SB 1220 by **Garcia**; (Identical to H 4139) Repeal of Health Insurance Provisions

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

237560	D	S		RCS	BI, Richter	Delete everything after	01/19 11:02 AM
589616	AA	S	L	RCS	BI, Richter	Delete L.80 - 87:	01/19 11:02 AM
324586	D	S	L	WD	BI, Richter	Delete everything after	01/19 11:02 AM

SB 1094 by **Hays**; (Identical to H 0789) Workers' Compensation

851418	A	S	L	WD	BI, Sobel	btw L.26 - 27:	01/19 11:02 AM

SB 1346 by **Oelrich (CO-INTRODUCERS) Lynn**; (Identical to H 1127) Citizens Property Insurance Corporation

SB 826 by **Bennett**; (Identical to H 0961) Title Insurance Claims

443100	D	S		WD	BI, Bennett	Delete everything after	01/24 08:27 AM

SB 1152 by **Richter**; (Identical to H 4087) Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement

SB 1230 by **BI**; OGSR/Public Records Exemption/Consumer Complaints and Inquiries

SB 1208 by **BI**; OGSR/Unclaimed Property/Department of Financial Services

SB 1232 by **BI**; (Identical to H 7033) OGSR/Personal Injury Protection and Property Damage Liability Insurance Policies

SB 668 by **Hays**; (Identical to H 0511) Workers' Compensation Medical Services

666350	A	S	L	FAV	BI, Sobel	Delete L.11 - 14:	01/19 11:02 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Thursday, January 19, 2012
TIME: 8:00 —10:00 a.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	**SB 1220** Garcia (Identical H 4139)	Repeal of Health Insurance Provisions; Deleting a requirement that the Florida Health Insurance Plan's board of directors annually report to the Governor and the Legislature concerning the Florida Health Insurance Plan; deleting redundant provisions making the implementation of the plan by the board contingent upon certain appropriations; deleting a requirement that the Office of Insurance Regulation of the Department of Financial Services annually report to the Governor and the Legislature concerning the Small Employers Access Program, etc. BI 01/19/2012 Favorable BC	Favorable Yeas 11 Nays 0
2	**SB 336** Richter (Similar H 67)	Debt Settlement 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 BI 01/19/2012 Fav/CS CM BC	Fav/CS Yeas 10 Nays 0
3	**SB 1094** Hays (Identical H 789)	Workers' Compensation; Revising penalties applicable to employers who fail to secure the payment of workers' compensation as required, etc. BI 01/19/2012 Favorable BC	Favorable Yeas 11 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1346** Oelrich (Identical H 1127)	Citizens Property Insurance Corporation; Reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments, etc. BI 01/19/2012 Favorable BC	Favorable Yeas 11 Nays 0
5	**SB 826** Bennett (Identical H 961)	Title Insurance Claims; Providing that after a specified time, a title insurer must pay the claim or cover the insured's costs until the claim is cured, etc. BI 01/19/2012 Not Considered JU BC	Not Considered
6	**SB 1152** Richter (Identical H 4087)	Repeal of a Workers' Compensation Independent Actuarial Peer Review Requirement; Repealing provisions relating to the duty of the Financial Services Commission to contract for a periodic report regarding an actuarial peer review and analysis of the ratemaking process of any licensed rating organization that makes rate filings for workers' compensation insurance, etc. BI 01/19/2012 Not Considered BC	Not Considered
7	**SB 1230** Banking and Insurance	OGSR/Public Records Exemption/Consumer Complaints and Inquiries; 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. BI 01/19/2012 Not Considered GO	Not Considered

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 1208** Banking and Insurance	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. BI 01/19/2012 Not Considered GO	Not Considered
9	**SB 1232** Banking and Insurance (Identical H 7033)	OGSR/Personal Injury Protection 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. BI 01/19/2012 Not Considered GO	Not Considered
10	**SB 668** Hays (Identical H 511)	Workers' Compensation Medical Services; Revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing limitations, etc. BI 01/19/2012 Fav/1 Amendment HR BC	Fav/1 Amendment (666350) Yeas 7 Nays 4
	Other related materials		

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 1220
INTRODUCER:	Senator Garcia
SUBJECT:	Repeal of Health Insurance Provisions
DATE:	January 14, 2012
REVISED:	

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

I. Summary:

The bill deletes s. 627.64872(6), F.S., which requires the Board of Directors of the Florida Health Insurance Plan to submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, an annual report which is to include an independent actuarial study.

The bill deletes s. 627.6699(15)(l), F.S., which requires the Office of Insurance Regulation to submit to the Governor, the President of the Senate and the Speaker of the House of Representatives, an annual report which summarizes the activities of the Small Employer Access Program, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.

This bill substantially amends the following sections of the Florida Statutes: 627.64872, 627.6699.

II. Present Situation:

Florida Health Insurance Plan (FHIP)

In 1983, the Florida Legislature created the Florida Comprehensive Health Association (FCHA), to cover individuals who were unable to purchase health insurance from the open market due to pre-existing conditions. The program is financed through premiums from the participants and assessments on insurance companies, but has been closed to new enrollment since 1991.[1]
In 2004, the Legislature created the Florida Health Insurance Plan (FHIP),[2] which was intended to replace the FCHA as the state's high risk insurance pool.[3] The benefits provided by the FHIP are the same as the standard and basic plans for small employers. The FHIP must also provide an option for the purchase of alternative coverage, such as catastrophic coverage which includes a minimum level of primary care coverage, and a high deductible plan that meets all the requirements for a health savings account. Eligibility for the plan is limited to individuals who have received two notices of rejection for coverage from health insurers and individuals covered under the FCHA at the time the FHIP was created.[4]

The FHIP was created to be run by a nine person Board of Directors, chaired by the Director of the Office of Insurance Regulation (OIR). Five Board members would be appointed by the Governor and one member each would be appointed by the President of the Senate, the Speaker of the House of Representatives, and the Chief Financial Officer.[5] The Board is required to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, an annual report which is to include an independent actuarial study.

According to the OIR, funds for the start-up of the FHIP have not been appropriated, and as a result, the FHIP is not in operation. Therefore, the requirement that a report be provided that includes an independent actuarial study is moot.

Small Employers Access Program

In 1992, the Legislature enacted the Employee Health Care Access Act (EHCAA).[6] The purpose of the act was to promote the availability of health insurance coverage to small employers, regardless of claims experience or their employees' health status.[7] In 2004, the Small Employers Access Program (Program) was created within the EHCAA.[8] The purpose of the Program was to provide additional health insurance options for small businesses consisting of up to 25 employees, including any municipality, county, school district, hospital located in a rural community, and any nursing home employer.[9] The OIR is required to submit an annual report to

[1] See Department of Financial Services website: myfloridacfo.com/Residual Markets – Florida Comprehensive Health Association; last visited January 15, 2012.
[2] Section 627.64872, F.S.
[3] See Department of Financial Services website: myfloridacfo.com/Residual Markets – Florida Health Insurance Plan; last visited January 15, 2012.
[4] Section 627.64872(9), F.S.
[5] Section 627.64872(3), F.S.
[6] Ch. 92-33, s. 117, L.O.F.
[7] Section 627.6699(2), F.S.
[8] Ch. 2004-297, s. 24, L.O.F.
[9] Section 627.6699(15)(b), F.S.

the Governor, the President of the Senate, and the Speaker of the House of Representatives summarizing the activities of the Program over the past year, including written and earned premiums, program enrollment, administrative expenses, and paid and incurred losses.[10]

According to the OIR, the Small Employers Access Program is not operational. The enacting legislation required a competitive bid for an insurer to administer the program. The OIR issued the required request for proposals (RFP) in 2004, and no insurer submitted a bid. Therefore, the annual reporting requirement contained in the section is moot.

III. Effect of Proposed Changes:

Section 1. The bill deletes s. 627.64872(6), F.S., thereby eliminating the annual reporting requirement for the FHIP. The Board of Directors of the FHIP would no longer be required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 2. The bill deletes s. 627.6699(15)(l), F.S., thereby eliminating the annual reporting requirement for the Small Employers Access Program. The OIR would no longer be required to submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 3. The bill has an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

[10] Section 627.6699(15)(l), F.S.

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.

By Senator Garcia

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A bill to be entitled

An act relating to the repeal of health insurance provisions; amending s. 627.64872, F.S.; deleting a requirement that the Florida Health Insurance Plan's board of directors annually report to the Governor and the Legislature concerning the Florida Health Insurance Plan; deleting redundant provisions making the implementation of the plan by the board contingent upon certain appropriations; amending s. 627.6699, F.S.; deleting a requirement that the Office of Insurance Regulation of the Department of Financial Services annually report to the Governor and the Legislature concerning the Small Employers Access Program; providing an effective date.

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

Section 1. Subsections (7) through (20) of section 627.64872, Florida Statutes, are renumbered as subsections (6) through (19), respectively, and paragraph (b) of subsection (4), present subsection (6), and paragraph (a) of present subsection (20) of that section are amended to read:

627.64872 Florida Health Insurance Plan.—

(4) PLAN OF OPERATION.—The plan of operation shall:

(b) Establish procedures for selecting an administrator in accordance with subsection (10) ~~(11)~~.

~~(6) ANNUAL REPORT.—The board shall annually submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes an independent~~

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~~actuarial study to determine, without limitation, the following:~~

~~(a) The effect the creation of the plan has on the small group and individual insurance market, specifically on the premiums paid by insureds, including an estimate of the total anticipated aggregate savings for all small employers in the state.~~

~~(b) The actual number of individuals covered at the current funding and benefit level, the projected number of individuals that may seek coverage in the forthcoming fiscal year, and the projected funding needed to cover anticipated increase or decrease in plan participation.~~

~~(c) A recommendation as to the best source of funding for the anticipated deficits of the pool.~~

~~(d) A summary of the activities of the plan in the preceding calendar year, including the net written and earned premiums, plan enrollment, the expense of administration, and the paid and incurred losses.~~

~~(e) A review of the operation of the plan as to whether the plan has met the intent of this section.~~

~~The board may not implement the Florida Health Insurance Plan until funds are appropriated for startup costs and any projected deficits; however, the board may complete the actuarial study authorized in this subsection.~~

(19) ~~(20)~~ COMBINING MEMBERSHIP OF THE FLORIDA COMPREHENSIVE HEALTH ASSOCIATION; ASSESSMENT.—

(a)1. Upon implementation of the Florida Health Insurance Plan, the Florida Comprehensive Health Association, as specified in s. 627.6488, is abolished as a separate nonprofit entity and

shall be subsumed under the board of directors of the Florida Health Insurance Plan. All individuals actively enrolled in the Florida Comprehensive Health Association shall be enrolled in the plan subject to its rules and requirements, except as otherwise specified in this section. Maximum lifetime benefits paid to an individual in the plan shall not exceed the amount established under subsection (15) ~~(16)~~, and benefits previously paid for any individual by the Florida Comprehensive Health Association shall be used in the determination of total lifetime benefits paid under the plan.

2. All persons enrolled in the Florida Comprehensive Health Association upon implementation of the Florida Health Insurance Plan are only eligible for the benefits authorized under subsection (15) ~~(16)~~. Persons identified by this section shall convert to the benefits authorized under subsection (15) ~~(16)~~ no later than January 1, 2005.

3. Except as otherwise provided in this section, the administration of the coverage of persons actively enrolled in the Florida Comprehensive Health Association shall operate under the existing plan of operation without modification until the adoption of the new plan of operation for the Florida Health Insurance Plan.

Section 2. Paragraph (l) of subsection (15) of section 627.6699, Florida Statutes, is amended to read:

627.6699 Employee Health Care Access Act.—

(15) SMALL EMPLOYERS ACCESS PROGRAM.—

~~(l) *Annual reporting.*—The office shall make an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report shall~~

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~~summarize the activities of the program in the preceding calendar year, including the net written and earned premiums, program enrollment, the expense of administration, and the paid and incurred losses. The report shall be submitted no later than March 15 following the close of the prior calendar year.~~

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

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 336
INTRODUCER:	Banking and Insurance Committee and Senators Richter and Gaetz
SUBJECT:	Debt Settlement Services
DATE:	January 19, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/CS**
2.			CM	
3.			BC	
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:

In recent 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 debt settlement and 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, debt settlement providers, offering debt settlement services to comply with the FTC provisions. The FTC regulation does not apply to nonprofit entities providing debt settlement services.
- Requires debt settlement providers offering 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.
- Provides that debt management services do not include debt settlement services.
- Clarifies current definition of services that a credit counseling agency may offer and creates definitions 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, 817.803, 817.804, 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

[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

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, 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]

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]

[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.

***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 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.

[8] Part IV, ch. 817, F.S.
[9] Section 817.801, F.S.
[10] 15 U.S.C. 41-58.
[11] 15 U.S.C. 6101-6108.

***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. 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

[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).

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 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).

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[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.

[16] 16 CFR 310.6(b)(3). The FTC considered whether the TSR 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.

- **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.

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, to clarify the services a credit counseling agency and a debt settlement provider may provide. 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. Currently, debt management services include debt settlement services. The bill specifies that debt management services do not include debt settlement services. The bill revises the definition of debt management services to specify services that are provided by a credit counseling agency and revises the definition of such services to include the adjustment of, compromise, or reduction of interest rate or fees or modification of terms and negotiations. 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 such as debt management plan, debt settlement plan, and principal amount of the debt.

Section 2 amends s. 817.802, F.S., relating to unlawful fees and costs to retain the current fee caps for credit counseling services and debt management services provided to any person residing in Florida. Fees applicable to debt settlement plans are created in section 4 of the bill.

[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.

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 amends s. 817.803, F.S., relating to exemptions, to clarify the current exemption for attorneys.

Section 4 creates s. 817.8035, F.S., relating to debt settlement plans, disclosures to debtors, payments, and refunds. A debt settlement provider is required to disclose the following information, in writing, to a debtor prior to the debtor consenting for the payment of debt settlement services:

Disclosures

- The amount of time necessary to achieve the represented results and the anticipated time by which the debt settlement provider 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 debt settlement provider will make a bona fide settlement offer to each of the creditors, if applicable.
- 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 debt settlement provider 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 debt settlement provider, the debtor must receive such funds within 7 business days after such request.

Prohibited Acts

The bill provides that a debt settlement provider 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 debt settlement provider 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
- Charge a fee that exceeds 30 percent of the amount saved.

A debt settlement provider is authorized to request or require the debtor to place funds in an account of a financial institution to be used for the debt settlement provider'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 is not owned or controlled, or affiliated with, the debt settlement provider; and
- 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.

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 debt settlement provider within 7 business days after the debtor's request.

Section 5 amends 817.804, F.S., relating to financial reporting. Under current law, any person engaged in debt management services or credit counseling services is required to obtain an annual audit. The bill requires debt settlement providers to obtain an annual audit, too. The bill provides that if another person is administering accounts on behalf of a debtor under agreement with a debt settlement provider, or under the direction or control of that provider, the scope of the audit must include all accounts in which the funds of Florida residents are deposited and from which payments are made at the direction or control of the debt settlement provider or its affiliate.

Section 6 amends s. 817.805, F.S., 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 under a debt settlement plan requires that the funds be held for a longer period in order to accumulate.

Section 7 requests the Division of Statutory Revision to rename part IV of ch. 817, F.S. as "Credit Counseling and Debt Settlement Services."

Section 8 provides that this act applies to debt settlement plans executed on or after July 1, 2012.

Section 9 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill codifies consumer protection provisions of the FTC Telemarketing Sales Regulation relating to debt settlement services, 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. The current fees for debt management services are retained.

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:

None.

VIII. Additional Information:

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

CS by Banking and Insurance on January 19, 2012

The CS provides the following changes:

- Provides that the scope of debt management services, which are provided by credit counseling agencies, does not include debt settlement services.
- Clarifies current statutory exemption relating to attorneys.
- Requires a debt settlement provider to provide the debtor with a copy of the required disclosures before the debtor consents to pay for the debt settlement services rather than within 7 days after the debtor consents.
- Requests the Division of Statutory Revision to rename part IV of ch. 817, F.S. as "Credit Counseling and Debt Settlement Services."
- Provides that the act applies to debt settlement plans executed on or after July 1, 2012.
- Provides technical and conforming changes.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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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 or credit counseling services.

(2) "Credit counseling services" means confidential money management, debt reduction, and financial educational services.

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(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

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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 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.

(10) "Principal amount of the debt" means the total outstanding balance of each unsecured debt included in a debt management plan or debt settlement plan, including accumulated interest and penalties that are not subject to an initial concession by a creditor pursuant to the debt management plan, and which are calculated individually and in the aggregate as of the date the plan is executed.

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

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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 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 in a full attorney-client relationship with a debtor in this state, and if debt management, credit counseling, or debt settlement services are provided in the course of his or her general practice of law and 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 writing and 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

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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 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 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.

(3) 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

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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 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.

(4) 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.

(5) 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

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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 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.

(6) 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 which includes ~~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. If

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another person administers accounts on behalf of a debtor under agreement with a debt settlement provider, or under the direction or control of that provider, the audit must include all accounts in which the funds of residents of this state are deposited and from which payments are made at the direction or control of the debt settlement provider or its affiliate.

(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, under a debt settlement plan, 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,


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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. The Division of Statutory Revision is requested to rename part IV of chapter 817, Florida Statutes, as "Credit Counseling and Debt Settlement Services."

Section 8. This act applies to debt settlement plans executed on or after July 1, 2012.

Section 9. 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 a directive to the Division of Statutory Revision; providing for applicability; providing an effective date.

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment to Amendment (237560)

Delete lines 80 - 87
and insert:
(1) An attorney licensed to practice law in this state who is providing debt management, credit counseling, or debt settlement services and who, in providing such services, is acting in compliance with the Florida Rules of Professional Conduct. ~~Any debt management or~~

324586

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/19/2012	.	
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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

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 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.

(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.

(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

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

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic Credit Counseling

Bill Number SB 336 *(if applicable)*

Name Michael Kerr

Amendment Barcode *(if applicable)*

Job Title

Address 1093 Huntleigh
Street

Phone 630 428 4498

E-mail michael.robert.kerr@gmail.com

City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Acapco

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)

1/19/12
Meeting Date

Topic Debt Settlement Services

Bill Number 336 *(if applicable)*

Name Towson Fraser

Amendment Barcode _____ *(if applicable)*

Job Title Partner

Address 123 S. Adams St
Street

Phone 671-4401

Tallahassee FL 32301
City *State* *Zip*

E-mail FraserE@SOSTRATEGY.com

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

Representing Care One Credit Services

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

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic Debt Settlement Services Bill Number 336 *(if applicable)*

Name Alice Vichus Amendment Barcode *(if applicable)*

Job Title Attorney

Address 623 Beard St. Phone 850 536-3121
Street

Tallahassee, FL 32303 E-mail alice.vichus623@gmail.com
City *State* *Zip*

Speaking: ☐ For ☑ Against ☐ Information

Representing Florida Consumer Action Network

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 1094
INTRODUCER:	Senator Hays
SUBJECT:	Revising Workers' Compensation Penalties
DATE:	January 12, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The Department of Financial Services (Department) Division of Workers' Compensation enforces employers' compliance in procuring workers' compensation as required in Ch. 440, F.S. The Department may issue stop-work orders, injunctions, and penalties against non-complying employers. In addition, the Department currently assesses a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding 3 years or $1,000, whichever is greater. Under the bill, the Department would assess a penalty equal to 2 times the amount the employer would have paid in premium within the preceding year or $1,000, whichever is greater.

This bill substantially amends the following section of the Florida Statutes: 440.107.

II. Present Situation:

Employers within Florida are required to obtain workers' compensation coverage that meets the requirements of Ch. 440, F.S., and the Florida Insurance Code. The Department is responsible for investigating and enforcing compliance with workers' compensation coverage requirements and may assess stop-work orders, injunctions, and penalties against the non-complying employers. If an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor the employer is deemed to have failed to secure payment for workers' compensation.[1] When the Department determines that an employer has failed to secure the required payment of workers' compensation, a stop-work order is issued

[1] Section 440.107(2), F.S.

within 72 hours ceasing all business operations and remains in effect until a finding that the employer has come into compliance with coverage requirements and paid any penalties.[2] A conditional release from the stop-work order may be issued by the Department to employers who have come into compliance with the workers' compensation coverage requirements and have agreed to pay any penalties through a payment agreement schedule with the Department.

In addition to stop-work orders, injunctions, or penalties, the Department is required to assess against employers who have failed to secure payment of workers' compensation a penalty equal to 1.5 times the amount the employer would have paid in premium within the preceding 3 year period or $1,000, whichever is greater.[3] In determining the amount of the penalty, the Department multiplies 1.5 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation within the preceding 3 year period.

III. Effect of Proposed Changes:

The bill would change the calculation of the required penalty the Department must assess against employers who fail to secure payment of workers' compensation as required. The bill would increase the penalty multiplier to 2 times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation. The bill will also reduce the time to determine periods of non-compliance from the preceding 3 year period to a 1 year period. The Department will either assess the calculated penalty or $1,000, whichever is greater.

Reducing the non-compliance period from 3 years to 1 year will streamline the Department's penalty calculation process due to the decrease in the volume of business records that must be reviewed and analyzed.[4] The streamlined process will allow the Department to provide employers a determination of their penalty amounts more quickly and enable employers to pay the penalties sooner.

The bill would take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[2] Section 440.107(7)(a), F.S.
[3] Section 440.107(7)(d)(1), F.S.
[4] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By reducing the non-compliance period to 1 year, the bill would decrease the business and payroll records retrieval and production duties currently imposed on employers. The streamlined penalty calculation and quicker penalty determination will enable employers to pay their penalties sooner and therefore return to work more quickly.[5]

C. Government Sector Impact:

The amount of penalties collected and deposited in the Workers' Compensation Administration Trust Fund (Fund) are affected by the penalty amount, the employer's ability to pay the penalty, whether the employer elects to pay the penalty in full or enters into a periodic payment plan with the Department, and the general economic environment.[6] Therefore the financial impact on the Fund is indeterminate.

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.

[5] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.
[6] Department of Financial Services Bill Analysis and Fiscal Impact Statement, December 1, 2011.

851418

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/19/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 26 and 27
insert:

Section 2. Paragraph (j) of subsection (3) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

(j) Notwithstanding any other provision of ~~anything in~~ this chapter ~~to the contrary~~, a sick or injured employee is ~~shall be~~ entitled, at all times, to free, full, and absolute choice in

851418

the selection of the pharmacy, ~~or~~ pharmacist, or dispensing practitioner to dispense and fill ~~dispensing and filling~~ prescriptions for medicines required under this chapter. ~~It is expressly forbidden for~~ The department, an employer, or a carrier, or any agent or representative of the department, an employer, or a carrier, may not ~~to~~ select the pharmacy, ~~or~~ pharmacist, or dispensing practitioner that ~~which~~ the sick or injured employee must use; condition coverage or payment on the basis of the pharmacy, ~~or~~ pharmacist, or dispensing practitioner used ~~utilized~~; or to otherwise interfere in the selection by the sick or injured employee of a pharmacy, ~~or~~ pharmacist, or dispensing practitioner.

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

And the title is amended as follows:

Delete line 5

and insert:

compensation as required; amending s. 440.13, F.S.; providing that a sick or injured employee is free to select a dispensing practitioner to fill prescriptions as well as a pharmacy or pharmacist; providing an effective date.

By Senator Hays

20-01008-12 20121094__

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising penalties applicable to employers who fail to secure the payment of workers' compensation as required; providing an effective date.

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

Section 1. Paragraph (d) of subsection (7) of section 440.107, Florida Statutes, is amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 1-year ~~3-year~~ period or $1,000, whichever is greater.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

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:	SB 1346
INTRODUCER:	Senator Oelrich
SUBJECT:	Citizens Property Insurance Corporation Assessments
DATE:	January 13, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Burgess	BI	**Favorable**
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

Senate Bill 1346 reduces the Citizens Property Insurance Corporation (Citizens) regular assessment from 6 percent per account to 2 percent for deficits in the Coastal Account and eliminates the regular assessment in the Personal Lines Account (PLA) and the Commercial Lines Account (CLA). The reduction of the regular assessment in the Coastal Account and its elimination for deficits in the PLA and CLA will not reduce the overall assessment authority of Citizens. Instead, greater levies will be imposed through emergency assessments, which are levied on all lines of property and casualty policies (except workers' compensation and medical malpractice[1]) in the state, including Citizens' own policies.

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. Citizens is authorized to levy the policyholder surcharge, a regular assessment for the Coastal Account, and emergency assessments upon a determination by the Citizens Board of Directors that a Citizens account has a projected deficit. The Office of Insurance Regulation (OIR) is authorized to assist Citizens to collect assessments in any way that the OIR deems appropriate. Assessable insurers and the Florida Surplus Lines Service Office (FSLSO) must begin collecting and paying the emergency assessments within 90 days after Citizens levies such assessments. Limited apportionment companies must also begin collecting regular assessments within 90 days of their levy by Citizens. However, the bill expands the time limited apportionment companies have to pay regular assessments in full from 12 months to 15 months after Citizens levies the assessment. The bill is effective July 1, 2012.

This bill substantially amends the following section of the Florida Statutes: 627.351.

[1] Section 627.351(6)(b)3.e., F.S.

II. Present Situation:

Citizens Property Insurance Corporation

Citizens is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[2] Citizens is not a private insurance company,[3] and its book of business is divided into three statutorily separate accounts.[4] Each of the three Citizens accounts has separate calculations with regard to surplus and deficits. By statute, assets of each account may not be comingled or used to fund losses in another account. Citizens' three accounts are:

Personal Lines Account (PLA) – Multi-peril policies which consist of homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners and similar policies covering damage to property from windstorm and from other perils.

Commercial Lines Account (CLA) – Multi-peril policies which consist of condominium association, apartment building and homeowners' association policies covering damage to property from windstorm and from other perils, as well as Commercial Non-Residential Multi-peril policies.

Coastal Account (Coastal) – Wind-only and Multi-peril policies which consist of personal lines wind-only policies, commercial residential wind-only policies and commercial non-residential wind-only policies issued in limited eligible coastal areas which cover damage to property from windstorm only. It also consists of personal and commercial residential multi-peril policies in specified coastal areas (wind-only zones) issued since 2007 which cover damage to property from windstorm and from other perils. Recently some Commercial Non-Residential Multi-peril policies have been added as well.

Assessments

In the event Citizens incurs a deficit, i.e., its obligations to pay claims exceed 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.[5] The three Citizens' accounts calculate deficits and resulting assessment needs independently:

Citizens Policyholder Surcharges:[6] Citizens will first levy surcharges on its policyholders of up to 15 percent of premium per account for a maximum total of 45 percent. This surcharge is collected over 12 months on all Citizens' policies and collected upon issuance and renewal.

Regular Assessments:[7] Upon the exhaustion of the Citizens policyholder surcharge for a particular account, Citizens may levy a regular assessment of up to 6 percent of premium or 6

[2] See Section 627.351(6)(a), F.S.
[3] See Section 627.351(6)(a)1., F.S.
[4] Section 627.351(6)(b)2.a., F.S.
[5] Section 627.351(6)(b)3., F.S.
[6] Section 627.351(6)(b)3.h., F.S.
[7] Section 627.351(6)(b)3.a.-b., F.S.

percent of the deficit per account, for a maximum total of 18 percent. The regular assessment is levied on all lines of property and casualty policies in the state except workers' compensation and medical malpractice, but is not levied on Citizens' policies. Property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders at the issuance of a new policy or at renewal of existing policies. Citizens has usually been able to collect regular assessment funds within 30 days after being levied.

Emergency Assessments:[8] Upon the exhaustion of the Citizens' policyholder surcharge and regular assessment for a particular account, Citizens may levy an emergency assessment of up to 10 percent of premium or 10 percent of the deficit per account, for a maximum total of 30 percent. This assessment can be collected for as many years as is necessary to rectify a deficit. Emergency assessments are levied on all lines of property and casualty policies (except workers' compensation and medical malpractice) in the state, including Citizens' own policies. Initially, property and casualty insurers with policies subject to the emergency assessment collect the assessment from policyholders at the issuance of a new policy or at renewal of existing policies and then remit the assessments periodically to Citizens. Thus, Citizens will not collect funds raised by an emergency assessment immediately after the assessment is levied, but will collect funds intermittently throughout the collection period as policies are renewed and new policies are written.

Citizens Assessment Capacity

Issue Brief 2012-226 by the Banking and Insurance Committee presented findings on the financial condition of Citizens and the corporation's claims resources in the event of a major hurricane event. Due to lack of storm activity for the last 5 years, the current surplus held by Citizens for all three accounts is $5.742 billon: $2.686 billion Coastal and $3.056 billion PLA/CLA. Pursuant to estimates provided by Citizens to committee staff, Citizens has the following assessment capacity:

- Policyholder Surcharge – approximately $1.172 billion: $391 million surcharge capacity for Coastal and $781 million surcharge capacity for PLA/CLA.
- Regular Assessment – approximately $5.580 billion: $1.860 billion Regular Assessment capacity for Coastal and $3.720 billion Regular Assessment capacity for PLA/CLA.
- Emergency Assessment - Citizens Emergency Assessment capacity is unlimited. The projected 1-100 year storm Emergency Assessment estimate is $6.468 billion for Coastal Account.

Reinsurance

A direct insurance writer will often spread its risk by purchasing reinsurance coverage from a reinsurance carrier. The reinsurance contract will specify the layer of the direct writer's risk that is shifted to the reinsurer and the premium that the direct writer must pay the reinsurer to assume the risk. For the contract year 2011-2012, Citizens has purchased private reinsurance coverage totaling $575 million for the Coastal account.

[8] Section 627.351(6)(b)3.c., F.S.

The Florida Hurricane Catastrophe Fund (FHCF or CAT fund)

The CAT fund is a tax-exempt state managed trust fund that reimburses (reinsures) insurers for a portion of their hurricane losses to residential property.[9] To access the CAT fund an insurer must have incurred losses above the retention levels calculated and set by statute. When faced with a multi-storm season, insurers must reach their full retention levels on the two largest storms of the season. The retention level is then reduced to one-third the normal amount for any other storms that season. The current retention levels for Citizens' accounts are $1.738 billion for Coastal and $1.19 billion for PLA/CLA. If Citizens were to incur losses above its retention levels, the CAT fund could provide Citizens with an additional $6.591 billion in coverage: $4.010 billion would be available for Coastal and $2.581 billion would be available for PLA/CLA.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.351(6), F.S.

Reduces the Citizens regular assessment from 6 percent per account to 2 percent for deficits in the Coastal Account and eliminates the regular assessment in the Personal Lines Account (PLA) and the Commercial Lines Account (CLA). The reduction of the regular assessment in the Coastal Account and its elimination for deficits in the PLA and CLA will not reduce the overall assessment authority of Citizens. Instead, greater levies will be imposed through emergency assessments, which are levied on all lines of property and casualty policies (except workers' compensation and medical malpractice) in the state, including Citizens' own policies. In the event of a storm that requires emergency assessments, Citizens policyholders will be subject to higher assessment liabilities than under current law because regular assessments do not include such policyholders within the assessment base, but emergency assessments do. Conversely, policyholders of property and casualty lines of insurance policies subject to assessment will be subject to lower levels of assessment liability.

The bill also makes revisions designed to assist Citizens in the promulgation and collection of assessments. The bill authorizes the Citizens Board of Governors to levy surcharges and assessments upon projecting that a Citizens account will incur a deficit. Current law requires that the Citizens account actually incur a deficit prior to the levy of surcharges or assessments. Under the bill, the various surcharges and assessments may be levied upon the following determinations:

- Policyholder Surcharge – Upon a determination by the board that a Citizens account has a projected deficit.
- Regular assessments for the Coastal Account – Upon a determination by the board that a Coastal Account will have a projected deficit after accounting for the policyholder surcharge.
- Emergency assessments – Upon a determination by the board that a Citizens account will have a projected deficit after accounting for the policyholder surcharge and, for the Coastal Account, regular assessments.

[9] Section 215.555, F.S.

The Office of Insurance Regulation is authorized to assist Citizens to collect assessments in any ways that the OIR deems appropriate. Assessable insurers and the Florida Surplus Lines Service Office must begin collecting and paying the emergency assessments within 90 days after Citizens levies such assessments. Limited apportionment companies must also begin collecting regular assessments within 90 days of their levy by Citizens. However, the bill expands the time limited apportionment companies have to pay regular assessments in full from 12 months to 15 months after Citizens levies the assessment.

Section 2. 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:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Representatives from multiple Florida admitted insurance companies assert that the requirement that property and casualty insurers with policies subject to the regular assessment provide the assessment to Citizens up front and subsequently recover it from their policyholders may delay the ability of some insurers to make timely claim payments to their own policyholders. These representatives have also raised the possibility that the requirement to front regular assessment liabilities could imperil the solvency of some insurers.

Representatives from the Office of Insurance Regulation report that some non-admitted property and casualty insurers have cited the requirement that insurers pre-pay the regular assessment up front to Citizens as a reason they have chosen not to write residential property insurance in the state.

C. Government Sector Impact:

Representatives from Citizens state that the bill will not have a negative impact on the corporation's ability to timely pay claims in the event of a storm that triggers emergency assessments. Citizens' representatives assert that the ability of the corporation to issue debt will enable it to maintain sufficient funds to timely pay claims and meet its obligations in the event of a storm that requires the levy of emergency assessments. Additionally, allowing Citizens to levy surcharges and assessments upon a determination by the Board of Directors that a deficit exists in a Citizens account will allow Citizens to begin the process of collecting those levies at an earlier time than under current law.

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.

By Senator Oelrich

14-01193C-12 20121346__

A bill to be entitled

An act relating to Citizens Property Insurance Corporation; amending s. 627.351, F.S.; conforming cross-references; reducing to 2 percent from 6 percent the amount of the projected deficit in the coastal account for the prior calendar year which is recovered through regular assessments; requiring that remaining projected deficits in personal and commercial lines accounts be recovered through emergency assessments after accounting for the Citizens policyholder surcharge; requiring the Office of Insurance Regulation of the Financial Services Commission to notify assessable insurers and the Florida Surplus Lines Service Office of the dates assessable insurers shall collect and pay emergency assessments; removing reference to recoupment of residual market deficit assessments; requiring the board of governors to make a determination that an account has a projected deficit before it levies a Citizens policy holder surcharge; requiring that a limited apportionment company begin collecting regular assessments within 90 days and pay in full within 15 months after the assessment is levied; authorizing the Office of Insurance Regulation to assist the Citizens Property Insurance Corporation in the collection of assessments; replacing the term "market equalization surcharge" with the term "policyholder surcharge"; providing an effective date.

14-01193C-12 20121346__

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

Section 1. Paragraphs (b), (c), (q), and (w) of subsection (6) of section 627.351, Florida Statutes, are amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

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

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

(I) A personal lines account for personal residential policies issued by the corporation, or issued by the Residential Property and Casualty Joint Underwriting Association and renewed

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

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

(III) A coastal account for personal residential policies and commercial residential and commercial nonresidential property policies issued by the corporation, or transferred to the corporation, which provides coverage for the peril of wind on risks that are located in areas eligible for coverage by the Florida Windstorm Underwriting Association as those areas were defined on January 1, 2002. The corporation may offer policies that provide multiperil coverage and the corporation shall continue to offer policies that provide coverage only for the peril of wind for risks located in areas eligible for coverage in the coastal account. In issuing multiperil coverage, the corporation may use its approved policy forms and rates for the personal lines account. An applicant or insured who is eligible

to purchase a multiperil policy from the corporation may purchase a multiperil policy from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides coverage only for the peril of wind from the corporation. An applicant or insured who is eligible for a corporation policy that provides coverage only for the peril of wind may elect to purchase or retain such policy and also purchase or retain coverage excluding wind from an authorized insurer without prejudice to the applicant's or insured's eligibility to prospectively purchase a policy that provides multiperil coverage from the corporation. It is the goal of the Legislature that there be an overall average savings of 10 percent or more for a policyholder who currently has a wind-only policy with the corporation, and an ex-wind policy with a voluntary insurer or the corporation, and who obtains a multiperil policy from the corporation. It is the intent of the Legislature that the offer of multiperil coverage in the coastal account be made and implemented in a manner that does not adversely affect the tax-exempt status of the corporation or creditworthiness of or security for currently outstanding financing obligations or credit facilities of the coastal account, the personal lines account, or the commercial lines account. The coastal account must also include quota share primary insurance under subparagraph (c)2. The area eligible for coverage under the coastal account also includes the area within Port Canaveral, which is bordered on the south by the City of Cape Canaveral, bordered on the west by the Banana River, and bordered on the north by Federal Government property.

b. The three separate accounts must be maintained as long

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

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

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

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

bonds under this subsection.

f. ~~No part of~~ The income of the corporation may not inure to the benefit of any private person.

3. With respect to a deficit in an account:

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

(I) Is not greater than 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the entire deficit shall be recovered through regular assessments of assessable insurers under paragraph (q) and assessable insureds.

(II) Exceeds 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year, the corporation shall levy regular assessments on assessable insurers under paragraph (q) and on assessable insureds in an amount equal to the greater of 2 ~~6~~ percent of the projected deficit or 2 ~~6~~ percent of the aggregate statewide direct written premium for the subject lines of business for the prior calendar year. Any remaining projected deficit shall be recovered through emergency assessments under sub-subparagraph d. ~~e.~~

b. Each assessable insurer's share of the amount being assessed under sub-subparagraph a. must be in the proportion that the assessable insurer's direct written premium for the subject lines of business for the year preceding the assessment bears to the aggregate statewide direct written premium for the subject lines of business for that year. The assessment

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

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

d.~~c.~~ Upon a determination by the board of governors that a projected deficit in an account exceeds the amount that is expected to ~~will~~ be recovered through regular assessments under sub-subparagraph a., plus the amount that is expected to be recovered through surcharges under sub-subparagraph i. ~~h.~~, the board, after verification by the office, shall levy emergency assessments for as many years as necessary to cover the deficits, to be collected by assessable insurers and the

corporation and collected from assessable insureds upon issuance or renewal of policies for subject lines of business, excluding National Flood Insurance policies. The amount collected in a particular year must be a uniform percentage of that year's direct written premium for subject lines of business and all accounts of the corporation, excluding National Flood Insurance Program policy premiums, as annually determined by the board and verified by the office. The office shall verify the arithmetic calculations involved in the board's determination within 30 days after receipt of the information on which the determination was based. The office shall notify assessable insurers and the Florida Surplus Lines Service Office of the date on which assessable insurers shall begin to collect and assessable insureds shall begin to pay such assessment. The date may be not less than 90 days after the date the corporation levies emergency assessments pursuant to this sub-subparagraph. Notwithstanding any other provision of law, the corporation and each assessable insurer that writes subject lines of business shall collect emergency assessments from its policyholders without such obligation being affected by any credit, limitation, exemption, or deferment. Emergency assessments levied by the corporation on assessable insureds shall be collected by the surplus lines agent at the time the surplus lines agent collects the surplus lines tax required by s. 626.932 and paid to the Florida Surplus Lines Service Office at the time the surplus lines agent pays the surplus lines tax to that office. The emergency assessments collected shall be transferred directly to the corporation on a periodic basis as determined by the corporation and held by the corporation solely

in the applicable account. The aggregate amount of emergency assessments levied for an account under this sub-subparagraph in any calendar year may be less than but not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.

e.~~d.~~ The corporation may pledge the proceeds of assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other insurance and reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as the source of revenue for and to secure bonds issued under paragraph (q), bonds or other indebtedness issued under subparagraph (c)3., or lines of credit or other financing mechanisms issued or created under this subsection, or to retire any other debt incurred as a result of deficits or events giving rise to deficits, or in any other way that the board determines will efficiently recover such deficits. The purpose of the lines of credit or other financing mechanisms is to provide additional resources to assist the corporation in covering claims and expenses attributable to a catastrophe. As used in this subsection, the term "assessments" includes regular assessments under sub-subparagraph a. or subparagraph (q)1. and emergency assessments under sub-subparagraph d. Emergency assessments collected under sub-subparagraph d. are not part of an insurer's rates, are not

premium, and are not subject to premium tax, fees, or commissions; however, failure to pay the emergency assessment shall be treated as failure to pay premium. The emergency assessments under sub-subparagraph d. ~~c.~~ shall continue as long as any bonds issued or other indebtedness incurred with respect to a deficit for which the assessment was imposed remain outstanding, unless adequate provision has been made for the payment of such bonds or other indebtedness pursuant to the documents governing such bonds or indebtedness.

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

g.~~f.~~ The Florida Surplus Lines Service Office shall determine annually the aggregate statewide written premium in subject lines of business procured by assessable insureds and report that information to the corporation in a form and at a

time the corporation specifies to ensure that the corporation can meet the requirements of this subsection and the corporation's financing obligations.

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

i.h. ~~If a deficit is incurred in any account~~ In 2008 or thereafter, upon a determination by the board of governors that an account has a projected deficit, the board shall levy a Citizens policyholder surcharge against all policyholders of the corporation.

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

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

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

(IV) The surcharge is not considered premium and is not

subject to commissions, fees, or premium taxes. However, failure to pay the surcharge shall be treated as failure to pay premium.

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

(c) The corporation's plan of operation:

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

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

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

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

commercial nonresidential structures in the admitted voluntary market.

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

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

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

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

a. As used in this subsection, the term:

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

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

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

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

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

d. Any quota share primary insurance agreement entered into

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

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

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

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

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the

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

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

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

b. To ensure that the corporation is operating in an efficient and economic manner while providing quality service to policyholders, applicants, and agents, the board shall commission an independent third-party consultant having expertise in insurance company management or insurance company management consulting to prepare a report and make recommendations on the relative costs and benefits of outsourcing various policy issuance and service functions to private servicing carriers or entities performing similar functions in the private market for a fee, rather than performing such functions in-house. In making such recommendations, the consultant shall consider how other residual markets, both in this state and around the country, outsource appropriate functions or use servicing carriers to better match expenses with revenues that fluctuate based on a

widely varying policy count. The report must be completed by July 1, 2012. Upon receiving the report, the board shall develop a plan to implement the report and submit the plan for review, modification, and approval to the Financial Services Commission. Upon the commission's approval of the plan, the board shall begin implementing the plan by January 1, 2013.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of eight individuals who are residents of this state, from different geographical areas of this state.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and is deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive

director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

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

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each board meeting on insurance market issues which may include rates

and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

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

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder of the corporation or a policyholder removed from the corporation through an assumption agreement until the end of the assumption period remains eligible for coverage from the corporation regardless of any offer of coverage from an authorized insurer or surplus lines insurer. The corporation shall determine the type of policy to be provided on the basis of objective

standards specified in the underwriting manual and based on generally accepted underwriting practices.

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

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

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

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

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

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

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

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

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

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

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation before a policy is issued to the risk by the

corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

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

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

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

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

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

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to

pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

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

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

for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

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

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

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

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage

and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds ~~pursuant to s. 627.3512~~, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments ~~assessment~~ must be paid in full within 15 ~~12~~ months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or

part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

18. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

19. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of

coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

20. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgement signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGEMENT OF POTENTIAL SURCHARGE AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I ALSO UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

3. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgement and

provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgement form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(q)1. The corporation shall certify to the office its needs for annual assessments as to a particular calendar year, and for any interim assessments that it deems to be necessary to sustain operations as to a particular year pending the receipt of annual assessments. Upon verification, the office shall approve such certification, and the corporation shall levy such annual or interim assessments. Such assessments shall be prorated as provided in paragraph (b). The corporation shall take all reasonable and prudent steps necessary to collect the amount of assessments ~~assessment~~ due from each assessable insurer, including, if prudent, filing suit to collect the assessments, and the office may provide such assistance to the corporation it deems appropriate ~~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.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-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.d.

4. The plan shall provide for the deferment, in whole or in part, of the assessment of an assessable insurer, other than an emergency assessment collected from policyholders pursuant to

sub-subparagraph (b)3.d., if the office finds that payment of the assessment would endanger or impair the solvency of the insurer. In the event an assessment against an assessable insurer is deferred in whole or in part, the amount by which such assessment is deferred may be assessed against the other assessable insurers in a manner consistent with the basis for assessments set forth in paragraph (b).

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

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

(w) Notwithstanding any other provision of law:

1. The pledge or sale of, the lien upon, and the security interest in any rights, revenues, or other assets of the corporation created or purported to be created pursuant to any financing documents to secure any bonds or other indebtedness of the corporation shall be and remain valid and enforceable, notwithstanding the commencement of and during the continuation of, and after, any rehabilitation, insolvency, liquidation,

bankruptcy, receivership, conservatorship, reorganization, or similar proceeding against the corporation under the laws of this state.

2. The ~~No such~~ proceeding does not ~~shall~~ relieve the corporation of its obligation, or otherwise affect its ability to perform its obligation, to continue to collect, or levy and collect, assessments, policyholder surcharges ~~market equalization~~ or other surcharges under sub-subparagraph (b)3.i. ~~subparagraph (c)10.~~, or any other rights, revenues, or other assets of the corporation pledged pursuant to any financing documents.

3. Each such pledge or sale of, lien upon, and security interest in, including the priority of such pledge, lien, or security interest, any such assessments, policyholder surcharges ~~market equalization~~ or other surcharges, or other rights, revenues, or other assets which are collected, or levied and collected, after the commencement of and during the pendency of, or after, any such proceeding shall continue unaffected by such proceeding. As used in this subsection, the term "financing documents" means any agreement or agreements, instrument or instruments, or other document or documents now existing or hereafter created evidencing any bonds or other indebtedness of the corporation or pursuant to which any such bonds or other indebtedness has been or may be issued and pursuant to which any rights, revenues, or other assets of the corporation are pledged or sold to secure the repayment of such bonds or indebtedness, together with the payment of interest on such bonds or such indebtedness, or the payment of any other obligation or financial product, as defined in the plan of operation of the

corporation related to such bonds or indebtedness.

4. Any such pledge or sale of assessments, revenues, contract rights, or other rights or assets of the corporation shall constitute a lien and security interest, or sale, as the case may be, that is immediately effective and attaches to such assessments, revenues, or contract rights or other rights or assets, whether or not imposed or collected at the time the pledge or sale is made. Any such pledge or sale is effective, valid, binding, and enforceable against the corporation or other entity making such pledge or sale, and valid and binding against and superior to any competing claims or obligations owed to any other person or entity, including policyholders in this state, asserting rights in any such assessments, revenues, or contract rights or other rights or assets to the extent set forth in and in accordance with the terms of the pledge or sale contained in the applicable financing documents, whether or not any such person or entity has notice of such pledge or sale and without the need for any physical delivery, recordation, filing, or other action.

5. As long as the corporation has any bonds outstanding, the corporation may not file a voluntary petition under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, and a public officer or any organization, entity, or other person may not authorize the corporation to be or become a debtor under chapter 9 of the federal Bankruptcy Code or such corresponding chapter or sections as may be in effect, from time to time, during any such period.

6. If ordered by a court of competent jurisdiction, the

corporation may assume policies or otherwise provide coverage for policyholders of an insurer placed in liquidation under chapter 631, under such forms, rates, terms, and conditions as the corporation deems appropriate, subject to approval by the office.

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)

JAN 19 2012
Meeting Date

Topic CITIZENS REGULAR ASSESSMENTS

Bill Number 1346 *(if applicable)*

Name LOCKE BURT

Amendment Barcode *(if applicable)*

Job Title CHAIRMAN + PRESIDENT - SECURITY FIRST INS

Address 140 SOUTH ATLANTIC AVE
Street

Phone 386-523-2300

ORMOND BEACH FLA 32176
City *State* *Zip*

E-mail BURT@ORMOREE.COM

Speaking: ☒ For ☐ Against ☐ Information

Representing SECURITY FIRST 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)

01/19/12
Meeting Date

Topic _____ Bill Number SB1346 *(if applicable)*

Name Sharon Binnun Amendment Barcode _____ *(if applicable)*

Job Title CFO

Address _____ Phone 513.3757

Street
Tallahassee, FL E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☑ Information

Representing Citizens Property Insurance Corp.

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

01/19/2012
Meeting Date

Topic CITIZENS REGULAR ASSESSMENTS

Bill Number 1346 *(if applicable)*

Name DON BROWN

Amendment Barcode *(if applicable)*

Job Title

Address POB 866
Street

DEFUNIAK SPRINGS, FL 32435
City *State* *Zip*

Phone 850-865-9250

E-mail DON@DONBROWNFLORIDA.COM ~~DON@DONBROWN.ORG~~

Speaking: ☐ For ☐ Against ☑ Information

Representing HEARTLAND INSTITUTE

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19
Meeting Date

Topic Citizens

Bill Number SB 1346 *(if applicable)*

Name Brian Deffenbaugh

Amendment Barcode *(if applicable)*

Job Title Sr. Counsel

Address *Street*

Phone 413-2913

City *State* *Zip*

E-mail

Speaking: ☑ For ☐ Against ☐ Information

Representing Insur. Consumer Advocate's Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic CITIZENS PROP. INS. CORP. Bill Number 1346 *(if applicable)*

Name KYLE ULRICH Amendment Barcode *(if applicable)*

Job Title SVP PUBLIC AFFAIRS

Address 3159 SHAMROCK SOUTH Phone 850-893-4155
Street

TALLAHASSEE FL 32308 E-mail KULRICH@FAIA.COM
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FL ASSOC. OF INSURANCE AGENTS

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic _____ Bill Number SB 1346 *(if applicable)*

Name Gerald Wester Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 101 E Park Ave Phone _____
Street

Tallahassee FL 32301 E-mail _____
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Associated Industries of FL

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic _____ Bill Number 1346 *(if applicable)*

Name Teye Reeves Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 136 S. Bronough ST Phone 850-521-1235
Street

Tallahassee FL 32301 E-mail teye@flchamber.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic Citizens

Bill Number 1346 *(if applicable)*

Name Monte Stevens - OIR

Amendment Barcode *(if applicable)*

Job Title 200 Gaines St

Address Tally FL 32399
Street

Phone 413-2571

E-mail Monte.Stevens@flwmcd

City *State* *Zip*

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

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 826
INTRODUCER:	Senator Bennett
SUBJECT:	Title Insurance Claims
DATE:	January 16, 2012 REVISED:

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

I. Summary:

The bill requires title insurance companies to pay full policy limits within 90 days after a challenge to title is filed or cover all additional costs that are incurred by the insured while a dispute to title is being cured, including attorney fees and costs. The bill applies to all title claims filed on or after the bill's effective date of July 1, 2012.

This bill creates the following section of the Florida Statutes: 627.7832.

II. Present Situation:

Title Insurance

Title insurance insures owners of real property or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer[2] that, after performing a search of title, represents the state of that title and insures the accuracy of its search against claims of title defects. Title insurance is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage. Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance places on title insurers a duty to defend actions related to adverse claims against title, and also promises to indemnify the

[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties as to the existence, attachment, perfection and priority of a security interest in personal property under the Uniform Commercial Code.
[2] 627.7711(3), F.S.

policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.

In Florida, two entities provide regulatory oversight of the title insurance industry: the Department of Financial Services (DFS), which regulates title agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and the promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3] and rates and premiums charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4]

Pursuant to s. 627.782, F.S., the FSC is mandated to adopt by rule and specify a premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years. Also, the FSC may by rule require insurers to submit statistical information, including loss and expense data, as it determines to be necessary to analyze premium rates.[5] Title insurers may deviate from the prescribed rates by petitioning the OIR for an order authorizing a specific deviation from the adopted premium.[6] In Florida, title insurers can only transact title insurance and cannot transact any other type of insurance.[7]

There are no set timeframes in statute as to when disputes to a title of real property must be cured by a title insurance company. The insurance company's primary objective in a dispute is to validate the policy as issued. If a challenge to title is brought, the title insurance company can settle with the challenging parties, challenge the dispute in court or tender partial or full policy limits for any damages occurred to the insured from the partial or total loss of title. Often time's disputes to title of real property can be settled between the parties involved without the involvement of the courts, thus cutting down on the time it takes for a challenge to title to be cured.

III. Effect of Proposed Changes:

Section 1. The bill creates 627.7832, F.S., which requires title insurance companies to fully pay policy limits within 90 days after a challenge to title is filed or to cover all additional costs that are incurred by the insured until the cure is finalized, including attorney fees and costs. The bill applies to all title claims filed on or after the bill's effective date of July 1, 2012.

Section 2. The bill is effective July 1, 2012.

[3] Section 627.777, F.S.
[4] Section 627.782, F.S.
[5] Section 627.782, F.S.
[6] Section 627.783, F.S.
[7] Section 627.786, F.S.

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:

Title insurance companies would be subject to additional costs when trying to cure a challenge to title.

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.

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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/24/2012	.	
	.	
	.	
	.	

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 627.7832, Florida Statutes, is created to read:

627.7832 Claims payment.—A title insurer has the right to cure each claim made. However, if an insurer does not cure a claim within 90 days, the insurer must tender full policy limits or pay up to an additional 25 percent above the initial amount insured in order to reimburse the policyholder for any initial attorney fees, moving expenses, property taxes, architect fees,

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engineering fees, permitting fees, or mortgage interest paid up until the time that the claim is cured. Payment of the additional 25 percent applies only if the insurer fails to establish the title as initially insured. This section applies to all title insurance policies issued on or after July 1, 2012.

Section 2. Subsection (1) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(1) A title insurer may not issue a title insurance commitment, endorsement, or title insurance policy until the title insurer has caused to be made a determination of insurability based upon the evaluation of a reasonable title search which begins with the original issuance of title ~~or a search of the records of a Uniform Commercial Code filing office, as applicable, has examined such other information as may be necessary, and has caused to be made a determination of insurability of title or the existence, attachments, perfection, and priority of a Uniform Commercial Code security interest, including endorsement coverages, in accordance with sound underwriting practices~~.

Section 2. 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 title insurance claims; creating s.


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627.7832, F.S.; providing that after a specified time, a title insurer must pay the full policy limits on a claim or pay a specified amount above the amount insured to reimburse certain fees and expenses of the insured until the claim is cured; providing for applicability; amending s. 627.7845, F.S.; providing that a title search begins with the original issuance of title; providing an effective date.

By Senator Bennett

21-00708-12 2012826__

A bill to be entitled

An act relating to title insurance claims; creating s. 627.7832, F.S.; providing that after a specified time, a title insurer must pay the claim or cover the insured's costs until the claim is cured; providing applicability; providing an effective date.

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

Section 1. Section 627.7832, Florida Statutes, is created to read:

627.7832 Claims payment.—A title insurer has the right to cure each claim made. However, after 90 days without a cure the insurer must tender payment of full policy limits to the insured or cover all additional costs incurred by the insured, including attorney fees and costs, until the cure is finalized. This section applies to all title claims filed on or after July 1, 2012.

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:	SB 1152
INTRODUCER:	Senator Richter
SUBJECT:	Repeal of Workers' Compensation Actuarial Peer Review Requirement
DATE:	January 13, 2012 REVISED:

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

I. Summary:

Under Section 627.285, F.S. the Financial Services Commission (Commission) is required to contract every other year for an independent actuarial peer review of the ratemaking processes for any licensed rating organization that makes rate filings for workers' compensation insurance. The final report must be submitted to the Commission, the President of the Senate, and the Speaker of the House of Representatives by February 1st.

Senate Bill 1152 repeals s. 627.285, F.S., therefore repealing the requirement of an independent actuarial peer review.

This bill repeals the following sections of the Florida Statutes: 627.285

II. Present Situation:

Under s. 627.285, F.S., the Financial Services Commission must contract every other year for an independent actuarial peer review of the ratemaking processes of any licensed rating organization that makes rate filings for workers' compensation insurance. The Commission oversees the Office of Insurance Regulation (OIR) and through the OIR publishes Request for Proposals (REPs) and executes contracts every other year for consultant actuarial services to perform the required independent peer reviews. The independent peer reviews must be submitted to the Commission, the President of the Senate, and the Speaker of the House of Representatives by February 1st.[1] A total of four reports have been submitted since the enactment of the statute in

[1] Section 627.285, F.S.

2003 and a fifth is due on February 1, 2012.[2] The costs of the independent actuarial peer reviews are paid from the Workers' Compensation Administration Trust Fund and have ranged in costs from $104,000 for the 2004 report to $35,000 for the 2010 report.[3]

Section 627.285, F.S., only applies to the National Council on Compensation Insurance (NCCI) since it is the sole licensed rating organization responsible for making workers' compensation rate filings on behalf of Florida insurers. The NCCI independently conducts actuarial analyses and presents its recommendations on its rate filing to the OIR. The OIR then undertakes an extensive actuarial review of the filing before it is approved or denied by the OIR. Since the OIR performs an extensive actuarial review of NCCI's rate filing, s. 627.285, F.S., serves to add an additional independent actuarial review on top of the OIR's review.

III. Effect of Proposed Changes:

The bill would repeal s. 627.285, F.S., thereby repealing the requirement of an independent actuarial review in addition to the OIR's review of the NCCI ratemaking processes. The OIR suggests that the requirement of an additional independent actuarial review does not serve to enhance the process of actuarial reviews conducted by the OIR. The OIR indicates that the past independent reviews have mainly served to validate the actuarial reviews conducted by the OIR, because any issues raised or proposed solutions discussed in the independent reviews were items already identified by the OIR.[4] The repeal of s. 627.285, F.S., would allow the OIR to save the resources currently required to complete and review the RFPs.[5]

The repeal would take effect on July 1, 2012.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[2] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[3] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[4] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.
[5] Florida Office of Insurance Regulation Bill Analysis, January 10, 2012.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The actuarial consulting firms that otherwise would be hired to conduct the independent actuarial peer review would lose these contracts.

C. Government Sector Impact:

The repeal of s. 627.285, F.S., would save the Workers' Compensation Administration Trust Fund approximately $35,000 to $104,000 in actuarial consulting fees for the independent reviews.

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.

By Senator Richter

37-01231-12 20121152__

A bill to be entitled

An act relating to repeal of a workers' compensation independent actuarial peer review requirement; repealing s. 627.285, F.S., relating to the duty of the Financial Services Commission to contract for a periodic report regarding an actuarial peer review and analysis of the ratemaking process of any licensed rating organization that makes rate filings for workers' compensation insurance; providing an effective date.

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

Section 1. Section 627.285, Florida Statutes, is repealed.

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: SB 1230

INTRODUCER: Banking and Insurance Committee

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

DATE: January 11, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Pre-meeting**
2.			GO	
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]

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[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 October 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 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.

By the Committee on Banking and Insurance

597-01560A-12 20121230__

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

597-01560A-12 20121230__

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~~

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

Section 2. This act shall take effect October 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:	SB 1208
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/Unclaimed Property/ Department of Financial Services
DATE:	January 19, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	**Pre-meeting**
2.			GO	
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 section 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 specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each

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

> 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

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[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 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 (Ch. 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's 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 s. 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 October 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 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.

By the Committee on Banking and Insurance

597-01561A-12 20121208__

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.~~

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597-01561A-12 20121208__

(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) ~~(c)~~ 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 October 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:	SB 1232
INTRODUCER:	Banking and Insurance Committee
SUBJECT:	OGSR/ Personal Identifying Information in Personal Injury Protection and Property Damage Liability Insurance Policies
DATE:	January 11, 2012 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rubio	Burgess	BI	**Pre-meeting**
2.			GO	
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,* Interim Report 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

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[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 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 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 October 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 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.

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.

By the Committee on Banking and Insurance

597-01559A-12 20121232__

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;

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(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 October 1, 2012.

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 668
INTRODUCER:	Senator Hays
SUBJECT:	Workers' Compensation Medical Services
DATE:	January 19, 2012
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	**Fav/1 amendment**
2.			HR	
3.			BC	
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:

Chapter 440, F.S., generally requires employers and carriers to provide medical and indemnity benefits to workers who are injured due to an accident arising out of and during the course of employment. Medical benefits can include, but are not limited to, medically necessary care and treatment, and prescription medications. In Florida, the prescription reimbursement rate for dispensing physicians and pharmacies is the average wholesale price (AWP) plus a $4.18 dispensing fee, or the contracted rate, whichever is lower.

Prescription drug repackagers are licensed by the Department of Business and Professional Regulation. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer and repackage the drugs into individual prescription sizes. The repackaged drugs are assigned a new National Drug Code and can be assigned a new, higher AWP than the original manufacturer's AWP.

The bill revises requirements for determining the amount of reimbursement for prescription medications of claimants by providing that the reimbursement amount is the same for repackaged or relabeled drugs as for non-repackaged drugs. Reimbursement for repackaged or relabeled drugs would be determined by multiplying the number of units of the drug dispensed

by the per-unit AWP set by the original manufacturer of the drug (which may not be the manufacturer of the repackaged or relabeled drug), plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill expressly prohibits the price of repackaged or relabeled drugs from exceeding the amount that would otherwise be payable had the drug not been repackaged or relabeled.

It is estimated that the bill would reduce workers' compensation costs overall by 2.5 percent.

This bill substantially amends the following section of the Florida Statutes: 440.13

II. Present Situation:

State and Federal Regulation of Prescription Drugs

Section 510 of the Federal Food, Drug, and Cosmetic Act (Act), 21 U.S.C. s. 360, requires registered drug establishments to provide the Food and Drug Administration (FDA) with a current list of all drugs manufactured, prepared, propagated, compounded, or processed by it for commercial distribution. Drug products are identified and reported to the FDA using a unique, three-segment number, called the National Drug Code (NDC), which is a universal product identifier for human drugs. The current edition of the NDC Directory is limited to prescription drugs and insulin products that have been manufactured, prepared, propagated, compounded, or processed by registered establishments for commercial distribution.[1]

The term "repackaged" drugs refers to drugs that have been purchased in bulk by a wholesaler/repackager from a manufacturer, relabeled, and repackaged into individual prescription sizes that can be dispensed directly by physicians or pharmacies to patients. Repackagers of drugs are required to register and list all such drug products repackaged and relabeled with the FDA.

In Florida, the Department of Business and Professional Regulation (DBPR) regulates prescription drug repackagers. A permit as a prescription drug repackager is required for any person that repackages a prescription drug in Florida. The permit authorizes the wholesale distribution of prescription drugs repackaged at the establishment.

Rule 64F-12 , F.A.C., defines "repackaging or otherwise changing the container, wrapper, or labeling to further the distribution" to mean:
1. Altering a packaging component that is or may be in direct contact with the drug, device, or cosmetic. For example, repackaging from bottles of 1000 to bottles of 100.
2. Altering a manufacturer's package for sale under a label different from the manufacturer. For example: a kit that contains an injectable vaccine from manufacturer A; a syringe from manufacturer B; alcohol from manufacturer C; and sterile gauze from manufacturer D; packaged together and marketed as an immunization kit under a label of manufacturer Z.
3. Altering a package of multiple-units, which the manufacturer intended to be distributed as one unit, for sale or transfer to a person engaged in the further distribution of the product. [2]

1The U.S. Food and Drug Administration website, http://www.fda.gov/drugs/developmentapprovalprocess/ucm070829. (Last visited January 13, 2012)
[2] The Rule provides that repackaging does not include:

Dispensing Practitioners

According to the Workers' Compensation Research Institute, some states, such as Massachusetts, New York, and Texas prohibit physicians from dispensing drugs.[3] In Florida, section 465.0276(1), F.S., authorizes physicians and pharmacies to dispense, as provided below:

> A person may not dispense medicinal drugs unless licensed as a pharmacist or otherwise authorized under this chapter to do so, except that a practitioner authorized by law to prescribe drugs may dispense such drugs to her or his patients in the regular course of her or his practice in compliance with this section.

To become a dispensing practitioner in Florida, a practitioner is required to register with the applicable professional licensing board as a dispensing practitioner and pay a $100 fee.[4] Dispensing practitioners must comply with all laws and rules applicable to pharmacists and pharmacies including undergoing inspections. Section 458.347, F.S., allows supervising physicians to delegate dispensing authority to his or her physician assistant (PA). No registration is required for PA's to dispense. The PA's may prescribe under his or her supervising physician; however, PA's cannot prescribe controlled substances.

According to advocates of physician dispensers, there are some advantages for patients of physician dispensing drugs. These benefits may include greater compliance by the patient in taking a drug dispensed directly by the physician, more convenience for patients residing in remote areas, and the benefit of prompt treatment.

A health care provider rendering medical treatment and care to an injured employee must be certified pursuant to Rule 69L-29.002, F.A.C. by the Department of Financial Services (DFS) or deemed certified, pursuant to s. 440.13(1)(d), F.S., as a provider within a managed care organization licensed through the Agency for Health Care Administration. Section 440.13(1) (d), F.S., provides that a "certified health care provider" is a provider approved to receive reimbursement through the Florida workers' compensation system. A certified provider may be a physician, a licensed practitioner, or a facility approved by the DFS or a provider who has entered an agreement with a licensed managed care organization to provide treatment to injured employees. Generally, a certified health care provider must receive authorization from the insurer before providing treatment.

Section 440.13(14), F.S., provides that fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under ch. 440, F.S., and department rule. However, if a physician or health care provider specifically agrees in writing to follow identified

---

a. Selling or transferring an individual unit which is a fully labeled self-contained package that is shipped by the manufacturer in multiple units, or

b. Selling or transferring a fully labeled individual unit, by adding the package insert, by a person authorized to distribute prescription drugs to an institutional pharmacy permit, health care practitioner, or emergency medical service provider for the purpose of administration and not for dispensing or further distribution.

[3] *Prescription Benchmarks for Massachusetts* by the Workers' Compensation Research Institute, March 2010.

[4] If the practitioner is dispensing complimentary packages of medicinal drugs, the practitioner is not required to register.

procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules are allowed.

Reimbursement for Prescription Drugs in Workers' Compensation

Chapter 440, F.S., is Florida's workers' compensation law. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Generally, employers/carriers are required to provide medical and indemnity benefits to a worker who is injured due to an accident arising out of and during the course of employment. For such compensable injuries, an employer/carrier is responsible for providing medical treatment, which includes, but is not limited to, medically necessary care and treatment and prescription drugs.[5]

The reimbursement method for a prescription medication to pharmacies and dispensing physicians is prescribed in s. 440.13(12)(c), F.S. The reimbursement amount is the average wholesale price (AWP) plus $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount. The AWP is comparable to a wholesaler's suggested price and the term, AWP, is not defined in ch. 440, FS. Current law does not provide caps on reimbursements for repackaged or relabeled prescription drugs.

An NDC is assigned to each drug and used to identify the medication and the manufacturer or repackager of the medication. The original drug manufacturer creates an AWP for each drug. Drug repackagers purchase pharmaceuticals in bulk from the manufacturer, then relabel, and repackage the drugs into individual prescription sizes. Although drug repackagers do not alter the drugs, they do sell them in different quantities. By repackaging a drug, a new NDC is created and a new AWP is assigned to the repackaged drug.

Costs of Prescription Drugs in the Worker's Compensation System

Workers' Compensation Research Institute (WCRI) Findings

According to a recent WCRI[6] report, the average payment per claim for prescription drugs in Florida was $536, which was the second highest average prescription cost per claim among the 17 states in the study.[7] [8] Between 2005/2006 and 2007/2008, the average prescription cost per claim increased 14 percent in Florida. Over the same period, prices per pill paid to physicians grew more rapidly than prices paid to pharmacies for the same prescription. In 2007/2008, the prices paid to physician dispensers for many common drugs were 40-80 percent higher than what was paid to pharmacies for the same drugs. For generic drugs, physicians were paid much higher prices per pill than pharmacies for the same prescription. According to the WCRI, this suggests that if physicians stop dispensing prescription drugs in response to a large price drop, more

[5] Section 440.13, F.S.

[6] The Workers Compensation Research Institute is an independent, not-for-profit research organization providing information about public policy issues involving workers' compensation systems. Organized in late 1983, the WCRI does not take positions on the issues it researches;

[7] *Prescription Benchmarks for Florida, 2ND Edition,* by Workers' Compensation Research Institute, July 2011.

[8] The following states were included in the WCRI study: Florida, California, Tennessee, Indiana, Texas, Louisiana, Michigan, North Carolina, Iowa, Pennsylvania, Illinois, Maryland, Wisconsin, New Jersey, New York, and Massachusetts.

pharmacies would dispense the same prescriptions at a lower price, resulting in a decline in prescription costs.

National Council on Compensation Insurance

In Florida, the National Council on Compensation Insurance ("NCCI") is the rating and statistical organization that files rates on behalf of worker's compensation insurers in the state. The NCCI is licensed by the Office of Insurance Regulation. The NCCI provided the following data related to drug repackaging costs:[9]

- Markup on Florida repackaged drugs ranges up to 679 percent above the same drug in a non-repackaged format.
- Physician dispensed drugs have grown from 9 percent of the drug costs in 2003 to 50 percent of the drug costs in 2009.
- Florida has the highest rate of physician-dispensed drugs of 46 states studied.
- Most repackaged drugs are dispensed by physicians.

Division of Risk Management, Department of Financial Services

The Division of Risk Management within the Department of Financial Services administers the State of Florida's self-insurance program for property and casualty risk, which includes workers' compensation coverage.[10] The program covers executive, legislative, and judicial branches of Florida government and state universities and is funded by yearly assessments to participating state agencies. In 2011, the division identified medical costs, including pharmacy, as a claims cost driver.[11] A recent study by the division identified total repackaging drug costs of $1.2 million for the 2010 fiscal year.[12]

III. Effect of Proposed Changes:

The bill amends s. 440.13, F.S., to require the same reimbursement rate for repackaged or relabeled drugs that currently exists for non-repackaged drugs in Florida. The bill provides that regardless of the location or the provider of a prescription to a claimant, the reimbursement amount is the average wholesale price, plus the $4.18 for the dispensing fee, unless the carrier has contracted for a lower amount.

If a drug has been repackaged or relabeled, the reimbursement amount is calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount. The bill also provides that the price of the repackaged or relabeled drug may not exceed the amount otherwise payable if the drug had not been repackaged or relabeled.

The act takes effect July 1, 2012.

[9] NCCI presentation to the Three Member Panel, November 16, 2011.
[10] Ch. 284, F.S.
[11] *Florida's Risk Management Program Initiatives to Address Program cost Drivers,* Presentation by staff of the Department of Financial Services to the House Subcommittee on General Government Appropriations, February 8, 2011.
[12] Fiscal Analysis of SB 910 by the Department of Financial Services, November 21, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The NCCI estimates that the implementation of SB 668 would result in an impact of -2.5 percent, or approximately $62 million in savings, on the overall workers compensation costs in Florida. In order to estimate the cost impact of this proposal, the NCCI compared the cost of repackaged or relabeled drugs to the cost of drugs dispensed in its original packaging from the manufacturer (not repackaged or relabeled). A repackaged or relabeled indicator field from First Databank's *National Drug Data FileTM (NDDF), Descriptive and Pricing Data*, was used to distinguish repackaged or relabeled drugs from the drugs dispensed in its original packaging from the manufacturer within the Florida Workers Compensation Data licensed to NCCI.

The NCCI looked at generic and non-generic drugs separately. As an example, acetaminophen is the generic medication for the brand name drug Tylenol. The NCCI looked at the reimbursement amounts for acetaminophen in physician's offices and in pharmacies, and determined the average markup for acetaminophen. Then, the NCCI looked at the reimbursement amounts for Tylenol in physicians' offices and in pharmacies, and determined the average markup for Tylenol.
If the bill were enacted, the NCCI estimated percentage reduction in physician dispensed drugs would be 57 percent. According to the 2011 Annual Report of the Division of Workers' Compensation, physician dispensed drug costs were $63.2 million for service year 2010.Using the $63.2 million figure provided by division, the total dollar savings in physician dispensed drugs would be $36 million ($63.2 million x -57 percent). In the Florida January 1, 2012 workers' compensation rate filing, total benefit costs represented 57.8 percent of the premium dollar. Therefore, the reduction in physician dispensed drugs would result in a premium savings of $62 million ($36 million/.578).

The overall decrease in costs attributable to the reduction in the costs of repackaged and relabeled drugs would benefit employers securing workers' compensation coverage. The Office of Insurance Regulation anticipates issuing a rate reduction order prospectively from the effective date of the new law, July 1, 2012.

The bill would continue to allow the repackaging of prescription drugs, but it would limit and reduce the reimbursement amount to the AWP of the original manufacturer, plus the $4.18 dispensing fee.

C. Government Sector Impact:

According to the Division of Risk Management of the Department of Financial Services, implementation of this bill would result in an estimated recurring costs savings of $1 million per fiscal year for the state.

The bill would also result in an indeterminate amount of annual savings to local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

In 2010, HB 5603 was vetoed by Governor Crist. That bill would have continued to allow the repackaging and relabeling of drugs, but it would have limited the reimbursement amount to the AWP of the original manufacturer, plus the $4.18 dispensing fee.

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 666350 by Banking and Insurance on January 19, 2012:
The amendment provides that a sick or injured employee is entitled to the choice in the selection of a dispensing practitioner to fill prescriptions for medicines required under ch. 440, F.S. Current law provides that a sick or injured employee has a choice in the selection of the pharmacy or pharmacist.
(WITH TITLE AMENDMENT)

666350

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/19/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 11 - 14
and insert:
Section 1. Paragraph (j) of subsection (3) and paragraph (c) of subsection (12) of section 440.13, Florida Statutes, are amended to read:
440.13 Medical services and supplies; penalty for violations; limitations.—
(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—
(j) Notwithstanding any other provision of ~~anything in~~ this chapter ~~to the contrary~~, a sick or injured employee is ~~shall be~~

666350

entitled, at all times, to free, full, and absolute choice in the selection of the pharmacy, ~~or~~ pharmacist, or dispensing practitioner to dispense and fill ~~dispensing and filling~~ prescriptions for medicines required under this chapter. ~~It is expressly forbidden for~~ The department, an employer, or a carrier, or any agent or representative of the department, an employer, or a carrier, may not ~~to~~ select the pharmacy, ~~or~~ pharmacist, or dispensing practitioner that ~~which~~ the sick or injured employee must use; condition coverage or payment on the basis of the pharmacy, ~~or~~ pharmacist, or dispensing practitioner used ~~utilized~~; or to otherwise interfere in the selection by the sick or injured employee of a pharmacy, ~~or~~ pharmacist, or dispensing practitioner.

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

And the title is amended as follows:

Delete line 3

and insert:

services; amending s. 440.13, F.S.; providing that a sick or injured employee is free to select a dispensing practitioner to fill prescriptions as well as a pharmacy or pharmacist; revising

By Senator Hays

20-00558-12 2012668__

A bill to be entitled

An act relating to workers' compensation medical services; amending s. 440.13, F.S.; revising requirements for determining the amount of a reimbursement for repackaged or relabeled prescription medication; providing limitations; providing an effective date.

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

Section 1. Paragraph (c) of subsection (12) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(c) As to reimbursement for a prescription medication, regardless of the location or provider from whom the claimant receives the prescription medication, the reimbursement amount ~~for a prescription~~ shall be the average wholesale price plus $4.18 for the dispensing fee, unless ~~except where~~ the carrier has contracted for a lower amount. If the drug has been repackaged or relabeled, the reimbursement amount shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug, which may not be the manufacturer of the repackaged or relabeled drug, plus a $4.18 dispensing fee, unless the carrier has contracted for a lower amount. The repackaged or relabeled drug price may not exceed

20-00558-12 2012668__

the amount otherwise payable if the drug had not been repackaged or relabeled. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. If ~~Where~~ the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower. ~~No~~ Such contract may not ~~shall~~ rely on a provider that is not reasonably accessible to the employee.

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)

1-19-12
Meeting Date

Topic Workers' Compensation Medical Services

Bill Number 668 *(if applicable)*

Name Mark Hinely

Amendment Barcode *(if applicable)*

Job Title Regulatory Affairs Analyst

Address 5100 West Lemon Street
Street

Phone 813-367-2538

Tampa FL
City *State* *Zip*

E-mail mhinely@healthesystems.com

Speaking: ☑ For ☐ Against ☐ Information

Representing ~~Healthesystems~~ CompPharma

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)

1/19/2012
Meeting Date

Topic MEDICAL SERVICES

Bill Number 668 *(if applicable)*

Name SANDY SHTAB

Amendment Barcode _____ *(if applicable)*

Job Title COMPLIANCE MANAGER

Address 5100 W. LEMON ST.
Street
TAMPA FL 33609
City *State* *Zip*

Phone 813-868-2264

E-mail SShtab@healthes

Speaking: ☒ For ☐ Against ☐ Information

Representing HEALTHESYSTEMS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/11
Meeting Date

Topic Workers Comp

Bill Number 668 *(if applicable)*

Name Pablo Diaz

Amendment Barcode *(if applicable)*

Job Title Legislative Director

Address 110 E. Jefferson Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850-681-0416

E-mail pablo.diaz@nfib.org

Speaking: ☑ For ☐ Against ☐ Information

Representing NFIB

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19
Meeting Date

Topic _____ Bill Number 668 *(if applicable)*

Name Matt Schreiber Amendment Barcode _____ *(if applicable)*

Job Title VP Marketing

Address 5706 Benjamin Center Dr Phone 813 215 2695
Street

Tampa FL 33634 E-mail mschreiber@mymatrixx.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing MyMatrixx

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☑ No

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S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

01.19.12
Date

668
Bill Number

Barcode

Name William Large

Address 210 S. Monroe Street
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 850.222.0170

E-mail William@fljustice.org

Job Title President

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

Appearing at request of Chair [ ]

Subject Drug Repackaging in Work Comp

Representing Florida Justice Reform Institute

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

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

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

S-001 (04/14/10)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic Workers Comp Repackaged Drugs Bill Number SB 668 *(if applicable)*

Name Cam Fentress Amendment Barcode _____ *(if applicable)*

Job Title Leg. Counsel

Address 1400 Village Square # 3-243 Phone 850-222-2772
Street

Tall FL 32312 E-mail AFentress@AOL.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing FLA Roofing Sheet Metal & AC Contractors

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic Workers' Comp Repackaged Drugs Bill Number SB 668 *(if applicable)*

Name Cam Fontriss Amendment Barcode _____ *(if applicable)*

Job Title Lobbyist

Address 1400 Village Square #3-243 Phone 850-222-2772
Street

Tall FL 32312 E-mail AFontriss@aol.com
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing Fla. Refrigeration + AC Contractors

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic Workers Comp Repackaged Drugs Bill Number SB 668 *(if applicable)*

Name Cam Fentriss Amendment Barcode _____ *(if applicable)*

Job Title Lobbyist

Address 1400 Village Square # 3-243 Phone 850-222-2772
Street

Tall FL 32312 E-mail AFentriss@aol.com
City *State* *Zip*

Speaking: ☐ For ☐ Against ☐ Information

Representing Fla Assn of Plumbing Heating Cooling Contractors

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic Workers' Compensation

Bill Number 1668 *(if applicable)*

Name Tammy Perdue

Amendment Barcode _____ *(if applicable)*

Job Title General Counsel

Address 516 N. Adams St *Street*

Phone 850-224-7173

Tallahassee FL 32301
City *State* *Zip*

E-mail tperdue@aif.com

Speaking: ☑ For ☐ Against ☐ Information

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic _____ Bill Number 668 *(if applicable)*

Name PAUL M. ANDERSON Amendment Barcode _____ *(if applicable)*

Job Title ATTORNEY

Address _____ Phone 850-894-3000
Street

TALL. FL. E-mail paul@baconandjusticematters.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FLORIDA JUSTICE ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-19-12
Meeting Date

Topic WORKER's Camp - Pre-packaged Drugs Bill Number SB 668 *(if applicable)*

Name KARI HEBRANK Amendment Barcode *(if applicable)*

Job Title

Address 120 S. MONROE ST. Phone 566-7824
Street

TALLAHASSEE FL 32301 E-mail Kari@rambo
City *State* *Zip* Consulting.com

Speaking: ☑ For ☐ Against ☐ Information

Representing SIMPSON STRONG-TIE, INC.

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic _____ Bill Number 668 *(if applicable)*

Name Terry Yon Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 2930 Crescent Drive Phone 445-3778
Street

Tally FL, 32301 E-mail terryyon@comcast.net
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Terry Yon ~~Pharmaceuticals~~ PHARMACEUTICALS

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic WC MEDICAL SERVICES Bill Number 668 *(if applicable)*

Name DONOVAN BROWN Amendment Barcode *(if applicable)*

Job Title COUNSEL, STATE GOVERNMENT RELATIONS

Address 215 S. MONROE ST. Phone 850.681.2615
Street

TALLAHASSEE FL 32301 E-mail donovan.brown@pciaa.net
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing PROPERTY CASUALTY INSURERS ASSOCIATION

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic Workers Comp Bill Number 668 *(if applicable)*

Name Tom Panza Amendment Barcode *(if applicable)*

Job Title

Address 3600 N. Federal Highway *Street* Phone 954-390-0100

Fort Lauderdale, FL 33308 *City* *State* *Zip* E-mail tpanza@panzamaurer.com

Speaking: ☐ For ☒ Against ☐ Information

Representing Automated Health Care Services

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

_____
Meeting Date

Topic Workers Comp Drugs Bill Number 668 *(if applicable)*

Name LORI LOVGREN Amendment Barcode _____ *(if applicable)*

Job Title State Relations Executive

Address _____ Phone 5612518333
Street

Boca Raton FL E-mail _____
City *State* *Zip*

Speaking: ☐ For ☐ Against ☒ Information

Representing NCCI

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic Workers Comp

Bill Number 668 *(if applicable)*

Name Jim Snyder

Amendment Barcode *(if applicable)*

Job Title Pres. Public Policy Associates Inc

Address 1030 East Lafayette Suite 2
Street
Tallahassee FL 32301
City *State* *Zip*

Phone 224-2777

E-mail jsnyder@publicpolicyassociates.com

Speaking: ☑ For ☐ Against ☐ Information

Representing FL. Fire Equipment Dealers Assoc. / American Fire Sprinkler Assoc.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

Meeting Date

Topic DRUG REPACKAGING

Bill Number 668 *(if applicable)*

Name MONTE STEVENS

Amendment Barcode *(if applicable)*

Job Title DIR. GOVT AFFAIRS

Address 200 E. GAINES ST *Street*

Phone 413-2571

TALLY *City* FL *State* 32301 *Zip*

E-mail Monte.Stevens@flor.com

Speaking: ☑ For ☐ Against ☐ Information

Representing OIR

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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THE FLORIDA SENATE

APPEARANCE RECORD

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Meeting Date

Topic Workers Comp

Bill Number HB 668 *(if applicable)*

Name Doug Buck

Amendment Barcode *(if applicable)*

Job Title

Address 201 E Park Ave *Street*

Phone 224-1316

E-mail dbuck@fhba.com

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing Florida Home Builders Assn

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

1-19-12
Meeting Date

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

Topic _____ Bill Number 668 *(if applicable)*

Name JESS MCCARTY Amendment Barcode _____ *(if applicable)*

Job Title ASST COUNTY ATTY

Address 111 NW 1ST ST 2810 Phone 305-979-7110
Street

MIAMI 33128 E-mail JMM2@MIAMI
DADE.GOV
City *State* *Zip*

Speaking: ☑ For ☐ Against ☐ Information

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☑ No Lobbyist registered with Legislature: ☑ Yes ☐ No

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S-001 (10/20/11)

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/19/12
Meeting Date

Topic Workers Comp. Bill Number 668 *(if applicable)*

Name Dr. Gary Kelman Amendment Barcode _____ *(if applicable)*

Job Title _____

Address 350 N. Pine Island Road Phone 954-476-8800
Street

Plantation FL 33324 E-mail kelmang@oausa.com
City *State* *Zip*

Speaking: ☐ For ☒ Against ☐ Information

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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1-19-2012
Meeting Date

Topic 3:11 Bill Number SB668 *(if applicable)*

Name Paul Sanford Amendment Barcode *(if applicable)*

Job Title

Address 106 S. Monroe St Phone 222-7200
Street

Tallahassee, FL 32301 E-mail
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing TM. Family Enterprises, Blue Cross Blue Shield

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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1-19-12
Meeting Date

Topic Workers' Compensation

Bill Number SB 668 *(if applicable)*

Name Jim BRAINERD

Amendment Barcode *(if applicable)*

Job Title Attorney

Address 2814 Rabbit Hill Rd
Street
Tallahassee FL 32308
City *State* *Zip*

Phone (850) 508-6716

E-mail BRAINERDLW@Comcast.Net

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

Representing Florida Assoc. of Insurance Agents

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

Lobbyist registered with Legislature: [ ] Yes [ ] No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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1/19/12
Meeting Date

Topic _____ Bill Number 668 *(if applicable)*

Name Teye Reeves Amendment Barcode _____ *(if applicable)*

Job Title Policy Director

Address 1365 Bronough ST Phone 850-521-1235
Street

Tallahassee FL 32301 E-mail teye@flchamber.com
City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FL Chamber of Commerce

Appearing at request of Chair: ☐ Yes ☐ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

1-19-2012 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic Workers' Comp - Drug Repackaging Bill Number 668 *(if applicable)*

Name Tom Stahl Amendment Barcode *(if applicable)*

Job Title Executive Director

Address 116 S. Monroe St. Phone

Street

Tallahassee FL 32301 E-mail

City *State* *Zip*

Speaking: ☒ For ☐ Against ☐ Information

Representing FUBA - Florida United Businesses Assoc.

Appearing at request of Chair: ☐ Yes ☒ No Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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1/19/2012
Meeting Date

Topic Repackaged Drugs

Bill Number SB 668 *(if applicable)*

Name DAVID C. DEITZ, MD, PhD

Amendment Barcode *(if applicable)*

Job Title Vice President, National Medical Director

Address Liberty Mutual Insurance
Street 175 Berkeley St
City BOSTON, *State* MA *Zip* 02116

Phone 617-654-4792

E-mail david.deitz@libertymutual.com

Speaking: ☒ For ☐ Against ☒ Information

Representing Liberty Mutual Insurance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412 **Case:** **Type:**
Caption: Senate Banking and Insurance Committee - 8 am- 10 am **Judge:**

Started: 1/19/2012 8:10:20 AM
Ends: 1/19/2012 10:00:43 AM Length: 01:50:24

8:11:04 AM	Roll call - quorum present
8:11:47 AM	Tab 1 - S 1220 by Sen Garcia - Repeal of Health Insurance Provisions
8:12:54 AM	Roll call on SB 1220 -- passed
8:13:31 AM	Sen. Richter turn chair over to Senator Smith
8:13:43 AM	Tab 2 - SB 336 by Sen. Richter -- Credit Counseling Sevices
8:14:20 AM	Explanation of bill by Senator Richter
8:15:21 AM	Amd to Amend taken up--without objection -- passed
8:16:56 AM	Amd to Amend taken up--without objection -- passed
8:16:59 AM	Delete all amendment --passed without objection
8:18:54 AM	Alice Vichus, Attorney, FL Consumer Action Network
8:20:43 AM	Senator Richter closes on bill
8:22:36 AM	Senator Richter closes on bill
8:22:36 AM	Motion by Sen. Alexander -- CS
8:22:52 AM	Vote on SB 336 --passed
8:23:32 AM	Vote on SB 336 --passed
8:23:47 AM	SB 1094 by Sen. Hays - Workers' Compensation
8:24:46 AM	Sen. Hays explains the bill
8:25:10 AM	Amendment withdrawn by Sen. Sobel
8:25:50 AM	
8:26:01 AM	Roll call on SB 1094 --Passed
8:26:52 AM	Tab 4 -- SB 1346 by Senator Oelrich - Citizens Property Insurance Corporation
8:30:10 AM	Senator Oelrich explains the bill
8:34:01 AM	Sharon Binnun, CFO representing Citiens Property Insurance Corporation
8:58:19 AM	Sharon Binnun, CFO representing Citizens Property Insurance Corporation
9:02:19 AM	Don Brown representing Heartland Institute
9:07:19 AM	Brian Deffenbaugh representing Insurance Consumer Advocate Office
9:10:54 AM	Sen. Oelrich closes on bill
9:11:54 AM	Roll call on SB 1346 --Passed
9:14:52 AM	Roll call on SB 1346 --Passed
9:17:12 AM	SB 668 by Senator Hays - Workers Compensation - explanation of bill
9:28:15 AM	Late filed amendment by Senator Sobel -- 666350
9:35:14 AM	Tom Panza representing Automated Health care services --speaking against bill
9:44:17 AM	Lori Lovgren - representing NCCI
9:45:17 AM	Senator Negron --motion to vote on SB 668 at 9:55 am--motion adopted
9:51:51 AM	Dr. Gory Kelman representing self --surgeon -- speaking against bill
9:53:06 AM	Motion for time certain at 9:59 by Senator Negron
9:54:41 AM	David C. Deitz, M.D. representing Liberty Mutual Insurance
9:55:49 AM	Motion to stop testimony--Senator Gaetz
9:56:51 AM	Late filed amendment by Senator Sobel--explanation of bill
9:59:17 AM	Amendment by Sen. Sobel--adopted without objection
9:59:54 AM	Final vote on SB 668—favorably with 1 amendment