurance company discovers the claim was not valid. The last two sentences of (4)(b) read:

> "This paragraph does not preclude or limit the ability of the insurer to assert that the claim was unrelated, was not medically necessary, or was unreasonable or that the amount of the charge was in excess of that permitted under, or in violation of, subsection (5). Such assertion by the insurer may be made at any time, including after payment of the claim or after the 30-day time period for payment set forth in this paragraph."

CONCLUSION:

Every PIP lawsuit is for a claim the insurance company should have thoroughly evaluated and then chose to deny instead paying the small amount in dispute.

Each PIP lawsuit is for a claim where the insurance company elected to allow the lawsuit rather than pay the claim.

The insurance company also controls the clock for PIP litigation because the insurance company owes no attorney fee for all time spent after the insurance company pays the claim.

Plaintiffs have no incentive to spend time on cases they will lose as they get no money for all time spent and for all expenses incurred on a case where there is no recovery to the plaintiff.

The cure to reducing PIP litigation numbers and attorney fees is to take away the "Heads I Win, Tails You Lose" insurance company perspective by legislating that attorney fees paid by insurance companies for PIP lawsuit losses shall not be included in any rate computations.

IN THE CIRCUIT COURT
THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

CASE NO.: 08-20931

ADVANTAGE OPEN MRI, as assignee, individually and on behalf of all others similarly situated,

Plaintiff,

v.

STATE FARM MUTULA AUTOMOBILE INSURANCE COMPANY, and STATE FARM FIRE AND CASUALTY COMPANY,

Defendants.
_____/

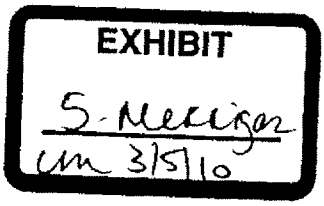
DECLARATION OF DANIEL P. MERRIGAN

My name is Daniel Merrigan. The following information is true and correct to the best of my recollection and belief:

1. I am sui juris, over the age of 21, and have personal knowledge of the facts set forth herein.

2. I am employed by State Farm Mutual Automobile Insurance Company as a Claims Section Manager in State Farm's Jacksonville office and Orlando office. I have held that position since 1998.

3. As Claims Section Manager, I am involved in State Farm's interpretation of § 627.736, Florida Statutes (2008), and its payment of personal injury protection ("PIP") coverage under that no-fault statute and its insureds' insurance policies, including State Farm's adjustments to bills for magnetic resonance imaging ("MRI") services pursuant to that statute and those policies.



4. As I understand it, the complaint in the above-styled action challenges State Farm's use of two specific payment caps in the reimbursement process to MRI providers. These payment caps relate to Medicare's physician fee schedule for the technical component of MRI procedures, as referenced in Fla. Stat. § 627.736(5) and incorporated into State Farm insureds' insurance policies.

5. The first payment cap is Medicare's Outpatient Prospective Payment System ("OPPS"), which applies when the technical component of an MRI exceeds the amount that would be paid to a hospital outpatient department. The second payment cap is Medicare's Multiple Imaging Procedure Reduction ("MIPR"), which applies when multiple imaging procedures are performed to contiguous body parts during the same session.

6. Attached to this declaration as Exhibit A is a spreadsheet that was prepared at my direction. Exhibit A lists all claims for payments submitted by MRI providers to State Farm pursuant to Fla. Stat. § 627.736(54) and a State Farm insured's insurance policy, where the service rendered was between January 1, 2008 and October 31, 2008, and where State Farm disallowed a payment pursuant to Medicare's OPPS and Multiple Imaging Procedure Reduction.

7. On Exhibit A, State Farm's disallowances of claim amounts pursuant to Medicare's OPPS are indicated by the explanation code 337. Disallowances of claim amounts pursuant to Medicare's MIPR are indicated by the explanation code 336. Also on Exhibit A, disallowances of claim amounts pursuant to both OPPS and Multiple Imaging Procedure Reduction are indicated by the explanation codes 336 and 337.

8. There are three tabs to Exhibit A. The first tab lists those bills in the time period January 1, 2008 through October 31, 2008 where only explanation code 336 was at issue. The second tab lists those bills during the same time period where only explanation code 337 was at issue. The third tab lists those bills in the same time period where both explanation codes 336 and 337 were at issue.

9. Thus, according to Exhibit A, State Farm disallowed payments for MRI bills pursuant to Fla. Stat. 627.736(5) and its insurance contracts which by law incorporate the provisions of Fla. Stat. §627.736(5), as follows:

a. 35 claims for explanation code 336 (MIPR): $26,586.66.

b. 10,937 claims for explanation code 337 (OPPS): $8,858,890.26.

c. 2,363 claims for explanation codes 336 & 337 (MIPR and OPPS combined).

$2,056,799.83.

10. In sum, State Farm's total disallowances for MIPR and OPPS during the time period January 1, 2008 through October 31, 2008 were $10,942,276.75.

DECLARATION

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my recollection and belief.

Executed on November 17, 2008.

Daniel Merrigan

County Court Cases Served on Insurers by Department of Financial Services

Insurer	2008	2009	2010 (January – June)
United Services Automobile Assn. (USAA)	240	276	181
USAA General Indemnity Co.	29	46	41
USAA Casualty Insurance Co.	653	579	340
Government Employees Insurance Co.	161	281	137
Geico General Insurance Co.	1103	1728	1102
Geico Casualty Co.	480	441	201
Geico Indemnity Co.	657	1230	915
State Farm Mutual Automobile Ins. Co.	1532	3241	2705
State Farm Fire & Casualty Co.	926	1199	533
United Automobile Ins. Co.	3346	1953	771

PIP Anti-Fraud and Cost Saving Proposals
Submitted by the consumer coalition (FJA, FMA, FOMA, FCA and others)

1. **Close the clinic licensure loophole** - This provision closes a loophole in the clinic licensure statute that currently allows licensed massage therapists, physical therapists or any "non-physician" health care licensee to open a practice employing physicians or other health care providers without obtaining a clinic license. Currently, practices wholly owned by health care providers are exempt from clinic licensure. The PIP statute does not allow a licensed clinic to file PIP claims until it has been licensed for at least three years. To avoid the waiting period, some people have obtained licensure as a massage therapist requiring only six months of schooling. The license massage therapist may then front ownership of a practice claiming exemption from clinic licensure to run a PIP mill.

   This provision closes that loophole by prohibiting a health care provider from employing another health care provider with a scope of license greater than the employing health care provider.

   The provision, also, provides that any certificate of exemption from clinic licensure is valid at only one location. This addresses a health care provider from obtaining a certificate of exemption and using it to cover multiple practice locations at which PIP mills are operated.

2. **Discipline providers who file fraudulent applications for exemption from clinic licensure** - This provision authorizes the Department of Health licensing boards to discipline licensees found guilty of either filing a fraudulent application for exemption from clinic licensure or falsely stating on the application that the licensee is the sole owner. Some health care licensees are "falsely fronting" ownership of a medical practice with multiple locations at which PIP mills are operated. This provision creates a tool to combat that practice.

3. **Suspension of license of providers who file fraudulent applications for exemption from clinic licensure** - This provision authorizes the Department of Health to summarily suspend a health care provider's license upon failure by a licensee to submit proof to the department of actual ownership of his or her practice within 45 days of having been requested by the department based upon a reasonable belief that the licensee does not own the practice and has filed a fraudulent application for a certificate of exemption from clinic licensure. Some health care licensees are "falsely fronting" ownership of a medical practice with multiple locations at which PIP mills are operated. This provision creates a tool to combat that practice.

4. **Civil immunity for whistleblowers who report patient brokering** - This provision grants a qualified civil immunity for health care providers, other persons or witnesses, for reporting patient brokering to law enforcement agencies.

5. **Dedicated PIP fraud unit at Department of Health** - This provision directs the Department of Health to designate a unit of investigators and prosecutors trained and knowledgeable in PIP fraud to investigate and prosecute licensees violating department statutes proscribing such fraudulent conduct. The legislature has passed such statutes, which have not been used to investigate or prosecute licensees who may have committed PIP fraud.

6. **PIP fraud reporting made easy on DFS website** - This provision directs the Department of Financial Services to add to its fraud reporting web site a method for reporting fraudulent activities by insurance companies, such as improper reduction of fees paid to health care providers or improper denial of claims. The web site currently allows for reporting other types of insurance fraud.

7. **Give PIP insurers a right of reimbursement from BI liability recoveries (subrogation)** - This provision gives insurers the right to reimbursement from an at fault party for payments made under PIP coverage. This provision should greatly reduce the cost and premiums for PIP. Presently, this right of reimbursement or subrogation exists for Medical Payments Coverage, but not for PIP coverage. In practice, an insurer who provided $5,000 in MPC coverage can now recover from the liability insurer of an at-fault driver those MPC payments. The same should apply to PIP coverage. This would substantially reduce the cost of mandatory PIP coverage for consumers. Under current law without this provision, PIP benefits that are "paid or payable" by an injured party's insurer cannot be recovered by the injured party from the at fault party. Allowing reimbursement of those amounts by the at fault party places responsibility on the at fault party and not on the injured victim's insurer. Another practical effect may be that insurers may decide to litigate fewer PIP claims disputes if the PIP insurers have a right of reimbursement for those claim payments from the at fault party. This provision should be particularly beneficial to both consumers and sellers of mandatory PIP coverage because it will lower the cost of mandatory PIP coverage.

8. **Prohibit insurers from including plaintiff attorneys fees in the rate base** - In practice, there are insurers who deny claims, fail to pay the claims upon receipt of a demand letter, force litigation of those claims and then spend absurd amounts of money to litigate those claims they cannot and do not win. It makes no business sense in the real world for an insurance company not to pay a claim upon receipt of a 30 day PIP demand letter and to instead force litigation over a small monetary dispute that will cost that insurer tens of thousands of dollars in attorney fees and costs when they lose the litigation. Why do they do it? One reason is their downside is marginalized by the fact they can include in their request for rate premiums the money they paid as attorney fees for losing a PIP lawsuit dispute when they made the awful business decision to

litigate that claim instead of paying the claim. This provision should result in insurers making quicker decisions to pay once a disputed claim is in litigation and it becomes apparent it will be difficult for the insurer to win the case. Why should an insurance company's bad business decisions to litigate cases until the cows come home be passed on to consumers as premium increases?

9. **Create PIP anti-fraud Direct Support Organization (DSO)** – This provision would create a Direct Support Organization to help coordinate and fund anti-fraud efforts on the part of state agencies and state and local law enforcement officers, investigators and prosecutors. This provision is similar to a provision in one of last year's bills but differs in that the proposed Board of Directors of the DSO is more balanced.

10. **Portion of driver license reinstatement fees to fund DSO and DOH PIP fraud unit** – This provision raises the fees charged to reinstate a driver's license after it has been suspended for lack of the required insurance. It also sends a portion of the fee (1/3) to the newly created DSO and another (1/3) to the newly created DOH anti-fraud unit.

11. **Insurance fraud notice on application for licensure or exemption from licensure** – This provision requires an anti-fraud warning notice in every application for clinic licensure or exemption from licensure. This provision was in one of last year's bills.

12. **Electronic submission of provider bills or notice of claim authorized** – This provision would permit health care providers to submit bills or notices of claims electronically. This would save costs for all parties involved and bring the submission of PIP claims into the modern age.

13. **Give providers the option to submit revised claims for alleged errors on forms** - Current law requires all bills for medical services submitted to an (PIP) insurer to be on a "properly completed" CMS 1500 form, UB 92 forms, or other standard form approved by the OIR. This law further provides that for purposes of the section setting forth the timeline for when payment is due, notice of the amount due is not to be considered to have been furnished to the insurer unless "the statements or bills are properly completed in their entirety as to all material provisions, with all relevant information being provided therein." For non-emergency services, bills must be submitted within 35 days (unless a notice of initiation of treatment was submitted within 21 days).

    These requirements have led some automobile insurers to deny claims in which all of the blocks of the CMS 1500 form were inadvertently not filled out, where a block was filled out improperly, or where other innocent errors were made on the form. Rather than simply send the form back to the provider for correction, the insurer denies the claim completely and invokes the law above as justification.

This provision seeks to provide relief to the medical provider who makes an innocent mistake in filling out the form, and prevents an insurer from using current law to deny claims in a manner that was not intended when the law was enacted. Under this provision, the insurer would have to notify the provider of the error, in which instance the provider would have 15 days to submit a revised claim, to which the insurer would have 15 days to respond.

14. **Give providers the option to submit revised claims for other alleged errors** - This would fix the problem similar to the one above when the alleged error is one other than an improperly completed claim form (for example a properly completed disclosure and acknowledgement form). Under this provision, the insurer would have to notify the provider of the error, in which instance the provider would have 15 days to submit a revised claim, to which the insurer would have 15 days to respond.

15. **Give providers the option to not submit bills to PIP** – This provision opens the door for consumers to obtain medical treatment for motor vehicle accident injuries from physicians who would otherwise refuse to see the accident victim because those physicians have elected not to accept PIP coverage. In most communities, there are a sizeable number of physicians who choose not to see accident victims because of the hassles in dealing with PIP insurers and the myriad rules and hoops involved to obtain payment. Try and find a general practice physician or family physician or primary care physician who takes PIP coverage. Most do not. They have been burned by the insurance company denials of claims for failing to comply with all of the statutory billing requirements and the fact that their failure to submit a bill within 35 days that meets all of the statutory criteria allows the insurance companies to deny the claims and Florida Statute 627.736(5) prevents the provider from collecting anything from the patient if a correct bill was not timely submitted within 35 days. The current statutory language in 627.736(5)(c)1 reads: "The injured party is not liable for, and the provider shall not bill the injured party for, charges that are unpaid because of the provider's failure to comply with this paragraph. Any agreement requiring the injured person or insured to pay for such charges is unenforceable."

Why shouldn't a medical provider and patient be allowed to contract for the physician's medical services outside of the rules and restrictions in the PIP statute? This provision would allow that agreement between patient and physician and would reduce PIP payouts to the extent a physician chooses to provide treatment to a patient without submitting any bills to PIP.

16. **Fix the provider fee schedule timing glitch** - PIP legislation in 2008 established a fee schedule on non-emergency medical services of 200 percent of the allowable amount under the participating physicians schedule of Medicare Part B, or the Medicare Part B allowable amount for 2007, whichever is greater. The automobile insurance companies have argued that pegging the fee schedule to the current Medicare Part B rate poses a problem in that Medicare can changes its reimbursement rates irregularly, making it difficult to determine what payment rate applies to a particular claim.

To help alleviate this problem and avoid litigation over the issue, this provision would provide auto insurers with certainty by making the applicable fee schedule for any calendar year the fee schedule that was in effect as of January 1 in which the medical care was rendered, regardless of any subsequent changes Medicare might make during the year.

17. **Require providers to report to DOH the locations where they practice** - Department of Health licensees are required to report (web based) each location at which a licensee offers or performs health care services, except for volunteer services. This provides an inventory of each place at which health care services are offered or performed. The department, insurers and others may use this information to verify claims for reimbursement and determination of practice ownership. Some health care licensees are "falsely fronting" ownership of a medical practice with multiple locations at which PIP mills are operated. This amendment creates a tool to combat that practice.

18. **Allow Medicaid to recover erroneous payments from PIP** - The Medicaid reimbursement fix is necessary because some providers—because they are unaware PIP is available--- bill and collect from Medicaid. When that mistake is discovered, the PIP insurer should be required to repay Medicaid the amount paid by mistaken by Medicaid because PIP is always primary to Medicaid. This mistake occurs when patients on Medicaid present their Medicaid information to providers and not their PIP information. The reimbursement would be at the amount Medicaid paid, which will be less than what PIP would have been obligated to pay in the first place. Currently, some insurers are refusing to reimburse what Medicaid mistakenly paid as the above present statute is unclear as to that obligation of the PIP insurer.

627.0651 Making and use of rates for motor vehicle insurance.—

(1) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on motor vehicle insurance written in this state. A copy of rates, rating schedules, and rating manuals, and changes therein, shall be filed with the office under one of the following procedures:

(a) If the filing is made at least 60 days before the proposed effective date and the filing is not implemented during the office's review of the filing and any proceeding and judicial review, such filing shall be considered a "file and use" filing. In such case, the office shall initiate proceedings to disapprove the rate and so notify the insurer or shall finalize its review within 60 days after receipt of the filing. Notification to the insurer by the office of its preliminary findings shall toll the 60-day period during any such proceedings and subsequent judicial review. The rate shall be deemed approved if the office does not issue notice to the insurer of its preliminary findings within 60 days after the filing.

(b) If the filing is not made in accordance with the provisions of paragraph (a), such filing shall be made as soon as practicable, but no later than 30 days after the effective date, and shall be considered a "use and file" filing. An insurer making a "use and file" filing is potentially subject to an order by the office to return to policyholders portions of rates found to be excessive, as provided in subsection (11).

(2) Upon receiving notice of a rate filing or rate change, the office shall review the rate or rate change to determine if the rate is excessive, inadequate, or unfairly discriminatory. In making that determination, the office shall in accordance with generally accepted and reasonable actuarial techniques consider the following factors:

(a) Past and prospective loss experience within and outside this state.

(b) The past and prospective expenses.

(c) The degree of competition among insurers for the risk insured.

(d) Investment income reasonably expected by the insurer, consistent with the insurer's investment practices, from investable premiums anticipated in the filing, plus any other expected income from currently invested assets representing the amount expected on unearned premium reserves and loss reserves. Such investment income shall not include income from invested surplus. The commission may adopt rules utilizing reasonable techniques of actuarial science and economics to specify the manner in which insurers shall calculate investment income attributable to motor vehicle insurance policies written in this state and the manner in which such investment income is used in the calculation of insurance rates. Such manner shall contemplate the use of a positive underwriting profit allowance in the rates that will be compatible with a reasonable rate of return plus provisions for contingencies. The total of the profit and contingency factor as specified in the filing shall be utilized in computing excess profits in conjunction with s. 627.066. In adopting such rules, the commission shall in all instances adhere to and implement the provisions of this paragraph.

(e) The reasonableness of the judgment reflected in the filing.

(f) Dividends, savings, or unabsorbed premium deposits allowed or returned to Florida policyholders, members, or subscribers.

(g) The cost of repairs to motor vehicles.

(h) The cost of medical services, if applicable.

(i) The adequacy of loss reserves.

(j) The cost of reinsurance.

(k) Trend factors, including trends in actual losses per insured unit for the insurer making the filing.

(l) Other relevant factors which impact upon the frequency or severity of claims or upon expenses.

(3) Rates shall be deemed excessive if they are likely to produce a profit from Florida business that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered.

(4) Rates shall be deemed excessive if, among other things, the rate structure established by a stock insurance company provides for replenishment of surpluses from premiums, when such replenishment is attributable to investment losses.

(5)(a) Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

(b) The office has the responsibility to ensure that rates for private passenger vehicle insurance are adequate. To that end, the commission shall adopt rules establishing standards defining inadequate rates on private passenger vehicle insurance as defined in s. 627.041(8). In the event that the office finds that a rate or rate change is inadequate, the office shall order that a new rate or rate schedule be thereafter filed by the insurer and shall further provide information as to the manner in which noncompliance of the standards may be corrected. When a violation of this provision occurs, the office shall impose an administrative fine pursuant to s. 624.4211.

(6) One rate shall be deemed unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the difference in expected losses and expenses.

(7) Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as rates reflect the differences with reasonable accuracy.

(8) Rates are not unfairly discriminatory if averaged broadly among members of a group; nor are rates unfairly discriminatory even though they are lower than rates for nonmembers of the group. However, such rates are unfairly discriminatory if they are not actuarially measurable and credible and sufficiently related to actual or expected loss and expense experience of the group so as to assure that nonmembers of the group are not unfairly discriminated against. Use of a single United States Postal Service zip code as a rating territory shall be deemed unfairly discriminatory.

(9) In reviewing the rate or rate change filed, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the filing according to the criteria enumerated herein.

(10) The office may, at any time, review a rate or rate change, the pertinent records of the insurer, and market conditions; and, if the office finds on a preliminary basis that the rate or rate change may be excessive, inadequate, or unfairly discriminatory, the office shall so notify the insurer. However, the office may not disapprove as excessive any rate for which it has given final approval or which has been deemed approved for a period of 1 year after the effective date of the filing unless the office finds that a material misrepresentation or material error was made by the insurer or was contained in the filing. Upon being so notified, the insurer or rating organization shall, within 60 days, file with the office all information which, in the belief of the insurer or organization, proves the reasonableness, adequacy, and fairness of the rate or rate change. In such instances and in any administrative proceeding relating to the legality of the rate, the insurer or rating organization shall carry the burden of proof by a preponderance of the evidence to show that the rate is not excessive, inadequate, or unfairly discriminatory. After the office notifies an insurer that a rate may be excessive, inadequate, or unfairly discriminatory, unless the office withdraws the notification, the insurer shall not increase the rate until the earlier of 120 days after the date the notification was provided or 180 days after the date of the implementation of the rate. The office may, subject to chapter 120, disapprove without the 60-day notification any rate increase filed by an insurer within the prohibited time period or during the time that the legality of the increased rate is being contested.

(11) In the event the office finds that a rate or rate change is excessive, inadequate, or unfairly discriminatory, the office shall issue an order of disapproval specifying that a new rate or rate schedule which responds to the findings of the office be filed by the insurer. The office shall further order for any "use and file" filing made in accordance with paragraph (1)(b), that premiums charged each policyholder constituting the portion of the rate above that which was actuarially justified be returned to such policyholder in the form of a credit or refund. If the

office finds that an insurer's rate or rate change is inadequate, the new rate or rate schedule filed with the office in response to such a finding shall be applicable only to new or renewal business of the insurer written on or after the effective date of the responsive filing.

(12) Any portion of a judgment entered as a result of a statutory or common-law bad faith action and any portion of a judgment entered which awards punitive damages against an insurer shall not be included in the insurer's rate base, and shall not be used to justify a rate or rate change. Any portion of a settlement entered as a result of a statutory or common-law bad faith action identified as such and any portion of a settlement wherein an insurer agrees to pay specific punitive damages shall not be used to justify a rate or rate change. The portion of the taxable costs and attorney's fees which is identified as being related to the bad faith and punitive damages in these judgments and settlements shall not be included in the insurer's rate base and shall not be utilized to justify a rate or rate change.

(13)(a) Underwriting rules not contained in rating manuals shall be filed for private passenger automobile insurance and homeowners' insurance.

(b) The submission of rates, rating schedules, and rating manuals to the office by a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this subsection for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating schedules, and rating manuals of such organization. All such information shall be available for public inspection, upon receipt by the office, during usual business hours.

(14)(a) Commercial motor vehicle insurance is not subject to subsection (1), subsection (2), or subsection (9) or s. 627.0645.

(b) The rates for insurance described in this subsection may not be excessive, inadequate, or unfairly discriminatory.

(c) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on commercial motor vehicle insurance written in this state.

(d) An insurer must notify the office of any changes to rates for type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the insurer, the type or kind of insurance subject to rate change, and the average statewide percentage change in rates. Actuarial data with regard to rates for risks described in this subsection shall be maintained by the insurer for 2 years after the effective date of changes to those rates and are subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the factors in paragraphs (2)(a)–(l) and apply subsections (3)-(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(e) A rating organization must notify the office of any changes to loss cost for the type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Actuarial data with regard to changes to loss cost for risks not subject to subsection (1), subsection (2), or subsection (9) shall be maintained by the rating organization for 2 years after the effective date of the change and are subject to examination by the office. The office may require the rating organization to incur the costs associated with an examination. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(a)-(l) and apply subsections (3)-(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

History.—s. 22, ch. 77-468; s. 8, ch. 78-374; s. 2, ch. 81-318; ss. 343, 357, 809(2nd), ch. 82-243; ss. 46, 47, 49, 79, ch. 82-386; s. 94, ch. 83-216; s. 16, ch. 85-245; s. 34, ch. 90-119; s. 114, ch. 92-318; s. 2, ch. 98-173; s. 1070, ch. 2003-261; s. 5, ch. 2010-175; s. 2, ch. 2011-160.

SYSTEMATIC REDUCTIONS- NON PAYMENT OF MEDICAL BENEFITS THAT ARE RIGHTLY OWED TO THE HOSPITALS AND OTHER MEDICAL PROVIDERS:

TOTAL OVERDUE/DENIED MEDICAL BENEFITS COLLECTED SINCE 2008: $13,684,832.05

Summary of Benefits Paid Per Demand (NO ATTORNEY FEE)

PAID PER DEMAND:

2008:	**$1,013,253.30**
2009:	**$1,614,161.62**
2010:	**$2,578,601.48**
2011(thru 10/31)	**$3,774,936.95**
TOTAL:	**$8,980,953.35 PAID PER DEMAND (NO ATTORNEY FEE)**

SUMMARY OF BENEFITS PAID PURSUANT TO A LAWSUIT:

2008:	**$497,718.30**
2009:	**$637,992.42**
2010:	**$1,070,687.20**
2011:	**$2,497,480.78**
TOTAL:	**$4,703,878.70 PAID PURSUANT TO A LAW SUIT**

***NOTE: This information is only for approximately 200 healthcare providers. There are over 41,000 healthcare providers in the Florida according to the Agency for Health Care Administration (AHCA)**

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/7/2011
Meeting Date

Topic Car Insurance

Bill Number _____ *(if applicable)*

Name Mark Delegal

Amendment Barcode _____ *(if applicable)*

Job Title Retained Counsel

Address 215 S. Monroe Street #200 *Street*

Phone 850-222-3533

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

E-mail _____

Speaking: ☑ For ☐ Against ☐ Information

Representing State Farm Mutual Automobile Insurance Company

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic PIP

Bill Number _____ *(if applicable)*

Name Todd Copeland

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 338 N. Magnolia Ave.
Street

Orlando FL 32801
City *State* *Zip*

Phone 407.999-8995

E-mail todd@toddcopeland.com

Speaking: ☐ For ☐ Against ☐ Information

Representing _____

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic No-Fault

Bill Number *(if applicable)*

Name Donald J. Masten

Amendment Barcode *(if applicable)*

Job Title Attorney

Address P.O. Box 4449 *Street*

Phone 407-288-2869

Orlando FL 32802 *City* *State* *Zip*

E-mail Don.Masten@Mastenlyerly.com

Speaking: ☐ For ☐ Against ☒ Information

Representing

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/7/11
Meeting Date

Topic PIP

Bill Number _____ *(if applicable)*

Name James J. Pratt

Amendment Barcode _____ *(if applicable)*

Job Title Director of FL Staff Counsel - GEICO

Address 500 N. Westshore Blvd. Ste. 850
Street

Tampa FL 33609
City *State* *Zip*

Phone 813-373-7800

E-mail jpratt@geico.com

Speaking: ☐ For ☐ Against ☒ Information

Representing GEICO

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-7-11
Meeting Date

Topic PIP Reform

Bill Number N/A

Name Bonny GORDON

Amendment Barcode N/A *(if applicable)*

(if applicable)

Job Title SR. Counsel

Address GEICO, 1 GEICO Plaza
Street
Washington, DC 20076
City *State* *Zip*

Phone 301-986-2653

E-mail bgordon@geico.com

Speaking: ☐ For ☐ Against ☑ Information

Representing GEICO (Government Employees Ins. Co.)

Appearing at request of Chair: ☑ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/7/11
Meeting Date

Topic PIP

Bill Number PIP *(if applicable)*

Name Charles Glen Ged

Amendment Barcode _____ *(if applicable)*

Job Title Attorney

Address 7171 N. Federal Hwy
Street

Phone 561-995-1966

Boca Raton FL 33487
City *State* *Zip*

E-mail ggedellisandged.com

Speaking: ☐ For ☐ Against ☒ Information

Representing PIP Hospital and Medical Providers

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/7/11
Meeting Date

ANTI-FRAUD PROPOSAL

Topic PIP WORKSHOP

Bill Number PIP *(if applicable)*

Name PAUL LAMBERT

Amendment Barcode *(if applicable)*

Job Title

Address 502 North Adams ST.
Street
TALLAHASSEE FL 32301
City *State* *Zip*

Phone 850 224-9393

E-mail plambert@paullambertlaw.com

Speaking: ☐ For ☐ Against ☒ Information

Representing Florida Chiropractic Asso.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-7
Meeting Date

Topic CAR INSURANCE

Bill Number _____ *(if applicable)*

Name TY CULLIFER

Amendment Barcode _____ *(if applicable)*

Job Title SECTION MANAGER

Address 5404 CYPRESS CENTER DR STE 200 *Street*

Phone 813.220.4877

TAMPA, FL 33609 *City* *State* *Zip*

E-mail _____

Speaking: ☐ For ☐ Against ☐ Information

Representing STATE FARM INSURANCE

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7026

INTRODUCER: For Consideration by the Banking and Insurance Committee

SUBJECT: OGSR/ Personal Identifying Information in Personal Injury Protection and Property Damage Liability Insurance Policies

DATE: September 28, 2011 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 324.242, F.S., provides an exemption from public records requirements for personal identifying information and the insurance policy number contained in personal injury protection (PIP) and property damage liability insurance policies. The public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal. This bill is the result of an Open Government Sunset Review. *See*, Issue Brief 2012-312.

This bill substantially amends the following section of the Florida Statutes: 324.242.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11] There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record

---

[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5-year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:
- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as

[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(4)(b), F.S.

opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 324.242, F.S., Exemption

Within Florida every registrant of a motor vehicle must obtain and provide proof of holding a motor vehicle insurance policy that includes $10,000 in personal injury protection (PIP). Additionally, s. 324.022, F.S., requires owners and operators of Florida-registered motor vehicles to maintain the ability to pay at least $10,000 in property damage, which may be met by maintaining $10,000 in property damage liability coverage. A higher financial requirement is placed on commercial motor vehicles, taxicab owners and operators, for-hire passenger transportation vehicles, and registered vehicle owners or operators found guilty or that have plead nolo contendere to driving under the influence.

The Department of Highway Safety and Motor Vehicles (DHSMV) is notified by insurers that supply policies with personal injury protection or property damage liability coverage of renewals, cancellations, and non-renewals of these policies within 45 days of their effective dates, as required by s. 324.0221, F.S. The insurer must also notify the named insured in writing of the cancellation or non-renewal of a policy and give notice of the consequences from the failure of maintaining PIP and property damage coverage, including the loss of registration, loss of driving privileges, and imposition of reinstatement fees. The records held by the DHSMV contain the insurance company code, the policy number, driver's license number, personal identifying information (name and address), and information identifying the vehicle, including the vehicle identification number and the make, model, and year of the vehicle.

This bill's predecessor s. 627.736(9)(a), F.S., was repealed as part of the Florida Motor Vehicle No-Fault Law on October 1, 2007. The legislature designed s. 324.242, F.S., to take the place of s. 627.736(9)(a), F.S., and exempt from public records requirements personal identifying information, including the name, address, and driver's license number of insureds and former insureds and the insurance policy number contained in PIP and property damage liability motor vehicle insurance policies. The exemption serves to protect sensitive personal information concerning individuals whose reputation or safety from identity theft would be jeopardized if the information were released. The exemption also protects confidential information used for business advantage against competitors. The disclosure of this information could injure insurance companies in the market since competitors would be able to solicit the business of their policyholders.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

The information exempted by s. 324.242, F.S., is neither obtainable by alternate means nor protected under other exemptions. However under s. 324.242, F.S., the DHSMV must release the policy number for a vehicle involved in an accident to any person involved in the accident, the attorney of any person involved in the accident, or a representative of the insurer of any person involved in the accident upon receipt of a written request and copy of the crash report.

III. Effect of Proposed Changes:

The bill reenacts the public records exemption provided under s. 324.242, F.S., by deleting section four containing the repeal date and provision subjecting the bill to Open Government Sunset Review.

The bill provides that this act will take effect on July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 324.242, F.S. *See*, Interim Project Report 2012-312 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00506-12 20127026__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 324.242, F.S., relating to a public records exemption for personal identifying information and policy numbers in personal injury protection and property damage liability insurance policies; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption; providing an effective date.

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

Section 1. Section 324.242, Florida Statutes, is amended to read:

324.242 Personal injury protection and property damage liability insurance policies; public records exemption.—

(1) The following information regarding personal injury protection and property damage liability insurance policies held by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Personal identifying information of an insured or former insured; and

(b) An insurance policy number.

(2) Upon receipt of a written request and a copy of a crash report as required under s. 316.065, s. 316.066, or s. 316.068, the department shall release the policy number for a policy covering a vehicle involved in a motor vehicle accident to:

(a) Any person involved in such accident;

Florida Senate - 2012 (PROPOSED COMMITTEE BILL) SPB 7026

597-00506-12 20127026__

(b) The attorney of any person involved in such accident; or

(c) A representative of the insurer of any person involved in such accident.

(3) This exemption applies to personal identifying information of an insured or former insured and insurance policy numbers held by the department before, on, or after October 11, 2007 ~~the effective date of this section~~.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2012.

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 Banking and Insurance Committee

BILL: SPB 7028

INTRODUCER: For consideration by the Banking and Insurance Committee

SUBJECT: OGSR/ Consumer Complaints and Inquiries Received by the Department of Financial Services

DATE: September 28, 2011 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 624.23, F.S., makes exempt from the public record requirements certain personal financial and health information of a consumer held by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code or s. 440.191, F.S., (Workers' Compensation Employee Assistance and Ombudsman Office). The exempt information includes consumers' personal health condition, disease, or injury and certain records relating to a consumer's personal finances and insurance coverage. The public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal. This bill saves the exemption from repeal.

This bill substantially amends the following section of the Florida Statutes: 624.23.

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

---

[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical*

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5 year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?

Center v. News-Journal Corporation, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

[12] Attorney General Opinion 85-62.

[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

[14] Section 119.15, F.S.

[15] Section 119.15(4)(b), F.S.

- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 624.23, F.S., Exemption

The protection of personal financial and health information against identity theft and other misuse is the main purpose of s. 624.23, F.S. In responding to consumers' complaints and inquiries the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) receive certain personal health and financial information from consumers. In 2002, legislation was enacted to provide that specified personal and financial information of a consumer held by the DFS or the OIR relating to a consumer's complaint or inquiry regarding a matter regulated under the Florida Insurance Code is confidential and exempt from the public records law. Disclosure of the exempted information is allowed to the National Association of Insurance Commissioners (NAIC) and other governmental entities if necessary to perform their duties and responsibilities. However the NAIC and other governmental entities must maintain the confidentiality and exempt status of the information.

Initially, s. 624.23, F.S., did not contain an exemption for the same personal financial and medical information provided by consumers to the Division of Workers' Compensation of the DFS for the purpose of resolving disputes and complaints of employees. Subsequently, in 2007 legislation was enacted that expanded the exemption to include the specified personal financial and health information provided to DFS and regulated under s. 440.191, F.S. (Workers' Compensation Employee Assistance and Ombudsman Office). Additionally, the 2007 legislation limited the scope of records applicable to the exemption by specifying the personal financial and health information considered confidential and exempt. The exempt information includes consumers' personal health condition, disease, or injury and certain records relating to the existence and nature of a consumer's personal finances and insurance coverage. Furthermore, the 2007 legislation deleted bank account numbers, debit, and charge card numbers from the exemption since they were already exempt under the general exemption of s 119.071(5)(b), F.S.

This public records exemption will repeal on October 2, 2012, unless reviewed and saved from repeal by reenactment by the Legislature.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).

III. Effect of Proposed Changes:

The bill reenacts the public records exemption provided under s. 624.23, F.S., by deleting section four containing the repeal date and provision subjecting the bill to Open Government Sunset Review.

The bill provides that this act will take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 624.23, F.S. *See*, Interim Project Report 2012-313 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00507A-12 20127028__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 624.23, F.S., relating to a public records exemption for certain records from consumer complaints and inquiries regarding matters or activities regulated under the Florida Insurance Code or Workers' Compensation Employee Assistance and Ombudsman Office; saving the exemption from repeal under the Open Government Sunset Review Act; deleting a provision providing for the repeal of the exemption; providing an effective date.

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

Section 1. Section 624.23, Florida Statutes, is amended to read:

624.23 Public records exemption.—

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

(a) "Consumer" means:

1. A prospective purchaser, purchaser, or beneficiary of, or applicant for, any product or service regulated under the Florida Insurance Code, and a family member or dependent of a consumer.

2. An employee seeking assistance from the Employee Assistance and Ombudsman Office under s. 440.191.

(b) "Personal financial and health information" means:

1. A consumer's personal health condition, disease, or injury;

2. The existence, nature, source, or amount of a consumer's

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

597-00507A-12 20127028__

personal income or expenses;

3. Records of or relating to a consumer's personal financial transactions of any kind;

4. The existence, identification, nature, or value of a consumer's assets, liabilities, or net worth;

5. A history of a consumer's personal medical diagnosis or treatment;

6. The existence or content or any individual coverage or status under a consumer's beneficial interest in any insurance policy or annuity contract; or

7. The existence, identification, nature, or value of a consumer's interest in any insurance policy, annuity contract, or trust.

(2) Personal financial and health information held by the department or office relating to a consumer's complaint or inquiry regarding a matter or activity regulated under the Florida Insurance Code or s. 440.191 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to personal financial and health information held by the department or office before, on, or after the effective date of this exemption.

(3) Such confidential and exempt information may be disclosed to:

(a) Another governmental entity, if disclosure is necessary for the receiving entity to perform its duties and responsibilities; and

(b) The National Association of Insurance Commissioners.

~~(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed~~

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

~~on October 2, 2012, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2012.

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 Banking and Insurance Committee

BILL:	SPB 7030
INTRODUCER:	For consideration by the Banking and Insurance Committee
SUBJECT:	OGSR/Unclaimed Property/ Department of Financial Services
DATE:	December 1, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Pre-meeting**
2.				
3.				
4.				
5.				
6.				

I. Summary:

Section 717.117(8), F.S., is an exemption for social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Property identifiers could include bank account numbers, credit card numbers, or insurance policy numbers. This public records exemption will sunset on October 2, 2012, unless saved from repeal by the legislature.

This bill substantially amends the following sections of the Florida Statutes: 717.117(8).

II. Present Situation:

Public Records

The State of Florida has a long history of providing public access to governmental records. The Florida Legislature enacted the first public records law in 1892.[1] One hundred years later, Floridians adopted an amendment to the State Constitution that raised the statutory right of access to public records to a constitutional level.[2] Article I, s. 24 of the State Constitution, provides that:

> (a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specificallyincludes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and

[1] Section 1390, 1391 F.S. (Rev. 1892)
[2] Article I, s. 24 of the State Constitution

> each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the State Constitution, the Public Records Act,[3] which pre-dates public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency.[4] Section 119.07(1) (a), F.S., states:

> Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency records are available for public inspection. The term "public record" is broadly defined to mean:

> . . . all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.[5]

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.[6] All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.[7]

Only the Legislature is authorized to create exemptions to open government requirements.[8] Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.[9] A bill enacting an exemption[10] may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.[11]

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record

---

[3] Chapter 119, F.S.

[4] The word "agency" is defined in s. 119.011(2), F.S., to mean". . . any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the state constitution.

[5] Section 119.011(11), F.S.

[6] *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

[7] *Wait v. Florida Power & Light Company*, 372 So.2d 420 (Fla.1979).

[8] Article I, s. 24(c) of the State Constitution.

[9] *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

[10] Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

[11] Art. I, s. 24 (c) of the State Constitution.

confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.[12] If a record is simply made exempt from disclosure requirements an agency is not prohibited from disclosing the record in all circumstances.[13]

The Open Government Sunset Review Act [14] provides for the systematic review, through a 5 year cycle ending October 2nd of the 5th year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. Each year, by June 1, the Division of Statutory Revision of the Office of Legislative Services is required to certify to the President of the Senate and the Speaker of the House of Representatives the language and statutory citation of each exemption scheduled for repeal the following year.

The act states that an exemption may be created or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or;
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.[15]

The act also requires consideration of the following:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readilyobtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

While the standards in the Open Government Sunset Review Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature

[12] Attorney General Opinion 85-62.
[13] *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).
[14] Section 119.15, F.S.
[15] Section 119.15(4)(b), F.S.

cannot bind another.[16] The Legislature is only limited in its review process by constitutional requirements.

Further, s. 119.15(4) (e), F.S., makes explicit that:

> … notwithstanding s. 768.28 or any other law, neither the state or its political subdivisions nor any other public body shall be made party to any suit in any court or incur any liability for the repeal or revival and reenactment of any exemption under this section. The failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

Section 717.117(8), F.S., Exemption

The Department of Financial Services (DFS) Bureau of Unclaimed Property (Bureau) administers the Florida Disposition of Unclaimed Property Act (Chapter 717, F.S.), which establishes the statutory procedure for the reversion and disposition of presumed abandoned, real or personal, property to the state. Under s. 717.119, F.S., the holders, including banks and insurance companies, of property that has not been claimed for a certain period of time are required to submit the unclaimed property to DFS. The proceeds from property that remains unclaimed is then deposited into the Department of Education School Trust Fund, except for $15 million that is retained in a separate account for the prompt payment of verified claims.[17] The Bureau utilizes multiple means to fulfill the state's obligation under s. 717.118, F.S., to notify owners of unclaimed property accounts valued over $250 in a cost-effective manner.

Section 717.1400, F.S., mandates attorneys, public accountants, private investigators, or private investigative agencies to be certified or licensed within Florida in order to act as a claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS. A claimant's representative will attempt to locate the owner of unclaimed property and through a power-of-attorney agreement offer assistance in recovering the property in exchange for a fee. In order to identify the owner of unclaimed property, claimants' representatives will utilize the information contained in the unclaimed property reports filed with the Bureau.

Under the exemption in s. 717.117(8)(b), F.S., social security numbers and property identifiers contained in unclaimed property reports are confidential and exempt from public disclosure. In 2007, legislation was enacted that replaced the phrase "financial account numbers" with "property identifiers," defined as a "descriptor used by the holder to identify the unclaimed property."[18] Property identifiers contained within property reports could include bank account numbers, credit card numbers, or insurance policy numbers. The parties affected by this exemption include owners of unclaimed property, registered claimants' representatives, and other non-registered third parties. The purpose of the exemption is to protect owners of unclaimed property from identity theft and related crimes.

[16] *Straughn v. Camp*, 293 So.2d 689, 694 (Fla. 1974).
[17] Section 717.123, F.S.
[18] Section 717.117(8)(a), F.S.

Section 717.117(8)(c), F.S., allows the disclosure of property reports, containing social security numbers of unclaimed property owners along with descriptions of the property, for the limited purpose of locating the owners. The property reports can be obtained by registered claimants' representatives from the Bureau's website or compact discs produced by the Bureau. Representatives of the Bureau indicate that social security numbers and property identifiers utilized within the unclaimed property reports are not readily available through other means. However, access to an individual's social security number can result in exploitation of that individual financial, educational, medical, or familial records or forgery of documents.

The general exemption in s. 119.071, F.S., applies to each state agency and exempts from public records social security numbers, bank account numbers, debit or charge card numbers, and credit card numbers. The exemption in s. 717.117(8), F.S., for social security numbers contained in unclaimed property reports is meant to be stronger than the general exemption, since the reports are only released to registered claimants' representatives for the sole purpose of locating the owners of the unclaimed property. However, there have been reports that unregistered persons have received the Bureau's compact discs containing the social security numbers of unclaimed property owners, which are often listed as a Federal Employee Identification Number. This poses a significant threat to the personal and financial information of unclaimed property owners.

III. Effect of Proposed Changes:

The bill would reenact all current public records exemptions in Section 717.117(8), F.S., relating to social security numbers and other property identifiers or descriptors used to identify the property holder of any unclaimed or abandoned property held by the Department of Financial Services (DFS). Additionally, the bill would further exempt the release of social security numbers to registered claimants' representatives who are currently provided a compact disk of various descriptors including full social security numbers which they utilize to identify and locate, for a fee, the owners of any unclaimed or abandon property held by DFS.

The act is effective July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Section 119.15(6)(b), F.S., provides that:

". . . an exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves."

This bill is the result of an Open Government Sunset Review of s. 717.117(8), F.S. *See,* Interim Project Report 2012-314 by the Committee on Banking and Insurance. In that committee staff report, it was recommended that the exemption should be reenacted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The exemption will protect individuals from potential identity theft, prevent fraudulent claims of unclaimed property and other misuses of social security numbers and property identifiers related to personal finances and other private information.

Registered claimants' representatives' ability to locate owners may be impacted by no longer providing them with the social security numbers of those individuals who have unclaimed or abandoned property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Banking and Insurance

597-00540A-12 20127030__

A bill to be entitled

An act relating to public records; amending s. 717.117, F.S.; revising the public records exemption for information held by the Department of Financial Services relating to unclaimed property to permanently exempt social security numbers from the public records law; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (8) of section 717.117, Florida Statutes, is amended to read:

717.117 Report of unclaimed property.—

(8) ~~(a) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.~~

~~(b)~~ Social security numbers and property identifiers contained in reports required under this section, held by the department, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

~~(c) Social security numbers shall be released, for the limited purpose of locating owners of abandoned or unclaimed property, to a person registered with the department under this chapter who is an attorney, Florida-certified public accountant, private investigator who is duly licensed in this state, or a private investigative agency licensed under chapter 493.~~

Florida Senate - 2012 **(PROPOSED COMMITTEE BILL) SPB 7030**

597-00540A-12 20127030__

(a) ~~(d)~~ This exemption applies to social security numbers and property identifiers held by the department before, on, or after the effective date of this exemption.

(b) As used in this subsection, the term "property identifier" means the descriptor used by the holder to identify the unclaimed property.

(c) ~~(e)~~ This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed October 2, 2017 ~~2012~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that social security numbers contained in reports of unclaimed property remain confidential and exempt from public records requirements. Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identify theft. Such use defrauds the rightful owner or the State School Fund, which is the depository for all remaining unclaimed funds.

Section 3. This act shall take effect July 1, 2012.

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

12.7.11
Meeting Date

Topic Unclaimed Property Informat
Bill Number 7030 *(if applicable)*

Name Ashley Mayer
Amendment Barcode *(if applicable)*

Job Title Dir Policy, Res. Legis Affairs

Address Capitol - PL-11
Street
Tallahassee
City *State* *Zip*

Phone 413-4938

E-mail ashley.mayer@myfloridacfo.com

Speaking: ☒ For ☐ Against ☐ Information

Representing Dep't 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 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 610
INTRODUCER:	Senate Banking and Insurance and Senator Diaz de la Portilla
SUBJECT:	Captive Insurance
DATE:	December 7, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Burgess	Burgess	BI	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

Under current law captive insurance is regulated by the Office of Insurance Regulation (OIR) under part V of ch. 628, F.S., which defines a "captive insurer" as a domestic insurer that is owned by, or is under common ownership with, a specific corporation or group of corporations for which the captive insurer provides insurance coverage.[1] Every captive insurer must maintain unimpaired paid-in capital of at least $500,000 and unimpaired surplus of at least $250,000.[2] Current law also specifically defines "industrial insureds" and "industrial insured captive insurer."[3] An industrial insured captive insurer is a captive insurer that is owned by, and provides insurance coverage for, only industrial insureds. An industrial insured must have gross assets in excess of $50 million, at least 100 full-time employees, and pay annual premiums of at least $200,000 for each line of insurance. The industrial insured captive insurer must maintain unimpaired capital and surplus of at least $20 million.

[1] Section 628.901, F.S.
[2] Section 628.907, F.S.
[3] Section 628.903, F.S.

Other than the requirements for captive insurers and industrial insured captive insurers, current law does not delineate any other type of captive insurance.

The bill deletes the current definition of captive insurer and redefines it as meaning a domestic insurer established under part V of ch. 628, F.S., including any of the five following specified types of captive formation, each of which are defined in turn as:

1. Pure captive insurance company means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.
2. Association captive insurance company means a company that insures risks of the member organizations of the association and their affiliated companies.
3. Captive reinsurance company means a reinsurance company that is formed or licensed under ch. 628, F.S., and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company cannot directly insure risks, it can only reinsure risks.
4. Special purpose captive insurance company means a captive insurance company licensed under ch. 628, F.S., that does not meet the definition of any other type of captive insurance company.
5. Industrial insured captive insurance company means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

The bill establishes capital and reserve requirements for each type of captive insurer and removes the current requirement[4] that captive insurers are also subject to the same level of surplus[5] specified for various lines of insurance written in this state.

This bill substantially amends the following sections of the Florida Statutes:
628.901, 628.905, 628.907, 628.909, 628.911, 628.913, and 626.7491.

This bill creates the following sections of the Florida Statutes:
628.906, 628.908, 628.910, 628.912, 628.914, 628.9141, 628.9142, 628.918, 628.919, and 628.920.

This bill repeals the following section of the Florida Statutes:
628.903.

II. Present Situation:

Captive Insurance

A captive insurer is an insurance company that primarily or exclusively insures a business entity, or
entities, that owns or is an affiliate of the captive insurer. The insured business entities pay premiums to the captive insurer for specified insurance coverages. A captive insurance arrangement can provide a number of benefits, depending on the type of business arrangement, the domicile of the insured business and the captive insurer, and the coverages involved. Some benefits of captive insurance may include:

[4] See s. 628.909(2)(a), F.S.
[5] Sections 624.407, F.S., and 624.408, F.S.

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

In Florida, captive insurance is regulated by the Office of Insurance Regulation (OIR) under Part V of ch. 628, F.S. That part defines a captive insurer to be "a domestic insurer established under part I[6] to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance."[7] Captives may apply to OIR to provide commercial property, commercial casualty, and commercial marine insurance coverage, except workers' compensation or employer's liability insurance.[8] An industrial insured captive insurer, however, may provide workers compensation and employer's liability insurance, but only in excess of at least $25 million in the annual aggregate.[9] Section 628.903(2), F.S., defines an "industrial insured captive insurer" as a captive insurer that:

- Has as its stockholders or members only industrial insureds[10] that are insured by the captive;
- Provides insurance only to the industrial insureds that are its stockholders or members and affiliates of its parent cooperation, or provides reinsurance to insurers only on risks written for the industrial insureds who are stockholders or members and affiliates of the industrial insured captive or its parent company; and
- Maintains unimpaired capital and surplus of at least $20 million.

Section 628.907, F.S., requires all captives to maintain unimpaired paid-in capital of at least $500,000 and unimpaired surplus of at least $250,000. Section 628.909, F.S., further requires that all captive insurers are also subject to the same level of surplus[11] that is specified for various lines of insurance written in this state.

[6] Part I of ch. 628, F.S., is entitled "STOCK AND MUTUAL INSURERS: ORGANIZATION AND CORPORATE PROCEDURES."
[7] Section 628.901, F.S.
[8] section 628.905(1), F.S.
[9] Section 628.905(6), F.S.
[10] Section 628.903(1), F.S. An industrial insured must have gross assets in excess of $50 million, at least 100 full-time employees, and pay annual premiums of at least $200,000 for each line of insurance.
[11] Sections 624.407, F.S, and 624.408, F.S.

III. Effect of Proposed Changes:

Section 1 – Amends s. 628.901, F.S., to delete the current definition of captive insurer and redefines it as meaning a domestic insurer established under part V of ch. 628, F.S., including any of the four following specified types of captive formation, each of which are defined in turn as:

1. Pure captive insurance company means a company that insures the risks of its parent, affiliated companies, controlled unaffiliated business, or a combination thereof.
2. Association captive insurance company means a company that insures risks of the member organizations of the association and their affiliated companies.
3. Special purpose captive insurance company means a captive insurance company licensed under ch. 628, F.S., that does not meet the definition of any other type of captive insurance company.
4. Industrial insured captive insurance company means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies. An industrial insured captive insurance company can also provide reinsurance only on risks written for the industrial group.

In addition to defining the specific types of authorized captive insurance company formations, the bill provides twelve more definitions, including the following:

- "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- "Association" means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations that has been in continuous existence for at least 1 year.
- "Captive reinsurance company" means a reinsurance company that is formed or licensed under ch. 628, F.S., and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company cannot directly insure risks, it can only reinsure risks.
- "Controlled unaffiliated business' means a company that is not in the corporate system of a parent, but that has an existing contractual relationship with the parent or affiliated company and has its risks managed by a captive insurance company.
- "Industrial insured" means an insured that: (a) has gross assets in excess of $50 million; (b) procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in that person's state of domicile; (c) has at least 100 full-time employees; and (d) pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurer or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate.
- "Qualifying reinsurer parent company" means a reinsurer that is authorized in Florida to write reinsurance and that has a consolidated GAAP net worth of at least $500 million and a consolidated debt to total capital ratio of no more than 0.50.

Section 2 –Amends s. 628.905, F.S., to require captives to apply for their license through the commissioner of insurance at the OIR. The bill allows captives to write any insurance authorized by the insurance code except workers compensation, health, personal motor vehicle, or personal residential property insurance, with the following restrictions:

- A pure captive insurance cannot insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.
- An association captive insurance company cannot insure any risks other than those of the member organizations of its association and their affiliated companies, and must provide on the first page of the policy certain disclosures specified in the bill.
- An industrial insured captive insurance company cannot insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.
- A special purpose captive insurance company can only insure the risks of its parent.
- A captive insurance company may not accept or cede reinsurance except as explicitly provided.

The bill requires that to conduct business in Florida, a captive must obtain from OIR a license to conduct insurance in Florida and must: hold at least one board of directors' meeting each year in Florida; maintain its principal place of business in Florida; and appoint a resident registered agent to act on its behalf in Florida.

Before receiving a license, a captive formed as a corporation must file with the OIR:
- A certified copy of its articles of incorporation and bylaws;
- A statement of its financial condition under oath by its president and secretary;
- Evidence of the amount and liquidity of the proposed captive's assets relative to the risks to be assumed;
- Evidence of adequate expertise, experience, and character of the person(s) who will manage the company;
- Evidence of the overall soundness of the company's plan of operation;
- Evidence of adequate loss prevention programs of the company's parent, member organizations, or industrial insureds; and
- Any other factors considered relevant by the OIR in determining whether the company will be able to meet its obligations.

The bill provides that a captive insurer or a captive reinsurance company must pay to the OIR a nonrefundable fee of $1,500 for processing the application, and an annual renewal fee of $1,000. The OIR may also charge $5 for any document requiring authentication.

Upon approval by the OIR, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with the requirements of a domestic captive insurance company, and filing the necessary organizational documents with the Secretary of State, along with a certificate of good standing issued by the OIR.

The bill retains the provision in current law that an industrial insured captive insurer does not need to be incorporated in Florida if it has been validly incorporated in another jurisdiction.

Section 3 – Creates s. 628.906, F.S., relating to restrictions on eligibility of officers and directors. The bill requires that a prospective captive insurer filing for a license under s. 628.905, F.S., must include background investigations, biographical affidavits, and fingerprint cards as evidence of the trustworthiness and competence of its officers and directors. OIR may deny,

suspend or revoke the certificate if a captive insurer's officer or director served in that capacity for an specified entity that became insolvent within 2 years of the service of the officer or director, unless the officer or director demonstrates that he or she did not contribute to the insolvency. OIR may deny, suspend or revoke the captive insurer's certificate if any person who has the ability to exercise control or influence over the captive insurer has been found guilty of any felony crime involving moral turpitude punishable by imprisonment of 1 year or more.

Section 4 –Amends s. 628.907, F.S., establishing the following amounts of unimpaired paid-in capital and net assets:

- Pure captive must have at least $100,000 of unimpaired paid-in capital, and in the case of a pure captive incorporated as a stock insurer, at least $250,000 of unrestricted net assets.
- Association captive must have at least $400,000 of unimpaired paid-in capital.
- Industrial insured captive incorporated as a stock insurer must have at least $200,000 of unimpaired paid-in capital.
- Special purpose captive insurance company must have an amount of unimpaired paid-in capital and unrestricted net assets determined by the OIR.

The bill provides that the OIR may prescribe additional capital or net asset requirements, depending on the type, volume, and nature of the insurance. The bill states a captive insurance company may not pay a dividend out of capital or surplus in excess of the limitations specified in ch. 628, F.S., without the prior approval of the OIR.

Section 5 - Creates s. 628.908, F.S., relating to surplus requirements and restrictions on payment of dividends. The bill states that the OIR may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

- For a pure captive insurance company, at least $150,000.
- For an association captive insurance company incorporated as a stock insurer, at least $350,000.
- For an industrial insured captive insurance company incorporated as a stock insurer or organized as a limited liability company, at least $300,000.
- For an association captive insurance company incorporated as a mutual insurer, at least $750,000.
- For an industrial insured captive insurance company incorporated as a mutual insurer, at least $500,000.
- For a special purpose captive insurance company, an amount determined by the OIR.

The bill states a captive insurance company may not pay a dividend out of capital or surplus in excess of the limitations set forth in ch. 628, F.S., without the prior approval of the OIR.

Section 6 – Amends s. 628.909, F.S., relating to the applicability of other statutory provisions to captive insurers. Among other changes, the bill exempts captives from the requirements of:

- Sections 624.407, F.S., and s. 624.408, F.S., which, under current law require that that captives maintain the same level of surplus specified for various lines of insurance in this state.
- Section 624.4085, F.S., which defines the requirements for risk-based capital for insurers in Florida.

- Section 624.4095, F.S., which establishes standards for required ratios of written premiums to surplus for various lines of insurance.

Section 7 – Creates s. 628.910, F.S., relating to incorporation options and requirements. The bill provides that:

- A pure captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or incorporated as a public benefit, mutual benefit, or religious nonprofit corporation.
- An association captive insurance company or an industrial insured captive insurance company may be incorporated as a stock insurer with its capital divided into shares and held by the stockholders, or incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

The bill provides that a captive insurance company must have at least three incorporators, of whom at least two must be residents of Florida. The bill provides that for a captive insurance company formed as a corporation, before the articles of incorporation or organization are transmitted to the Secretary of State, the incorporators must file in triplicate the articles of incorporation with the OIR. If OIR finds the articles to conform with law, it will endorse its approval and return two sets of the articles to the incorporators for submission to the Department of State.

In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors must be a resident of Florida. The bill specifies that a captive formed as a corporation will be subject to all provisions of the general corporation law, as well as the provisions of ch. 628, F.S. If there is a conflict between the general corporation law and ch 628, the provisions of ch. 628, F.S., will govern.

Section 8 – Amends s. 628.911, F.S., relating to reports and statements. The bill requires captive insurance companies and captive reinsurance companies to submit an annual report on financial condition to the OIR before March 1st. The bill retains current law requiring the report to be verified by oath from two executive officers, and the report must be compiled using generally accepted accounting principles unless the OIR approves alternative accounting measures. The bill retains the provision in current law allowing the Financial Services Commission to adopt by rule the form in which captive insurers must report.

The bill allows a captive insurer to apply for filing the annual report on a fiscal year-end that is consistent with its parent company's fiscal year-end. If an alternative reporting date is granted the report is due 60 days after the parent company's fiscal year end.

Section 9 – Creates s. 628.912, F.S, relating to discounting of loss and loss adjustment expense reserves. The bill allows a captive reinsurance company to discount its loss and loss adjustment expense reserves at treasury rates applied to the expected payment pattern associated with the reserves. A captive reinsurance company must file annually an actuarial opinion on the loss and loss adjustment expense reserves provided by an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive company or its affiliates.

Section 10 – Amends s. 628.913, F.S., relating to captive reinsurance companies. The bill allows a captive reinsurance company to apply to the OIR for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the OIR may write reinsurance contracts covering risks in any state; however, a captive reinsurer is not allowed to directly insure risks.

The bill requires that to conduct business in this state, a captive reinsurance company must:
- Obtain from the OIR a license authorizing it to conduct business as a captive reinsurance company in this state;
- Hold at least one board of directors' meeting each year in Florida;
- Maintain its principal place of business in Florida; and
- Appoint a registered agent to accept service of process and act on its behalf in Florida.

Additionally, before receiving a license, a captive reinsurance company must file with the OIR:
- A certified copy of its charter and bylaws.
- A statement under oath of its president and secretary showing its financial condition.
- Other documents required by the OIR.
- Evidence of the amount of liquidity of the captive reinsurance company's assets relative to the risks to be assumed.
- Evidence of the adequacy of the expertise, experience, and character of the person who manages the company.
- Evidence of the overall soundness of the company's plan of operation.
- Other overall factors considered relevant by the OIR in ascertaining if the company would be able to meet its policy obligations.

Section 11 – Creates s. 628.914, F.S., relating to minimum capitalization and reserves for captive reinsurance companies. The bill states the OIR may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of the greater of $300 million or 10% of reserves. The surplus may be in the form of cash or securities. The OIR may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted. Further, a captive reinsurance company may not pay a dividend out of capital or surplus in excess of these limitations without the prior approval of the OIR.

Section 12 – Creates s. 628.9141, F.S., relating to incorporation of a captive reinsurance company. The bill requires a captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders. A captive reinsurance company must have at least three incorporators of whom at least two must be residents of Florida. The capital stock must be issued at a par value of at least $1 and no more than $100. At least one of the board of directors must be a resident of Florida.

Section 13 – Creates s. 628.9142, F.S., relating to provisions on the effect of reinsurance on required reserves. The bill allows a captive insurance company to provide reinsurance on risks ceded by any other insurer. Additionally, a captive insurance company may take credit for reserves on risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with s. 624.610, F.S.

Section 14 – Creates s. 628.918, F.S., relating to management of assets of a captive reinsurance company. The bill requires that at least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in Florida.

Section 15 – Creates s. 628.919, F.S., establishing regulations and standards to ensure risk management control by a parent company. The bill requires the Financial Services Commission to adopt rules to establish standards to ensure that a parent company or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by a pure captive insurance company.

Section 16 – Creates s. 628.920, F.S., relating to the eligibility of a captive insurance company to obtain a certificate of authority to act as an insurer. The bill specifies that a licensed captive insurance company that meets requirements imposed on an insurer must be considered for a certificate of authority to act as an insurer in Florida.

Section 17 – Amends s. 626.7491, F.S., making a technical conforming change.

Section 18 – Repeals s. 628.903, F.S., which contains the definitions in the current law which are being replaced by the definitions the bill.

Section 19 – Provides that the act shall take effect upon becoming law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

States that have seen growth in captive insurance companies report positive economic impact through job creation. The legislation is intended to make captive insurance a more

attractive alternative than it currently is, and thereby expand the proportion of Florida insureds that rely on captive insurance domiciled in Florida. To the extent that insureds move to a captive form of coverage, their current form of insurance coverage will be displaced. The net effect may be a growth in jobs for insurance personnel such as actuaries, lawyers, accountants, adjusters, administrators, and support personal, but that effect is indeterminable at this time. Additionally, the bill requires a captive insurer to maintain its principal place of business and hold at least one annual board of directors meeting in Florida.

For a company forming a captive insurance company, an insurance policy tailored to the individual company's risk profile should effectuate overall premium savings.

C. Government Sector Impact:

The bill requires the Financial Services Commission to engage in rulemaking to establish the standards necessary to ensure that a parent company is able to exercise control of the risk management function of a controlled unaffiliated business insured by a pure captive insurance company.

Regulators in some states that have seen significant growth in captive insurance have established positions dedicated specifically to oversee this form of coverage. It is unclear whether this regulatory approach necessitated a net increase in personnel. The OIR is not able to determine the net fiscal effect at this point.

To the extent that insureds move to a captive form of coverage, their current form of insurance coverage will be displaced, as will the premium tax collected for that coverage. Part of the purpose for captive insurance is to provide lower overall premiums for the insured. If the amount of taxes and fees collected for new captive insurance is less than the premium tax being displaced, there will be a net reduction in total premium tax collected. Any effect from this is indeterminable at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

Committee Substitute – Statement of Substantial Changes:

CS by Banking and Insurance on December 7, 2011

The CS requires, by definition, that a captive insurance company be a domestic insurance company.

The original bill included captive reinsurers within the definition of captive insurer. The CS narrows the definition of captive insurer to removes captive reinsurers.

The CS prohibits a captive reinsurance company from directly insuring risks.

The CS provides that an industrial insured captive insurance company can also provide reinsurance only on risks written for the industrial group.

The CS requires that an association captive insurance company must provide on the first page of the policy certain disclosures specified in the bill.

The CS provides that a captive insurer or a captive reinsurance company must pay to the OIR a nonrefundable fee of $1,500 for processing the application, and an annual renewal fee of $1,000, and that the OIR may also charge $5 for any document requiring authentication.

The CS reinstates the provision in current law that an industrial insured captive insurance company does not need to be incorporated in Florida if it has been validly incorporated in another jurisdiction.

The original bill required that before the articles of incorporation for a captive insurer could be submitted to the Secretary of State, the OIR needed to find that the proposed captive insurer "will promote the general good of the state." Further the original bill established the elements that the OIR must consider to determine whether that standard was met. The CS removed those provisions and replaced them with:

- The requirement that a prospective captive insurer filing for a license under s. 628.905, F.S., must include background investigations, biographical affidavits, and fingerprint cards as evidence of the trustworthiness and competence of its officers and directors.
- The provision that the OIR may deny, suspend or revoke the certificate if a captive insurer's officer or director served in that capacity for an specified entity that became insolvent within 2 years of the service of the officer or director, unless the officer or director demonstrates that he or she did not contribute to the insolvency.
- The provision that the OIR may deny, suspend or revoke the captive insurer's certificate if any person who has the ability to exercise control or influence over the captive insurer has been found guilty of any felony crime involving moral turpitude punishable by imprisonment of 1 year or more.

The original bill allowed pure captives to apply for filing the annual report on a fiscal year-end that is consistent with its parent company's fiscal year-end. The CS broadened that allowance to include all captive insurance companies.

The CS removed a specific reference to portions of the NAIC annual report that would be necessary as sufficient detail to support the premium tax return.

The CS removed a provision in the original bill that required an annual captive reinsurance tax of $5,000, and a provision that that tax is the only tax collectible from a captive reinsurance company, other than occupation tax and ad valorem taxes on real and personal property.

A. Amendments:

None.

344004

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 628.901, Florida Statutes, is amended to read:

628.901 Definitions ~~"Captive insurer" defined.~~ As used in ~~For the purposes of~~ this part, the term: ~~except as provided in s. 628.903, a "captive insurer" is a domestic insurer established under part I to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts~~

~~risk under a contract of insurance.~~

(1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations which has been in continuous existence for at least 1 year, the member organizations of which collectively, or which does itself:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an association captive insurance company organized as a mutual insurer.

(3) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies.

(4) "Captive insurance company" means a domestic insurer established under this part. A captive insurance company includes a pure captive insurance company, association captive insurance company, special purpose captive insurance company, or industrial insured captive insurance company formed and licensed under this part.

(5) "Captive reinsurance company" means a reinsurance company that is formed and licensed under this part and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation and may not directly insure risks. A captive reinsurance company may

reinsure only risks.

(6) "Consolidated debt to total capital ratio" means the ratio of the sum of all debts and hybrid capital instruments as described in paragraph (a) to total capital as described in paragraph (b).

(a) Debts and hybrid capital instruments include, but are not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) Total capital consists of all debts and hybrid capital instruments as described in paragraph (a) plus owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(7) "Consolidated GAAP net worth" means the consolidated owners' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(8) "Controlled unaffiliated business" means a company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a captive insurance company in accordance with s. 628.919.

(9) "GAAP" means generally accepted accounting principles.

(10) "Industrial insured" means an insured that:

(a) Has gross assets in excess of $50 million;

344004

(b) Procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or buyer or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in such person's state of domicile;

(c) Has at least 100 full-time employees; and

(d) Pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurer or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of $25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(11) "Industrial insured captive insurance company" means a captive insurance company that provides insurance only to the industrial insureds that are its stockholders or members, and affiliates thereof, or to the stockholders, and affiliates thereof, of its parent corporation. An industrial insured captive insurance company can also provide reinsurance to insurers only on risks written by such insurers for the industrial insureds who are the stockholders or members, and affiliates thereof, of the industrial insured captive insurer, or the stockholders, and affiliates thereof, of the parent corporation of the industrial insured captive insurer.

(12) "Member organization" means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(13) "Office" means the Office of Insurance Regulation.

(14) "Parent" means any corporation, limited liability

344004

company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting interests of a captive insurance company.

(15) "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(16) "Qualifying reinsurer parent company" means a reinsurer which currently holds a certificate of authority, letter of eligibility or is an accredited or a satisfactory non-approved reinsurer in this state possessing a consolidated GAAP net worth of not less than $500 million and a consolidated debt to total capital ratio of not greater than 0.50.

(17) "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(18) "Treasury rates" means the United States Treasury STRIPS asked yield as published in the Wall Street Journal as of a balance sheet date.

Section 2. Section 628.905, Florida Statutes, is amended to read:

628.905 Licensing; authority.—

(1) A ~~Any~~ captive insurer, if ~~when~~ permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, ~~provide commercial property, commercial casualty, and commercial marine insurance coverage~~ other than workers' compensation, health, personal motor vehicle, and

personal residential property ~~and employer's liability~~ insurance ~~coverage~~, except that: ~~an industrial insured captive insurer may apply for a license to provide workers' compensation and employer's liability insurance as set forth in subsection (6).~~

(a) A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies. An association captive insurance company shall have stamped or written upon the first page of the policy or the certificate, cover note, or confirmation of insurance the words: THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA CAPTIVE INSURERS LAW. PERSONS INSURED BY CAPTIVE INSURANCE COMPANIES DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER. An association captive insurance company shall also have stamped or printed on the face of the policy in at least 14-point, boldface type, the following statement: CAPTIVE INSURANCE COMPANIES' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

(c) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(d) A special purpose captive insurance company may insure only the risks of its parent.

(e) A captive insurance company may not accept or cede

reinsurance except as provided in this part.

(2) To conduct insurance business in this state, a ~~No captive insurer, other than an industrial insured~~ captive insurer must:~~, shall insure or accept reinsurance on any risks other than those of its parent and affiliated companies.~~

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, if the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer of this state must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(3)(a) Before receiving a license, a captive insurance company formed as a corporation or a nonprofit corporation must file with the office a certified copy of its articles of incorporation and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the office.

(b) In addition to the information required by paragraph (a), an applicant captive insurance company must file with the office evidence of:

1. The amount and liquidity of the proposed captive

insurance company's assets relative to the risks to be assumed;

2. The adequacy of the expertise, experience, and character of the person or persons who will manage the company;

3. The overall soundness of the company's plan of operation;

4. The adequacy of the loss prevention programs of the company's parent, member organizations, or industrial insureds, as applicable; and

5. Any other factors considered relevant by the office in ascertaining whether the company will be able to meet its policy obligations. ~~In addition to information otherwise required by this code, each applicant captive insurer shall file with the office evidence of the adequacy of the loss prevention program of its insureds.~~

(4) A captive insurance company or captive reinsurance company must pay to the office a nonrefundable fee of $1,500 for processing its application for license.

(a) A captive insurance company or captive reinsurance company must also pay an annual renewal fee of $1,000.

(b) The office may charge a fee of $5 for any document requiring certification of authenticity or the signature of the commissioner or his or her designee. ~~An industrial insured captive insurer need not be incorporated in this state if it has been validly incorporated under the laws of another jurisdiction.~~

(5) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this chapter, the commissioner may grant a license authorizing the company to conduct insurance business in this state until

the next succeeding March 1, at which time the license may be renewed. ~~An industrial insured captive insurer is subject to all provisions of this part except as otherwise indicated.~~

(6) Upon approval of the office, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with all of the requirements of law relative to the organization and licensing of a domestic captive insurance company of the same or equivalent type in this state and by filing with the Secretary of State its articles of association, charter, or other organizational documents, together with any appropriate amendments that have been adopted in accordance with the laws of this state to bring the articles of association, charter, or other organizational documents into compliance with the laws of this state, along with a certificate of good standing issued by the office. The captive insurance company is then entitled to the necessary or appropriate certificates and licenses to continue transacting business in this state and is subject to the authority and jurisdiction of this state. In connection with this redomestication, the office may waive any requirements for public hearings. It is not necessary for a captive insurance company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section. ~~An industrial insured captive insurer may not provide workers' compensation and employer's liability insurance except in excess of at least $25 million in the annual aggregate.~~

(7) An industrial insured captive insurance company need not be incorporated in this state if it has been validly

344004

incorporated under the laws of another jurisdiction.

Section 3. Section 628.906, Florida Statutes, is created to read:

628.906 Application requirements; restrictions on eligibility of officers and directors.—

(1) To evidence competence and trustworthiness of its officers and directors, the application for a license to act as a captive insurance company or captive reinsurance company shall include, but not be limited to, background investigations, biographical affidavits, and fingerprint cards for all officers and directors.

(2) The office may deny, suspend, or revoke the license to transact captive insurance or captive reinsurance in this state if any person who was an officer or director of an insurer, reinsurer, captive insurance company, captive reinsurance company, financial institution, or financial services business doing business in the United States, any state, or under the law of any other country and who served in that capacity within the 2-year period prior to the date the insurer, reinsurer, captive insurance company, captive reinsurance company, financial institution, or financial services business became insolvent, serves as an officer or director of a captive insurance company or officer or director of a captive reinsurance company licensed in this state unless the officer or director demonstrates that his or her personal actions or omissions were not a contributing cause to the insolvency or unless the officer or director is immediately removed from the captive insurance company or captive reinsurance company.

(3) The office may deny, suspend, or revoke the license to

transact insurance or reinsurance in this state of a captive insurance company or captive reinsurance company if any officer or director, any stockholder that owns 10 percent or more of the outstanding voting securities of the captive insurance company or captive reinsurance company, or incorporator has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, including a crime of dishonesty or breach of trust, punishable by imprisonment of 1 year or more under the law of the United States or any state thereof or under the law of any other country without regard to whether a judgment of conviction has been entered by the court having jurisdiction in such case. However, in the case of a captive insurance company or captive reinsurance company operating under a subsisting license, the captive insurance company or captive reinsurance company shall remove any such person immediately upon discovery of the conditions set forth in this subsection when applicable to such person or upon the order of the office, and the failure to so act shall be grounds for revocation or suspension of the captive insurance company's or captive reinsurance company's license.

Section 4. Section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends ~~surplus~~.—

(1) A ~~No~~ captive insurer may not ~~shall~~ be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) ~~(1)~~ In the case of a pure captive insurance company, not less than $100,000. ~~Unimpaired paid-in capital of at least~~

~~$500,000; and~~

(b) ~~(2)~~ In the case of an association captive insurance company incorporated as a stock insurer, not less than $400,000. ~~Unimpaired surplus of at least $250,000.~~

(c) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than $200,000.

(d) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(2) The office may not issue a license to a captive insurance company incorporated as a nonprofit corporation unless the company possesses and maintains unrestricted net assets of:

(a) In the case of a pure captive insurance company, not less than $250,000.

(b) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(3) Contributions to a captive insurance company incorporated as a nonprofit corporation must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office.

(4) For purposes of this section, the office may issue a license expressly conditioned upon the captive insurance company

providing to the office satisfactory evidence of possession of the minimum required unimpaired paid-in capital. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(5) The office may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted. Contributions in connection with these prescribed additional net assets or capital must be in the form of:

(a) Cash;

(b) Cash equivalent;

(c) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office; or

(d) Securities invested as provided in part II of chapter 625.

(6) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or

344004

determined in accordance with formulas approved by, the office.

(7) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 5. Section 628.908, Florida Statutes, is created to read:

628.908 Surplus requirements; restriction on payment of dividends.—

(1) The office may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(a) In the case of a pure captive insurance company, not less than $150,000.

(b) In the case of an association captive insurance company incorporated as a stock insurer, not less than $350,000.

(c) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than $300,000.

(d) In the case of an association captive insurance company incorporated as a mutual insurer, not less than $750,000.

(e) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than $500,000.

(f) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including

the nature of the risks to be insured.

(2) For purposes of this section, the office may issue a license expressly conditioned upon the captive insurance company providing to the office satisfactory evidence of possession of the minimum required unimpaired surplus. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the required surplus is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(3) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

(4) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 6. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does ~~shall~~ not apply to

344004

captive insurers or industrial insured captive insurers except as provided in this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code ~~shall~~ apply to captive insurers who are not industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, when no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurer is incorporated in this state.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405 when no-fault coverage is provided.

(e) Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 7. Section 628.910, Florida Statutes, is created to read:

628.910 Incorporation options and requirements.—

(1) A pure captive insurance company may be:

344004

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Florida Not For Profit Corporation Act.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two must be residents of this state.

(4) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall file the articles of incorporation in triplicate with the office. The office shall promptly examine the articles of incorporation. If it finds that the articles of incorporation conform to law, it shall endorse its approval on each of the triplicate originals of the articles of incorporation, retain one copy for its files, and return the remaining copies to the incorporators for filing with the Department of State.

(5) The articles of incorporation, the certificate issued pursuant to this section, and the organization fees required by the Florida Business Corporation Act or the Florida Not For

Profit Corporation Act, as applicable, must be transmitted to the Secretary of State, who must record the articles of incorporation and the certificate.

(6) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at par value of not less than $1 or more than $100 per share.

(7) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this state must be a resident of this state.

(8) A captive insurance company formed as a corporation or a nonprofit corporation, pursuant to the provisions of this chapter, has the privileges and is subject to the provisions of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, and a provision of this chapter, the latter controls. The provisions of this title pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in such provisions, except that the office may waive or modify the requirements for public notice and hearing in accordance with rules the office may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the office may cancel the hearing.

(9) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors as provided for by the Florida Business Corporation Act or the Florida Not For Profit Corporation Act.

Section 8. Section 628.911, Florida Statutes, is amended to read:

628.911 Reports and statements.—

(1) A captive insurance company may ~~insurer shall~~ not be required to make any annual report except as provided in this part ~~section~~.

(2) Annually no later than March 1, a captive insurance company or a captive reinsurance company ~~insurer~~ shall~~, within 60 days after the end of its fiscal year and as often as the office may deem necessary,~~ submit to the office a report of its financial condition verified by oath of two of its executive officers. Except as provided in this part, a captive insurance company or a captive reinsurance company must report using generally accepted accounting principles, unless the office approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the office for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the office. The Financial Services Commission may adopt by rule the form in which captive insurance companies ~~insurers~~ shall report.

(3) A captive insurance company may make written application for filing the required report on a fiscal year end that is consistent with the parent company's fiscal year. If an

alternative reporting date is granted, the annual report is due 60 days after the fiscal year end.

Section 9. Section 628.912, Florida Statutes, is created to read:

628.912 Discounting of loss and loss adjustment expense reserves.—

(1) A captive reinsurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(2) A captive reinsurance company must file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive reinsurance company or its affiliates.

(3) The office may disallow the discounting of reserves if a captive reinsurance company violates a provision of this part.

Section 10. Section 628.913, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 628.913, F.S., for present text.)

628.913 Captive reinsurance companies.—

(1) A captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the office for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the office may write reinsurance contracts covering risks in any state; however, a captive reinsurance company authorized by the office may not directly insure risks.

(2) To conduct business in this state, a captive reinsurance company must:

(a) Obtain from the office a license authorizing it to conduct business as a captive reinsurance company in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a registered agent to accept service of process and act otherwise on its behalf in this state.

(3) Before receiving a license, a captive reinsurance company must file with the office:

(a) A certified copy of its charter and bylaws;

(b) A statement under oath of its president and secretary showing its financial condition; and

(c) Other documents required by the office.

(4) In addition to the information required by this section, the captive reinsurance company must file with the office evidence of:

(a) The amount and liquidity of the captive reinsurance company's assets relative to the risks to be assumed;

(b) The adequacy of the expertise, experience, and character of the person who manages the company;

(c) The overall soundness of the company's plan of operation; and

(d) Other overall factors considered relevant by the office in ascertaining if the company would be able to meet its policy obligations.

Section 11. Section 628.914, Florida Statutes, is created

to read:

628.914 Minimum capitalization or reserves for captive reinsurance companies.—

(1) The office may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of not less than the greater of $300 million or 10 percent of reserves. The surplus may be in the form of cash or securities as permitted by part II of chapter 625.

(2) The office may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted.

(3) A captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

Section 12. Section 628.9141, Florida Statutes, is created to read:

628.9141 Incorporation of a captive reinsurance company.—

(1) A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

(2) A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this state.

344004

(3) Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall comply with all the requirements of s. 628.091.

(4) The capital stock of a captive reinsurance company must be issued at par value of not less than $1 or more than $100 per share.

(5) At least one of the members of the board of directors of a captive reinsurance company incorporated in this state must be a resident of this state.

Section 13. Section 628.9142, Florida Statutes, is created to read:

628.9142 Reinsurance; effect on reserves.—

(1) A captive insurance company may provide reinsurance, as authorized in this part, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with the provisions of s. 624.610. A captive insurer may not take credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 14. Section 628.918, Florida Statutes, is created to read:

628.918 Management of assets of captive reinsurance company.—At least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in this state.

Section 15. Section 628.919, Florida Statutes, is created to read:

344004

628.919 Standards to ensure risk management control by parent company.—The Financial Services Commission shall adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 16. Section 628.920, Florida Statutes, is created to read:

628.920 Eligibility of licensed captive insurance company for certificate of authority to act as insurer.—A licensed captive insurance company that meets the necessary requirements of this part imposed upon an insurer must be considered for issuance of a certificate of authority to act as an insurer in this state.

Section 17. Paragraph (e) of subsection (2) of section 626.7491, Florida Statutes, is amended to read:

626.7491 Business transacted with producer controlled property and casualty insurer.—

(2) DEFINITIONS.—As used in this section:

(e) "Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property or casualty insurance business in this state. The following are not licensed insurers for the purposes of this section:

1. Any risk retention group as defined in:

a. The Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq. (1982 and Supp. 1986); or

c. Section 627.942(9).

344004

2. Any residual market pool or joint underwriting authority or association; and

3. Any captive insurance company ~~insurer~~ as defined in s. 628.901.

Section 18. Section 628.903, Florida Statutes, is repealed.

Section 19. 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 captive insurance; amending s. 628.901, F.S.; providing definitions; amending s. 628.905, F.S.; expanding the kinds of insurance for which a captive insurer may seek licensure; limiting the risks that certain captive insurers may insure; specifying requirements and conditions relating to a captive insurer's authority to conduct business; requiring that before licensure certain captive insurers must file or submit to the Office of Insurance Regulation specified information, documents, and statements; requiring a captive insurance company to file specific evidence with the office relating to the financial condition and quality of management and operations of the company; specifying certain fees to be paid by captive insurance companies; authorizing a foreign or alien captive insurance company to become a domestic captive insurance company by complying with

specified requirements; authorizing the office to waive any requirements for public hearings relating to the redomestication of an alien captive insurance company; creating s. 628.906, F.S.; requiring biographical affidavits and background investigations for all officers and directors; providing restrictions on officers and directors involved with insolvent insurers under certain conditions; providing restrictions on officers and directors found guilty of, or that have pleaded guilty or nolo contendere to, any felony or crime involving moral turpitude, including a crime of dishonesty or breach of trust; amending s. 628.907, F.S.; revising capitalization requirements for specified captive insurance companies; requiring capital of specified captive insurance companies to be held in certain forms; requiring contributions to captive insurance companies that are stock insurer corporations to be in a certain form; authorizing the office to issue a captive insurance company license conditioned upon certain evidence relating to possession of specified capital; authorizing revocation of a conditional license under certain circumstances; authorizing the office to prescribe certain additional capital and net asset requirements; requiring such additional requirements relating to capital and net assets to be held in specified forms; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain

irrevocable letters of credit to meet certain standards; creating s. 628.908, F.S.; prohibiting the issuance of a license to specified captive insurance companies unless such companies possess and maintain certain levels of unimpaired surplus; authorizing the office to condition issuance of a captive insurance company license upon the provision of certain evidence relating to the possession of a minimum amount of unimpaired surplus; authorizing revocation of a conditional license under certain circumstances; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain irrevocable letters of credit to meet certain standards; amending s. 628.909, F.S.; providing for applicability of certain statutory provisions to specified captive insurers; creating s. 628.910, F.S.; providing requirements, options, and conditions relating to how a captive insurance company may be incorporated or organized as a business; amending s. 628.911, F.S.; providing reporting requirements for specified captive insurance companies and captive reinsurance companies; creating s. 628.912, F.S.; authorizing a captive reinsurance company to discount specified losses subject to certain conditions; amending s. 628.913, F.S.; authorizing a captive reinsurance company to apply to the office for licensure to write reinsurance covering property and casualty insurance or reinsurance contracts; authorizing the office to allow a captive

reinsurance company to write reinsurance contracts covering risks in any state; specifying that a captive reinsurance company is subject to specified requirements and must meet specified conditions to conduct business in this state; creating s. 628.914, F.S.; specifying requirements and conditions relating to the capitalization or maintenance of reserves by a captive reinsurance company; creating s. 628.9141, F.S.; specifying requirements and conditions relating to the incorporation of a captive reinsurance company; creating s. 628.9142, F.S.; providing for the effect on reserves of certain actions taken by a captive insurance company relating to providing reinsurance for specified risks; creating s. 628.918, F.S.; requiring a specified percentage of a captive reinsurance company's assets to be managed by an asset manager domiciled in this state; creating s. 628.919, F.S.; authorizing the Financial Services Commission to adopt rules establishing certain standards for control of an unaffiliated business by a parent or affiliated company relating to coverage by a pure captive insurance company; creating s. 628.920, F.S.; requiring that a licensed captive insurance company must be considered for issuance of a certificate of authority as an insurer under certain circumstances; amending s. 626.7491, F.S.; conforming a cross-reference; repealing s. 628.903, F.S., relating to the definition of the term "industrial insured captive insurer," to conform to changes made by the act;

providing an effective date.

By Senator Diaz de la Portilla

36-00010A-12 2012610__

A bill to be entitled

An act relating to captive insurance; amending s. 628.901, F.S.; providing definitions; amending s. 628.905, F.S.; expanding the kinds of insurance for which a captive insurer may seek licensure; limiting the risks that certain captive insurers may insure; specifying requirements and conditions relating to a captive insurer's authority to conduct business; requiring that before licensure certain captive insurers must file or submit to the Office of Insurance Regulation specified information, documents, and statements; requiring a captive insurance company to file specific evidence with the office relating to the financial condition and quality of management and operations of the company; authorizing a foreign or alien captive insurance company to become a domestic captive insurance company by complying with specified requirements; authorizing the office to waive any requirements for public hearings relating to the redomestication of an alien captive insurance company; amending s. 628.907, F.S.; revising capitalization requirements for specified captive insurance companies; requiring capital of specified captive insurance companies to be held in certain forms; requiring contributions to captive insurance companies that are stock insurer corporations to be in a certain form; authorizing the office to issue a captive insurance company license conditioned upon certain evidence relating to possession of specified capital;

36-00010A-12 2012610__

authorizing revocation of a conditional license under certain circumstances; authorizing the office to prescribe certain additional capital and net asset requirements; requiring such additional requirements relating to capital and net assets to be held in specified forms; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain irrevocable letters of credit to meet certain standards; creating s. 628.908, F.S.; prohibiting the issuance of a license to specified captive insurance companies unless such companies possess and maintain certain levels of unimpaired surplus; authorizing the office to condition issuance of a captive insurance company license upon the provision of certain evidence relating to the possession of a minimum amount of unimpaired surplus; authorizing revocation of a conditional license under certain circumstances; requiring dividends or distributions of capital or surplus to meet certain conditions and be approved by the office; requiring certain irrevocable letters of credit to meet certain standards; amending s. 628.909, F.S.; providing for applicability of certain statutory provisions to specified captive insurers; creating s. 628.910, F.S.; providing requirements, options, and conditions relating to how a captive insurance company may be incorporated or organized as a business; amending s. 628.911, F.S.; providing reporting requirements for specified captive insurance companies

and captive reinsurance companies; creating s. 628.912, F.S.; authorizing a captive reinsurance company to discount specified losses subject to certain conditions; amending s. 628.913, F.S.; authorizing a captive reinsurance company to apply to the office for licensure to write reinsurance covering property and casualty insurance or reinsurance contracts; authorizing the office to allow a captive reinsurance company to write reinsurance contracts covering risks in any state; specifying that a captive reinsurance company is subject to specified requirements and must meet specified conditions to conduct business in this state; creating s. 628.914, F.S.; specifying requirements and conditions relating to the capitalization or maintenance of reserves by a captive reinsurance company; creating s. 628.9141, F.S.; specifying requirements and conditions relating to the incorporation of a captive reinsurance company; creating s. 628.9142, F.S.; providing for the effect on reserves of certain actions taken by a captive insurance company relating to providing reinsurance for specified risks; creating s. 628.9143, F.S.; requiring a captive reinsurance company to annually pay a specified tax amount; prohibiting any other taxation of a captive reinsurance company other than an occupation tax and certain ad valorem taxes; subjecting a captive reinsurance company to sanctions for failures relating to the payment of taxes; creating s. 628.918, F.S.; requiring a specified

percentage of a captive reinsurance company's assets to be managed by an asset manager domiciled in this state; creating s. 628.919, F.S.; authorizing the Financial Services Commission to adopt rules establishing certain standards for control of an unaffiliated business by a parent or affiliated company relating to coverage by a pure captive insurance company; creating s. 628.920, F.S.; requiring that a licensed captive insurance company must be considered for issuance of a certificate of authority as an insurer under certain circumstances; amending s. 626.7491, F.S.; conforming a cross-reference; repealing s. 628.903, F.S., relating to "industrial insured captive insurer" defined, to conform to changes made by this act; providing an effective date.

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

Section 1. Section 628.901, Florida Statutes, is amended to read:

628.901 Definitions ~~"Captive insurer" defined.~~—As used in ~~For the purposes of~~ this part, unless the context requires otherwise, the term: ~~except as provided in s. 628.903, a "captive insurer" is a domestic insurer established under part I to insure the risks of a specific corporation or group of corporations under common ownership owned by the corporation or corporations from which it accepts risk under a contract of insurance.~~

(1) "Affiliated company" means a company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

(2) "Association" means a legal association of individuals, corporations, limited liability companies, partnerships, political subdivisions, or associations that has been in continuous existence for at least 1 year, the member organizations of which collectively, or which does itself:

(a) Own, control, or hold with power to vote all of the outstanding voting securities of an association captive insurance company incorporated as a stock insurer; or

(b) Have complete voting control over an association captive insurance company organized as a mutual insurer.

(3) "Association captive insurance company" means a company that insures risks of the member organizations of the association and their affiliated companies.

(4) "Captive insurance company" means a pure captive insurance company, association captive insurance company, captive reinsurance company, special purpose captive insurance company, or industrial insured captive insurance company formed or licensed under this chapter.

(5) "Captive reinsurance company" means a reinsurance company that is formed or licensed under this chapter and is wholly owned by a qualifying reinsurance parent company. A captive reinsurance company is a stock corporation.

(6) "Consolidated debt to total capital ratio" means the ratio of the sum of all debts and hybrid capital instruments as described in paragraph (a) to total capital as described in

paragraph (b).

(a) Debts and hybrid capital instruments include, but are not limited to, all borrowings from banks, all senior debt, all subordinated debts, all trust preferred shares, and all other hybrid capital instruments that are not included in the determination of consolidated GAAP net worth issued and outstanding.

(b) Total capital consists of all debts and hybrid capital instruments as described in paragraph (a) plus owners' equity determined in accordance with GAAP for reporting to the United States Securities and Exchange Commission.

(7) "Consolidated GAAP net worth" means the consolidated owners' equity determined in accordance with generally accepted accounting principles for reporting to the United States Securities and Exchange Commission.

(8) "Controlled unaffiliated business" means a company:

(a) That is not in the corporate system of a parent and affiliated companies;

(b) That has an existing contractual relationship with a parent or affiliated company; and

(c) Whose risks are managed by a captive insurance company in accordance with s. 628.919.

(9) "GAAP" means generally accepted accounting principles.

(10) "Industrial insured" means an insured that:

(a) Has gross assets in excess of $50 million;

(b) Procures insurance through the use of a full-time employee of the insured who acts as an insurance manager or buyer or through the services of a person licensed as a property and casualty insurance agent, broker, or consultant in such

person's state of domicile;

(c) Has at least 100 full-time employees; and

(d) Pays annual premiums of at least $200,000 for each line of insurance purchased from the industrial insured captive insurer or at least $75,000 for any line of coverage in excess of at least $25 million in the annual aggregate. The purchase of umbrella or general liability coverage in excess of $25 million in the annual aggregate shall be deemed to be the purchase of a single line of insurance.

(11) "Industrial insured captive insurance company" means a company that insures risks of the industrial insureds that comprise the industrial insured group and their affiliated companies.

(12) "Member organization" means any individual, corporation, limited liability company, partnership, or association that belongs to an association.

(13) "Office" means the Office of Insurance Regulation.

(14) "Parent" means any corporation, limited liability company, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than 50 percent of the outstanding voting interests of a captive insurance company.

(15) "Pure captive insurance company" means a company that insures risks of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(16) "Qualifying reinsurer parent company" means a reinsurer authorized to write reinsurance by this state that has a consolidated GAAP net worth of not less than $500 million and a consolidated debt to total capital ratio of not greater than

0.50.

(17) "Special purpose captive insurance company" means a captive insurance company that is formed or licensed under this chapter that does not meet the definition of any other type of captive insurance company defined in this section.

(18) "Treasury rates" means the United States Treasury STRIPS asked yield as published in the Wall Street Journal as of a balance sheet date.

Section 2. Section 628.905, Florida Statutes, is amended to read:

628.905 Licensing; authority.—

(1) Any captive insurer, when permitted by its charter or articles of incorporation, may apply to the office for a license to do any and all insurance authorized under the insurance code, ~~provide commercial property, commercial casualty, and commercial marine insurance coverage~~ other than workers' compensation and health ~~employer's liability~~ insurance ~~coverage~~, except that: ~~an industrial insured captive insurer may apply for a license to provide workers' compensation and employer's liability insurance as set forth in subsection (6).~~

(a) A pure captive insurance company may not insure any risks other than those of its parent, affiliated companies, controlled unaffiliated businesses, or a combination thereof.

(b) An association captive insurance company may not insure any risks other than those of the member organizations of its association and their affiliated companies.

(c) An industrial insured captive insurance company may not insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated

companies.

(d) A special purpose captive insurance company may only insure the risks of its parent.

(e) A captive insurance company may not provide personal motor vehicle or homeowners' insurance coverage or any component of such coverages.

(f) A captive insurance company may not accept or cede reinsurance except as provided in this part.

(2) To conduct insurance business in this state, a ~~No captive insurer, other than an industrial insured~~ captive insurer~~,~~ shall: ~~insure or accept reinsurance on any risks other than those of its parent and affiliated companies.~~

(a) Obtain from the office a license authorizing it to conduct insurance business in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a resident registered agent to accept service of process and to otherwise act on its behalf in this state. In the case of a captive insurance company formed as a corporation or a nonprofit corporation, whenever the registered agent cannot with reasonable diligence be found at the registered office of the captive insurance company, the Chief Financial Officer of this state must be an agent of the captive insurance company upon whom any process, notice, or demand may be served.

(3)(a) Before receiving a license, a captive insurance company formed as a corporation or a nonprofit corporation must file with the office a certified copy of its articles of

incorporation and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the office.

(b) In addition to the information required by paragraph (a), an applicant captive insurance company must file with the office evidence of:

1. The amount and liquidity of the proposed captive insurance company's assets relative to the risks to be assumed;

2. The adequacy of the expertise, experience, and character of the person or persons who will manage the company;

3. The overall soundness of the company's plan of operation;

4. The adequacy of the loss prevention programs of the company's parent, member organizations, or industrial insureds, as applicable; and

5. Any other factors considered relevant by the office in ascertaining whether the company will be able to meet its policy obligations ~~In addition to information otherwise required by this code, each applicant captive insurer shall file with the office evidence of the adequacy of the loss prevention program of its insureds~~.

(4) Upon approval of the office, a foreign or alien captive insurance company may become a domestic captive insurance company by complying with all of the requirements of law relative to the organization and licensing of a domestic captive insurance company of the same or equivalent type in this state and by filing with the Secretary of State its articles of association, charter, or other organizational documents, together with any appropriate amendments that have been adopted

in accordance with the laws of this state to bring the articles of association, charter, or other organizational documents into compliance with the laws of this state, along with a certificate of good standing issued by the office. After this is accomplished, the captive insurance company is entitled to the necessary or appropriate certificates and licenses to continue transacting business in this state and is subject to the authority and jurisdiction of this state. In connection with this redomestication, the office may waive any requirements for public hearings. It is not necessary for a captive insurance company redomesticating into this state to merge, consolidate, transfer assets, or otherwise engage in any other reorganization, other than as specified in this section. ~~An industrial insured captive insurer need not be incorporated in this state if it has been validly incorporated under the laws of another jurisdiction.~~

~~(5) An industrial insured captive insurer is subject to all provisions of this part except as otherwise indicated~~.

~~(6) An industrial insured captive insurer may not provide workers' compensation and employer's liability insurance except in excess of at least $25 million in the annual aggregate.~~

Section 3. Section 628.907, Florida Statutes, is amended to read:

628.907 Minimum capital and net assets requirements; restriction on payment of dividends ~~surplus~~.—

(1) A ~~No~~ captive insurer may not ~~shall~~ be issued a license unless it possesses and thereafter maintains unimpaired paid-in capital of:

(a) ~~(1)~~ In the case of a pure captive insurance company, not

less than $100,000. ~~Unimpaired paid-in capital of at least $500,000; and~~

(b) ~~(2)~~ In the case of an association captive insurance company incorporated as a stock insurer, not less than $400,000 ~~Unimpaired surplus of at least $250,000~~.

(c) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than $200,000.

(d) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(2) The office may not issue a license to a captive insurance company incorporated as a stock insurer unless the company possesses and maintains unrestricted net assets of:

(a) In the case of a pure captive insurance company, not less than $250,000.

(b) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company's business plan, feasibility study, and pro forma financial statements and projections, including the nature of the risks to be insured.

(3) Contributions to a captive insurance company incorporated as a stock insurer must be in the form of cash, cash equivalent, or an irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office.

(4) For purposes of this section, the office may issue a

license expressly conditioned upon the captive insurance company providing to the office satisfactory evidence of possession of the minimum required unimpaired paid-in capital. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the required capital is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(5) The office may prescribe additional capital or net assets based upon the type, volume, and nature of insurance business transacted. Contributions in connection with these prescribed additional net assets or capital must be in the form of:

(a) Cash;

(b) Cash equivalent;

(c) An irrevocable letter of credit issued by a bank chartered by this state or a member bank of the Federal Reserve System with a branch office in this state, or as approved by the office; or

(d) Securities invested as provided in part II of chapter 625.

(6) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of

capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

(7) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 4. Section 628.908, Florida Statutes, is created to read:

628.908 Surplus requirements; restriction on payment of dividends.—

(1) The office may not issue a license to a captive insurance company unless the company possesses and maintains unimpaired surplus of:

(a) In the case of a pure captive insurance company, not less than $150,000.

(b) In the case of an association captive insurance company incorporated as a stock insurer, not less than $350,000.

(c) In the case of an industrial insured captive insurance company incorporated as a stock insurer, not less than $300,000.

(d) In the case of an association captive insurance company incorporated as a mutual insurer, not less than $750,000.

(e) In the case of an industrial insured captive insurance company incorporated as a mutual insurer, not less than $500,000.

(f) In the case of a special purpose captive insurance company, an amount determined by the office after giving due consideration to the company’s business plan, feasibility study,

and pro forma financial statements and projections, including the nature of the risks to be insured.

(2) For purposes of this section, the office may issue a license expressly conditioned upon the captive insurance company providing to the office satisfactory evidence of possession of the minimum required unimpaired surplus. Until this evidence is provided, the captive insurance company may not issue any policy, assume any liability, or otherwise provide coverage. The office may revoke the conditional license if satisfactory evidence of the required surplus is not provided within a maximum period of time, not to exceed 1 year, to be established by the office at the time the conditional license is issued.

(3) A captive insurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations set forth in this chapter without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distribution must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

(4) An irrevocable letter of credit that is issued by a financial institution other than a bank chartered by this state or a member bank of the Federal Reserve System must meet the same standards as an irrevocable letter of credit that has been issued by a bank chartered by this state or a member bank of the Federal Reserve System.

Section 5. Section 628.909, Florida Statutes, is amended to read:

628.909 Applicability of other laws.—

(1) The Florida Insurance Code does ~~shall~~ not apply to captive insurers or industrial insured captive insurers except as provided in this part and subsections (2) and (3).

(2) The following provisions of the Florida Insurance Code ~~shall~~ apply to captive insurers who are not industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405, when no-fault coverage is provided.

(e) Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurers to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurer is incorporated in this state.

(c) Chapter 626, part IX.

(d) Sections 627.730-627.7405 when no-fault coverage is provided.

(e) Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 6. Section 628.910, Florida Statutes, is created to read:

628.910 Incorporation options and requirements.—

(1) A pure captive insurance company may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a public benefit, mutual benefit, or religious nonprofit corporation with members in accordance with the Florida Not For Profit Corporation Act.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or

(b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association.

(3) A captive insurance company may not have fewer than three incorporators of whom not fewer than two must be residents of this state.

(4) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall petition the office to issue a certificate setting forth a finding that the establishment and maintenance of the proposed entity will promote the general good of the state. In arriving at this finding, the office must consider:

(a) The character, reputation, financial standing, and purposes of the incorporators;

(b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors; and

(c) Other aspects as the office considers advisable.

(5) The articles of incorporation, the certificate issued pursuant to this section, and the organization fees required by the Florida Business Corporation Act or the Florida Not For Profit Corporation Act, as applicable, must be transmitted to the Secretary of State, who must record the articles of incorporation and the certificate.

(6) The capital stock of a captive insurance company incorporated as a stock insurer must be issued at par value of not less than $1 or more than $100 per share.

(7) In the case of a captive insurance company formed as a corporation or a nonprofit corporation, at least one of the members of the board of directors of a captive insurance company incorporated in this state must be a resident of this state.

(8) A captive insurance company formed as a corporation or a nonprofit corporation, pursuant to the provisions of this chapter, has the privileges and is subject to the provisions of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, as well as the applicable provisions contained in this chapter. If a conflict occurs between a provision of the general corporation law, including the Florida Not For Profit Corporation Act for nonprofit corporations, as applicable, and a provision of this chapter, the latter controls. The provisions of this title pertaining to mergers, consolidations, conversions, mutualizations, and redomestications apply in determining the procedures to be followed by a captive insurance company in carrying out any of the transactions described in such provisions, except that the office may waive or modify the requirements for public notice and hearing in accordance with

rules the office may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the office may cancel the hearing.

(9) The articles of incorporation or bylaws of a captive insurance company may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors as provided for by the Florida Business Corporation Act or the Florida Not For Profit Corporation Act.

Section 7. Section 628.911, Florida Statutes, is amended to read:

628.911 Reports and statements.—

(1) A captive insurance company may ~~insurer shall~~ not be required to make any annual report except as provided in this part ~~section~~.

(2) Annually no later than March 1, a captive insurance company or a captive reinsurance company ~~insurer~~ shall~~, within 60 days after the end of its fiscal year and as often as the office may deem necessary,~~ submit to the office a report of its financial condition verified by oath of two of its executive officers. Except as provided in this part, a captive insurance company or a captive reinsurance company must report using generally accepted accounting principles, unless the office approves the use of statutory accounting principles, with useful or necessary modifications or adaptations required or approved or accepted by the office for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the office. The Financial Services Commission may adopt by rule the form in which captive insurance companies ~~insurers~~ shall report.

(3)(a) A pure captive insurance company may make written application for filing the required report on a fiscal year end that is consistent with the parent company's fiscal year. If an alternative reporting date is granted, the annual report is due 60 days after the fiscal year end.

(b) In order to provide sufficient detail to support the premium tax return, the pure captive insurance company must file no later than March 1 of each year for each calendar year end pages 1-7 of the National Association of Insurance Commissioners (NAIC) Annual Statement, verified by oath of two of its executive officers.

Section 8. Section 628.912, Florida Statutes, is created to read:

628.912 Discounting of loss and loss adjustment expense reserves.—

(1) A captive reinsurance company may discount its loss and loss adjustment expense reserves at treasury rates applied to the applicable payments projected through the use of the expected payment pattern associated with the reserves.

(2) A captive reinsurance company must file annually an actuarial opinion on loss and loss adjustment expense reserves provided by an independent actuary. The actuary may not be an employee of the captive reinsurance company or its affiliates.

(3) The office may disallow the discounting of reserves if a captive reinsurance company violates a provision of this part.

Section 9. Section 628.913, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 628.913, F.S., for present text.)

628.913 Captive reinsurance companies.—

(1) A captive reinsurance company, if permitted by its articles of incorporation or charter, may apply to the office for a license to write reinsurance covering property and casualty insurance or reinsurance contracts. A captive reinsurance company authorized by the office may write reinsurance contracts covering risks in any state.

(2) To conduct business in this state, a captive reinsurance company must:

(a) Obtain from the office a license authorizing it to conduct business as a captive reinsurance company in this state;

(b) Hold at least one board of directors' meeting each year in this state;

(c) Maintain its principal place of business in this state; and

(d) Appoint a registered agent to accept service of process and act otherwise on its behalf in this state.

(3) Before receiving a license, a captive reinsurance company must file with the office:

(a) A certified copy of its charter and bylaws;

(b) A statement under oath of its president and secretary showing its financial condition; and

(c) Other documents required by the office.

(4) In addition to the information required by this section, the captive reinsurance company must file with the office evidence of:

(a) The amount and liquidity of the captive reinsurance company's assets relative to the risks to be assumed;

(b) The adequacy of the expertise, experience, and

character of the person who manages the company;

(c) The overall soundness of the company's plan of operation; and

(d) Other overall factors considered relevant by the office in ascertaining if the company would be able to meet its policy obligations.

Section 10. Section 628.914, Florida Statutes, is created to read:

628.914 Minimum capitalization or reserves for captive reinsurance companies.—

(1) The office may not issue a license to a captive reinsurance company unless the company possesses and maintains capital or unimpaired surplus of not less than the greater of $300 million or 10 percent of reserves. The surplus may be in the form of cash or securities as permitted by part II of chapter 625.

(2) The office may prescribe additional capital or surplus based upon the type, volume, and nature of the insurance business transacted.

(3) A captive reinsurance company may not pay a dividend out of, or other distribution with respect to, capital or surplus in excess of the limitations without the prior approval of the office. Approval of an ongoing plan for the payment of dividends or other distributions must be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the office.

Section 11. Section 628.9141, Florida Statutes, is created to read:

628.9141 Incorporation of a captive reinsurance company.—

(1) A captive reinsurance company must be incorporated as a stock insurer with its capital divided into shares and held by its shareholders.

(2) A captive reinsurance company may not have fewer than three incorporators of whom at least two must be residents of this state.

(3) Before the articles of incorporation are transmitted to the Secretary of State, the incorporators shall comply with all the requirements of s. 628.091.

(4) The capital stock of a captive reinsurance company must be issued at par value of not less than $1 or more than $100 per share.

(5) At least one of the members of the board of directors of a captive reinsurance company incorporated in this state must be a resident of this state.

Section 12. Section 628.9142, Florida Statutes, is created to read:

628.9142 Reinsurance; effect on reserves.—

(1) A captive insurance company may provide reinsurance, as authorized in this part, on risks ceded by any other insurer.

(2) A captive insurance company may take credit for reserves on risks or portions of risks ceded to authorized insurers or reinsurers and unauthorized insurers or reinsurers complying with the provisions of s. 624.610. A captive insurer may not take credit for reserves on risks or portions of risks ceded to an unauthorized insurer or reinsurer if the insurer or reinsurer is not in compliance with s. 624.610.

Section 13. Section 628.9143, Florida Statutes, is created

to read:

628.9143 Annual captive reinsurance tax.—

(1) A captive reinsurance company must pay to the office by March 1 of each year a captive reinsurance tax of $5,000.

(2) The tax provided in this section is the only tax collectible under the laws of this state from a captive reinsurance company, and no tax on reinsurance premiums, other than occupation tax, nor any other taxes, except ad valorem taxes on real and personal property used in the production of income, may be levied or collected from a captive reinsurance company by this state or a county, city, or municipality within this state.

(3) A captive reinsurance company failing to make returns or to pay all taxes required by this section is subject to sanctions provided in this part.

Section 14. Section 628.918, Florida Statutes, is created to read:

628.918 Management of assets of captive reinsurance company.—At least 35 percent of the assets of a captive reinsurance company must be managed by an asset manager domiciled in this state.

Section 15. Section 628.919, Florida Statutes, is created to read:

628.919 Standards to ensure risk management control by parent company.—The Financial Services Commission shall adopt rules establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurance company.

Section 16. Section 628.920, Florida Statutes, is created to read:

628.920 Eligibility of licensed captive insurance company for certificate of authority to act as insurer.—A licensed captive insurance company that meets the necessary requirements of this part imposed upon an insurer must be considered for issuance of a certificate of authority to act as an insurer in this state.

Section 17. Paragraph (e) of subsection (2) of section 626.7491, Florida Statutes, is amended to read:

626.7491 Business transacted with producer controlled property and casualty insurer.—

(2) DEFINITIONS.—As used in this section:

(e) "Licensed insurer" or "insurer" means any person, firm, association, or corporation licensed to transact a property or casualty insurance business in this state. The following are not licensed insurers for the purposes of this section:

1. Any risk retention group as defined in:

a. The Superfund Amendments Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613 (1986);

b. The Risk Retention Act, 15 U.S.C. ss. 3901 et seq. (1982 and Supp. 1986); or

c. Section 627.942(9).

2. Any residual market pool or joint underwriting authority or association; and

3. Any captive insurance company ~~insurer~~ as defined in s. 628.901.

Section 18. Section 628.903, Florida Statutes, is repealed.

Section 19. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

12-7-11
Meeting Date

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

Topic Captive Insurance

Bill Number 610

Name Beth A. Vecchioli

Amendment Barcode 344004
(if applicable)

Job Title Sr. Gov't. Consultant

Address 215 S. Monroe St., Ste 500
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-513-3607

E-mail bvecchioli@earthlink.net

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

Representing The Beacon Council

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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12. 7. 2011
Meeting Date

Topic Captive Insurance

Bill Number 610 *(if applicable)*

Name Iuthe Arango

Amendment Barcode 344004 *(if applicable)*

Job Title VP The Beacon Council

Address 80 SW 8th St., Suite 2400
Street

Phone 305 345-7746

Miami FL
City *State* *Zip*

E-mail iarango@beaconcouncil.com

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

Representing The Beacon 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 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-7-11
Meeting Date

Topic Captive Insurance

Bill Number 610 *(if applicable)*

Name Teye Reeves

Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 136 S. Bronough St. *Street*

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

Phone 850-521-1200

E-mail teye@flchamber.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Florida Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 792
INTRODUCER:	Senator Gaetz and others
SUBJECT:	Financial Institutions
DATE:	November 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Senate bill 792 codifies into state law the federal requirement that all state financial institutions certify that they have adopted policies, procedures, and controls, in accordance with promulgated rules established by the Office of Financial Regulation (OFR), to detect and assure the financial institution does not knowingly maintain any correspondent accounts or payable-through accounts with any financial institution that does business with Iran or any other terrorist organization designated by the United States Government. The bill mandates new reporting requirements upon all state chartered financial institutions as well as the OFR. The bill further authorizes the OFR to impose civil penalties of $100,000 against any state chartered financial institution that is in noncompliance with the annual reporting requirement.

The bill creates an undesignated section of Florida statutes.

II. Present Situation:

As a result of Iran's support for international terrorism and its aggressive actions against non-belligerent shipping in the Persian Gulf, President Reagan issued Executive Order 12613,[1] imposing a new import embargo on Iranian-origin goods and services. Section 505 of the International Security and Development Cooperation Act of 1985 (ISDCA) was utilized as the statutory authority for the embargo, which gave rise to the Iranian Transactions Regulations (ITR).[2]

[1] Executive Order 12613, October 29, 1987.
[2] Title 31, Part 560 of the U.S. Code of Federal Regulations.

In 1995, as a result of Iranian support of international terrorism and Iran's active pursuit of weapons of mass destruction, President Clinton issued Executive Order 12957[3] prohibiting U.S. involvement with any petroleum development in Iran. Later that year, President Clinton issued Executive Order 12959,[4] substantially tightening the United States' sanctions against Iran. In 1997, President Clinton signed Executive Order 13059,[5] prohibiting virtually all trade and investment activities with Iran by all U.S. Citizens.

On July 1, 2010, President Obama signed into law the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA).[6] CISADA requires the Secretary of the Treasury to prohibit or restrict the opening or maintaining in the United States of a correspondent or payable-through account by a foreign financial institution if that institution knowingly:

- facilitates Iranian government, including the Iran's Revolutionary Guard Corps (IRGC), efforts to acquire weapons of mass destruction (WMD) or to support international terrorism;
- engages in dealings with Iranian persons sanctioned by the Security Council;
- engages in money laundering or facilitates Central Bank of Iran efforts to aid Iran's WMD programs, to support Iran's sponsorship of terrorism, or to support persons under Security Council sanction; or
- conducts significant business with the IRGC, its affiliates, or financial institutions whose property or interests are blocked pursuant to the International Emergency Economic Powers Act.

CISADA directs the Secretary of the Treasury to prohibit any person owned or controlled by a domestic financial institution from knowingly engaging in a transaction with or benefiting the IRGC or its affiliates whose property or interests are blocked pursuant to the International Emergency Economic Powers Act and applies specified penalties under the International Emergency Economic Powers Act to a domestic financial institution if:

- a person owned or controlled by the institution violates or attempts to violate such provisions; and
- the institution knew or should have known of such activity.

In addition, CISADA directs the Secretary of the Treasury to require a domestic financial institution maintaining a correspondent account or payable-through account in the United States for a foreign financial institution to do one or more of the following:

- perform an audit of activities that may be carried out by the foreign financial institution;
- report to the Department of the Treasury regarding transactions provided with any sanctioned activity;
- certify that the foreign financial institution is not knowingly engaging in any such sanctioned activity; and
- establish due diligence policies designed to detect whether the foreign financial institution has engaged in sanctioned activity.

[3] Executive Order 12957, March 16, 1995.
[4] Executive Order 12959, May 6, 1995.
[5] Executive Order 13059, August 19, 1997.
[6] Pub. L. 111-195.

Lastly, the act applies specified penalties to persons that violate such provisions and authorizes the Secretary of the Treasury to waive such prohibitions for purposes of U.S. national interest.

Currently, all Florida state chartered financial institutions must comply with Treasury's OFAC and FinCEN regulations and the promulgated federal Iranian sanctions. The bank examination processes, by both state and federal examiners, includes procedures for examining and assessing a financial institution's policies, procedures, and processes for ensuring compliance with the federal regulatory requirements and sanctions. As part of the scoping and planning procedures, examiners must review the bank's OFAC risk assessment and independent testing to determine the extent to which a review of the bank's OFAC compliance program should be conducted during the examination. The effectiveness of the examination process is heightened due to the existence of information sharing agreements between state and federal banking regulators with both OFAC and FinCEN. As a result, under present law the type of banking transactions being targeted by the bill are scrutinized and subject to federal laws, pursuant to state law based upon safety and soundness grounds or in the alternative based upon the Florida Control of Money Laundering provisions of Section 655.50, F.S.

III. Effect of Proposed Changes:

SB 792 requires the Office of Financial Regulation (OFR) to adopt rules establishing minimum standards that all state chartered financial institutions must adopt to detect whether any correspondent accounts or a payable-through accounts with a foreign financial institution are knowingly:

- facilitating the efforts of the Iranian Government to develop weapons of mass destruction;
- providing support to a foreign terrorist organization;
- facilitating the activities of a person who is subject to financial sanctions by a United Nations Security Council's Iranian sanction resolutions;
- engaging in related money laundering activity;
- facilitating efforts by Iranian financial institutions to carry out prohibited activities; or
- facilitating a significant transaction or providing significant financial services to an entity whose property interests are blocked pursuant to federal law associated with Iran's proliferation of weapons of mass destruction or support for international terrorism.

The bill requires OFR to submit an annual report to the Governor and the Legislature as well as post the report on the Department of Financial Services' website. The bill also authorizes the OFR to impose a $100,000 civil penalty against any state chartered financial institution that fails to comply with the annual reporting requirement.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill adopts Federal laws and regulations that change frequently. Any future changes to the federal requirements after the bill were to become law would have to be readdressed by the legislature.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Federally chartered financial institutions and out-of-state chartered financial institutions doing business in Florida will not be subject to the bill's requirements. Noncompliance with the reporting requirements will subject Florida state chartered financial institutions to a $100,000 civil penalty. In addition, there could be compliance costs that only state chartered financial institution would be subject to.

C. Government Sector Impact:

The bill creates additional regulatory costs with regard to the mandatory rule making, enforcement and reporting by the OFR.

VI. Technical Deficiencies:

The Financial Services Commission is the authority through which rules are adopted for the Office of Financial Regulation.

VII. Related Issues:

Because the OFR has direct jurisdiction over financial institutions, the posting of the compliance report could be placed on the OFR's website, rather than, or in addition to, the DFS's website.

VIII. Additional Information:

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

None.

B. Amendments:

None.

By Senators Gaetz and Rich

4-00649-12 2012792__

A bill to be entitled

An act relating to financial institutions; providing definitions; requiring a financial institution that is chartered in this state and that maintains certain accounts with a foreign financial institution to establish due diligence policies, procedures, and controls reasonably designed to detect whether the foreign financial institution engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities; requiring the Office of Financial Regulation to adopt rules establishing minimum standards for the due diligence policies, procedures, and controls; requiring a financial institution chartered in this state to annually file a compliance certificate with the Office of Financial Regulation; requiring the Office of Financial Regulation to submit an annual report relating to its rules and certifications from financial institutions to the Governor, the President of the Senate, and the Speaker of the House of Representatives; requiring the Office of the Chief Financial Officer to make the annual report available to the public on its website; authorizing the Office of Financial Regulation to impose a civil penalty against a financial institution that fails to make the annual certification required by the act; providing an effective date.

4-00649-12 2012792__

WHEREAS, the United States Congress passed, and President Obama signed into law, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 prohibits or strictly limits any foreign financial institution's ability to open or maintain a correspondent account or a payable-through account with American financial institutions if the United States Secretary of the Treasury determines that the foreign financial institution knowingly engages in certain activities facilitating the development of weapons of mass destruction by the Government of Iran, provides support for certain foreign terrorist organizations, or participates in other related activities, and

WHEREAS, the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 imposes civil and criminal penalties against financial institutions based in the United States which know or should know that they are maintaining a correspondent account or a payable-through account with a foreign financial institution that engages in prohibited activities, and

WHEREAS, it is a sensible fiduciary responsibility of financial institutions chartered in the State of Florida to know the activities of foreign financial institutions with which they maintain correspondent or payable-through accounts, NOW, THEREFORE,

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

Section 1. Financial institutions; transactions relating to

Iran or terrorism.—

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

(a) "Correspondent account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(b) "Financial institution" has the same meaning as defined in s. 655.005(1)(i), Florida Statutes.

(c) "Payable-through account" has the same meaning as defined in 31 U.S.C. s. 5318A.

(2) A financial institution chartered in this state which maintains a correspondent account or a payable-through account with a foreign financial institution must establish due diligence policies, procedures, and controls reasonably designed to detect whether the United States Secretary of the Treasury has found that the foreign financial institution knowingly:

(a) Facilitates the efforts of the Government of Iran, including efforts of Iran's Revolutionary Guard Corps, to acquire or develop weapons of mass destruction or their delivery systems;

(b) Provides support for an organization designated by the United States as a foreign terrorist organization;

(c) Facilitates the activities of a person who is subject to financial sanctions pursuant to a resolution of the United Nations Security Council imposing sanctions on Iran;

(d) Engages in money laundering to carry out any activity listed in this subsection;

(e) Facilitates efforts by the Central Bank of Iran or any other Iranian financial institution to carry out an activity listed in this subsection; or

(f) Facilitates a significant transaction or provides

significant financial services for Iran's Revolutionary Guard Corps or its agents or affiliates, or any financial institution, whose property or interests in property are blocked pursuant to federal law in connection with Iran's proliferation of weapons of mass destruction, or delivery systems for those weapons, or Iran's support for international terrorism.

(3) By July 1, 2012, the Office of Financial Regulation shall adopt rules establishing minimum standards for due diligence policies, procedures, and controls required by this section.

(4) By January 1, 2013, and each January 1 thereafter, each financial institution chartered in this state must certify to the Office of Financial Regulation that the financial institution has adopted and substantially complies with its due diligence policies, procedures, and controls required by this section and the rules of the Office of Financial Regulation, and that to the best knowledge of the financial institution, the financial institution does not maintain a correspondent account or a payable-through account with a foreign financial institution that knowingly engages in any act described in subsection (2).

(5) By January 31, 2013, and each January 31 thereafter, the Office of Financial Regulation must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives which contains a copy of the rules required under subsection (2) and the status of the certifications of compliance received from the financial institutions charted in this state.

(6) The Office of the Chief Financial Officer shall make

its annual compliance report under this section available on its website.

(7) The Office of Financial Regulation may impose a civil penalty, not to exceed $100,000 per occurrence, against a financial institution that fails to make the annual certification required under subsection (4).

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic _____ Bill Number 792 (if applicable)

Name Bernie Friedman Amendment Barcode _____ (if applicable)

Job Title FL Assoc. Jewish Federations

Address 3111 Stirling Rd Phone _____
Street

Ft Lau E-mail _____
City State Zip

Speaking: ☑ For ☐ Against ☐ Information

Representing FL Assoc Jewish Federations

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/7/11
Meeting Date

Topic Financial Institutions

Bill Number 792 *(if applicable)*

Name JARED Ross

Amendment Barcode *(if applicable)*

Job Title Dir. of Legislative Affairs

Address 3773 Commonwealth Blvd
Street

Phone 590-6570

Tallahassee FL 32303
City *State* *Zip*

E-mail jared.ross@lscu.coop

Speaking: ☒ For ☐ Against ☐ Information

Representing League of Southeastern Credit Unions

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 578
INTRODUCER:	Senator Richter
SUBJECT:	Depopulation Programs of Citizens Property Insurance Corporation
DATE:	November 28, 2011 REVISED: 12/07/11

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Fav/7 amendments**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	☐	Statement of Substantial Changes
B. AMENDMENTS.....	☐	Technical amendments were recommended
	☒	Amendments were recommended
	☐	Significant amendments were recommended

I. Summary:

Under current law, surplus lines insurers are not allowed to participate in the Citizens' depopulation program. While surplus lines insurers are statutorily allowed to operate in Florida and must meet certain requirements of the Office of Insurance Regulation (OIR), they are not required to obtain a license to operate, whereas only licensed insurers can participate in the Citizens' depopulation program. The bill would change current law to allow surplus lines insurers that meet specified financial criteria to participate in the Citizens' depopulation program without the need of obtaining a license as an admitted carrier though OIR. The bill allows policy holders in Citizens to remain in Citizens should they be selected for removal though the depopulation program by a qualified surplus lines insurer.

The bill requires a surplus lines insurer removing policies from Citizens to provide prominent notice to the Citizens' policyholder prior to the insurer assumes the policy. The notice must explain that the surplus lines policy being offered is not covered by the Florida Insurance Guaranty Association. Additionally, the surplus lines insurer must offer similar coverage to what the policy holder currently has through Citizens. The surplus lines insurer must also explain to the selected Citizens' policyholders the differences between coverage through surplus lines and Citizens. If the Citizens' policyholder were to receive an offer for insurance from both a Florida

licensed insurer and a surplus lines insurer, then the offer from the Florida licensed insurer has priority.

The bill also requires surplus lines insurers participating in the Citizens' depopulation program to deposit a specified amount of premium from the assumed policies with the Bureau of Collateral Management in the Department of Financial Services. The premium deposit can be used to pay claims of Citizens' policyholders assumed by the insurer if the surplus lines insurer were to ever become insolvent.

Lastly, the bill allows additional types of insurers and insurance entities considering depopulating Citizens to receive Citizens' underwriting and confidential claims files, but maintains current law requiring release of the files only if the receiving insurer or entity agrees in writing to maintain the confidentiality of the files.

This bill substantially amends 627.351, Florida Statutes.

II. Present Situation:

Citizens Property Insurance Corporation
Citizens Property Insurance Corporation (Citizens or corporation) 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. It is not a private insurance company. As of September 30, 2011, Citizens is the largest property insurer in Florida with over 1.4 million policies extending over $508 billion of property coverage to Floridians.[1] Citizens was created by the Legislature in 2002 by the merger of two existing property insurance associations that provided property insurance to those homeowners and businesses who could not find coverage in the private market.

Coverage
Citizens writes various types of property insurance coverage for its policyholders. The types of coverage are divided into three separate accounts within the corporation:

- Personal Lines Account (PLA) – Multi-peril Policies.[2] Consists of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies;
- Commercial Lines Account (CLA) – Multi-peril Policies. Consists of condominium association, apartment building, homeowner's association policies, and commercial non-residential multi-peril policies on property located outside the Coastal Account area; and
- Coastal Account – Wind-only[3] and Multi-peril Policies. Consists of wind-only and multi-peril policies for personal residential, commercial residential and commercial non-residential issued in limited eligible coastal areas.

[1] https://www.citizensfla.com/
[2] A multi-peril policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. (http://www2.iii.org/glossary/) Multi-peril property insurance policies include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.
[3] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

Financial Resources
Citizens' financial resources to pay property insurance claims include both resources typically available to private insurance companies and resources uniquely available to Citizens as a governmental entity with the statutory authority to levy assessments in the event of a deficit in Citizens' financial resources. Like typical private insurance companies, Citizens' financial resources include:

- Insurance premiums;
- Investment income;
- Accumulated surplus;
- Reimbursements from the Florida Hurricane Catastrophe Fund due to Citizens' purchase of reinsurance from the Florida Hurricane Catastrophe Fund; and
- Reimbursements from private reinsurance companies if Citizens purchases private reinsurance.

Financial Resources unique to Citizens include: Citizens' policyholder surcharges, regular assessments, and emergency assessments.

Assessments
In the event Citizens incurs a deficit (i.e., its obligations to pay claims exceeds its capital plus reinsurance recoveries), it may levy assessments on most of Florida's property and casualty insurance policyholders in a specific sequence set by statute.[4] The three Citizens' accounts calculate deficits and resulting assessment needs independently.

Citizens Policyholder Assessments: If Citizens incurs a deficit, Citizens will first levy surcharges on its policyholders of up to 15% of premium per account in deficit, for a maximum total of 45%.[5] This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

Regular Assessments: Upon the exhaustion of the Citizens Policyholder Assessment for a particular account, Citizens may levy a regular assessment of up to 6% of premium or 6% of the deficit per account, for a maximum total of 18%.[6] The regular assessment is levied on virtually all property and casualty policies in the state, but is not levied on Citizens' policies. The assessment is also not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

Emergency Assessments: Upon the exhaustion of the Citizens Policyholder Assessment and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10% of premium or 10% of the deficit per account, for a maximum total of 30%.[7] This assessment can be collected for as many years as is necessary to cure a deficit. Emergency assessments are levied on virtually all property and casualty policies in the state, including Citizens' own policies. However, this assessment is not levied on workers' compensation, medical malpractice, accident and health, crop or federal flood insurance policies.

[4] s. 627.351(6)(b)3.a.,d., and i., F.S.
[5] s. 627.351(6)(b)3.i., F.S.
[6] s. 627.351(6)(b)3.a. and b., F.S.
[7] s. 627.352(6)(b)3.d., F.S.

Depopulation

Under current law, Citizens is authorized to develop and maintain a depopulation program to reduce the number of its insured properties and to decrease its financial exposure.[8] The depopulation program encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure. However, current law allows a Citizens' policyholder to choose to remain in Citizens even though the policyholder receives an offer of coverage (assumption) from an insurance company in the private market. Furthermore, a Citizens' policyholder cannot be removed from Citizens by a private insurer licensed in Florida if the policyholder's insurance agent is not appointed by the insurer removing the policy from Citizens.[9]

The following table outlines Citizens' recent depopulation statistics:
Depopulation of Citizens Property Insurance[10]

Year	Number of Policies	Exposure
2003	28,219	$ 8,140,681,906
2004	158,416	$ 30,663,076,480
2005	293,684	$ 53,658,840,059
2006	67,853	$ 15,637,589,369
2007	247,887	$ 68,259,426,361
2008	385,084	$ 106,870,490,165
2009	149,645	$ 37,784,506,743
2010	59,792	$ 13,888,913,857

Surplus Lines Insurance

Surplus lines insurance refers to a category of insurance for which there is no market available through standard insurance carriers in the admitted market (insurance companies licensed to transact insurance in Florida). There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code and thus do not obtain a certificate of authority from the Office of Insurance Regulation to transact insurance in Florida.[11] Rather, surplus lines insurers are "unauthorized" or "nonadmitted" insurers, but are eligible to transact surplus lines insurance under the surplus lines law as "eligible surplus insurers."[12] The OIR determines whether a surplus lines insurer is "eligible" based on statutory guidelines.[13] Eligibility requirements[14] reviewed by the OIR for surplus lines

[8] s. 627.351(6)(q)3., F.S.
[9] See s. 627.3517, F.S.
[10] https://www.citizensfla.com/about/depopinfo.cfm (last viewed October 26, 2011).
[11] s. 624.09(1), F.S., defines "authorized" insurer.
[12] s. 624.09(2), F.S. defines "unauthorized" insurer, s. 626.914(2), F.S., defines "eligible surplus lines insurer," and s. 626.918, F.S., provides eligibility for surplus lines insurers.
[13] s. 626.918(2), F.S.
[14] s. 626.918, F.S.

include: Eligibility is requested in writing for the insurer by the Florida Surplus Lines Service Office; Insurer is authorized for the prior 3 years in the state or country of its domicile to write the kinds of insurance the insurer wants to write in Florida (with limited exceptions); Insurer provides the OIR with its current annual financial statement; Insurer meets surplus requirements (delineated below); and Insurer has a good reputation relating to payment of claims and policyholder service. Generally, a surplus lines insurer must have and maintain surplus of $15 million or more in order to obtain and maintain eligibility.[15] In addition, an insurer formed outside the U.S. must have and maintain in the U.S. a trust fund containing at least $5.4 million. The OIR has no duty or responsibility to determine the actual financial condition or claims practice of surplus lines insurers; a finding of eligibility by the OIR only means the surplus lines insurer appears to be financially sound and to have satisfactory claims practice.[16]
The OIR must withdraw the eligibility of a surplus lines insurer if the OIR has reason to believe the insurer is insolvent or in unsound financial condition, does not make reasonable prompt payment of claims, or does not meet the statutory guidelines for eligibility (including maintenance of $15 million in surplus). The OIR may withdraw the eligibility of a surplus lines insurer if the insurer willfully violates a statute or rule.[17]

III. Effect of Proposed Changes:

The bill would allow surplus lines insurers meeting specified criteria to take part in Citizens' depopulation program. Only surplus lines insurers meeting three financial criteria would be allowed to take policies out of Citizens. The criteria are designed to ensure that only financially sound surplus lines insurers can participate in the Citizens' depopulation program. The OIR will determine if the surplus lines insurer meets the specified financial criteria for participation in the depopulation program and must approve the surplus lines insurer's depopulation plan.

First, the bill requires the surplus lines insurer wanting to participate in Citizens' depopulation to maintain $50 million in surplus. Current law requires surplus lines insurers to maintain surplus of only $15 million in order to be eligible to write insurance in Florida. Thus, the bill provides increased surplus requirements for those surplus lines insurers that take policies out of Citizens. The increased surplus will protect against insolvency of the insurer and make it more likely policyholder claims can be paid if an insolvency occurs.

Second, the insurer must also maintain an A.M. Best Financial Strength Rating of A- or better in order to take policies out of Citizens. Surplus lines insurers are not required in current law to maintain a certain A.M. Best rating in order to be eligible to write insurance in Florida.

Third, the bill requires a surplus lines insurer wanting to participate in Citizens' depopulation to have financial resources to cover the insurer's 100-year probable maximum loss at least twice in a hurricane season. Historically, the OIR has required authorized insurers to have financial resources to cover the insurer's 100-year probable maximum loss at least once in a hurricane season. However, instead of implementing a 100-year reinsurance requirement for all authorized insurers, recently the OIR implemented reinsurance requirements based on a review of an

[15] s. 626.918(1)(d)1.a., F.S.
[16] s. 626.918(4), F.S.
[17] s. 626.919, F.S.

insurer's financial picture and exposure. Thus, reinsurance requirements can vary among authorized insurers.

Under the bill, a surplus lines insurer removing policies from Citizens must provide prominent notice to the Citizens' policyholder, before the insurer assumes the policy, that the surplus lines policy is not covered by the Florida Insurance Guaranty Association (FIGA). Generally, FIGA pays claims of policyholders insured by licensed Florida insurers if the insurer becomes insolvent. Because insurance written by surplus lines insurers are not covered by FIGA, if the insurer becomes insolvent, claims will be paid solely from the assets of the insurer, and claim payment, in full or in part, is not guaranteed.

A surplus lines insurer wanting to take a policy from Citizens must offer the Citizens' policyholder a policy with similar coverage to his or her Citizens' policy and must notify the Citizens' policyholder of the differences in coverage offered by the insurer and Citizens. In addition, the insurer must comply with the requirements in current law for licensed insurers that take policies out of Citizens.[18] If the Citizens' policyholder receives an offer for insurance from both a Florida licensed insurer and a surplus lines insurer, then the offer from the Florida licensed insurer has priority.

The bill expands the provision in current law allowing release of Citizens' underwriting and confidential claims files to certain insurers. Current law allows insurers wanting to take policies out of Citizens to obtain underwriting and claims information on policies in Citizens. This is allowed so the insurer can decide which Citizens' policies to assume based on the insurer's exposure, financial picture, and business plan. The information can be released by Citizens only if the insurer agrees in writing to maintain the confidentiality of the files.

The bill allows additional types of insurers and insurance related entities considering depopulating Citizens to receive Citizens' underwriting and confidential claims files. Under the bill, reinsurance intermediaries, eligible surplus lines insurers, and entities created to seek authority to write property insurance are allowed to receive Citizens' files. The bill maintains current law requiring release of the files only if the receiving insurer or entity agrees in writing to maintain the confidentiality of the files.

Surplus lines insurers assuming policies from Citizens must deposit a certain amount of premium from the assumed policies with the Bureau of Collateral Management in the Department of Financial Services. The Bureau of Collateral Management is part of the Division of Treasury. The Chief Financial Officer has fiduciary responsibility over the Division of Treasury.[19]

The Division of Treasury has three bureaus:
- The Bureau of Funds Management;
- The Bureau of Collateral Management; and
- The Bureau of Deferred Compensation.

[18] s. 627.351(6)(q)3., F.S.; s. 627.3511, F.S.; s. 627.3517, F.S.
[19] See s. 17.52, F.S.; s. 17.54, F.S.; s. 17.55, F.S.

The Bureau of Collateral Management is a centralized deposit location for specialized handling of regulatory collateral deposits. Regulatory collateral deposits are required by state agencies as a condition of doing business or acts of guarantee. For 2010, the Bureau's asset management staff was responsible for maintaining regulatory collateral deposits for 1,885 combined accounts representing in excess of $17 billion dollars.[20]
The premium deposit can be used to pay claims of Citizens' policyholders assumed by the insurer if the surplus lines insurer becomes insolvent. The surplus lines insurer must make an accounting of the premium deposit with OIR at the time of the initial deposit and quarterly thereafter. The accounting must evidence the amount of the premium on deposit is accurate. If the deposit amount is too low, then the insurer must deposit additional funds. If the deposit amount is too high, then the insurer must receive a refund of the excess funds.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance written by surplus lines insurers is often more expensive than insurance written by licensed insurers and by Citizens. Thus, Citizens' policyholders who choose to be taken out of Citizens to obtain insurance from a surplus lines insurer could pay more for insurance. However, the bill does not force Citizens' policyholders out of Citizens when a surplus lines insurer wants to insure their property. Obtaining insurance with a surplus lines insurer instead of Citizens is the policyholder's choice. Thus, if the cost of insurance

[20] Division of Treasury Annual Report 2010 available at http://www.myfloridacfo.com/treasuryannual/2010/ (last viewed October 24, 2011).

from the surplus lines insurer is more than the insurance from Citizens or more than the policyholder wants to pay, then the policyholder can remain in Citizens. A Citizens' policyholder opting to move from Citizens to a surplus lines insurer would no longer incur a Citizens Policyholder Assessment if Citizens runs a deficit. However, the policyholder would still incur regular and emergency assessments as policyholders of property and casualty surplus lines insurers are assessed for Citizens' deficits.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

Barcode 163542 by Banking and Insurance on December 7, 2012:
The amendment changes the effective date of the bill to upon becoming law.

Barcode 252080 by Banking and Insurance on December 7, 2012:
A technical amendment which corrected the name for the Bureau of Collateral Management within the Department of Financial Services.

Barcode 589860 by Banking and Insurance on December 7, 2012:
The amendment clarified the timing when an insurer must deposit additional funds with the Commissioner of Insurance.

Barcode 621564 by Banking and Insurance on December 7, 2012:
Allows entities who have filed an application with the Office of Insurance Regulation to begin receiving policy data for the purpose of take outs from Citizens.

Barcode 721946 by Banking and Insurance on December 7, 2012:
A technical amendment adding "authorized insurer" as opposed to "admitted carrier."

Barcode 914512 by Banking and Insurance on December 7, 2012:
The amendment requires surplus lines carriers seeking approval from the Office of Insurance Regulation must first:

- Provide biographical affidavits, fingerprint cards and criminal history reports on all officers and directors of the insurer and its parent or holding company.
- Complete a service of process consent and agreement form executed by the insurer.
- Provide proof that the insurer has been eligible or authorized insurer for not less than 3 years.
- Provide duly authenticated copy of the insurer's current audited financial statement, in English, with all monetary values therein expressed in United States dollars.
- A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if applicable.
- A copy of the United States trust account agreement, if applicable.

The amendment further details when the surplus lines insurer participating in the takeout program must deposit amounts equal to the unearned premium with the Department of Finical Services in order to protect the policy holders in the event of insolvency by the insurer.

Barcode 769920 by Banking and Insurance on December 7, 2012:
The amendment removes the requirement that the surplus lines insurer notify the policy holder that the policy offered is not covered by the Florida Insurance Guaranty Association.

475274

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 152
and insert:
(A) Maintains surplus of $100 million on a company or pooled

769920

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 161 - 164
and insert:
(D) Provides to the policyholder before the assumption of the policy an outline of any substantial differences in coverage

556226

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 166 - 167
and insert:
insured;
(E) Provides similar policy coverage; and
(F) Provides proof that the policyholder, after being informed by the insurance agent of any differences between the existing policy and the new surplus lines policy, has agreed in writing to the assumption of the policy by the surplus lines insurer.

914512

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 168 - 202
and insert:
(III) In order to obtain approval for a plan, the surplus lines insurer must file the following with the office:
(A) Information requested by the office to demonstrate compliance with s. 624.404(3), including biographical affidavits, fingerprint cards, and the results of a criminal history records checks for officers and directors of the insurer and its parent or holding company;
(B) A service-of-process consent and agreement form

914512

executed by the insurer;

(C) Proof that the insurer has been an eligible or authorized insurer for not less than 3 years;

(D) A duly authenticated copy of the insurer's current audited financial statement, in English, with all monetary values therein expressed in United States dollars, at an exchange rate then current and shown in the statement, in the case of statements originally made in the currencies of other countries, and with such any additional information relative to the insurer as the office may request;

(E) A complete certified copy of the latest official financial statement required by the insurer's domiciliary state, if different from sub-sub-sub-subparagraph (D); and

(F) A copy of the United States trust account agreement, if applicable.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(IV) Within 10 days after the date of assumption, the surplus lines insurer assuming policies from the corporation must remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Bureau of Collateral Securities within the Department of Financial Services. The surplus lines insurer must submit to the office, along with the initial deposit, an accounting of the policies assumed and the amount of unearned premium for such

914512

policies and a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer must make a filing within 10 days after each calendar quarter attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds if the special deposit is insufficient to cover the unearned premium on assumed policies, or must receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court having jurisdiction over the insolvency.

(V) Surplus lines brokers representing a surplus lines

593788

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 169 - 173
and insert:
This sub-sub-subparagraph subjects a surplus lines insurer to the requirements of ss. 627.4035, 627.4133, 627.4137, 627.420, 627.426, 627.428, 627.701, 627.7011, 627.70131, 627.7019, 627.702, and 627.7283, in addition to part VIII of chapter 626.

252080

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 178 - 179
and insert:
Bureau of Collateral Management of the Department of Financial Services. The surplus lines insurer must submit to the office

589860

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 187
and insert:
submit additional funds with that filing if the special deposit is insufficient

721946

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 209 - 210
and insert:
surplus lines insurer and an authorized insurer, the offer of coverage from the authorized insurer shall be given priority by

621564

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 291 - 292
and insert:
eligible surplus lines insurer, or entity that has filed an application with the office for licensure as a property and casualty insurer in this state is

205362

LEGISLATIVE ACTION

Senate	.	House
Comm: UNFAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 353 and 354
insert:

Section 2. Section 631.52, Florida Statutes, is amended to read:

631.52 Scope.—This part applies ~~shall apply~~ to all kinds of direct insurance, except:

(1) Life, annuity, health, or disability insurance.~~;~~

(2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection against investment risks.~~;~~

(3) Fidelity or surety bonds, or any other bonding

205362

obligations.~~;~~

(4) Credit insurance, vendors' single interest insurance, or collateral protection insurance or ~~any~~ similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction.~~;~~

(5) Warranty, including motor vehicle service, home warranty, or service warranty.~~;~~

(6) Ambulance service, health care service, or preneed funeral merchandise or service.~~;~~

(7) Optometric service plan, pharmaceutical service plan, or dental service plan.~~;~~

(8) Legal expense.~~;~~

(9) Health maintenance, prepaid health clinic, or continuing care.~~;~~

(10) Ocean marine or wet marine insurance.~~;~~

(11) Self-insurance and any kind of self-insurance fund, liability pool, or risk management fund.~~;~~

(12) Title insurance.~~;~~

(13) Surplus lines, except for an insurance policy that is part of a depopulation, take-out, or keep-out program pursuant to s. 627.351.~~;~~

(14) Workers' compensation, including claims under employer liability coverage.~~;~~

(15) Any transaction or combination of transactions between a person, including affiliates of such person, and an insurer, including affiliates of the ~~such~~ insurer, which involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk.~~; or~~

(16) Any insurance provided by or guaranteed by government.

205362

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

And the title is amended as follows:

Delete line 20

and insert:

file's public record status; amending s. 631.52, F.S.; providing that certain types of surplus lines insurance are subject to the Florida Insurance Guaranty Association; providing an effective

163542

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 354
and insert:
Section 2. This act shall take effect upon becoming a law.

777490

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
12/07/2011	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 25 - 28
and insert:
Section 1. Paragraphs (a), (q), and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:
627.351 Insurance risk apportionment plans.—
(6) CITIZENS PROPERTY INSURANCE CORPORATION.—
(a) The public purpose of this subsection is to ensure that there is an orderly market for property insurance for residents and businesses of this state.
1. The Legislature finds that private insurers are

unwilling or unable to provide affordable property insurance coverage in this state to the extent sought and needed. The absence of affordable property insurance threatens the public health, safety, and welfare and likewise threatens the economic health of the state. The state therefore has a compelling public interest and a public purpose to assist in assuring that property in the state is insured and that it is insured at affordable rates so as to facilitate the remediation, reconstruction, and replacement of damaged or destroyed property in order to reduce or avoid the negative effects otherwise resulting to the public health, safety, and welfare, to the economy of the state, and to the revenues of ~~the~~ state and local governments which are needed to provide for the public welfare. It is necessary, therefore, to provide affordable property insurance to applicants who are in good faith entitled to procure insurance through the voluntary market but are unable to do so. The Legislature intends~~, therefore,~~ that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company. To that end, the corporation shall strive to increase the availability of affordable property insurance in this state, while achieving efficiencies and economies, and while providing service to policyholders, applicants, and agents which is no less than the quality generally provided in the voluntary market, for the achievement of the foregoing public purposes. Because it is essential for this governmental ~~government~~ entity to have the maximum financial resources to pay claims following

777490

a catastrophic hurricane, it is the intent of the Legislature that the corporation continue to be an integral part of the state and that the income of the corporation ~~be exempt from federal income taxation~~ and ~~that~~ interest on the debt obligations issued by the corporation be exempt from federal income taxation.

2. The Residential Property and Casualty Joint Underwriting Association originally created by this statute shall be known as the Citizens Property Insurance Corporation. The corporation shall provide insurance for residential and commercial property, for applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market. The corporation shall operate pursuant to a plan of operation approved by order of the Financial Services Commission. The plan is subject to continuous review by the commission. The commission may, by order, withdraw approval of all or part of a plan if the commission determines that conditions have changed since approval was granted and that the purposes of the plan require changes in the plan. For the purposes of this subsection, residential coverage includes both personal lines residential coverage, which consists of the type of coverage provided by homeowner’s, mobile home owner’s, dwelling, tenant’s, condominium unit owner’s, and similar policies; and commercial lines residential coverage, which consists of the type of coverage provided by condominium association, apartment building, and similar policies.

3. Effective January 1, 2009, a personal lines residential structure that has a dwelling replacement cost of $2 million or more, or a single condominium unit that has a combined dwelling

and contents replacement cost of $2 million or more is not eligible for coverage by the corporation. Such dwellings insured by the corporation on December 31, 2008, may continue to be covered by the corporation until the end of the policy term. However, such dwellings may reapply and obtain coverage if the property owner provides the corporation with a sworn affidavit from one or more insurance agents, on a form provided by the corporation, stating that the agents have made their best efforts to obtain coverage and that the property has been rejected for coverage by at least one authorized insurer and at least three surplus lines insurers. If such conditions are met, the dwelling may be insured by the corporation for up to 3 years, after which time the dwelling is ineligible for coverage. The office shall approve the method used by the corporation for valuing the dwelling replacement cost for the purposes of this subparagraph. If a policyholder is insured by the corporation before ~~prior to~~ being determined to be ineligible pursuant to this subparagraph and such policyholder files a lawsuit challenging the determination, the policyholder may remain insured by the corporation until the conclusion of the litigation.

4. It is the intent of the Legislature that policyholders, applicants, and agents of the corporation receive service and treatment of the highest possible level but never less than that generally provided in the voluntary market. It is also intended that the corporation be held to service standards no less than those applied to insurers in the voluntary market by the office with respect to responsiveness, timeliness, customer courtesy, and overall dealings with policyholders, applicants, or agents

777490

of the corporation.

5. Effective October 1, 2012 ~~January 1, 2009~~, a personal lines residential structure that is located in the "wind-borne debris region," as defined in s. 1609.2, International Building Code (2006), and that has an insured value on the structure of $750,000 or more is ~~not~~ eligible for coverage by the corporation. However, unless the structure has opening protections as required under the Florida Building Code for a newly constructed residential structure in that area, the corporation may charge a surcharge that it deems appropriate for such structures, notwithstanding any restrictions on rates provided in this subsection or in s. 627.062. A residential structure shall be deemed to comply with this subparagraph if it has shutters or opening protections on all openings and if such opening protections complied with the Florida Building Code at the time they were installed.

6. For any claim filed under a ~~any~~ policy of the corporation, a public adjuster may not charge, agree to, or accept any compensation, payment, commission, fee, or other thing of value greater than 10 percent of the additional amount actually paid over the amount that was originally offered by the corporation for any one claim.

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

And the title is amended as follows:

Delete lines 2 - 4

and insert:

An act relating to the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; removing

777490

certain exclusions for residential coverage; directing the corporation to provide coverage to certain residential structures but at rates deemed appropriate by the corporation; providing that eligible surplus lines

By Senator Richter

37-00216A-12 2012578__

A bill to be entitled

An act relating to the depopulation programs of Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that eligible surplus lines insurers may participate, in the same manner and on the same terms as an authorized insurer, in depopulation, take-out, or keep-out programs relating to policies removed from Citizens Property Insurance Corporation; providing certain exceptions, conditions, and requirements relating to such participation by a surplus lines insurer in the corporation's depopulation, take-out, or keep-out programs; authorizing information from underwriting files and confidential files to be released by the corporation to specified entities that are considering writing or underwriting risks insured by the corporation under certain circumstances; specifying that only the corporation's transfer of a policy file to an insurer, as opposed to the transfer of any file, changes the file's public record status; providing an effective date.

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

Section 1. Paragraphs (q) and (x) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(q)1. The corporation shall certify to the office its needs

37-00216A-12 2012578__

for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessment due from each assessable insurer, including, if prudent, filing suit to collect such assessment. If the corporation is unable to collect an assessment from any assessable insurer, the uncollected assessments shall be levied as an additional assessment against the assessable insurers and any assessable insurer required to pay an additional assessment as a result of such failure to pay shall have a cause of action against such nonpaying assessable insurer. Assessments shall be included as an appropriate factor in the making of rates. The failure of a surplus lines agent to collect and remit any regular or emergency assessment levied by the corporation is considered to be a violation of s. 626.936 and subjects the surplus lines agent to the penalties provided in that section.

2. The governing body of any unit of local government, any residents of which are insured by the corporation, may issue bonds as defined in s. 125.013 or s. 166.101 from time to time to fund an assistance program, in conjunction with the corporation, for the purpose of defraying deficits of the corporation. In order to avoid needless and indiscriminate proliferation, duplication, and fragmentation of such assistance programs, any unit of local government, any residents of which

are insured by the corporation, may provide for the payment of losses, regardless of whether or not the losses occurred within or outside of the territorial jurisdiction of the local government. Revenue bonds under this subparagraph may not be issued until validated pursuant to chapter 75, unless a state of emergency is declared by executive order or proclamation of the Governor pursuant to s. 252.36 making such findings as are necessary to determine that it is in the best interests of, and necessary for, the protection of the public health, safety, and general welfare of residents of this state and declaring it an essential public purpose to permit certain municipalities or counties to issue such bonds as will permit relief to claimants and policyholders of the corporation. Any such unit of local government may enter into such contracts with the corporation and with any other entity created pursuant to this subsection as are necessary to carry out this paragraph. Any bonds issued under this subparagraph shall be payable from and secured by moneys received by the corporation from emergency assessments under sub-subparagraph (b)3.c. ~~(b)3.d.~~, and assigned and pledged to or on behalf of the unit of local government for the benefit of the holders of such bonds. The funds, credit, property, and taxing power of the state or of the unit of local government shall not be pledged for the payment of such bonds.

3.a. The corporation shall adopt one or more programs subject to approval by the office for the reduction of both new and renewal writings in the corporation. Beginning January 1, 2008, any program the corporation adopts for the payment of bonuses to an insurer for each risk the insurer removes from the corporation shall comply with s. 627.3511(2) and may not exceed

the amount referenced in s. 627.3511(2) for each risk removed. The corporation may consider any prudent and not unfairly discriminatory approach to reducing corporation writings, and may adopt a credit against assessment liability or other liability that provides an incentive for insurers to take risks out of the corporation and to keep risks out of the corporation by maintaining or increasing voluntary writings in counties or areas in which corporation risks are highly concentrated and a program to provide a formula under which an insurer voluntarily taking risks out of the corporation by maintaining or increasing voluntary writings will be relieved wholly or partially from assessments under sub-subparagraph sub-subparagraphs (b)3.a. ~~and b.~~ However, any "take-out bonus" or payment to an insurer must be conditioned on the property being insured for at least 5 years by the insurer, unless canceled or nonrenewed by the policyholder. If the policy is canceled or nonrenewed by the policyholder before the end of the 5-year period, the amount of the take-out bonus must be prorated for the time period the policy was insured. When the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on such policy, and the insurer shall either:

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

(II) Offer to allow the producing agent of record of the

policy to continue servicing the policy for a period of not less than 1 year and offer to pay the agent the insurer's usual and customary commission for the type of policy written. If the producing agent is unwilling or unable to accept appointment by the new insurer, the new insurer shall pay the agent in accordance with sub-sub-subparagraph (I).

b. Any credit or exemption from regular assessments adopted under this subparagraph shall last no longer than the 3 years following the cancellation or expiration of the policy by the corporation. With the approval of the office, the board may extend such credits for an additional year if the insurer guarantees an additional year of renewability for all policies removed from the corporation, or for 2 additional years if the insurer guarantees 2 additional years of renewability for all policies so removed.

c. There shall be no credit, limitation, exemption, or deferment from emergency assessments to be collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.d.~~

d. Notwithstanding any other provision of law, for purposes of a depopulation, take-out, or keep-out program adopted by the corporation, including an initial or renewal offer of coverage made to a policyholder removed from the corporation pursuant to such program, an eligible surplus lines insurer may participate in the program in the same manner and on the same terms as an authorized insurer, except as provided under this sub-subparagraph.

(I) To qualify for participation, the surplus lines insurer must first obtain approval from the office for its depopulation, take-out, or keep-out plan and then comply with all of the

corporation's requirements for the plan applicable to admitted insurers and with all statutory provisions applicable to the removal of policies from the corporation.

(II) In considering a surplus lines insurer's request for approval for its plan, the office must determine that the surplus lines insurer meets the following requirements:

(A) Maintains surplus of $50 million on a company or pooled basis;

(B) Maintains an A.M. Best Financial Strength Rating of A- or better;

(C) Maintains reserves, surplus, reinsurance, and reinsurance equivalents sufficient to cover the insurer's 100-year probable maximum hurricane loss at least twice in a single hurricane season, and submits such reinsurance to the office to review for purposes of the take-out;

(D) Provides prominent notice to the policyholder before the assumption of the policy that surplus lines policies are not provided coverage by the Florida Insurance Guaranty Association, and an outline of any substantial differences in coverage between the existing policy and the policy being offered to the insured; and

(E) Provides similar policy coverage.

This sub-sub-subparagraph does not subject any surplus lines insurer to requirements in addition to part VIII of chapter 626. Surplus lines brokers making an offer of coverage under this sub-subparagraph are not required to comply with s. 626.916(1)(a), (b), (c), and (e).

(III) Within 10 days after the date of assumption, the

surplus lines insurer assuming policies from the corporation must remit a special deposit equal to the unearned premium net of unearned commissions on the assumed block of business to the Department of Financial Services, Bureau of Collateral Securities. The surplus lines insurer must submit to the office with the initial deposit an accounting of the policies assumed and the amount of unearned premium for such policies along with a sworn affidavit attesting to its accuracy by an officer of the surplus lines insurer. Thereafter, the surplus lines insurer must make a filing within 10 days after each calendar quarter, attesting to the unearned premium in force for the previous quarter on policies assumed from the corporation, and must submit additional funds if the special deposit is insufficient to cover the unearned premium on assumed policies, or must receive a return of funds within 60 days if the special deposit exceeds the amount of unearned premium required for assumed policies. The special deposit is an asset of the surplus lines insurer which is held by the department for the benefit of state policyholders of the surplus lines insurer in the event of the insolvency of the surplus lines insurer. If an order of liquidation is entered in any state against the surplus lines insurer, the department may use the special deposit for payment of unearned premium or policy claims, return all or part of the deposit to the domiciliary receiver, or use the funds in accordance with any action authorized under part I of chapter 631 or in compliance with any order of a court with jurisdiction over the insolvency.

(IV) Surplus lines brokers representing a surplus lines insurer on a take-out program must obtain confirmation, in

written or e-mail form, from each producing agent in advance stating that the agent is willing to participate in the take-out program with the surplus lines insurer engaging in the take-out program. The take-out program is also subject to s. 627.3517. If a policyholder is selected for removal from the corporation by a surplus lines insurer and an admitted carrier, the offer of coverage from the admitted carrier shall be given priority by the corporation.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to sub-subparagraph (b)3.c. ~~(b)3.d.~~, if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

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

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

service the policies. This subparagraph applies to policies of the corporation and not policies taken out, assumed, or removed from any other entity.

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer, reinsurance intermediary,

eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state is considering writing or assisting in the underwriting of a risk insured by the corporation, relevant information from both the underwriting files and confidential claims files may be released to the insurer, reinsurance intermediary, eligible surplus lines insurer, or entity that has been created to seek authority to write property insurance in this state provided the recipient ~~insurer~~ agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a policy file is transferred to an insurer, that policy file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's

notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

Section 2. This act shall take effect July 1, 2012.

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic SURPLUS LINES / CITIZENS

Bill Number 578 *(if applicable)*

Name GARY FARMER

Amendment Barcode *(if applicable)*

Job Title ATTORNEY

Address 425 N. ANDREWS AVE. #2 *Street*

Phone 954-524-2820

FT. LAUDERDALE, FL 33067 *City* *State* *Zip*

E-mail GARY@PATHTOJUSTICE.COM

Speaking: ☐ For ☒ Against ☐ Information

Representing CONSUMERS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic Depopulation + surplus lines carrier Bill Number 578 *(if applicable)*

Name David Welch Amendment Barcode _____ *(if applicable)*

Job Title Regional Director.

Address 7950 S. Military Trail, Suite 204 Phone 352-232-0351
Street

Lake Worth FL 33462 E-mail dwelch@floridainsurancereform.org
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Florida Association for Insurance Reform.

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-7-11
Meeting Date

Topic CITIZENS - SB578

Bill Number SB578 *(if applicable)*

Name MONTE STEVENS

Amendment Barcode *(if applicable)*

Job Title DIR. OF GOV'T AFFAIRS

Address 200 E. GAINES ST
Street

Phone 413-2571

TALLY FL
City *State* *Zip*

E-mail monte.stevens@flora

Speaking: ☑ For ☐ Against ☐ Information

Representing OIR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Dec 7, 2011
Meeting Date

Topic For Bill, For Richter mdts. Bill Number 578 *(if applicable)*

Name Tim Meenan Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 204 S. Monroe St. Phone 850 681-6710
Street

Tallahassee, FL E-mail Tim@blawklaw.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Geovera Specialty Ins Co.

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

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

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

S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	SB 336
INTRODUCER:	Senator Richter
SUBJECT:	Credit Counseling Services
DATE:	November 28, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Pre-meeting**
2.			CM	
3.			BC	
4.				
5.				
6.				

I. Summary:

In the last few years, an increasing number of disreputable companies have been targeting consumers who have significant delinquent debts. These unscrupulous entities engage in deceptive and misleading marketing practices (i.e., promising the cancellation of debts for pennies on the dollar) or charge egregious fees for debt management, settlement, or negotiation services that will never be provided.

Part IV of ch. 817, F.S., governs the regulation of services offered by credit counseling agencies, which include credit counseling and debt management. Debt management services include the adjustment, compromise, or discharge of unsecured debt. The negotiation of debt may include the reduction of interest rates or fees (traditional debt management) as well as the reduction of principal and interest through debt settlement services.

The bill provides the following changes governing credit counseling services, including codification of provisions of the amended Telemarketing Sales Rule adopted by the Federal Trade Commission and fee revisions:

- Increases the fee cap applicable to debt settlement services to a maximum of 30 percent of the amount saved. At least 16 out of 50 states have enacted laws authorizing a fee cap of 30 percent or more of the amount saved. Currently, the law prohibits a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the law provides that a person may not charge or accept a fee or contribution from a debtor residing in this state greater than $120 per year for additional consultations. As an alternative, the law provides that if services as defined in s. 817.801(4)(b), F.S., are provided, a person may charge the greater of 7.5 percent of the amount paid monthly by the debtor to the person or $35 per month.

- Codifies provisions of the Federal Trade Commission's (FTC) Telemarketing Sales Regulation governing debt settlement transactions, such as prohibiting upfront fees, requiring specified disclosures, and prohibiting misrepresentation regarding services. Current Florida law allows an entity to charge or accept a monthly fee.
- Requires nonprofits, as well as for profit credit counseling agencies, providing debt settlement services to comply with the FTC provisions. The FTC regulation does not apply to nonprofit entities providing debt settlement services.
- Requires credit counseling agencies providing debt settlement services through a "face-to-face" encounter, internet only, or intrastate-only sales to comply with the FTC provisions. The FTC regulation generally applies only to businesses engaging in inbound or outbound interstate telephone telemarketing.[1] As such, the federal regulation does not cover telemarketing transactions conducted face-to-face, internet only, or intrastate only.
- Clarifies current definition of services that a credit counseling agency may offer and clarifies existing definitions and creates definitions and provisions relating to debt settlement services.

The bill creates the following section of the Florida Statutes: 817.8035.The bill amends the following sections of the Florida Statutes: 817.801, 817.802, and 817.805.

II. Present Situation:

Consumers with debt problems may have several options, contingent upon their financial situation. Although a consumer may negotiate directly with a creditor to modify the terms of the debt, a consumer may seek assistance from a third party to facilitate this process for a fee. Those who have sufficient assets and income to repay their full debts over time can enroll in a debt management plan with a credit counseling agency, if their creditors make certain concessions (e.g., a reduction in interest rate or fees). On the other end of the spectrum, for consumers who are so far in debt that they can never catch up, declaring bankruptcy might be the only solution. Providers of debt settlement services market their services to consumers who fall between these two options, i.e., consumers who cannot repay their full debt amount, but could pay some percentage of it.

Providers of debt management services, which are typically nonprofit credit counseling agencies, work with creditors to develop repayment plans for consumers.[2] These plans typically permit a consumer to repay the balance owed under renegotiated terms, such as substantially reduced interest rates and fees. A debt management plan allows a consumer to reduce debt through monthly deposits to the credit counseling organization, which then distributes those funds to creditors. Nonprofit credit counseling organizations use various methods for producing income for the organization. Many creditors, particularly credit card issuers or financial institutions,

[1] 16 CFR 310.2(cc).

[2] The 2005 federal Bankruptcy Abuse Prevention and Consumer Protection Act generally provides that an individual may not be a debtor in bankruptcy unless such individual has, within 180 days of filing a petition for bankruptcy, received from an approved nonprofit credit counseling agency, a briefing that outlines the opportunities for available credit counseling and assists the individual in performing a related budget analysis. Therefore, many credit counseling agencies are established as nonprofit, tax-exempt organizations under the Internal Revenue Code. A non-profit credit counseling agency cannot refuse to provide counseling services due to a consumer's inability to pay or the ineligibility or unwillingness of a consumer to establish a debt management plan. Moreover, a non-profit agency must charge reasonable fees. [Sections 501c (3), 501c (4), and 501 (q) of the Internal Revenue Code]

make voluntary contributions or "fair share" payments to nonprofit credit counseling organizations for providing an alternative means of debt collection. Since credit card issuers limit their fair-share payments to nonprofit agencies, the majority of these credit counseling agencies are organized as nonprofits. Additionally, credit counseling agencies may request donations or fees from consumers for their services.

For consumers who are unable to repay the full balance owed, debt settlement companies offer to negotiate with a consumer's creditors to enable the consumer to make a lump-sum payment of less than the entire principal and interest owed to the creditor, thereby settling the debt obligation. In contrast to the traditional, nonprofit credit counseling organization, debt settlement companies generally operate as for-profit entities. In return for a settlement, the consumer pays the provider a fee based on the savings on the principal plus monthly fees and consultation fees or a fee based on the enrolled debt.

Regulation of Credit Counseling Services in Florida

Florida law does not assign any specific state agency with the duty of enforcing the laws governing credit counseling agencies, debt management services, and debt settlement services. However, the Department of Legal Affairs and state attorneys do protect consumers from the entities that employ unfair practices by using the enforcement authority under part II of ch. 501, F.S., the Florida Deceptive and Unfair Trade Practices Act, and part IV of ch. 817, F.S., relating to credit counseling.

Florida Deceptive and Unfair Trade Practices Act **--** The Florida Deceptive and Unfair Trade Practices Act,[3] provides remedies and penalties for "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[4] Violations of this part include any violation of this act and rules adopted pursuant to the FTC Act, including the standards of unfairness and deception set forth and interpreted by the FTC or the federal courts. Willful violations of the act occur when the person knew or should have known that the conduct was unfair, deceptive, or prohibited by rule. Remedies for practices prohibited by the act may include an action to enjoin a person from committing such acts,[5] an action to recover actual damages caused by the violation, and the imposition of a civil penalty, generally not more than $10,000 for each willful violation. Actions can be brought by a state attorney, the Department of Legal Affairs,[6] or by a consumer.[7]

Credit Counseling Services and Debt Management **Services** -- In Florida, credit counseling organizations provide credit counseling and debt management services.[8] The term "credit counseling services" means money management, debt reduction, and financial educational services. "Debt management services" generally means services provided for a fee to adjust or discharge the indebtedness of the debtor.[9] Debt management services include the provision of

[3] Part II of ch. 501, F.S.
[4] Section 501.204, F.S.
[5] Section 501.207(1)(b), F.S.
[6] Section 501.203(2), F.S.
[7] Section 501.211(1), F.S.
[8] Part IV, ch. 817, F.S.
[9] Section 817.801, F.S.

debt settlement services. Part IV of ch. 817, F.S., exempts numerous entities from the provisions of this part, including any debt management or credit counseling services provided in the practice of law in this state.

Any person engaged in credit counseling or debt management services is prohibited from charging fees to any consumer or debtor residing in Florida in excess of amounts prescribed in s. 817.802, F.S. This provision prohibits a person, while engaging in debt management services or credit counseling services, from charging or accepting a fee greater than $50 for the initial consultation. Subsequently, the person may not charge or accept a fee greater than $120 per year for additional consultations or, alternatively, if debt management services are provided, the person may charge 7.5 percent of the amount paid monthly by the debtor or $35 per month, whichever is greater.

A violation of any provision of part IV of ch. 817, F.S., is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act. The Department of Legal Affairs can enforce Part II of ch. 501, F.S., against credit counseling agencies engaging in unfair and deceptive trade practices. A person who violates any provision of the act commits a third-degree felony. A consumer harmed by a violation of this act may bring an action for recovery of damages, costs, and attorney's fees.

Federal Laws and Regulations Related to Consumer Debt

Many federal laws protect consumers from deceptive and fraudulent practices related to debt relief services. The Federal Trade Commission (FTC) has jurisdiction to enforce certain federal consumer protection laws through the Federal Trade Commission Act,[10] the Telemarketing and Consumer Fraud and Abuse Prevention Act,[11] and other acts.

Federal Trade Commission Act -- The FTC is authorized to (1) prevent unfair methods of competition, and unfair or deceptive acts or practices affecting commerce; (2) seek monetary redress for conduct injurious to consumers; (3) adopt trade regulation rules defining acts or practices that are unfair or deceptive; and (4) conduct investigations relating to the business practices.

The Telemarketing and Consumer Fraud and Abuse Prevention Act—This act targets deceptive and abusive telemarketing practices, and directs the FTC to adopt a rule with antifraud and privacy protections for consumers receiving telephone solicitations to purchase goods or services. Specifically, this act directed the FTC to issue a rule defining and prohibiting deceptive and abusive telemarketing acts or practices. In addition, the act mandated that the FTC adopt regulations addressing some specific practices, which the act designated as "abusive." The act also authorized state attorneys general or other appropriate state officials, as well as private persons who meet stringent jurisdictional requirements, to bring civil actions in federal district court. The FTC promulgated the original Telemarketing Sales Rule (TSR) in 1995.
Federal Telemarketing Sales Rule -- In 2010, the Federal Trade Commission adopted amendments to the TSR to combat deceptive and abusive telemarketing of debt relief services.

[10] 15 U.S.C. 41-58.
[11] 15 U.S.C. 6101-6108.

However, these provisions only apply to for-profit entities.[12] The amended TSR provides the following protections:

- Defines "debt relief service" as any service or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.
- Prohibits providers from charging or collecting fees until they have provided the debt relief services, but permits such fees as individual debts are resolved on a proportional basis, or if the fee is a percentage of savings;
- Allows providers to require customers to place funds in a dedicated bank account that meets certain criteria;
- Requires the following four disclosures in promoting debt relief services, in addition to the existing disclosures required by the TSR: (1) the amount of time it will take to obtain the promised debt relief; (2) with respect to debt settlement services, the amount of money or percentage of each outstanding debt that the customer must accumulate before the provider will make a bona fide settlement offer; (3) if the debt relief program entails not making timely payments to creditors, a warning of the specific consequences thereof; and (4) if the debt relief provider requests or requires the customer to place funds in a dedicated bank account, that the customer owns the funds held in the account and may withdraw from the debt relief service at any time without penalty, and receive all funds remitted to the account;
- Prohibits misrepresentations about material aspects of debt relief services, including success rates and a provider's nonprofit status; and
- Extends the TSR to cover calls consumers make to debt relief services in response to advertisements disseminated through any medium, including direct mail or email.

The FTC notes that the TSR applies only to persons, regardless of their professional affiliation, who engage in "telemarketing" – i.e., "a plan, program, or campaign which is conducted to induce the purchase of goods or services" and that involves interstate telephone calls.[13] [14] The existing TSR currently covers attorneys who engage in telemarketing. [15] The FTC states that the final amended Rule permits attorneys to engage in providing bona fide legal services yet curbs deceptive and abusive practices engaged in by some attorneys in this industry. Thus, an attorney who makes telephone calls to clients on an individual basis to provide assistance and legal advice generally would not be engaged in "telemarketing." Second, even if an attorney is engaged in telemarketing as defined in the TSR, it is common for the attorney to meet with prospective clients in person before agreeing to represent them. These attorneys would not be covered by the TSR under the TSR's exemption for transactions where payment is not required until after a

[12] Although nonprofit entities are exempt, telemarketers or sellers that solicit on their behalf are nonetheless covered by the TSR. *See TSR Amended Rule*, 68 FR at 4631.
[13] 16 CFR 310.2(cc).
[14] 15 U.S.C. 44, 45(a)(2), which exclude or limit from the Commission's jurisdiction several types of entities, including bona fide nonprofits, bank entities (including, among others, banks, thrifts, and federally chartered credit unions), and common carriers, as well as the business of insurance.
[15] The only explicit exemption for attorneys found in the TSR is a very limited one that permits attorneys who help consumers recover funds lost because of telemarketing fraud to collect an upfront fee. *See* 16 CFR 310.4(a)(3); *TSR Final Rule*, 60 FR at 43854.

face-to-face meeting.[16] The FTC contends that it is important to retain TSR coverage for attorneys, and those collaborating with attorneys, who principally rely on telemarketing to obtain clients, because they have engaged in the same types of deceptive and abusive practices as those committed by nonattorneys and that are proscribed by the Rule. According to the FTC, some attorneys have been sued in numerous law enforcement actions alleging deceptive practices in violation of the TSR.[17]

The Business Law Section of the Florida Bar notes that the TSR includes numerous *implicit* exemptions – while not explicitly labeled as "attorney exemptions" for any sellers or telemarketers that qualify for those exemptions, *including lawyers who so qualify*, as the FTC stated.[18] The Business Law Section suggests that any (or perhaps all) of the following four exemptions, would cover most Florida attorneys:

- **The Catalog Exemption**: Because 16 CFR 310.2(cc) uses the same definition as the Telemarketing Act, 15 U.S.C. 6106(4), it excludes from the definition of telemarketing: "solicitation of sales [of services] through the mailing… a catalog which: contains a written description or illustration of the services offered for sale; includes the business address of the seller; includes multiple pages of written material or illustrations; and has been issued not less frequently than once a year, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog and during those calls takes orders only without further solicitation." That scenario provides an exemption under the 2010 TSR Amendments, and is available to attorneys.
- **The Non-Telemarketing Exemption**: An exemption exists for an attorney who markets bona fide debt relief services without telemarketing, such as in non-interstate telephone calls [that comply with the National Do Not Call Registry] or in local or state-wide media (road-side signage or billboards, flyers, and newspapers of local circulation). 16 CFR 310.2(cc).
- **The Meeting With Prospective Clients Exemption**: An exemption exists for attorneys who telemarket but actually meet with prospective clients before they accept money for services, or agree to represent them. [It is unclear whether a teleconference would suffice for the initial meeting, although if that is most efficient, it probably would meet the intent of the TSR.] 16 CFR 310.6(b)(3).
- **The Exemption for Attorney Outbound Calls on an Individual Basis, or Inbound Calls From Existing Clients**: An attorney who makes telephone calls to clients on an individual basis to offer to provide assistance with legal advice, or who offers to provide debt relief services in a letter or as a "stuffer" in a monthly statement for services, pursuant to which a client responds to the attorney, would not be deemed to "telemarket" as defined in the TSR, and thus would be exempt.

[16] 16 CFR 310.6(b)(3). The FTC considered whether it should explicitly exempt attorneys representing clients in bankruptcy proceedings from the Rule's coverage, as attorneys in such proceedings generally advise their clients about handling their debt. The Commission determined that such an exemption was unnecessary, because bankruptcy attorneys typically would not be involved in "telemarketing," and, in any event, likely would meet with their clients face-to-face.

[17] *FTC v. Express Consolidation*, No. 06-cv-61851-WJZ (S.D. Fla. Am. Compl. filed Mar. 21, 2007) (a Florida attorney, his debt management services company, and a telemarketer charged with using abusive telemarketing and deception to sell debt management services to consumers nationwide); *Florida v. Hess*, No. 08007686 (17th Jud. Cir., Broward Cty. 2008).

[18] *Credit counseling, Debt management, and Debt Settlement (White Paper concerning 2011 Legislation, SB 1828 and HB 1433)*, The Florida Bar, Business Law Section, June 21, 2011.

Regulation of Debt Settlement Services in Other States

Many states have enacted statutes specifically designed to combat deceptive debt settlement practices. According to the FTC, some states impose certain requirements or restrictions, for example, prohibiting advance fees,[19] requiring that providers be licensed in the state,[20] providing consumers with certain key disclosures (*e.g.*, a schedule of payments and fees),[21] and granting consumers some right to cancel their enrollment.[22] At least 16 out of the 50 states have fee caps equivalent to or above 30 percent of the savings.

III. Effect of Proposed Changes:

Section 1 amends s. 817.801, F.S., relating to the definition of a credit counseling agency, to clarify that the services of a credit counseling agency may include the provision of debt settlement services. Currently, the definition of the term, "credit counseling agency," means an organization providing debt management services or credit counseling services. Under current law, the term, "debt management services," includes the adjustment, compromise, or discharge of unsecured debt, which could include principal and interest rate or interest rate only. The bill revises the definition of debt management services to specify that such services effect the adjustment of, compromise, or reduction of interest rate or fees. The bill creates a separate definition of the term, "debt settlement services," to provide that such services are provided to a debtor with the expectation of obtaining the creditor's agreement to accept less than the principal amount of debt. This section also defines the associated terms, debt management plan, and debt settlement plan.

Section 2 amends s. 817.802, F.S., relating to unlawful fees and costs to apply the current fee caps to credit counseling services and debt management services provided to any person regardless of whether he or she is residing in Florida. Presently, any person engaged in credit counseling or debt management services is prohibited from charging fees to any consumer or debtor residing in Florida in excess of amounts prescribed in s. 817.802, F.S.

Section 3 creates s. 817.305, F.S., relating to debt settlement plans, disclosures to debtors, payments, and refunds. A credit counseling agency is required to disclose the following information to a debtor prior to the debtor consenting for debt settlement services:

Disclosures

- The amount of time necessary to achieve the represented results and the anticipated time by which the credit counseling agency will make a bona fide settlement offer to each of the debtor's creditors.
- The amount of money or the percentage of each outstanding debt that the debtor must accumulate before the credit counseling agency will make a bona fide settlement offer to each of the creditors, if applicable.

[19] N.C. Gen. Stat. s. 14-423 et seq.
[20] *See, e.g.,* Kan. Stat. Ann. s.§ 50-1116, et seq.; Me. Rev. Stat. Ann. Title 17 § 701, et seq. & Title 32 § 6171, et seq., 1101-03; N.H. Rev. Stat. Ann. s. 339-D:1, et seq.; Va. Code Ann. s. 6.1-363.2, et seq.
[21] *See, e.g,.* Kan. Stat. Ann. s. 50-1116, et seq.; N.H. Rev. Stat. Ann. s. 339-D:1, et seq.; S.C. Code Ann. s. 37-7-101, et seq.; Wash. Rev. Code s. 18.28.010, et seq.
[22] *See, e.g.,* S.C. Code Ann. s. 37-7-101, et seq.; Va. Code Ann. s. 6.1-363.2, et seq.; Wash. Rev. Code s. 18.28.010, et seq.

- To the extent that any aspect of the debt settlement service relies upon or results in the debtor's failure to make timely payments to creditors or debt collectors, that the use of the debt settlement service will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or litigation by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest.
- To the extent that the credit counseling agency requests or requires the debtors to place funds in an account at a financial institution, that the debtor owns the funds and may withdraw such funds at any time without penalty. If the debtor requests a withdrawal of all funds, other than funds earned by the credit counseling agency, the debtor must receive such funds within 7 business days after such request.

The credit counseling agency is required to provide the debtor with a copy of the above disclosures within 7 business days after the debtor consents to pay the credit counseling agency for debt settlement services.

Prohibited Acts

The bill provides that a credit counseling agency may not:

- Misrepresent any material aspect of any service, including the amount of money or the percentage of the debt amount which a debtor may save by using such services, the amount of time necessary to achieve the represented results, the effect of the service on the collection efforts of the debtor's creditors or debt collectors, the effect of the service on a debtor's creditworthiness, the percentage or number of debtors who attain the represented results, and whether a debt settlement service is offered or provided by a nonprofit entity.
- Receive payment of any fee for any debt settlement service until the credit counseling agency has renegotiated, settled, or otherwise altered the terms of at least one debt pursuant to a debt settlement plan; the debtor has made at least one payment pursuant to that debt settlement plan; and the fee for settling each individual debt enrolled in a debt settlement plan bears a proportional relationship to the total fee for settling the entire debt balance as the individual debt bears to the entire debt amount or the fee is a percentage of the amount saved as a result of the settlement, which is capped at 30 percent of the amount saved.

A credit counseling agency is authorized to request or require the debtor to place funds in an account of a financial institution to be used for the credit counseling agency's fees and for payments to creditors or debt collectors in connection with a renegotiation, settlement, or reduction of the terms of payment or other terms of a debt if the following conditions are met:

- The funds are held in a financial institution account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;
- The debtor owns the funds held in the account and is paid accrued interest on the account, if any;
- The entity administering the account , if the credit counseling agency does not administer the account, is not owned or controlled , or affiliated with, the credit counseling agency; and
- The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the credit counseling agency.

The debtor is allowed to withdraw from the debt settlement service at any time without penalty and must receive all funds held in the account, other than funds earned by the credit counseling agency within 7 business days after the debtor's request.

Section 4 amends s. 817.805, relating to disbursement of funds. The section provides an exception to the current requirement of disbursing payments to a creditor of all funds received from a debtor within 30 days if the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period in order to accumulate.

Section 5 provides that this act takes effect October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill may impair existing contracts since the bill takes effect on October 1, 2012, and does not provide an exemption for such contracts. See also Related Issues, below.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill incorporates consumer protection provisions of the FTC Telemarketing Sales Regulation, such as prohibiting upfront fees, requiring disclosures, and prohibiting misrepresentation regarding services.

The bill expands the scope of transactions and entities subject to the TSR and state oversight by covering companies engaging in face-to-face, internet only, or intrastate-only sales. The FTC regulation applies only to businesses covered by the TSR, which generally applies to a transaction in which an entity is engaging in inbound or outbound interstate telemarketing. As such, the federal regulation does not cover a company that engages in face-to-face, internet only, or intrastate only sales. Although the FTC

regulations do not apply to nonprofits, the bill would apply to profits as well as nonprofits.

The bill increases the fee applicable to debt settlement services to a maximum of 30 percent of the amount saved.

C. Government Sector Impact:

The bill would codify FTC regulations relating to debt settlement services, which would give the state the authority to enforce these consumer protections.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The current law provides an exemption in s. 817.803(1), F.S., for "any debt management or credit counseling services provided in the practice of law in this state." According to the Florida Bar Business Law Section (BLS), this exemption presents two major concerns. First, by not referring to "debt settlement services" (which commonly are performed by attorneys) in the exemption provision, certain customary lawyer-provided services would end up effectively drawn under the proposed statute. If the intent of the exemption is to extend to "debt settlement services" that are provided in the practice of law, the exemption should state that expressly. In the view of the BLS, in the context of the overall Statute, arguably doing this by including debt settlement services under the term "debt management services" actually creates confusion over what the proposed legislation actually covers. Second, by using the words "provided in the practice of law in this state" a latent ambiguity has existed in the Statute from the time it was created and is further exacerbated by these proposed changes. At the very least, it is the view of the BLS that the proposed changes should clarify the exemption for attorneys to assure there is no confusion about what the exemption is intended to cover, by specifically separately mentioning debt settlement services.

According to the BLS, this is so, because a Florida-licensed attorney may – as a matter of efficiency or convenience – outsource paraprofessional services to an entity not physically located in Florida (e.g., preliminary negotiations for settlement may occur subject to a Florida licensed attorney's approval of each actual settlement; or fulfillment of actual transactions in furtherance of a settlement may occur outside Florida once the Florida-licensed attorney approves each settlement). Any ancillary services so performed by paraprofessionals not physically located in Florida should be covered under the Florida exemption so long as those ancillary or subservient functions performed by paraprofessionals not physically located in Florida remain at all times subject to the authority and are performed under the unwavering responsibility of a Florida-licensed attorney.

VIII. Additional Information:

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

None.

B. Amendments:

None.

324586

LEGISLATIVE ACTION

Senate . House

. .

. .

. .

. .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 817.801, Florida Statutes, is amended to read:

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

(1) "Credit counseling agency" means an ~~any~~ organization providing debt management services, debt settlement services, or credit counseling services.

(2) "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

(3) "Creditor contribution" means any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of a debtor ~~debtors~~.

(4) "Debt management plan" means a written agreement or contract between a credit counseling agency and a debtor whereby the credit counseling agency, in return for a direct or indirect payment by the debtor of fees not exceeding those specified in s. 817.802, will provide credit counseling services or debt management services that contemplate that the debtor's creditors will reduce finance charges or fees incurred by the debtor for late payment, default, or delinquency.

(5)~~(4)~~ "Debt management services" means services provided to a debtor pursuant to a debt management plan by a credit counseling agency ~~organization~~ for a fee to:

(a) Effect the adjustment, compromise, reduction of interest rate or fees, modification of terms, negotiation, or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value with the expectation that the debtor will repay the entire principal amount of the unsecured debt owed to the creditor.

Debt management services do not include debt settlement services.

(6) "Debt settlement plan" means a written agreement or contract between a debt settlement provider and a debtor whereby the provider, in return for payment by the debtor, will provide

debt settlement services that contemplate that creditors of the debtor will settle debts for less than the principal amount of the debt.

(7) "Debt settlement provider" means any person, including, but not limited to, a credit counseling agency, providing debt settlement services.

(8) "Debt settlement services" means services provided to a debtor with the expectation of obtaining the agreement of the debtor's creditors to accept less than the principal amount of the debtor's unsecured debt in full satisfaction of the debt. Debt settlement services do not include debt management services.

(9) ~~(5)~~ "Person" means any individual, corporation, partnership, trust, association, or other legal entity.

Section 2. Subsection (1) of section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than $120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(5)(b) ~~817.801(4)(b)~~ are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor ~~to the person~~ or $35 per month.

Section 3. Section 817.803, Florida Statutes, is amended to

read:

817.803 Exceptions. ~~Nothing in~~ This part does not apply ~~applies~~ to:

(1) An attorney licensed or otherwise authorized to practice law in this state who negotiates, settles, litigates, or appeals financial disputes and who is acting in compliance with the Florida Rules of Professional Conduct that apply to services performed under the attorney's ultimate responsibility. ~~Any debt management or credit counseling services provided in the practice of law in this state;~~

(2) A ~~Any~~ person who engages in debt adjustment to adjust the indebtedness owed to such person.~~; or~~

(3) The following entities or their subsidiaries:

(a) The Federal National Mortgage Association;

(b) The Federal Home Loan Mortgage Corporation;

(c) The Florida Housing Finance Corporation, a public corporation created in s. 420.504;

(d) A bank, bank holding company, trust company, savings and loan association, credit union, credit card bank, or savings bank that is regulated and supervised by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of Financial Regulation of the Department of Financial Services, or any state banking regulator;

(e) A consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. ss. 1681-1681y, as it existed on April 5, 2004; or

(f) Any subsidiary or affiliate of a bank holding company,

its employees and its exclusive agents acting under written agreement.

Section 4. Section 817.8035, Florida Statutes, is created to read:

817.8035 Debt settlement plans; disclosures to debtor; payments; refunds.—

(1) Debt settlement services provided to a debtor residing in this state may be provided only pursuant to a debt settlement plan that complies with this part.

(2) Before a debtor consents to payment for debt settlement services, the debt settlement provider must disclose, in a clear and conspicuous manner, all of the following material information:

(a) The amount of time necessary to achieve the represented results and, to the extent that the debt settlement service may include a settlement offer to any of the debtor’s creditors or debt collectors, the anticipated time by which the debt settlement provider will make a bona fide settlement offer to each of them.

(b) To the extent that the debt settlement service may include a settlement offer to any of the debtor’s creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the debtor must accumulate before the debt settlement provider will make a bona fide settlement offer to each of them.

(c) To the extent that any aspect of the debt settlement service relies upon or results in the debtor’s failure to make timely payments to creditors or debt collectors, that the use of the debt settlement service will likely adversely affect the

<u>debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest.</u>

<u>(d) To the extent that the debt settlement provider requests or requires the debtor to place funds in an account at a state or federal financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, that the debtor owns the funds held in the account, the debtor may withdraw such funds from the debt settlement service at any time without penalty, and, if the debtor requests to withdraw such funds, the debtor must receive all funds in the account, other than funds earned by the debt settlement provider, within 7 business days after the debtor's request.</u>

<u>(3) The debt settlement provider shall provide the debtor with a copy of the disclosures required under subsection (2) within 7 days after the debtor consents to pay the debt settlement provider for debt settlement services.</u>

<u>(4) A debt settlement provider may not misrepresent, directly or by implication, any material aspect of any debt settlement service, including, but not limited to, the amount of money or the percentage of the debt amount which a debtor may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt the debtor must accumulate before the debt settlement provider will initiate attempts or make a bona fide offer to negotiate, settle, or modify the terms of the debtor's debt with the debtor's creditors or debt</u>

collectors; the effect of the service on a debtor's creditworthiness; the effect of the service on the collection efforts of the debtor's creditors or debt collectors; the percentage or number of debtors who attain the represented results; and whether a debt settlement service is offered or provided by a nonprofit entity.

(5) A debt settlement provider may not receive payment of any fee or consideration for any debt settlement service until:

(a) The debt settlement provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a debt settlement plan;

(b) The debtor has made at least one payment pursuant to that debt settlement plan; and

(c) The fee or consideration for settling each individual debt enrolled in a debt settlement plan is a percentage of the amount saved as a result of the settlement. The percentage charged may not change from one individual debt to another and may not exceed 30 percent of the amount saved. The amount saved is the difference between the amount owed at the time the debtor enrolled in the debt settlement plan and the amount actually paid to satisfy the debt.

(6) This section does not prohibit a debt settlement provider from requesting or requiring the debtor to place funds in an account to be used for the debt settlement provider's fees and for payments to creditors or debt collectors in connection with a renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt if:

(a) The funds are held in an account at a state or federal financial institution insured by the Federal Deposit Insurance

Corporation or the National Credit Union Share Insurance Fund;

(b) The debtor owns the funds held in the account and is paid accrued interest on the account, if any;

(c) The entity administering the account, if the debt settlement provider does not administer the account, is not owned or controlled by, or in any way affiliated with, the debt settlement provider; and

(d) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the debt settlement provider.

(7) The debtor may withdraw from the debt settlement service at any time without penalty, and must receive all funds held in the account, other than funds earned by the debt settlement provider in compliance with this part, within 7 business days after the debtor's request.

Section 5. Subsection (1) of section 817.804, Florida Statutes, is amended to read:

817.804 Requirements; disclosure and financial reporting.—

(1) Any person engaged in debt management services, debt settlement services, or credit counseling services shall:

(a) Obtain from a licensed certified public accountant an annual audit in accordance with generally accepted auditing standards that ~~shall~~ include all accounts of such person in which the funds of debtors are deposited and from which payments are made to creditors on behalf of debtors.

(b) Obtain and maintain at all times insurance coverage for employee dishonesty, depositor's forgery, and computer fraud. The insurance coverage must be ~~in an amount~~ not less than the greater of $100,000 or 10 percent of the monthly average of the

aggregate amount of all deposits made for distribution to creditors with such person by all debtors for the 6 months immediately preceding the date of initial application for or renewal of the insurance. The deductible on such coverage may ~~shall~~ not exceed 10 percent of the face amount of the policy coverage.

Section 6. Section 817.805, Florida Statutes, is amended to read:

817.805 Disbursement of funds.—Any person engaged in debt management, debt settlement, or credit counseling services shall disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by s. 817.802 and any creditor contributions, within 30 days after receipt of such funds, unless the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period in order to accumulate. However, a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor. Further, any person engaged in such services must ~~shall~~ maintain a separate trust account for the receipt of any funds from debtors and the disbursement of such funds on behalf of such debtors.

Section 7. This act applies to debt settlement plans enacted on or after July 1, 2012.

Section 8. This act shall take effect July 1, 2012.

================ 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 debt settlement services; amending s. 817.801, F.S.; defining terms and revising definitions; amending s. 817.802, F.S.; conforming a cross-reference; amending s. 817.803, F.S.; clarifying that an attorney is exempt from regulation under part IV of ch. 817, F.S., under certain circumstances; creating s. 817.8035, F.S.; requiring that debt settlement services be provided pursuant to a debt settlement plan; requiring a debt settlement provider to make certain disclosures to the debtor before a debtor consents to payment; prohibiting a debt settlement provider from making certain misrepresentations to a debtor; providing certain conditions that a debt settlement provider must meet before receiving payment; providing that a debtor may withdraw any account funds placed with a debt settlement provider at any time without penalty; amending s. 817.804, F.S.; extending auditing and insurance requirements to persons providing debt settlement services; amending s. 817.805, F.S.; authorizing a debt settlement provider to hold funds in order to allow the funds to accumulate; providing for applicability; providing an effective date.

By Senator Richter

37-00303A-12 2012336__

A bill to be entitled

An act relating to credit counseling services; amending s. 817.801, F.S.; defining terms; revising definitions; amending s. 817.802, F.S.; conforming a cross-reference; creating s. 817.8035, F.S.; requiring that debt management and credit counseling services be provided pursuant to a debt settlement plan; requiring a credit counseling agency to make certain disclosures to the debtor before a debtor consents to payment; prohibiting a credit counseling agency from making certain misrepresentations to a debtor; providing certain conditions that a credit counseling agency must meet before receiving payment; providing that a debtor may withdraw any account funds placed with a credit counseling agency at any time without penalty; amending s. 817.805, F.S.; authorizing a credit counseling agency to hold funds in order to allow the funds to accumulate; providing an effective date.

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

Section 1. Section 817.801, Florida Statutes, is amended to read:

817.801 Definitions.—As used in this part:

(1) "Credit counseling agency" means any organization providing debt management services, debt settlement services, or credit counseling services for compensation.

(2) "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

37-00303A-12 2012336__

(3) "Creditor contribution" means any sum that a creditor agrees to contribute to a credit counseling agency, whether directly or by setoff against amounts otherwise payable to the creditor on behalf of debtors.

(4) "Debt management plan" means a written agreement or contract between a credit counseling agency and a debtor whereby the credit counseling agency, in return for a direct or indirect payment by the debtor of fees not exceeding those in s. 817.802, will provide credit counseling services or debt management services that contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency.

(5) ~~(4)~~ "Debt management services" means services provided to a debtor by a credit counseling organization for a fee to:

(a) Effect the adjustment, compromise, reduction of interest rate or fees, modification of terms, or negotiation or discharge of any unsecured account, note, or other indebtedness of the debtor; or

(b) Receive from the debtor and disburse to a creditor any money or other thing of value with the expectation that the debtor will repay the entire principal amount owed to the creditor.

(6) "Debt settlement plan" means a written agreement or contract between a credit counseling agency and a debtor whereby the credit counseling agency, in return for payment by the debtor, will provide debt settlement services that contemplate that creditors will settle debts for less than the principal amount of the debt.

(7) "Debt settlement services" means services provided to a debtor with the expectation of obtaining the creditor's

agreement to accept less than the principal amount of debt in full satisfaction of the debt.

(8)~~(5)~~ "Person" means any individual, corporation, partnership, trust, association, or other legal entity.

Section 2. Subsection (1) of section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution ~~from a debtor residing in this state~~ greater than $120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(5)(b) ~~817.801(4)(b)~~ are provided, the person may charge the greater of 7.5 percent of the amount paid monthly by the debtor ~~to the person~~ or $35 per month.

Section 3. Section 817.8035, Florida Statutes, is created to read:

817.8035 Debt settlement plans; disclosures to debtor; payments; refunds.—

(1) Debt settlement services or credit counseling services provided to a debtor residing in this state may be provided only pursuant to a debt settlement plan that complies with this part.

(2) Before a debtor consents to payment for debt settlement services, the credit counseling agency must disclose, in a clear and conspicuous manner, all of the following material information:

(a) The amount of time necessary to achieve the represented results and, to the extent that the debt settlement service may include a settlement offer to any of the debtor's creditors or debt collectors, the anticipated time by which the credit counseling agency will make a bona fide settlement offer to each of them.

(b) To the extent that the debt settlement service may include a settlement offer to any of the debtor's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the debtor must accumulate before the credit counseling agency will make a bona fide settlement offer to each of them.

(c) To the extent that any aspect of the debt settlement service relies upon or results in the debtor's failure to make timely payments to creditors or debt collectors, that the use of the debt settlement service will likely adversely affect the debtor's creditworthiness, may result in the debtor being subject to collection actions or sued by creditors or debt collectors, and may increase the amount of money the debtor owes due to the accrual of fees and interest.

(d) To the extent that the credit counseling agency requests or requires the debtor to place funds in an account at a state or federal financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, that the debtor owns the funds held in the account, the debtor may withdraw such funds from the debt settlement service at any time without penalty, and, if the debtor requests to withdraw such funds, the debtor must receive all funds in the account, other than funds earned by the credit

counseling agency, within 7 business days after the debtor's request.

(3) The credit counseling agency shall provide the debtor with a copy of the disclosures required under subsection (2) within 7 days after the debtor consents to pay the credit counseling agency for debt settlement services.

(4) A credit counseling agency may not misrepresent, directly or by implication, any material aspect of any debt management service, including, but not limited to, the amount of money or the percentage of the debt amount which a debtor may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt the debtor must accumulate before the credit counseling agency will initiate attempts or make a bona fide offer to negotiate, settle, or modify the terms of the debtor's debt with the debtor's creditors or debt collectors; the effect of the service on a debtor's creditworthiness; the effect of the service on the collection efforts of the debtor's creditors or debt collectors; the percentage or number of debtors who attain the represented results; and whether a debt settlement service is offered or provided by a nonprofit entity.

(5) A credit counseling agency may not receive payment of any fee or consideration for any debt settlement service until:

(a) The credit counseling agency has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to a debt settlement plan;

(b) The debtor has made at least one payment pursuant to that debt settlement plan; and

(c) The fee or consideration for settling each individual debt enrolled in a debt settlement plan:

1. Bears the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount. The individual debt amount and the entire debt amount are those owed at the time the debtor enrolled in the debt management service; or

2. Is a percentage of the amount saved as a result of the settlement. The percentage charged may not change from one individual debt to another and may not exceed 30 percent of the amount saved. The amount saved is the difference between the amount owed at the time the debtor enrolled in the debt settlement service and the amount actually paid to satisfy the debt.

(6) This section does not prohibit a credit counseling agency from requesting or requiring the debtor to place funds in an account to be used for the credit counseling agency's fees and for payments to creditors or debt collectors in connection with a renegotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt if:

(a) The funds are held in an account at a state or federal financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund;

(b) The debtor owns the funds held in the account and is paid accrued interest on the account, if any;

(c) The entity administering the account, if the credit counseling agency does not administer the account, is not owned or controlled by, or in any way affiliated with, the credit counseling agency; and

(d) The entity administering the account does not give or accept any money or other compensation in exchange for referrals of business by the credit counseling agency.

(7) The debtor may withdraw from the debt settlement service at any time without penalty, and must receive all funds held in the account, other than funds earned by the credit counseling agency in compliance with this part, within 7 business days after the debtor's request.

Section 4. Section 817.805, Florida Statutes, is amended to read:

817.805 Disbursement of funds.—Any person engaged in debt management, debt settlement, or credit counseling services shall disburse to the appropriate creditors all funds received from a debtor, less any fees permitted by s. 817.802 and any creditor contributions, within 30 days after receipt of such funds, unless the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period in order to accumulate. However, a creditor contribution may not reduce any sums to be credited to the account of a debtor making a payment to the credit counseling agency for further payment to the creditor. Further, any person engaged in such services shall maintain a separate trust account for the receipt of any funds from debtors and the disbursement of such funds on behalf of such debtors.

Section 5. This act shall take effect October 1, 2012.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Budget, *Chair*
Rules, *Vice Chair*
Agriculture
Banking and Insurance
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism, and Economic Development Appropriations
Education Pre-K - 12
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:
Legislative Budget Commission, *Chair*

SENATOR JD ALEXANDER
17th District

December 7, 2011

Senator Garrett S. Richter, Chair
Committee on Banking & Insurance
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, today, December 7, 2011. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

JD Alexander
Senator, District 17

Xc: Steve Burgess

REPLY TO:
❒ 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
❒ 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

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

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Banking and Insurance **Judge:**

Started: 12/7/2011 9:35:57 AM
Ends: 12/7/2011 12:31:28 PM Length: 02:55:32

9:35:59 AM Meeting called to order and roll call.
9:36:48 AM Opening remarks by Chairman Richter.
9:37:26 AM Senator Gaetz and Senator Rich recognized to present SB 792.
9:39:26 AM Senator Rich makes statement regarding SB 792.
9:40:51 AM
9:42:17 AM Jared Ross, League of Southeastern Credit Unions, waives in support.
9:42:44 AM Bernie Friedman, Florida Assoc. of Jewish Federations, waives in support.
9:43:23 AM Senator Gaetz closes.
9:43:42 AM Senator Rich makes statement to Senator Fasano.
9:44:24 AM SB 792 passes favorably.
9:44:51 AM Senator Diaz de la Portilla recognized to present SB 610.
9:46:11 AM Senator Diaz de la Portilla explains strike all bill.
9:46:47 AM Teye Reeves, Florida Chamber of Commerce, waives in support.
9:46:58 AM Beth A Vecchioli and Ivethe Frango, the Beacon Council, waive in support.
9:47:11 AM SB 610 passes as favorably as a CS.
9:48:55 AM SPB 7026 presented and submitted as committee bill.
9:49:36 AM SPB 7028 presented.
9:50:01 AM SPB 7028 submitted as Committee bill.
9:50:17 AM SPB 7030 presented and submitted as a committee bill.
9:51:04 AM Vice Chair Smith recognized Chairman Richter to present SB 578.
9:51:22 AM Senator Richter presents SB 578.
9:52:41 AM Senator Fasano poses questions regarding surplus lines company.
9:53:41 AM Senator Richter responds.
9:56:10 AM Series of questions and answers from Senator Fasano and Senator Richter.
10:00:01 AM Senator Margolis recognized.
10:00:54 AM Senator Richter responds.
10:01:06 AM Senator Margolis responds.
10:01:52 AM Senator Richter states he can assist Senator Margolis with her surplus lines issue.
10:02:24 AM Chairman Smith moves along to amendments.
10:02:35 AM Senator Richter presents amendment 163452. Amendment adopted.
10:03:25 AM Senator Richter presents amendment 621564. Amendment adopted.
10:03:48 AM Senator Richter presents amendment 721946.
10:04:49 AM Senator Richter presents amendment 589860.
10:05:30 AM Senator Richter presents amendment 252080.
10:05:43 AM Amendment adopted.
10:05:56 AM Senator Richter presents amendment 914512.
10:06:19 AM Senator Fasano recognized.
10:06:37 AM Senator Richter asked if its an exemption from current export law.
10:06:47 AM Senator Richter states to bring the bill in compliance with federal laws.
10:07:03 AM Senator Fasano asks if OIR staff present and could speak to the issue.
10:07:35 AM OIR staff (Monte Stevens) answers Senator Fasano's question.
10:08:15 AM Senator Fasano recognized to present amendment 475274.
10:10:40 AM Senator Hays recognized.
10:11:02 AM Senator Fasano responds.
10:11:19 AM Senator Hays responds to Senator Fasano.
10:11:29 AM Senator Fasano states Citizens is regulated and surplus lines are not.
10:11:39 AM Senator Richter makes statement to Senator Fasano.
10:12:08 AM Asks Senator Fasano if there are customers who are not getting their claims paid by surplus lines companies.
10:12:26 AM Senator Fasano responds.
10:13:37 AM Senator Gaetz debates the amendment.
10:13:52 AM Senate Gaetz inclined to agree with Senator Fasano and says Senator Hays is also correct.

10:15:58 AM Senate Gaetz believes Senator Fasano's intentions are good, but don't need a double standard.
10:16:49 AM Senator Negron recognized.
10:17:02 AM Senator Negron asks if compare surplus lines companies and Citizens financial viability/payment of claims.
10:17:58 AM Senator Oelrich recognized.
10:18:40 AM Senator Oelrich stated most of the surplus companies are probably more financially sound than Citizens Property.
10:19:13 AM Senator Margolis recognized.
10:21:00 AM Senator Hays recognized.
10:21:11 AM Senator Hays stated Citizens Property is "one sick puppy" and this bill is a significant step to enhancing Citizens
10:21:39 AM and that Fasano's amendments diminishes that step forward.
10:22:26 AM Senator Richter debates Senator Fasano's amendment and speaks to Senator Negron's question.
10:26:01 AM Senator Fasano closes on his amendment.
10:28:42 AM Amendment not adopted.
10:28:51 AM Senator Fasano recognized to present amendment 769920.
10:30:49 AM Senator Sobel makes motion to be counted in the affirmative on SB 610 and 792.
10:31:12 AM Senator Oelrich recognized.
10:32:34 AM Senator Sobel recognized and speaks in favor of amendment.
10:33:02 AM Senator Margolis recognized.
10:34:10 AM Senator Hays recognized.
10:34:24 AM Senator Gaetz recognized.
10:34:52 AM How burdensome would it be if there is a disclosure statement provided and would it be a discentive?
10:35:55 AM Senator Richter recognized in debate.
10:38:07 AM Senator Fasano recognized to close on his amendment.
10:40:20 AM Senator Gaetz recognized for point of order - to allow Senators Richter and Fasano to work out language.
10:41:05 AM Senator Fasano says there doesn't appear to be any confusion.
10:42:13 AM Senator Fasano asks for roll call vote on his amendment.
10:42:48 AM Amendment adopted.
10:43:03 AM Senator Fasano recognized to present amendment 556226.
10:45:37 AM Senator Richter recognized.
10:46:12 AM Senator Fasano recognized.
10:48:24 AM Senator Richter recognized for follow up.
10:48:51 AM Senator Fasano recognized.
10:50:44 AM Senator Richter speaks to the amendment and questions Senator Fasano about regulation vs. claims payments.
10:51:20 AM Senator Fasano responds to Senator Richter's questions.
10:51:51 AM Senator Hays poses question to Senator Fasano regarding non-regulation of surplus companies.
10:52:26 AM Senator Fasano recognized to answer Senator Hays question.
10:53:56 AM Senator Hays recognized for follow up.
10:54:33 AM Senator Fasano responds to Senator Hays.
10:55:24 AM Senator Sobel recognized.
10:55:50 AM Chairman Smith recognizes surplus lines representatives.
10:56:35 AM Tim Meenan, Geovera Specialty Insurance Company, recognized to answer Senator Sobel's question.
10:57:11 AM Senator Sobel recognized for follow up.
10:57:34 AM Tim Meenan responds to Senator Sobel's question.
10:58:20 AM Chairman Smith asks Senator Richter to respond to his questions.
10:58:31 AM Senator Richter recognized.
10:59:21 AM Senator Fasano recognized.
10:59:32 AM Senator Fasano asked if insurance company had a letter ready.
10:59:46 AM Mr. Meenan responds to Senator Fasano's question.
11:00:36 AM Senator Fasano asks Mr. Meenan how many agents they have in Florida.
11:00:55 AM Mr. Meenan responds.
11:01:08 AM Senator Fasano asks follow up question.
11:01:28 AM Mr. Meenan responds.
11:02:24 AM Senator Fasano asks follow up question.
11:03:14 AM Mr. Meenan responds about assumptions.
11:04:09 AM Senator Fasano asks follow up regarding "assumptions".
11:05:18 AM Mr. Meenan responds regarding take outs.
11:05:51 AM Senator Fasano interrupts and makes a point about Citizens' rates.
11:06:05 AM Mr. Meenan continues.
11:06:53 AM Chairman Smith opens floor for debate.

11:07:03 AM Senator Oelrich recognized for debate.
11:09:00 AM Senator Hays recognized for debate.
11:10:07 AM Senator Gaetz recognized for debate.
11:13:46 AM Senator Margolis recognized for debate.
11:14:29 AM Senator Richter stated banks do not have concerns with surplus lines.
11:14:40 AM Senator Richter recognized for debate.
11:16:24 AM Senator Fasano recognized to close on the bill.
11:19:31 AM Senator Fasano requests roll call on amendment.
11:20:03 AM Amendment fails.
11:20:27 AM Senator Fasano recognized to present amendment 205362.
11:21:57 AM Chairman Smith asks for vote on amendment.
11:22:11 AM Amendment fails.
11:22:24 AM Senator Bennett bill was withdrawn.
11:22:33 AM Chairman Smith poses question to Senator Richter.
11:22:54 AM Senator Richter responds.
11:22:59 AM Senator Fasano yields to Senator Sobel.
11:23:13 AM Senator Sobel recognized.
11:23:56 AM Is there anyway to address post office closure issue with surplus lines companies?
11:24:28 AM Senator Richter responds to Senator Sobel's question.
11:25:41 AM Senator Sobel recognized for follow up.
11:25:56 AM Is there a time limit in which they have to agree?
11:26:14 AM Mr. Meenan recognized to answer Senator Sobel's question.
11:27:27 AM Senator Fasano recognized.
11:27:56 AM Senator Richter recognized.
11:28:52 AM Senator Fasano recognized for follow up.
11:32:23 AM Chairman Smith recognizes Senator Hays.
11:33:09 AM Senator Hayes wants to know if Senator Richter would want a reconsideration of Senator Fasano's amendment.
11:34:37 AM Senator Richter said yes.
11:35:02 AM Senator Oelrich requested vote certain.
11:35:28 AM Motion for time certain at 11:50.
11:35:42 AM Chairman Smith moved bill to public testimony.
11:36:02 AM Gary Farmer, attorney, recognized.
11:38:23 AM David Welch, Florida Association of Insurance Reform, recognized.
11:40:42 AM Senator Richter recognized.
11:40:58 AM David Welch responded.
11:41:04 AM Senator Bennett recognized.
11:43:26 AM Mr. Welch responds to Senator Bennett's comments.
11:44:03 AM Monte Stevens, Office of Insurance Regulation, waives in support.
11:44:10 AM Tim Meenan, representing Geovera Specialty Insurance Company, waives in support.
11:44:17 AM Senator Bennett recognized for debate.
11:45:49 AM Senator Fasano recognized for debate.
11:49:10 AM Senator Richter recognized for debate.
11:49:41 AM Roll call on SB 578.
11:50:08 AM SB 578 passes favorably.
11:50:17 AM SB 336 temporarily postponed.
11:50:33 AM Chairman Richter makes statement regarding workshop.
11:51:32 AM Senator Gaetz asks that he be shown as a "yes" on SB 578.
11:52:38 AM Chairman Richter recognizes State Farm and GEICO representatives to speak regarding PIP.
11:52:58 AM James Pratt, Director of Florida Staff Counsel, GEICO, recognized.
11:53:44 AM Mr. Pratt discuss four keys/issues.
11:57:34 AM Mr. Pratt discusses increases in lawsuits, judgments, attorneys' fees, etc.
11:58:32 AM Mr. Pratt continues to discuss issues with PIP.
12:00:51 PM Chairman Richter asks that questions be held until end of presentation.
12:01:29 PM Ty Cullifer, State Farm, recognized.
12:09:56 PM Chairman Richter asks panel if they have any other comments.
12:10:16 PM Chairman Richter asks them to speak to the multiplier.
12:10:34 PM Mr. Pratt responds.
12:10:53 PM Senator Negron recognized.
12:11:08 PM In cases that go to trial, what percentage does insurance company win and vice versa.
12:11:26 PM Mark Delegal recognized to respond to Senator Negron's question.
12:12:23 PM Senator Negron asks a follow up.

12:12:39 PM Mr. Delegal replies.
12:12:48 PM Mr. Pratt asks if he may respond.
12:13:02 PM Chairman Richter asks for clarification.
12:13:09 PM Senator Negron responds.
12:13:46 PM Senator Negron asks what percentage of cases that goes to judge or jury, how often are multiplier are awarded?
12:14:16 PM Mr. Delegal responds.
12:14:22 PM Senator Negron poses hypothetical question: On going PIP lawsuit, PIP benefits exhausted, would insurance
12:15:11 PM company agree that if the insurance company didn't properly notify the provider, that they should have notified all
12:15:45 PM parties involved in the litigation of that fact.
12:15:56 PM Mr. Pratt responds on behalf of GEICO.
12:16:07 PM Mr. Cullifer responds.
12:16:41 PM Senator Bennett recognized.
12:17:22 PM Mr. Delegal recognized to respond to Senator Bennett's question.
12:18:53 PM Senator Bennett recognized for follow up.
12:19:22 PM How many lawsuits were filed agaist State Farm for claims filed timely?
12:19:46 PM Mr. Delegal recognized to respond.
12:20:43 PM Chairman Richter makes a statement.
12:20:51 PM Mr. Cullifer responds to Senator Bennett's question.
12:21:12 PM Senator Gaetz recognized.
12:21:24 PM Bonnie Gordon, GEICO, responds to lose/pay question from Senator Gaetz.
12:22:10 PM Chairman Richter recognizes Todd Copeland and Glen Ged and Don Masten.
12:22:28 PM Glen Ged, attorney, representing hospital and medical providers, recognized.
12:25:32 PM Chairman Richter recognizes Mr. Masten.
12:26:23 PM Mr. Donald J. Masten, attorney, speaks regarding PIP.
12:30:19 PM Chairman Richter makes statement regarding Mr. Copeland's handout.
12:30:42 PM Senator Smith makes statement and encourages senators to meet with people who travelled re: PIP.
12:31:04 PM Meeting adjourned.