

SB 1586 by **Thrasher**; (Similar to CS/H 1277) Money Services Businesses

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SB 1584 by **Thrasher**; (Similar to H 1279) Public Records/Money Services Businesses/Office of Financial Regulation

SB 1050 by **Bogdanoff**; (Compare to CS/CS/H 0505) Mortgages

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CS/SB 1052 by **HR, Ring**; (Similar to H 0829) Newborn Screening for Critical Congenital Heart Disease

SB 1476 by **Richter**; (Compare to CS/H 1065) Annuities

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SB 458 by **Bennett**; Uniform Fraudulent Transfer Act

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SB 1518 by **Hays**; (Identical to H 0211) Property and Casualty Insurance

SB 1794 by **Hays**; (Identical to H 4145) Continuing Education Advisory Board

SB 1796 by **Hays**; (Identical to H 4149) Preferred Worker Program

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, February 7, 2012
TIME: 1:30 —3:30 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1586 Thrasher (Similar CS/H 1277, Compare H 1279, Link S 1584)	Money Services Businesses; Revising the frequency and notice requirements for examinations and investigations by the Office of Financial Regulation of money services business licensees; prohibiting money services businesses, authorized vendors, and affiliated parties from possessing certain paraphernalia used or intended or designed for use in misrepresenting a customer's identity, for which penalties apply; requiring money services business licensees to submit certain transaction information to the Office of Financial Regulation related to the payment instruments cashed; authorizing the Financial Services Commission to prescribe the time, format, and manner for licensees to submit the transaction information, etc. BI 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0
2	SB 1584 Thrasher (Similar H 1279, Compare CS/H 1277, Link S 1586)	Public Records/Money Services Businesses/Office of Financial Regulation; Providing an exemption from public records requirements for information contained in the database of payment instrument transactions within the Office of Financial Regulation into which payment instrument transaction information submitted by money services business licensees is maintained; providing for specified access to such information; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. BI 02/07/2012 Favorable GO BC	Favorable Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1050 Bogdanoff (Compare CS/CS/H 505)	Mortgages; Requiring that the holder of a mortgage deliver an estoppel letter containing certain information regarding the unpaid balance of the loan secured by the mortgage to an owner of an interest in property encumbered by the mortgage, upon request; providing that if the requestor is not the mortgagor, the estoppel letter need not contain an itemization of the unpaid balance of the loan, but must include a per-day amount for the unpaid balance; requiring that an owner of an interest in property encumbered by a mortgage include, along with the request, a copy of the instrument showing an ownership interest in the property, etc. BI 02/07/2012 Fav/CS JU	Fav/CS Yeas 10 Nays 0
4	CS/SB 1052 Health Regulation / Ring (Similar H 829)	Newborn Screening for Critical Congenital Heart Disease; Providing definitions; providing requirements for screening newborns for critical congenital heart disease; providing an exception; requiring that the physician, midwife, or other person attending the newborn maintain a record if the screening has not been performed and attach a written objection signed by the parent or guardian; requiring appropriate documentation of the screening completion in the medical record; requiring that each hospital and each licensed birth center designate a lead physician and a licensed health care provider, respectively, to provide programmatic oversight for the screening; requiring that the screening for critical congenital heart disease be conducted on all newborns in hospitals and birth centers in this state; authorizing the Department of Health to adopt rules to administer the screening program; providing powers and duties of the department, etc. HR 01/25/2012 Fav/CS BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
5	SB 1476 Richter (Compare CS/H 1065)	Annuities; Providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers not just to senior consumers; deleting requirements relating to information that must be collected on certain forms adopted by rule of the Department of Financial Services; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; deleting certain annuity policy requirements applicable to persons 65 years of age or older, etc. BI 02/07/2012 Fav/CS BC	Fav/CS Yeas 10 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, February 7, 2012, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 458 Bennett	Uniform Fraudulent Transfer Act; Defining the term "exempt organization"; providing that a charitable contribution that was accepted in good faith by an exempt organization is not voidable; providing legislative intent to clarify existing law, etc. BI 02/07/2012 Fav/CS BC	Fav/CS Yeas 7 Nays 3
7	SB 1518 Hays (Identical H 211, H 4059)	Property and Casualty Insurance; Deleting a requirement that the Financial Services Commission provide an annual report to the Legislature consisting of specified data and analysis related to the aggregate net probable maximum losses, financing options, and potential assessments of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation, etc. BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
8	SB 1794 Hays (Identical H 4145)	Continuing Education Advisory Board; Deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board, etc. BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
9	SB 1796 Hays (Identical H 4149)	Preferred Worker Program; Deleting a preferred worker program for permanently impaired workers who are unable to return to work, etc. BI 02/07/2012 Favorable BC	Favorable Yeas 10 Nays 0
Other related meeting 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 1586

INTRODUCER: Senator Thrasher

SUBJECT: Money Services Businesses

DATE: January 30, 2012 REVISED: _____

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

I. Summary:

Money services businesses (MSBs), also known as money transmitters, offer financial services, such as check cashing, money transmittals (wire transfers), sales of monetary instruments, and currency exchange outside the traditional banking environment. The Office of Financial Regulation (OFR) is responsible for the regulation of money services businesses.

In August 2007, the Supreme Court of Florida ordered the empanelment of a statewide grand jury to investigate various criminal offenses, including activities relating to check cashers. In 2008, the grand jury issued its report: *Check Cashers: A Call for Enforcement*. In 2008, the Legislature enacted major reforms recommended in the report to provide greater regulatory and enforcement tools for the OFR.

In 2011, the Chief Financial Officer formed the Money Service Business Facilitated Workers' Compensation Work Group (work group) to study the issue of workers' compensation insurance premium fraud facilitated by check cashers. Currently, legitimate contractors are placed at a significant competitive disadvantage by unscrupulous contractors avoiding the payment of workers' compensation insurance as well as state and federal employment taxes. The bill incorporates the following consensus recommendations of the work group to provide increased regulatory oversight of MSBs that are designed to provide greater prevention, detection, and prosecution of workers' compensation premium fraud:

- Authorizes the OFR to create an integrated statewide database to maintain information from check cashers for check transactions exceeding \$1,000 and corporate payment instruments. Check cashers will be required to enter this information into the database. This database will allow regulators and law enforcement to identify and target individuals who are engaging in

criminal activity as these crimes are occurring instead of attempting to reconstruct the records and activities of defunct shell companies.

- Requires the Financial Services Commission to adopt rules requiring licensees to remit to the OFR a transaction fee, not to exceed \$3 per transaction, which would be used to support the statewide database.
- Eliminates the requirement that the OFR conduct examinations within the first 6 months of a check casher's licensure. The elimination of this requirement will provide the OFR with greater flexibility in the use of resources for purposes of enforcement.
- Requires licensees to maintain and deposit all checks accepted into a bank account in its own name and to report the termination of bank accounts to the OFR within five business days. This change will enhance the audit trail necessary to assist regulators, law enforcement, and prosecutors.
- Prohibits any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.
- Authorizes the OFR to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by ch. 560, F.S., for noncompliance with the following: maintaining a federally insured depository account; depositing all checks accepted into its depository account; or submitting transactional information to the office.
- Requires a licensee to suspend its check cashing operations immediately if there is any interruption in its depository relationship and prohibits the resumption of check cashing operations until the licensee has secured a new depository relationship.

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.109, 560.111, 560.114, 560.126, 560.309, and 560.310.

The bill creates the following section of the Florida Statutes. 560.311

II. Present Situation:

Regulation of Check Cashers

The Office of Financial Regulation (OFR) is responsible for safeguarding the private financial interests of the public by licensing, examining, and regulating depository and nondepository financial institutions and financial service companies in the State. Among its responsibilities, the OFR regulates money service businesses, which are subject to the provisions of ch. 560, F.S.

Licensure of Check Cashers

Money service businesses are licensed under two license categories. Money transmitters and payment instrument issuers are licensed under part II of ch. 560, F.S., while check cashers and foreign currency exchangers are licensed under part III. Current law provides that the requirement for licensure does not apply to a person cashing payment instruments that have an

aggregate face value of less than \$2,000 per person, per day and that are incidental to the retail sale of goods or services, within certain parameters.¹

Check Cashing Fees

Check cashers are limited in the fees they may charge. By law, a check casher may not charge fees:

- In excess of 5 percent of the face amount of the payment instrument, or \$5, whichever is greater.
- In excess of 3 percent of the face amount of the payment instrument, or \$5, whichever is greater, if the payment instrument is any kind of state public assistance or federal social security benefit.
- For personal checks or money orders in excess of 10 percent of the face amount of those payment instruments, or \$5, whichever is greater.²

In addition, check cashers are authorized to collect a fee linked to the direct costs of verifying a customer's identity or employment. That fee, established by rule,³ may not exceed \$5. Rule 69V-560.801, F.A.C., provides:

- In addition to the fees established in Section 560.309(8), F.S., a check casher or deferred presentment provider may collect the direct costs associated with verifying a payment instrument holder's identity, residence, employment, credit history, account status, or other necessary information, including the verification of a drawer's status on the Office administered database for deferred presentment transactions prior to cashing the payment instrument or accepting a personal check in connection with a deferred presentment transaction. Such verification fee shall be collected only when verification is conducted and shall not exceed \$5 per transaction. For example, a check casher shall not charge a drawer more than one (1) verification fee per diem, regardless of whether the check casher is cashing or has cashed more than one (1) of the drawer's payment instruments that day.
- For purposes of Section 560.309(8), F.S., and this rule, the "direct costs of verification" shall mean those costs that are allocated by the provider to a particular function or are readily ascertainable based upon standard commercial practices and include internal staff and infrastructure costs incurred by the provider in performing the verification function and payments to third party vendors who provide verification related services.

Examinations and Investigations

Section 560.109, F.S., authorizes the OFR to examine each licensee as often is warranted but at least once every 5 years. Generally, the OFR is required to provide licensees with at least 15 days advance notice of an examination. However, if the OFR "suspects that the money services business, authorized vendor, or affiliated party has violated or is about to violate any provisions of ch. 560, F.S., or any criminal laws of the state of Florida or of the U.S., the OFR is not

¹ Section 560.304, F.S.

² Section 560.309(8), F.S.

³ Id.

required to provide advance notice of an examination or investigation. The OFR is also required to examine a licensee within 6 months of licensure.

Recordkeeping Requirements

Section 560.1105, F.S., requires each licensee and its authorized vendors to maintain specified records for a minimum of 5 years. In additions, s. 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third party instruments exceeding \$1,000. Rule 69V-560.704, F.A.C., requires licensees to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, articles of incorporation, information from the Department of Financial Services Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. Customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,
- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Licensees must maintain this information in an electronic format that is “readily retrievable and capable of being exported to most widely available software applications including Microsoft EXCEL.” The maintenance of this information has been intended to be used in the audit process. While this can be useful, it does not allow regulators and law enforcement to analyze information in a “real time” format through a central database, for the purpose of identifying and targeting persons engaged in violations of ch. 560, F.S., or other unlawful activity.

A check casher is required to deposit all checks into a commercial account with a financial institution or sell the payment instruments within 5 business days after acceptance, pursuant to s. 560.309(3), F.S. When money service businesses do not properly negotiate, endorse, or deposit checks, it may be difficult for the OFR to detect potential illegal activities.

Workers' Compensation Insurance Fraud

In recent years, unscrupulous contractors and check cashiers have colluded on a scheme that allows these contractors to hide their payroll and obtain workers' compensation coverage without purchasing such coverage. In addition to the workers' compensation fraud, these contractors are avoiding the payment of state and federal taxes. For their participation and risk, the check cashiers may receive a fee of 7 percent of the value of the check or more for cashing the checks, which exceeds the statutory limit check cashiers are allowed to charge.⁴

A 2008 Statewide Grand Jury described a typical scheme.⁵ First, a "shell" company is formed in the name of a nominee owner, often a temporary resident of the U.S. This company has no real operations or employees. This shell company will then buy a minimum premium policy to procure the certificate of insurance that the contractor needs to document proof of workers' compensation insurance coverage. A certificate of insurance does not show the amount of coverage because the number and class code of employees can vary throughout the year. The contractor then writes checks to this shell company playing the part of the phony subcontractor. According to the statewide grand jury, one indicted Miami check casher created mobile check cashing units that would provide check cashing at the contractor's construction site. In reality, the contractor is actually cashing the check that he or she has just written to the phony company and taking the cash back to pay his employees without maintaining any documentation regarding the actual payroll. On paper, however, it appears that the contractor is paying another company for their work on the project. According to the statewide grand jury, the amount of these checks is usually over the \$10,000 limit and must be reported on a Currency Transaction Report (CTR) to the federal government.⁶ The check casher actively participates in this scheme by either falsifying the CTR, claiming to have paid the money out to the phony subcontractor, or, in some cases, dispensing with the CTR altogether. Both of these actions are 3rd degree felonies.

The dollar magnitude of this fraud is tremendous. For example, the Division of Insurance Fraud of the Department of Financial Services collaborated with the North Florida High Intensity Drug Trafficking Area (HIDTA) Task Force last year on a case that targeted individuals who were running a shell company scheme using undocumented foreign national laborers to avoid paying workers' compensation insurance premiums and federal and state taxes. The suspects were documented to have cashed checks totaling approximately \$4 million at a check-cashing store to pay the workers under the table. The suspects were arrested; three vehicles and \$67 thousand in cash were seized.

Typically, the insurance company will attempt to conduct a premium audit of an insured, such as the shell company, after the end of the policy year. However, by this time, the shell company has

⁴ *Check Cashers: A Call for Enforcement*, Eighteenth Statewide Grand Jury, Case No. SC 07-1128, Second Interim Report of the Statewide Grand Jury, March 2008.

⁵ *Id.*

⁶ The U.S. Department of Treasury has adopted regulations to implement the provisions of the Bank Secrecy Act under 31 C.F.R. s. 103, which requires MSBs to maintain certain records and report certain currency transactions and suspicious activities. For example, cash transaction reports (CTRs) are required to be filed for cash transactions involving more than \$10,000. Section 560.1235, F.S., requires MSBs to comply with all state and federal laws relating to the detection and prevention of money laundering.

ceased operating and the nominee owner has disappeared, having usually gone back to his home country. If any workers' compensation claims occur, the insurer is forced to try to offset such costs by increasing rates on legitimate contractors who secure adequate coverage.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to create definitions.

Section 2 amends s. 560.109, F.S., to eliminate the general requirement to provide 15-days advance notice to a licensee regarding an examination or investigation by the OFR. Under current law, the OFR is authorized to conduct an examination or investigation unannounced if the OFR suspects the entity has violated or will violate ch. 560, F.S., or any criminal laws of Florida or any state or of the U.S. Additionally, this section eliminates the requirement for the OIR to conduct an examination of a business within 6 months of licensure. The bill retains the requirement for the OFR to examine each licensee at least once every 5 years.

Section 3 amends s. 560.111, F.S., to make it unlawful for any money services business, its authorized vendor, or affiliated party to possess any fraudulent identification paraphernalia, or for someone other than the person who is presenting the check for payment to provide the customer's personal identification information to the check casher. A person who willfully violates these provisions commits a felony of the third degree.

Section 4 amends s. 560.114, F.S., to provide the OIR the authority to issue a cease and desist order; issue a removal order; the denial, suspension, or revocation of a license or any other action permitted by the statute for the following:

1. Failure to maintain a federally insured depository account;
2. Failure to deposit all checks accepted into its depository account, or
3. Failure to submit transactional information to the office.

Additionally, this section provides that failure to maintain the required bank account or to submit transactional data to the statewide database would constitute an immediate harm, thereby allowing the OFR to suspend immediately the license of the check casher until the licensee can resolve these issues.

Section 5 amends s. 560.126, F.S., to require a licensee to provide notice to the OFR within 5 business days after the cessation of its depository banking account. Prior to resuming operations, the check casher must reestablish such account and notify the OFR of the account.

Section 6 amends s. 560.309, F.S., to require a licensee to suspend its check cashing operations immediately if the licensee ceases to have a depository account. The licensee may not resume check-cashing operations until it has secured a new depository relationship. Additionally, this section provides that a licensee may not cash payment instruments from any person who is not the original payee (including authorized individuals if the payee is a legal entity).

The bill also places a cap of \$5 on the verification fee that is currently authorized under s. 560.309(8), F.S. Under current law, a check casher may collect, in addition to fees established

under s. 560.309, F.S., the direct costs of verification. The statute currently does not contain a cap on the amount of the verification fee. The Financial Services Commission has adopted Rule 69V-560.801, F.A.C., which provides that the direct costs of verification, which include verifying a customer's identity, employment, etc., may not exceed \$5 per transaction. The bill codifies this requirement.

Section 7 clarifies recordkeeping requirements under s. 560.310, F.S. The bill eliminates the requirement for an electronic payment instrument log for checks that exceed \$1,000. This provision is being replaced with the requirement for submission of the transaction information to a statewide database created in Section 8 of the bill. The cashing of third party checks would be prohibited.

Section 8 creates s. 560.111, F.S., which establishes a statewide transactional database for all checks cashed by a licensed business that exceed \$1,000. The new section specifies the data elements to be collected, the authority of the OFR to administer the database, the power of the commission to make rules regarding the database, and requires the OIR to interface this information with existing databases maintained by the Division of Workers' Compensation in the Department of Financial Service and the Department of State (Sunbiz).

The Financial Services Commission is required to adopt rules requiring a licensee to remit to the OFR a transaction fee, as part of the direct costs of the verification fee, not to exceed \$3 per transaction.

Section 9 provides 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:

Check cashers may incur additional costs in connection with reporting the required data to the statewide database. In order to establish and maintain the database required under the bill, the bill requires a licensee to remit to the OFR a transaction fee not to exceed \$3, as part of the direct costs of verification, on checks exceeding \$1,000 that are cashed. It is unclear whether the check casher would incur this fee or pass it on to the customer.

According to the OIR, as of February 3, 2012, there were 1,508 licensees reporting under part III of ch. 560, F.S.; of which 1,065 have authority to engage in check cashing. Currently, approximately 90 percent of all licensees do not charge a verification fee. Approximately 4 percent of the checks cashed had a verification fee imposed.

B. Private Sector Impact:

It is unclear how many licensees will absorb the transaction fee not to exceed \$3 or pass this fee onto the customers. Presently, the OFR does not capture transactional data that would indicate the number of checks presented that exceed \$1,000, and that are assessed a fee by the check casher.

For checks cashed in excess of \$1,000, check cashers will need to report certain data to a statewide database. Currently, this data must be maintained by the check casher in an electronic format (i.e., excel spreadsheet) and made available to the OFR during the examination process. The database may reduce some administrative burden for licensees.

Elimination of the competitive advantage resulting from use of subcontractors without obtaining adequate workers' compensation insurance would create a more level playing field for law-abiding contractors.

C. Government Sector Impact:

The bill provides the OFR, law enforcement, and prosecutors with additional enforcement tools to detect and prosecute workers' compensation insurance fraud.

The OFR plans to use a third party administrator to establish and maintain the database similar to the procedure that was used to establish the deferred presentment database under s. 560.404(23), F.S. For the deferred presentment database, the vendor agreed to bear all of the initial development costs. Once the database was established, the OFR paid the vendor a portion of the transaction fees collected on each transaction to compensate the vendor for establishing, maintaining, and administering the database. Because of the uncertainty of the number of transactions, the contract provided for a review after the first year of operation to adjust the reimbursement rate if necessary.

The OFR does not require additional resources to administer the bill.

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.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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The Committee on Banking and Insurance (Gaetz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (9) and (10) of section 560.103, Florida Statutes, are renumbered as subsections (11) and (12), respectively, present subsections (11) through (14) are renumbered as subsections (14) through (17), respectively, present subsections (15) through (27) are renumbered as subsections (19) through (31), respectively, present subsections (28) through (30) are renumbered as subsections (33) through (35), respectively, and new subsections (9), (10), (13), (18),



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13 and (32), are added to that section, to read:

14 560.103 Definitions.—As used in this chapter, the term:

15 (9) "Conductor" means a natural person who presents himself
16 or herself to a licensee for purposes of cashing a payment
17 instrument.

18 (10) "Corporate payment instrument" means a payment
19 instrument on which the payee named on the instrument's face is
20 other than a natural person.

21 (13) "Department" means the Department of Financial
22 Services.

23 (18) "Fraudulent identification paraphernalia" means all
24 equipment, products, or materials of any kind that are used,
25 intended for use, or designed for use in the misrepresentation
26 of a customer's identity. The term includes, but is not limited
27 to:

28 (a) A signature stamp, thumbprint stamp, or other tool or
29 device used to forge a customer's personal identification
30 information.

31 (b) An original of any type of personal identification
32 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
33 issued.

34 (c) A blank, forged, fictitious, or counterfeit instrument
35 in the similitude of any type of personal identification listed
36 in s. 560.310(2)(b) which would in context lead a reasonably
37 prudent person to believe that such instrument is an authentic
38 original of such personal identification.

39 (d) Counterfeit, fictitious, or fabricated information in
40 the similitude of a customer's personal identification
41 information that, although not authentic, would in context lead



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42 a reasonably prudent person to credit its authenticity.

43 (32) "Personal identification information" means a
44 customer's name that, alone or together with any of the
45 following information, may be used to identify that specific
46 customer:

47 (a) Customer's signature.

48 (b) Photograph, digital image, or other likeness of the
49 customer.

50 (c) Unique biometric data, such as the customer's
51 thumbprint or fingerprint, voice print, retina or iris image, or
52 other unique physical representation of the customer.

53 Section 2. Subsections (1) and (7) of section 560.109,
54 Florida Statutes, are amended to read:

55 560.109 Examinations and investigations.—The office may
56 conduct examinations and investigations, within or outside this
57 state to determine whether a person has violated any provision
58 of this chapter and related rules, or of any practice or conduct
59 that creates the likelihood of material loss, insolvency, or
60 dissipation of the assets of a money services business or
61 otherwise materially prejudices the interests of their
62 customers.

63 (1) The office may, without advance notice, examine or
64 investigate each licensee as often as is warranted for the
65 protection of customers and in the public interest. However, the
66 office must examine each licensee, but at least once every 5
67 years. A new licensee shall be examined within 6 months after
68 the issuance of the license. The office shall provide at least
69 15 days' notice to a money services business, its authorized
70 vendor, or license applicant before conducting an examination or



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71 ~~investigation. However,~~ The office may, without advance notice,
72 examine ~~conduct an examination~~ or investigate ~~investigation~~ of a
73 money services business, authorized vendor, ~~or~~ affiliated party,
74 or license applicant at any time ~~and without advance notice~~ if
75 the office suspects that the money services business, authorized
76 vendor, ~~or~~ affiliated party, or license applicant has violated
77 or is about to violate any provision ~~provisions~~ of this chapter
78 or any criminal law ~~laws~~ of this state or of the United States.

79 (7) Reasonable and necessary costs incurred by the office
80 or third parties authorized by the office in connection with
81 examinations or investigations may be assessed against any
82 person subject to this chapter on the basis of actual costs
83 incurred. Assessable expenses include, but are not limited to,
84 expenses for: interpreters; certified translations of documents
85 into the English language required by this chapter or related
86 rules; communications; legal representation; economic, legal, or
87 other research, analyses, and testimony; and fees and expenses
88 for witnesses. The failure to reimburse the office is a ground
89 for denial of a license application, denial of a license
90 renewal, or for revocation of any approval thereof. Except for
91 examinations authorized under this section ~~s. 560.109~~, costs may
92 not be assessed against a person unless the office determines
93 that the person has operated or is operating in violation of
94 this chapter.

95 Section 3. Paragraph (g) is added to subsection (1) of
96 section 560.111, Florida Statutes, subsection (3) is renumbered
97 as subsection (4), present subsection (4) is renumbered as
98 subsection (5) and amended, and a new subsection (3) is added to
99 that section, to read:



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100 560.111 Prohibited acts.—

101 (1) A money services business, authorized vendor, or
102 affiliated party may not:

103 (g) Knowingly possess any fraudulent identification
104 paraphernalia. This paragraph does not prohibit the maintenance
105 and retention of any records required by this chapter.

106 (3) A person other than the conductor of a payment
107 instrument may not provide a licensee engaged in cashing the
108 payment instrument with the customer's personal identification
109 information.

110 (5)~~(4)~~ Any person who willfully violates any provision of
111 s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a
112 felony of the third degree, punishable as provided in s.
113 775.082, s. 775.083, or s. 775.084.

114 Section 4. Paragraph (h) of subsection (1) of section
115 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb),
116 and (cc) are added to that subsection, and subsection (2) of
117 that section is amended, to read:

118 560.114 Disciplinary actions; penalties.—

119 (1) The following actions by a money services business,
120 authorized vendor, or affiliated party constitute grounds for
121 the issuance of a cease and desist order; the issuance of a
122 removal order; the denial, suspension, or revocation of a
123 license; or taking any other action within the authority of the
124 office pursuant to this chapter:

125 (h) Engaging in an act prohibited under s. 560.111.

126 (aa) Failure of a check cashier to maintain a federally
127 insured depository account as required by s. 560.309.

128 (bb) Failure of a check cashier to deposit into its own



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129 federally insured depository account any payment instrument
130 cash as required by s. 560.309.

131 (cc) Failure to submit transaction information to the
132 office as required by s. 560.311 for any payment instrument
133 cash.

134 (2) The office may immediately suspend the license of any
135 money services business if the money services business fails to:

136 (a) Provide to the office, upon written request, any of the
137 records required by s. ~~ss.~~ 560.123, s. 560.1235, s. 560.211, or
138 s. and 560.310 or any rule adopted under those sections. The
139 suspension may be rescinded if the licensee submits the
140 requested records to the office.

141 (b) Maintain a federally insured depository account as
142 required by s. 560.309.

143 (c) Submit transaction information to the office as
144 required by s. 560.311 for any payment instrument cash.

145
146 For purposes of s. 120.60(6), failure to perform ~~provide~~ any of
147 the acts specified in this subsection ~~above-mentioned records~~
148 constitutes immediate and serious danger to the public health,
149 safety, and welfare.

150 Section 5. Subsection (4) is added to section 560.126,
151 Florida Statutes, to read:

152 560.126 Required notice by licensee.-

153 (4) A licensee that engages in check cashing must notify
154 the office within 5 business days after the licensee ceases to
155 maintain a federally insured depository account as required by
156 s. 560.309(3) and, before resuming check cashing, must
157 reestablish such an account and notify the office of the



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158 account.

159 Section 6. Subsections (3), (4), and (8) of section
160 560.309, Florida Statutes, are amended to read:

161 560.309 Conduct of business.—

162 (3) A licensee under this part must maintain and deposit
163 payment instruments into its own a commercial account at a
164 federally insured financial institution. If a licensee ceases to
165 maintain such a depository account, the licensee must not engage
166 in check cashing until the licensee reestablishes such an
167 account and notifies the office of the account as required by s.
168 560.126(4) or sell payment instruments within 5 business days
169 after the acceptance of the payment instrument.

170 (4) A licensee may not accept or cash a ~~multiple~~ payment
171 instrument ~~instruments~~ from a conductor ~~person~~ who is not the
172 original payee, ~~unless the person is licensed to cash payment~~
173 ~~instruments pursuant to this part and all payment instruments~~
174 ~~accepted are endorsed with the legal name of the person.~~
175 However, this subsection does not prohibit a licensee from
176 accepting or cashing a corporate payment instrument from a
177 conductor who is an authorized officer of the corporate payee
178 named on the instrument's face.

179 (8) Exclusive of the direct costs of verification, which
180 shall be established by rule not to exceed \$5, a check casher
181 may not:

182 (a) Charge fees, except as otherwise provided by this part,
183 in excess of 5 percent of the face amount of the payment
184 instrument, or \$5, whichever is greater;

185 (b) Charge fees in excess of 3 percent of the face amount
186 of the payment instrument, or \$5, whichever is greater, if such



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187 payment instrument is the payment of any kind of state public
188 assistance or federal social security benefit payable to the
189 bearer of the payment instrument; or

190 (c) Charge fees for personal checks or money orders in
191 excess of 10 percent of the face amount of those payment
192 instruments, or \$5, whichever is greater.

193 Section 7. Section 560.310, Florida Statutes, is amended to
194 read:

195 560.310 Records of check cashers and foreign currency
196 exchangers.—

197 ~~(1) In addition to the record retention requirements~~
198 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing
199 must maintain for the period specified in s. 560.1105 a copy of
200 each payment instrument cashed.

201 (2) If the payment instrument exceeds \$1,000, the following
202 additional information must be maintained ~~the following:~~

203 (a) Customer files, as prescribed by rule, on all customers
204 who cash corporate ~~or third-party~~ payment instruments that
205 exceed exceeding \$1,000.

206 (b) ~~For any payment instrument accepted having a face value~~
207 ~~of \$1,000 or more:~~

208 ~~1.~~ A copy of the personal identification that bears a
209 photograph of the customer used as identification and presented
210 by the customer. Acceptable personal identification is limited
211 to a valid driver ~~driver's~~ license; a state identification card
212 issued by any state of the United States or its territories or
213 the District of Columbia, and showing a photograph and
214 signature; a United States Government Resident Alien
215 Identification Card; a passport; or a United States Military



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216 identification card.

217 (c)2. A thumbprint of the customer taken by the licensee
218 when the payment instrument is presented for negotiation or
219 payment.

220 ~~(c) A payment instrument log that must be maintained~~
221 ~~electronically as prescribed by rule. For purposes of this~~
222 ~~paragraph, multiple payment instruments accepted from any one~~
223 ~~person on any given day which total \$1,000 or more must be~~
224 ~~aggregated and reported on the log.~~

225 (3)(2) A licensee under this part may engage the services
226 of a third party that is not a depository institution for the
227 maintenance and storage of records required by this section if
228 all the requirements of this section are met.

229 Section 8. Section 560.311, Florida Statutes, is created to
230 read:

231 560.311 Reporting of payment instruments cashed; database
232 of payment instrument transactions.-

233 (1) A licensee that cashes a payment instrument that
234 exceeds \$1,000 must submit the following transaction information
235 about the payment instrument to the office within the time and
236 in the format and manner prescribed by commission rule:

237 (a) Transaction date.

238 (b) Payor name.

239 (c) Payee name.

240 (d) Conductor name, if different from the payee name.

241 (e) Amount of the payment instrument.

242 (f) Amount of the currency provided.

243 (g) Type of payment instrument, which may include, as
244 prescribed by commission rule, but is not limited to, a personal



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245 check, payroll check, government check, corporate check, or
246 third-party check.

247 (h) Location or branch where the payment instrument is
248 accepted.

249 (i) Payee's workers' compensation policy number, if the
250 payment instrument is a corporate payment instrument.

251 (j) Any other transaction information that may be required
252 by commission rule.

253
254 Multiple payment instruments accepted from any one conductor on
255 any given day that exceeds \$1,000 must be aggregated and
256 reported to the office through the payment instrument database.

257 (2) (a) The office shall establish and administer a
258 centralized database that maintains and provides real-time
259 access to the transaction information submitted to the office
260 under subsection (1). The commission may require licensees to
261 submit the transaction information through the Internet or by
262 other electronic means that provide for inclusion of the
263 submitted information in the database.

264 (b) The office shall design and administer the database to
265 interface with other government databases, including, but not
266 limited to:

267 1. The department's workers' compensation proof of coverage
268 database.

269 2. The Department of State's database of corporations,
270 partnerships, limited liability companies, corporations not for
271 profit, trusts, associations, cooperatives, and other business
272 organizations registered with the Department of State.

273 (3) The commission shall adopt rules requiring a licensee



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274 to remit to the office a transaction fee, as part of the direct
275 costs of verification authorized under s. 560.309(8), not to
276 exceed \$3 per transaction submitted under subsection (1) to
277 establish and administer the database required by this section.

278 (4) The commission may adopt rules to administer this
279 section, including, but not limited to, rules governing the
280 operation and security of the database.

281 Section 9. This act shall take effect July 1, 2012.

282
283 ===== T I T L E A M E N D M E N T =====

284 And the title is amended as follows:

285 Delete everything before the enacting clause
286 and insert:

287 A bill to be entitled
288 An act relating to money services businesses; amending
289 s. 560.103, F.S.; defining terms for purposes of
290 provisions regulating money services businesses;
291 amending s. 560.109, F.S.; revising the frequency and
292 notice requirements for examinations and
293 investigations by the Office of Financial Regulation
294 of money services business licensees; amending s.
295 560.111, F.S.; prohibiting money services businesses,
296 authorized vendors, and affiliated parties from
297 knowingly possessing certain paraphernalia used or
298 intended or designed for use in misrepresenting a
299 customer's identity, for which penalties apply;
300 prohibiting certain persons from providing a
301 customer's personal identification information to a
302 money services business licensee and providing



303 penalties; reenacting s. 560.114(1)(h), F.S., relating
304 to penalties for certain prohibited acts by money
305 services businesses, to incorporate the amendment made
306 by the act to s. 560.111, F.S., in a reference
307 thereto; amending s. 560.114, F.S.; prohibiting
308 certain acts by money services businesses, authorized
309 vendors, and affiliated parties, for which penalties
310 apply; revising the conditions for which a money
311 services business license may be suspended; amending
312 ss. 560.126 and 560.309, F.S.; requiring a money
313 services business licensee to maintain its own
314 federally insured depository account and deposit into
315 the account any payment instruments cashed; requiring
316 a licensee to notify the office and cease to cash
317 payment instruments if the licensee ceases to maintain
318 the account; prohibiting a licensee from accepting or
319 cashing a payment instrument from a conductor who is
320 not the original payee; authorizing a licensee to
321 accept or cash a corporate payment instrument from
322 certain conductors; establishing a limit on the amount
323 of fees that licensees may charge for the direct costs
324 of verification of payment instruments cashed;
325 amending s. 560.310, F.S.; revising requirements for
326 the records that a money services business licensee
327 must maintain related to the payment instruments
328 cashed; creating s. 560.311, F.S.; requiring money
329 services business licensees to submit certain
330 transaction information to the Office of Financial
331 Regulation related to the payment instruments cashed;



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332 requiring the office to maintain the transaction
333 information in a centralized database; authorizing the
334 Financial Services Commission to prescribe the time,
335 format, and manner for licensees to submit the
336 transaction information; requiring that the database
337 be designed to interface with certain other state
338 databases; providing a transaction fee for the
339 submission of transaction information; authorizing the
340 commission to adopt rules for the operation and
341 security of the database; providing an effective date.

By Senator Thrasher

8-01438-12

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1 A bill to be entitled
 2 An act relating to money services businesses; amending
 3 s. 560.103, F.S.; defining terms for purposes of
 4 provisions regulating money services businesses;
 5 amending s. 560.109, F.S.; revising the frequency and
 6 notice requirements for examinations and
 7 investigations by the Office of Financial Regulation
 8 of money services business licensees; amending s.
 9 560.111, F.S.; prohibiting money services businesses,
 10 authorized vendors, and affiliated parties from
 11 possessing certain paraphernalia used or intended or
 12 designed for use in misrepresenting a customer's
 13 identity, for which penalties apply; prohibiting
 14 certain persons from providing a customer's personal
 15 identification information to a money services
 16 business licensee and providing penalties; reenacting
 17 s. 560.114(1)(h), F.S., relating to penalties for
 18 certain prohibited acts by money services businesses,
 19 to incorporate the amendment made by the act to s.
 20 560.111, F.S., in a reference thereto; amending s.
 21 560.114, F.S.; prohibiting certain acts by money
 22 services businesses, authorized vendors, and
 23 affiliated parties, for which penalties apply;
 24 revising the conditions for which a money services
 25 business license may be suspended; amending ss.
 26 560.126 and 560.309, F.S.; requiring a money services
 27 business licensee to maintain its own federally
 28 insured depository account and deposit into the
 29 account any payment instruments cashed; requiring a

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30 licensee to notify the office and cease to cash
 31 payment instruments if the licensee ceases to maintain
 32 the account; prohibiting a licensee from accepting or
 33 cashing a payment instrument from a person who is not
 34 the original payee; establishing a limit on the amount
 35 of fees that licensees may charge for the direct costs
 36 of verification of payment instruments cashed;
 37 amending s. 560.310, F.S.; revising requirements for
 38 the records that a money services business licensee
 39 must maintain related to the payment instruments
 40 cashed; creating s. 560.311, F.S.; requiring money
 41 services business licensees to submit certain
 42 transaction information to the Office of Financial
 43 Regulation related to the payment instruments cashed;
 44 requiring the office to maintain the transaction
 45 information in a centralized database; authorizing the
 46 Financial Services Commission to prescribe the time,
 47 format, and manner for licensees to submit the
 48 transaction information; requiring that the database
 49 be designed to interface with certain other state
 50 databases; providing a transaction fee for the
 51 submission of transaction information; authorizing the
 52 commission to adopt rules for the operation and
 53 security of the database; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Subsections (9) and (10) of section 560.103,
 58 Florida Statutes, are renumbered as subsections (11) and (12),

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 59 respectively, present subsections (11) through (14) are
 60 renumbered as subsections (14) through (17), respectively,
 61 present subsections (15) through (27) are renumbered as
 62 subsections (19) through (31), respectively, present subsections
 63 (28) through (30) are renumbered as subsections (33) through
 64 (35), respectively, and new subsections (9), (10), (13), (18),
 65 (32), and (36) are added to that section, to read:

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

66 (9) “Conductor” means a natural person who presents himself
 67 or herself to a licensee for purposes of cashing a payment
 68 instrument.
 69

70 (10) “Corporate payment instrument” means a payment
 71 instrument on which the payee named on the instrument’s face is
 72 other than a natural person.

73 (13) “Department” means the Department of Financial
 74 Services.

75 (18) “Fraudulent identification paraphernalia” means all
 76 equipment, products, or materials of any kind that are used,
 77 intended for use, or designed for use in the misrepresentation
 78 of a customer’s identity. The term includes, but is not limited
 79 to:

80 (a) A signature stamp, thumbprint stamp, or other tool or
 81 device used to forge a customer’s personal identification
 82 information.

83 (b) An original of any type of personal identification
 84 listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully
 85 issued.

86 (c) A blank, forged, fictitious, or counterfeit instrument
 87 in the similitude of any type of personal identification listed

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 88 in s. 560.310(2)(b) which would in context lead a reasonably
 89 prudent person to believe that such instrument is an authentic
 90 original of such personal identification.

91 (d) Counterfeit, fictitious, or fabricated information in
 92 the similitude of a customer’s personal identification
 93 information that, although not authentic, would in context lead
 94 a reasonably prudent person to credit its authenticity.

95 (32) “Personal identification information” means a
 96 customer’s name that, alone or together with any of the
 97 following information, may be used to identify that specific
 98 customer:

99 (a) Customer’s signature.

100 (b) Photograph, digital image, or other likeness of the
 101 customer.

102 (c) Unique biometric data, such as the customer’s
 103 thumbprint or fingerprint, voice print, retina or iris image, or
 104 other unique physical representation of the customer.

105 (36) “Third-party payment instrument” means a payment
 106 instrument being negotiated by a party other than the payee
 107 named on the instrument’s face.

108 Section 2. Subsections (1) and (7) of section 560.109,
 109 Florida Statutes, are amended to read:

110 560.109 Examinations and investigations.—The office may
 111 conduct examinations and investigations, within or outside this
 112 state to determine whether a person has violated any provision
 113 of this chapter and related rules, or of any practice or conduct
 114 that creates the likelihood of material loss, insolvency, or
 115 dissipation of the assets of a money services business or
 116 otherwise materially prejudices the interests of their

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 117 customers.

118 (1) The office may, without advance notice, examine or
 119 investigate each licensee as often as is warranted for the
 120 protection of customers and in the public interest. However, the
 121 office must examine each licensee, but at least once every 5
 122 years. ~~A new licensee shall be examined within 6 months after~~
 123 ~~the issuance of the license. The office shall provide at least~~
 124 ~~15 days' notice to a money services business, its authorized~~
 125 ~~vendor, or license applicant before conducting an examination or~~
 126 ~~investigation. However, The office may, without advance notice,~~
 127 examine ~~conduct an examination~~ or investigate investigation of a
 128 money services business, authorized vendor, ~~or~~ affiliated party,
 129 or license applicant at any time ~~and without advance notice~~ if
 130 the office suspects that the money services business, authorized
 131 vendor, ~~or~~ affiliated party, or license applicant has violated
 132 or is about to violate any provision ~~provisions~~ of this chapter
 133 or any criminal law ~~laws~~ of this state or of the United States.

134 (7) Reasonable and necessary costs incurred by the office
 135 or third parties authorized by the office in connection with
 136 examinations or investigations may be assessed against any
 137 person subject to this chapter on the basis of actual costs
 138 incurred. Assessable expenses include, but are not limited to,
 139 expenses for: interpreters; certified translations of documents
 140 into the English language required by this chapter or related
 141 rules; communications; legal representation; economic, legal, or
 142 other research, analyses, and testimony; and fees and expenses
 143 for witnesses. The failure to reimburse the office is a ground
 144 for denial of a license application, denial of a license
 145 renewal, or for revocation of any approval thereof. Except for

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 146 examinations authorized under this section ~~s. 560.109~~, costs may
 147 not be assessed against a person unless the office determines
 148 that the person has operated or is operating in violation of
 149 this chapter.

150 Section 3. Paragraph (g) is added to subsection (1) of
 151 section 560.111, Florida Statutes, subsection (3) is renumbered
 152 as subsection (4), present subsection (4) is renumbered as
 153 subsection (5) and amended, and a new subsection (3) is added to
 154 that section, to read:

155 560.111 Prohibited acts.—

156 (1) A money services business, authorized vendor, or
 157 affiliated party may not:

158 (g) Possess any fraudulent identification paraphernalia.
 159 This paragraph does not prohibit the maintenance and retention
 160 of any records required by this chapter.

161 (3) A person other than the conductor of a payment
 162 instrument may not provide a licensee engaged in cashing the
 163 payment instrument with the customer's personal identification
 164 information.

165 (5)(4) Any person who willfully violates any provision of
 166 s. 560.311(1), s. 560.403, s. 560.404, or s. 560.405 commits a
 167 felony of the third degree, punishable as provided in s.
 168 775.082, s. 775.083, or s. 775.084.

169 Section 4. Paragraph (h) of subsection (1) of section
 170 560.114, Florida Statutes, is reenacted, paragraphs (aa), (bb),
 171 and (cc) are added to that subsection, and subsection (2) of
 172 that section is amended, to read:

173 560.114 Disciplinary actions; penalties.—

174 (1) The following actions by a money services business,

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 175 authorized vendor, or affiliated party constitute grounds for
 176 the issuance of a cease and desist order; the issuance of a
 177 removal order; the denial, suspension, or revocation of a
 178 license; or taking any other action within the authority of the
 179 office pursuant to this chapter:

(h) Engaging in an act prohibited under s. 560.111.

(aa) Failure of a check casher to maintain a federally
 insured depository account as required by s. 560.309.

(bb) Failure of a check casher to deposit into its own
 federally insured depository account any payment instrument
 cashed as required by s. 560.309.

(cc) Failure to submit transaction information to the
 office as required by s. 560.311 for any payment instrument
 cashed.

(2) The office may immediately suspend the license of any
 money services business if the money services business fails to:

(a) Provide to the office, upon written request, any of the
 records required by s. ~~560.123~~, s. 560.1235, s. 560.211, or
 s. ~~and~~ 560.310 or any rule adopted under those sections. The
 suspension may be rescinded if the licensee submits the
 requested records to the office.

(b) Maintain a federally insured depository account as
 required by s. 560.309.

(c) Submit transaction information to the office as
 required by s. 560.311 for any payment instrument cashed.

For purposes of s. 120.60(6), failure to ~~perform~~ provide any of
 the acts specified in this subsection ~~above-mentioned records~~
 constitutes immediate and serious danger to the public health,

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 204 safety, and welfare.

205 Section 5. Subsection (4) is added to section 560.126,
 206 Florida Statutes, to read:

207 560.126 Required notice by licensee.—

208 (4) A licensee that engages in check cashing must notify
 209 the office within 5 business days after the licensee ceases to
 210 maintain a federally insured depository account as required by
 211 s. 560.309(3) and, before resuming check cashing, must
 212 reestablish such an account and notify the office of the
 213 account.

214 Section 6. Subsections (3), (4), and (8) of section
 215 560.309, Florida Statutes, are amended to read:

216 560.309 Conduct of business.—

217 (3) A licensee under this part must maintain and deposit
 218 payment instruments into its own a commercial account at a
 219 federally insured financial institution. If a licensee ceases to
 220 maintain such a depository account, the licensee must not engage
 221 in check cashing until the licensee reestablishes such an
 222 account and notifies the office of the account as required by s.
 223 560.126(4) or sell payment instruments within 5 business days
 224 after the acceptance of the payment instrument.

225 (4) A licensee may not accept or cash ~~a multiple~~ payment
 226 ~~instrument~~ instruments from a person who is not the original
 227 ~~payee, unless the person is licensed to cash payment instruments~~
 228 ~~pursuant to this part and all payment instruments accepted are~~
 229 ~~endorsed with the legal name of the person.~~

230 (8) Exclusive of the direct costs of verification, which
 231 shall be established by rule not to exceed \$5, a check casher
 232 may not:

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233 (a) Charge fees, except as otherwise provided by this part,
234 in excess of 5 percent of the face amount of the payment
235 instrument, or \$5, whichever is greater;

236 (b) Charge fees in excess of 3 percent of the face amount
237 of the payment instrument, or \$5, whichever is greater, if such
238 payment instrument is the payment of any kind of state public
239 assistance or federal social security benefit payable to the
240 bearer of the payment instrument; or

241 (c) Charge fees for personal checks or money orders in
242 excess of 10 percent of the face amount of those payment
243 instruments, or \$5, whichever is greater.

244 Section 7. Section 560.310, Florida Statutes, is amended to
245 read:

246 560.310 Records of check cashers and foreign currency
247 exchangers.—

248 (1) ~~In addition to the record retention requirements~~
249 ~~specified in s. 560.1105,~~ A licensee engaged in check cashing
250 must maintain for the period specified in s. 560.1105 a copy of
251 each payment instrument cashed.

252 (2) If the payment instrument exceeds \$1,000 or is a
253 corporate or third-party payment instrument, the following
254 additional information must be maintained ~~the following:~~

255 (a) Customer files, as prescribed by rule, on all customers
256 who cash corporate or third-party payment instruments that
257 exceed ~~exceeding~~ \$1,000.

258 (b) ~~For any payment instrument accepted having a face value~~
259 ~~of \$1,000 or more.~~

260 ~~+~~ A copy of the personal identification that bears a
261 photograph of the customer used as identification and presented

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262 by the customer. Acceptable personal identification is limited
263 to a valid driver ~~driver's~~ license; a state identification card
264 issued by any state of the United States or its territories or
265 the District of Columbia, and showing a photograph and
266 signature; a United States Government Resident Alien
267 Identification Card; a passport; or a United States Military
268 identification card.

269 (c)2- A thumbprint of the customer taken by the licensee
270 when the payment instrument is presented for negotiation or
271 payment.

272 ~~(c) A payment instrument log that must be maintained~~
273 ~~electronically as prescribed by rule. For purposes of this~~
274 ~~paragraph, multiple payment instruments accepted from any one~~
275 ~~person on any given day which total \$1,000 or more must be~~
276 ~~aggregated and reported on the log.~~

277 (3)(2) A licensee under this part may engage the services
278 of a third party that is not a depository institution for the
279 maintenance and storage of records required by this section if
280 all the requirements of this section are met.

281 Section 8. Section 560.311, Florida Statutes, is created to
282 read:

283 560.311 Reporting of payment instruments cashed; database
284 of payment instrument transactions.—

285 (1) A licensee that cashes a payment instrument that
286 exceeds \$1,000, a corporate payment instrument, or a third-party
287 payment instrument must submit the following transaction
288 information about the payment instrument to the office within
289 the time and in the format and manner prescribed by commission
290 rule.

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- 291 (a) Transaction date.
 292 (b) Payor name.
 293 (c) Payee name.
 294 (d) Conductor name, if different from the payee name.
 295 (e) Amount of the payment instrument.
 296 (f) Amount of the currency provided.
 297 (g) Type of payment instrument, which may include, as
 298 prescribed by commission rule, but is not limited to, a personal
 299 check, payroll check, government check, corporate check, or
 300 third-party check.
 301 (h) Location or branch where the payment instrument is
 302 accepted.
 303 (i) Payee's workers' compensation policy number, if the
 304 payment instrument is a corporate payment instrument.
 305 (j) Any other transaction information that may be required
 306 by commission rule.

307
 308 If, on any given day, a licensee cashes multiple payment
 309 instruments that collectively exceed \$1,000 for any payor-payee
 310 combination, the licensee must aggregate the payment instruments
 311 as one transaction and submit the aggregated transaction
 312 information as prescribed by commission rule.

- 313 (2) (a) The office shall establish and administer a
 314 centralized database that maintains and provides real-time
 315 access to the transaction information submitted to the office
 316 under subsection (1). The commission may require licensees to
 317 submit the transaction information through the Internet or by
 318 other electronic means that provide for inclusion of the
 319 submitted information in the database.

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- 320 (b) The office shall design and administer the database to
 321 interface with other government databases, including, but not
 322 limited to:
 323 1. The department's workers' compensation proof of coverage
 324 database.
 325 2. The Department of State's database of corporations,
 326 partnerships, limited liability companies, corporations not for
 327 profit, trusts, associations, cooperatives, and other business
 328 organizations registered with the Department of State.
 329 (3) The commission shall adopt rules requiring a licensee
 330 to remit to the office a transaction fee, as part of the direct
 331 costs of verification authorized under s. 560.309(8), not to
 332 exceed \$3 per transaction submitted under subsection (1).
 333 (4) The commission may adopt rules to administer this
 334 section, including, but not limited to, rules governing the
 335 operation and security of the database.

336 Section 9. 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)

2.7.12

Meeting Date

Topic Money Services Businesses

Bill Number 1586
(if applicable)

Name Sarah Busk

Amendment Barcode N/A
(if applicable)

Job Title Dir of Gov. Affairs

Address 215 S. Monroe St, #602

Phone 850.222.8900

Tallahassee FL 32301
City State Zip

E-mail sjb@cardenaspartners.com

Speaking: For Against Information

Representing Florida Carpenters Regional Council

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 1586 / Money Service Business Bill Number 1586
(if applicable)

Name Robin Westcott Amendment Barcode _____
(if applicable)

Job Title Ins. Consumer Advocate

Address LL 22 The Capitol Phone 413-2868
Street

TLH FL 32399
City State Zip

E-mail Robin.Westcott@myflorida.com

Speaking: For Against Information

Representing _____

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

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

This form is part of the public record for this meeting. S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7

Meeting Date

Topic MSB Legislation

Bill Number 1586
(if applicable)

Name Jim Daughton

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe Street

Phone 205-9000

Street

Tallahassee

City

FL

State

32301

Zip

E-mail Jim.Daughton@WRTZ/AV.COM

Speaking: For Against Information

Representing FINANCIAL SERVICE CENTERS OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

2.9.12
Meeting Date

Topic workers comp fraud

Bill Number 1586
(if applicable)

Name Ashley Mayer

Amendment Barcode _____
(if applicable)

Job Title Dir. Policy & Legal Affairs

Address Capitol - PL-14
Street

Phone 413-2863

Tallahassee FL
City State Zip

E-mail ashley.mayer@nyflorida.com

Speaking: For Against Information

Representing CFO Atwater

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

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

2/7/12
Meeting Date

Topic money Services Business

Bill Number SB 1586
(if applicable)

Name Andrea Moreland

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 200 E. Gaines St.
Street

Phone 410-9601

Tallahassee, FL
City State Zip

E-mail andrea.moreland@flafr.com

Speaking: For Against Information

Representing Office of Financial Regulation

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)

2 / 7 / 2012

Meeting Date

Topic _____

Bill Number 1586
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

2-7-12
Meeting Date

Topic MONEY SERVICES BUSINESSES

Bill Number SB 1586
(if applicable)

Name CAM FENTRISS

Amendment Barcode _____
(if applicable)

Job Title _____

Address 1400 VILLAGE SQ
Street

Phone _____

City _____ State _____ Zip _____

E-mail _____

Speaking: For Against Information

Representing FCA ROOFING SHEET METAL + AC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 1584

INTRODUCER: Senator Thrasher

SUBJECT: Public Records/Money Services Businesses/Office of Financial Regulation

DATE: January 31, 2012

REVISED: _____

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

I. Summary:

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation (OFR).

The bill provides for repeal of the exemption on October 2, 2017, unless reviewed and saved from repeal by the Legislature. The bill also provides a statement of public necessity as required by the State Constitution.¹

This bill creates the following section of the Florida Statutes: 560.312

II. Present Situation:

Public Records Law

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an

¹ Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a new exemption; thus, it requires a two-thirds vote for final passage.

existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.²

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act³ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- 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 sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

Statewide database

Section 560.310, F.S., requires check casher licensees to maintain customer files for those who cash corporate or third-party instruments exceeding \$1,000. These files must contain a copy of the customer's personal identification and a thumbprint taken by the licensee. Licensees must also maintain an electronic payment log.

Under Rule 69V-560.704, F.A.C., licensees are required to affix customer thumbprints to the original of each payment instrument exceeding \$1,000, as well as secure and maintain a copy of the original payment instrument, a copy of the customer's personal identification presented at the time of acceptance, and maintain customer files for those cashing corporate and third party payment instruments, which includes documentation from the Secretary of State verifying the corporate registration, Articles of Incorporation, information from Department of Financial Services' Compliance Proof of Coverage Query Page, and documentation of those authorized to negotiate payment instruments on the corporation of fictitious entity's behalf. These customer files must be updated annually.

Further, Rule 69V-560.704, F.A.C., requires that for payment instruments of \$1,000 or more, the check casher must maintain an electronic log of payment instruments accepted, which includes, at a minimum, the following information:

- Transaction date,
- Payor name,
- Payee name,
- Conductor name, if other than the payee,
- Amount of payment instrument,

² Section 24(c), Art. I of the State Constitution.

³ s. 119.15, F.S.

- Amount of currency provided,
- Type of payment instrument (personal, payroll, government, corporate, third-party, or other),
- Fee charged for the cashing of the payment instrument,
- Branch/location where instrument was accepted,
- Identification type presented by customer, and
- Identification number presented by customer.

Legislation proposed during the 2012 Legislative Session⁴ authorizes the OFR to implement a centralized statewide database to gather transactional data from check cashers for checks exceeding \$1,000, corporate payment instruments, and third-party payment instruments. Check cashers will be required to enter this information into the database in a timely manner.

The centralization of the data will allow regulators and law enforcement to effectively target individuals who are engaging in criminal activity as these crimes are occurring instead of forensically attempting to reconstruct the activities of defunct shell companies. The centralization of the data will also allow information to be compared on a statewide basis.

III. Effect of Proposed Changes:

The bill creates a public records exemption for information contained in the database of payment instrument transactions that is to be administered by the Office of Financial Regulation.

The bill sets forth legislative findings of public necessity to protect the integrity of the database and all personal information contained within.

The bill takes effect on the date that SB 1586, or similar legislation adopted by the Legislature during the 2012 Regular Legislative Session takes effect and subsequently becomes a law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ 2012 - SB 1586

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 Senator Thrasher

8-01441A-12

20121584

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 560.312, F.S.; providing an exemption from public
 4 records requirements for information contained in the
 5 database of payment instrument transactions within the
 6 Office of Financial Regulation into which payment
 7 instrument transaction information submitted by money
 8 services business licensees is maintained; providing
 9 for specified access to such information; authorizing
 10 the office to enter into information-sharing
 11 agreements and provide access to information contained
 12 in the database to certain governmental agencies;
 13 requiring any department or agency that receives
 14 confidential information to maintain the
 15 confidentiality of the information, except as
 16 otherwise required by court order; providing a penalty
 17 for willful disclosure of confidential information;
 18 providing for future review and repeal of the
 19 exemption; providing a statement of public necessity;
 20 providing a contingent effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 560.312, Florida Statutes, is created to
 25 read:

26 560.312 Database of payment instrument transactions;
 27 confidentiality.-

28 (1) Information contained in the database of payment
 29 instrument transactions administered by the office pursuant to

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30 s. 560.311 is confidential and exempt from s. 119.07(1) and s.
 31 24(a), Art. I of the State Constitution.

32 (2) (a) A licensee may access information that it submits to
 33 the office for inclusion in the database.

34 (b) The office, to the extent permitted by state and
 35 federal law, may enter into information-sharing agreements with
 36 the department, law enforcement agencies, and other governmental
 37 agencies and, in accordance with such agreements, may provide
 38 the department, law enforcement agencies, and other governmental
 39 agencies with access to information contained in the database
 40 for use in detecting and deterring financial crimes. Any
 41 department or agency that receives confidential information from
 42 the office under this paragraph must maintain the
 43 confidentiality of the information, unless, and only to the
 44 extent that, a court order compels production of this
 45 information to a specific party or parties.

46 (3) Subsection (1) is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2017, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that information contained in the database of payment
 52 instrument transactions administered by the Office of Financial
 53 Regulation pursuant to s. 560.311, Florida Statutes, be held
 54 confidential and exempt from s. 119.07(1), Florida Statutes, and
 55 s. 24(a), Article I of the State Constitution. The electronic
 56 database provides for the maintenance of payment instrument
 57 transaction information that, pursuant to s. 560.311, Florida
 58 Statutes, money services business licensees are required to

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20121584__

59 submit to the office and is intended to assist the office, the
60 Department of Financial Services, law enforcement agencies, and
61 other governmental agencies in detecting and deterring financial
62 crimes. Licensees that cash a payment instrument exceeding a
63 specified amount, a corporate payment instrument, or a third-
64 party payment instrument must submit information about the
65 transaction to the office for inclusion in the database.
66 Information submitted includes personal identifying information
67 of licensees, sensitive financial information, and other
68 sensitive information such as insurance policy numbers and
69 workers' compensation information that, if not held exempt from
70 public disclosure, could be used to the detriment or
71 disadvantage of a licensee.

72 Section 3. This act shall take effect on the same date that
73 SB __ or similar legislation takes effect, if such legislation
74 is adopted in the same legislative session or an extension
75 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/2012

Meeting Date

Topic _____

Bill Number 1584

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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 1050

INTRODUCER: Senator Bogdanoff

SUBJECT: Mortgages

DATE: February 4, 2012

REVISED: _____

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

I. Summary:

Current law allows mortgagors to request and receive, within 14 days, information about their loan, such as the payoff, from the mortgagee. The bill would require mortgagees to provide subsequent owners of real property with mortgage payoff information. To receive information about the mortgage, the bill requires an owner of an interest in the encumbered property to provide an instrument proving that ownership interest to the mortgagee. The mortgagee must then provide the unpaid balance, but may include more information.

This bill substantially amends the following sections of the Florida Statutes: 701.04.

II. Present Situation:

Chapter 701 allows the person who has a mortgage (the mortgagor) to obtain from the mortgage holder (the mortgagee) information about the unpaid balance of the loan secured by the mortgage within 14 days of a written request.¹ The information requested is returned in a document known as an estoppel letter. Generally, only the mortgagor is able to receive this information from the mortgagee.

The statute does not require the mortgagee to provide that information to any other owner of the encumbered property. For example, a person could become an owner of an interest in the property by any number of ways, including but not limited to, an heir or devisee through probate, homestead laws, a surviving spouse that was not on the note, or a junior lienholder that has foreclosed on the property against the mortgagor.

¹ Section 701.04, F.S.

Privacy Laws

According to advocates of the bill, some mortgagees are not furnishing the mortgage information citing the privacy requirements of the federal Gramm-Leach-Bliley Act. The federal Gramm-Leach-Bliley Act, 15 USC, Subchapter I, Section 6801-6809, addresses privacy requirements and disclosure or nonpublic personal information. Except as otherwise provided in this subchapter, a financial institution may not, directly or through any affiliate, disclose to a nonaffiliated third party any nonpublic personal information, unless such financial institution provides or has provided to the consumer a notice that complies with section 6803 of this title. The act contains an exception to the prohibition of disclosure restrictions as contained in Section 6802(e)(8) of this act to comply with state laws.

Pursuant to s. 655.059, F.S., the records of a financial institution² are confidential and are made available for inspection and examination only in specifically enumerated circumstances or by specifically listed individuals or entities. Under current law, if the mortgagee is a financial institution, the mortgagee may violate privacy laws and face penalties by releasing the mortgagor's mortgage information.

III. Effect of Proposed Changes:

Section 1 amends s. 701.04(1), F.S., to require a holder of a mortgage, or the servicer of the mortgage, to release limited payoff information as to the encumbered property so that an owner can obtain the information necessary to pay the mortgagee or servicer the unpaid balance and obtain a satisfaction of the mortgage. Such information must be provided within 14 days after receipt of a written request.

If the requestor is not the mortgagor, the estoppel letter does not need to contain an itemization of the unpaid balance of the loan secured by the mortgage, but must include a per-day amount for the unpaid balance. An owner of an interest in property encumbered by a mortgage must include, along with the request, a copy of the instrument showing an ownership interest in the property.

Section 2 provides that this act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

² Section 655.005(1)(i), F.S., defines "financial institution" as a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust company representative office, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would allow an owner of an interest to pay off a mortgage and clear title to the property.

Holders of mortgages may incur some indeterminate costs to accommodate additional requests.

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: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 701.04, Florida Statutes, is amended to
read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1) Within 14 days after receipt of the written request of
a mortgagor, a record title owner of the property, a fiduciary
or trustee lawfully acting on behalf of a record title owner, or
any other person lawfully authorized to act on behalf of a
mortgagor or record title owner of the property, the holder of a



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13 mortgage shall deliver or cause the servicer of the mortgage to
14 deliver to the person making the request ~~mortgagor~~ at a place
15 designated in the written request an estoppel letter setting
16 forth the unpaid balance of the loan secured by the mortgage.7

17 (a) If the mortgagor, or any person lawfully authorized to
18 act on behalf of the mortgagor, makes the request, the estoppel
19 letter must include an itemization of the ~~including~~ principal,
20 interest, and any other charges properly due under or secured by
21 the mortgage and interest on a per-day basis for the unpaid
22 balance.

23 (b) If a record title owner of the property, or any person
24 lawfully authorized to act on behalf of a mortgagor or record
25 title owner of the property, makes the request:

26 1. The request must include a copy of the instrument
27 showing title in the property or lawful authorization.

28 2. The estoppel letter may include the itemization of
29 information required under paragraph (a), but must at a minimum
30 include the total unpaid balance due under or secured by the
31 mortgage on a per-day basis.

32 3. The mortgagee or servicer of the mortgagee acting in
33 accordance with a request in substantial compliance with this
34 paragraph is expressly discharged from any obligation or
35 liability to any person on account of the release of the
36 requested information, other than the obligation to comply with
37 the terms of the estoppel letter.

38 (c) A mortgage holder may provide the financial information
39 required under this subsection to a person authorized under this
40 subsection to request the financial information notwithstanding
41 s. 655.059.



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42 (2) Whenever the amount of money due on any mortgage, lien,
43 or judgment has been ~~shall be~~ fully paid to the person or party
44 entitled to the payment thereof, the mortgagee, creditor, or
45 assignee, or the attorney of record in the case of a judgment,
46 to whom the ~~such~~ payment was ~~shall have been~~ made, shall execute
47 in writing an instrument acknowledging satisfaction of the ~~said~~
48 mortgage, lien, or judgment and have the instrument ~~same~~
49 acknowledged, or proven, and duly entered ~~of record in the book~~
50 ~~provided by law for such purposes~~ in the official records of the
51 proper county. Within 60 days after ~~of~~ the date of receipt of
52 the full payment of the mortgage, lien, or judgment, the person
53 required to acknowledge satisfaction of the mortgage, lien, or
54 judgment shall send or cause to be sent the recorded
55 satisfaction to the person who has made the full payment. In the
56 case of a civil action arising out of ~~the provisions of this~~
57 section, the prevailing party is ~~shall be~~ entitled to attorney
58 ~~attorney's~~ fees and costs.

59 (3) ~~(2)~~ Whenever a writ of execution has been issued,
60 docketed, and indexed with a sheriff and the judgment upon which
61 it was issued has been fully paid, it is ~~shall be~~ the
62 responsibility of the party receiving payment to request, in
63 writing, addressed to the sheriff, return of the writ of
64 execution as fully satisfied.

65 Section 2. Present subsections (3) through (13) of section
66 738.102, Florida Statutes, are renumbered as subsections (4)
67 through (14), respectively, and a new subsection (3) is added to
68 that section, to read:

69 738.102 Definitions.—As used in this chapter, the term:

70 (3) "Carrying value" means the fair market value at the



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71 time the assets are received by the fiduciary. For the estates
72 of decedents and trusts described in s. 733.707(3), after the
73 grantor's death, the assets are considered received as of the
74 date of death. If there is a change in fiduciaries, a majority
75 of the continuing fiduciaries may elect to adjust the carrying
76 values to reflect the fair market value of the assets at the
77 beginning of their administration. If such election is made, it
78 must be reflected on the first accounting filed after the
79 election. For assets acquired during the administration of the
80 estate or trust, the carrying value is equal to the acquisition
81 costs of the asset.

82 Section 3. Subsection (3) is added to section 738.103,
83 Florida Statutes, to read:

84 738.103 Fiduciary duties; general principles.—

85 (3) Except as provided in s. 738.1041(9), this chapter
86 pertains to the administration of a trust and is applicable to
87 any trust that is administered in this state or under its law.
88 This chapter also applies to any estate that is administered in
89 this state unless the provision is limited in application to a
90 trustee, rather than a fiduciary.

91 Section 4. Subsections (5) and (11) of section 738.104,
92 Florida Statutes, are amended to read:

93 738.104 Trustee's power to adjust.—

94 ~~(5) (a) A trustee may release the entire power to adjust~~
95 ~~conferred by subsection (1) if the trustee desires to convert an~~
96 ~~income trust to a total return unitrust pursuant to s. 738.1041.~~

97 ~~(b)~~ A trustee may release the entire power to adjust
98 conferred by subsection (1) or may release only the power to
99 adjust from income to principal or the power to adjust from



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100 principal to income if the trustee is uncertain about whether
101 possessing or exercising the power will cause a result described
102 in paragraphs (3) (a)-(e) or paragraph (3) (g) or if the trustee
103 determines that possessing or exercising the power will or may
104 deprive the trust of a tax benefit or impose a tax burden not
105 described in subsection (3).

106 ~~(e) A release under this subsection may be permanent or for~~
107 ~~a specified period, including a period measured by the life of~~
108 ~~an individual. Notwithstanding anything contrary to this~~
109 ~~subsection, a release of the power to adjust pursuant to~~
110 ~~paragraph (a) shall remain effective only for as long as the~~
111 ~~trust is administered as a unitrust pursuant to s. 738.1041.~~

112 ~~(11) This section shall be construed as pertaining to the~~
113 ~~administration of a trust and is applicable to any trust that is~~
114 ~~administered either in this state or under Florida law.~~

115 Section 5. Section 738.1041, Florida Statutes, is amended
116 to read:

117 738.1041 Total return unitrust.-

118 (1) For purposes of this section, the term:

119 (a) "Average fair market value" means the average of the
120 fair market values of assets held by the trust at the beginning
121 of the current and each of the 2 preceding years, or for the
122 entire term of the trust if there are less than 2 preceding
123 years, and adjusted as follows:

124 1. If assets have been added to the trust during the years
125 used to determine the average, the amount of each addition is
126 added to all years in which such addition was not included.

127 2. If assets have been distributed from the trust during
128 the years used to determine the average, other than in



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129 satisfaction of the unitrust amount, the amount of each
130 distribution is subtracted from all years in which such
131 distribution was not included.

132 (b)~~(a)~~ "Disinterested person" means a person who is not a
133 "related or subordinate party" ~~as defined in s. 672(c) of the~~
134 ~~United States Internal Revenue Code, 26 U.S.C. ss. 1 et seq., or~~
135 ~~any successor provision thereof,~~ with respect to the person then
136 acting as trustee of the trust and excludes the grantor and any
137 interested trustee.

138 (c)~~(b)~~ "Fair market value" means the fair market value of
139 the assets held by the trust as otherwise determined under this
140 chapter, reduced by all known noncontingent liabilities.

141 (d)~~(c)~~ "Income trust" means a trust, created by ~~either~~ an
142 inter vivos or a testamentary instrument, which directs or
143 permits the trustee to distribute the net income of the trust to
144 one or more persons, ~~either~~ in fixed proportions or in amounts
145 or proportions determined by the trustee and regardless of
146 whether the trust directs or permits the trustee to distribute
147 the principal of the trust to one or more such persons.

148 (e)~~(d)~~ "Interested distributee" means a person to whom
149 distributions of income or principal can currently be made and
150 who has the power to remove the existing trustee and designate
151 as successor a person who may be a "related or subordinate
152 party," ~~as defined in the Internal Revenue Code, 26 U.S.C. s.~~
153 ~~672(e),~~ with respect to such distributee.

154 (f)~~(e)~~ "Interested trustee" means an individual trustee to
155 whom the net income or principal of the trust can currently be
156 distributed or would be distributed if the trust were then to
157 terminate and be distributed, any trustee whom an interested



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158 distributee has the power to remove and replace with a related
159 or subordinate party ~~as defined in paragraph (d)~~, or an
160 individual trustee whose legal obligation to support a
161 beneficiary may be satisfied by distributions of income and
162 principal of the trust.

163 (g) "Related or subordinate party" has the same meaning as
164 provided in 26 U.S.C. s. 672(c) of the Internal Revenue Code, or
165 any successor provision thereof.

166 (h) ~~(f)~~ "Unitrust amount" means the amount determined by
167 multiplying the average fair market value of the assets as
168 calculated ~~defined~~ in paragraph (a) ~~(b)~~ by the percentage
169 calculated under paragraph (2) (b).

170 (2) A trustee may, without court approval, convert an
171 income trust to a total return unitrust, reconvert a total
172 return unitrust to an income trust, or change the percentage
173 used to calculate the unitrust amount or the method used to
174 determine the fair market value of the trust if:

175 (a) The trustee adopts a written statement regarding trust
176 distributions which ~~that~~ provides:

177 1. In the case of a trust being administered as an income
178 trust, that future distributions from the trust will be unitrust
179 amounts rather than net income, and indicates the manner in
180 which the unitrust amount will be calculated and the method in
181 which the fair market value of the trust will be determined.

182 2. In the case of a trust being administered as a total
183 return unitrust, that:

184 a. Future distributions from the trust will be net income
185 rather than unitrust amounts; or

186 b. The percentage used to calculate the unitrust amount or



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187 the method used to determine the fair market value of the trust
188 will be changed, and indicates the manner in which the new
189 unitrust amount will be calculated and the method in which the
190 new fair market value of the trust will be determined;

191 (b) The trustee determines the terms of the unitrust under
192 one of the following methods:

193 1. A disinterested trustee determines, or if there is no
194 trustee other than an interested trustee, the interested trustee
195 appoints a disinterested person who, in its sole discretion but
196 acting in a fiduciary capacity, determines for the interested
197 trustee:

198 a. The percentage to be used to calculate the unitrust
199 amount, provided the percentage used is not greater than 5
200 percent nor less than 3 percent;

201 b. The method to be used in determining the fair market
202 value of the trust; and

203 c. Which assets, if any, are to be excluded in determining
204 the unitrust amount; or

205 2. The interested trustee or disinterested trustee
206 administers the trust such that:

207 a. The percentage used to calculate the unitrust amount is
208 50 percent of the ~~applicable federal~~ rate as defined in the
209 Internal Revenue Code, 26 U.S.C. s. 7520, in effect for the
210 month the conversion under this section becomes effective and
211 for each January thereafter; however, if the percentage
212 calculated exceeds 5 percent, the unitrust percentage is ~~shall~~
213 ~~be~~ 5 percent and if the percentage calculated is less than 3
214 percent, the unitrust percentage is ~~shall be~~ 3 percent; and

215 b. The fair market value of the trust shall be determined



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216 at least annually on an asset-by-asset basis, reasonably and in
217 good faith, in accordance with ~~the provisions of~~ s. 738.202(5),
218 except the following property shall not be included in
219 determining the value of the trust:

220 (I) Any residential property or any tangible personal
221 property that, as of the first business day of the current
222 valuation year, one or more current beneficiaries of the trust
223 have or have had the right to occupy, or have or have had the
224 right to possess or control, ~~other than in his or her capacity~~
225 ~~as trustee of the trust~~, and instead the right of occupancy or
226 the right to possession and control ~~is shall be deemed to be~~ the
227 unitrust amount with respect to such property; however, the
228 unitrust amount ~~shall~~ must be adjusted to take into account
229 partial distributions from or receipt into the trust of such
230 property during the valuation year; ~~:-~~

231 (II) Any asset specifically given to a beneficiary and the
232 return on investment on such property, which return on
233 investment shall be distributable to ~~the such~~ the beneficiary; ~~or-~~

234 (III) Any asset while held in a decedent's ~~testator's~~
235 estate;

236 (c) The trustee sends written notice of its intention to
237 take such action, along with copies of the ~~such~~ written
238 statement regarding trust distributions and this section, and,
239 if applicable, the determinations of ~~either~~ the trustee or the
240 disinterested person to:

- 241 1. The grantor of the trust, if living.
- 242 2. All living persons who are currently receiving or
243 eligible to receive distributions of income from ~~of~~ the trust.
- 244 3. All living persons who would receive distributions of



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245 principal of the trust if the trust were to terminate at the
246 time of ~~the~~ giving ~~of~~ such notice ~~(without regard to the~~
247 exercise of any power of appointment,~~)~~ or, if the trust does not
248 provide for its termination, all living persons who would
249 receive or be eligible to receive distributions of income or
250 principal of the trust if the persons identified in subparagraph
251 2. were deceased.

252 4. All persons acting as advisers or protectors of the
253 trust.

254

255 Notice under this paragraph shall be served informally~~,~~ in the
256 manner provided in the Florida Rules of Civil Procedure relating
257 to service of pleadings subsequent to the initial pleading.
258 Notice may be served on a legal representative or natural
259 guardian of a person without ~~the~~ filing ~~of~~ any proceeding or
260 approval of any court;

261 (d) At least one person receiving notice under each of
262 subparagraphs (c)2. and 3. is legally competent; and

263 (e) No person receiving such notice objects, by written
264 instrument delivered to the trustee, to the proposed action of
265 the trustee or the determinations of the disinterested person
266 within 60 days after service of such notice. An objection ~~under~~
267 ~~this section~~ may be executed by a legal representative or
268 natural guardian of a person without ~~the~~ filing ~~of~~ any
269 proceeding or approval of any court.

270 (3) If a trustee desires to convert an income trust to a
271 total return unitrust, reconvert a total return unitrust to an
272 income trust, or change the percentage used to calculate the
273 unitrust amount or the method used to determine a fair market



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274 value of the trust but does not have the ability to or elects
275 not to do it under subsection (2), the trustee may petition the
276 circuit court for such order as the trustee deems appropriate.
277 In that event, the court, in its own discretion or on the
278 petition of such trustee or any person having an income or
279 remainder interest in the trust, may appoint a disinterested
280 person who, acting in a fiduciary capacity, shall present such
281 information to the court as is ~~shall be~~ necessary for the court
282 to make a determination hereunder.

283 ~~(4) All determinations made pursuant to sub-subparagraph~~
284 ~~(2)(b)2.b. shall be conclusive if reasonable and made in good~~
285 ~~faith. Such determination shall be conclusively presumed to have~~
286 ~~been made reasonably and in good faith unless proven otherwise~~
287 ~~in a proceeding commenced by or on behalf of a person interested~~
288 ~~in the trust within the time provided in s. 736.1008. The burden~~
289 ~~will be on the objecting interested party to prove that the~~
290 ~~determinations were not made reasonably and in good faith.~~

291 ~~(4)(5)~~ Following the conversion of an income trust to a
292 total return unitrust, the trustee:

293 (a) Shall treat the unitrust amount as if it were net
294 income of the trust for purposes of determining the amount
295 available, from time to time, for distribution from the trust.

296 (b) May allocate to trust income for each taxable year of
297 the trust, or portion thereof:

298 1. Net short-term capital gain described in the Internal
299 Revenue Code, 26 U.S.C. s. 1222(5), for such year, or portion
300 thereof, but only to the extent that the amount so allocated
301 together with all other amounts allocated to trust income, as
302 determined under the provisions of this chapter without regard



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303 to this section and s. 738.104, for such year, or portion
304 thereof, does not exceed the unitrust amount for such year, or
305 portion thereof.

306 2. Net long-term capital gain described in the Internal
307 Revenue Code, 26 U.S.C. s. 1222(7), for such year, or portion
308 thereof, but only to the extent that the amount so allocated
309 together with all other amounts, including amounts described in
310 subparagraph 1., allocated to trust income for such year, or
311 portion thereof, does not exceed the unitrust amount for such
312 year, or portion thereof.

313 (5)~~(6)~~ In administering a total return unitrust, the
314 trustee may, in its sole discretion but subject to the
315 provisions of the governing instrument, determine:

316 (a) The effective date of the conversion.

317 (b) The timing of distributions, including provisions for
318 prorating a distribution for a short year in which a
319 beneficiary's right to payments commences or ceases.

320 (c) Whether distributions are to be made in cash or in kind
321 or partly in cash and partly in kind.

322 (d) If the trust is reconverted to an income trust, the
323 effective date of such reconversion.

324 (e) Such other administrative issues as may be necessary or
325 appropriate to carry out the purposes of this section.

326 (6)~~(7)~~ Conversion to a total return unitrust under ~~the~~
327 ~~provisions of~~ this section does ~~shall~~ not affect any other
328 provision of the governing instrument, if any, regarding
329 distributions of principal.

330 (7)~~(8)~~ Any trustee or disinterested person who in good
331 faith takes or fails to take any action under this section is



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332 ~~shall~~ not ~~be~~ liable to any person affected by such action or
333 inaction, regardless of whether such person received written
334 notice as provided in this section or ~~and regardless of whether~~
335 such person was under a legal disability at the time of the
336 delivery of such notice. Such person's exclusive remedy is ~~shall~~
337 ~~be~~ to obtain, under subsection (8) ~~(9)~~, an order of the court
338 directing the trustee to convert an income trust to a total
339 return unitrust, to reconvert from a total return unitrust to an
340 income trust, or to change the percentage used to calculate the
341 unitrust amount. If a court determines that the trustee or
342 disinterested person has not acted in good faith in taking or
343 failing to take any action under this section, ~~the provisions of~~
344 s. 738.105(3) applies ~~apply~~.

345 (8) ~~(9)~~ If a majority in interest of ~~either~~ the income or
346 remainder beneficiaries of an income trust has delivered to the
347 trustee a written objection to the amount of the income
348 distributions of the trust, and, if the trustee has failed to
349 resolve the objection to the satisfaction of the objecting
350 beneficiaries within 6 months after ~~from the~~ receipt of such
351 written objection, ~~then~~ the objecting beneficiaries may petition
352 the court in accordance with subsection (3).

353 (9) ~~(10)~~ This section pertains ~~shall be construed as~~
354 ~~pertaining~~ to the administration of a trust and is applicable to
355 any trust that is administered ~~either~~ in this state or under
356 Florida law unless:

357 (a) The governing instrument reflects an intention that the
358 current beneficiary or beneficiaries are to receive an amount
359 other than a reasonable current return from the trust;

360 (b) The trust is a trust described in the Internal Revenue



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361 Code, 26 U.S.C. s. 170(f)(2)(B), s. 642(c)(5), s. 664(d), s.
362 2702(a)(3), or s. 2702(b);

363 (c) One or more persons to whom the trustee could
364 distribute income have a power of withdrawal over the trust:

365 1. That is not subject to an ascertainable standard under
366 the Internal Revenue Code, 26 U.S.C. s. 2041 or s. 2514, and
367 exceeds in any calendar year the amount set forth in the
368 Internal Revenue Code, 26 U.S.C. s. 2041(b)(2) or s. 2514(e); or

369 2. A power of withdrawal over the trust that can be
370 exercised to discharge a duty of support he or she possesses; or

371 (d) The governing instrument expressly prohibits use of
372 this section by specific reference to the section. A provision
373 in the governing instrument that, "The provisions of section
374 738.1041, Florida Statutes, as amended, or any corresponding
375 provision of future law, may shall not be used in the
376 administration of this trust," or similar words reflecting such
377 intent are shall be sufficient to preclude the use of this
378 section; ~~or~~

379 ~~(e) The trust is a trust with respect to which a trustee~~
380 ~~currently possesses the power to adjust under s. 738.104.~~

381 ~~(10)-(11)~~ The grantor of a trust may create an express total
382 return unitrust that ~~which~~ will be ~~become~~ effective as provided
383 in the trust instrument ~~document~~ without requiring a conversion
384 under this section.

385 (a) An express total return unitrust created by the grantor
386 of the trust is ~~shall be~~ treated as a unitrust ~~under this~~
387 ~~section~~ only if the terms of the trust instrument ~~document~~
388 contain all of the following provisions:

389 1.(a) That distributions from the trust will be unitrust



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390 amounts and the manner in which the unitrust amount will be
391 calculated; and ~~the method in which the fair market value of the~~
392 ~~trust will be determined.~~

393 2.(b) The percentage to be used to calculate the unitrust
394 amount, provided the percentage used is not greater than 5
395 percent nor less than 3 percent.

396 (b) The trust instrument may also contain provisions
397 specifying:

398 1.(e) The method to be used in determining the fair market
399 value of the trust, including whether to use an average fair
400 market value or the fair market value of the assets held by the
401 trust at the beginning of the current year; or-

402 2.(d) Which assets, if any, are to be excluded in
403 determining the unitrust amount.

404 (c) This section establishes the method of determining the
405 fair market value of the trust if the trust instrument is silent
406 as to subparagraph (b)1., and to specify those assets, if any,
407 which are to be excluded in determining the unitrust amount if
408 the trust instrument is silent as to subparagraph (b)2.

409 Section 6. Subsections (1), (3), and (4) of section
410 738.105, Florida Statutes, are amended to read:

411 738.105 Judicial control of discretionary powers.—

412 (1) A court may ~~shall~~ not change a trustee's fiduciary's
413 decision to exercise or not to exercise a discretionary power
414 conferred by this chapter unless the court determines that the
415 decision was an abuse of the trustee's fiduciary's discretion. A
416 court may ~~shall~~ not determine that a trustee fiduciary abused
417 its discretion merely because the court would have exercised the
418 discretion in a different manner or would not have exercised the



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419 discretion.

420 (3) If a court determines that a trustee ~~fiduciary~~ has
421 abused its discretion, the remedy is ~~shall be~~ to restore the
422 income and remainder beneficiaries to the positions they would
423 have occupied if the trustee ~~fiduciary~~ had not abused its
424 discretion, in accordance with ~~according to~~ the following rules:

425 (a) To the extent the abuse of discretion has resulted in
426 no distribution to a beneficiary or a distribution that is too
427 small, the court shall require the trustee ~~fiduciary~~ to
428 distribute from the trust to the beneficiary an amount the court
429 determines will restore the beneficiary, in whole or in part, to
430 his or her appropriate position.

431 (b) To the extent the abuse of discretion has resulted in a
432 distribution to a beneficiary that is too large, the court shall
433 restore the beneficiaries, the trust, or both, in whole or in
434 part, to their appropriate positions by requiring the trustee
435 ~~fiduciary~~ to withhold an amount from one or more future
436 distributions to the beneficiary who received the distribution
437 that was too large or requiring that beneficiary to return some
438 or all of the distribution to the trust.

439 (c) To the extent the court is unable, after applying
440 paragraphs (a) and (b), to restore the beneficiaries or, the
441 trust, or both, to the positions they would have occupied if the
442 trustee ~~fiduciary~~ had not abused its discretion, the court may
443 require the trustee ~~fiduciary~~ to pay an appropriate amount from
444 its own funds to one or more of the beneficiaries or the trust
445 or both.

446 (4) Upon the filing of a petition by the trustee ~~fiduciary~~,
447 the court having jurisdiction over the trust ~~or estate~~ shall



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448 determine whether a proposed exercise or nonexercise by the
449 trustee ~~fiduciary~~ of a discretionary power conferred by this
450 chapter will result in an abuse of the trustee's ~~fiduciary's~~
451 discretion. If the petition describes the proposed exercise or
452 nonexercise of the power and contains sufficient information to
453 inform the beneficiaries of the reasons for the proposal, the
454 facts upon which the trustee ~~fiduciary~~ relies, and an
455 explanation of how the income and remainder beneficiaries will
456 be affected by the proposed exercise or nonexercise of the
457 power, a beneficiary who challenges the proposed exercise or
458 nonexercise has the burden of establishing that such exercise or
459 nonexercise will result in an abuse of discretion.

460 Section 7. Subsections (1) through (4) of section 738.201,
461 Florida Statutes, are amended to read:

462 738.201 Determination and distribution of net income.—After
463 a decedent dies, in the case of an estate, or after an income
464 interest in a trust ends, the following rules apply:

465 (1) A fiduciary of an estate or of a terminating income
466 interest shall determine the amount of net income and net
467 principal receipts received from property specifically given to
468 a beneficiary under ~~the rules in ss. 738.301-738.706 which apply~~
469 ~~to trustees and the rules in~~ subsection (5). The fiduciary shall
470 distribute the net income and net principal receipts to the
471 beneficiary who is to receive the specific property.

472 (2) A fiduciary shall determine the remaining net income of
473 a decedent's estate or a terminating income interest under ~~the~~
474 ~~rules in ss. 738.301-738.706 which apply to trustees and by:~~

475 (a) Including in net income all income from property used
476 to discharge liabilities.



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477 (b) Paying from income or principal, in the fiduciary's
478 discretion, fees of attorneys, accountants, and fiduciaries;
479 court costs and other expenses of administration; and interest
480 on death taxes. ~~but~~ The fiduciary may pay those expenses from
481 income of property passing to a trust for which the fiduciary
482 claims an estate tax marital or charitable deduction under the
483 Internal Revenue Code or comparable law of any state only to the
484 extent the payment of those expenses from income will not cause
485 the reduction or loss of the deduction.

486 (c) Paying from principal all other disbursements made or
487 incurred in connection with the settlement of a decedent's
488 estate or the winding up of a terminating income interest,
489 including debts, funeral expenses, disposition of remains,
490 family allowances, and death taxes and related penalties that
491 are apportioned to the estate or terminating income interest by
492 the will, the terms of the trust, or applicable law.

493 (3) If A fiduciary shall distribute to a beneficiary who
494 receives a pecuniary devise amount outright is also entitled to
495 receive the interest or any other amount on the devise under the
496 terms of provided by the will or, the terms of the trust, the
497 fiduciary shall distribute the interest or other amount
498 ~~applicable law~~ from net income determined under subsection (2)
499 or from principal to the extent net income is insufficient. ~~If a~~
500 ~~beneficiary is to receive a pecuniary amount outright from a~~
501 ~~trust after an income interest ends and no interest or other~~
502 ~~amount is provided for by the terms of the trust or applicable~~
503 ~~law, the fiduciary shall distribute the interest or other amount~~
504 ~~to which the beneficiary would be entitled under applicable law~~
505 ~~if the pecuniary amount were required to be paid under a will.~~



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506 (4) A fiduciary shall distribute the net income remaining
507 after distributions required under subsections (1)-(3) ~~by~~
508 ~~subsection (3)~~ in the manner described in s. 738.202 to all
509 other beneficiaries, including a beneficiary who receives a
510 pecuniary amount in trust, even if the beneficiary holds an
511 unqualified power to withdraw assets from the trust or other
512 presently exercisable general power of appointment over the
513 trust.

514 Section 8. Section 738.202, Florida Statutes, is amended to
515 read:

516 738.202 Distribution to residuary and remainder
517 beneficiaries.—

518 (1) Each beneficiary described in s. 738.201(4) is entitled
519 to receive a portion of the net income remaining after the
520 application of s. 738.201(1)-(3), which is equal to the
521 beneficiary's fractional interest in undistributed principal
522 assets, using carrying values as of the distribution date. If a
523 fiduciary makes more than one distribution of assets to
524 beneficiaries to whom this section applies, each beneficiary,
525 including one who does not receive part of the distribution, is
526 entitled, as of each distribution date, to the net income the
527 fiduciary ~~has~~ received after the date of death or terminating
528 event or earlier distribution date but has not distributed as of
529 the current distribution date.

530 (2) In determining a beneficiary's share of net income, the
531 following applies ~~rules apply~~:

532 (a) The beneficiary is entitled to receive a portion of the
533 net income equal to the beneficiary's fractional interest in the
534 carrying value of the undistributed principal assets immediately



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535 before the distribution date, excluding the amount of unpaid
536 liabilities including assets that later may be sold to meet
537 principal obligations.

538 (b) The beneficiary's fractional interest in the
539 undistributed principal assets shall be calculated: without
540 regard to

541 1. At the time the interest began and adjusted for any
542 disproportionate distributions since the interest began;

543 2. By excluding any liabilities of the estate or trust from
544 the calculation;

545 3. By also excluding property specifically given to a
546 beneficiary and property required to pay pecuniary amounts not
547 in trust; and-

548 4. (c) The beneficiary's fractional interest in the
549 undistributed principal assets shall be calculated On the basis
550 of the aggregate carrying value of those assets determined under
551 subsection (1) as of the distribution date without reducing the
552 value by any unpaid principal obligation.

553 (c) If a disproportionate distribution of principal is made
554 to any beneficiary, the respective fractional interests of all
555 beneficiaries in the remaining underlying assets shall be
556 recomputed by:

557 1. Adjusting the carrying value of the principal assets to
558 their fair market value before the distribution;

559 2. Reducing the fractional interest of the recipient of the
560 disproportionate distribution in the remaining principal assets
561 by the fair market value of the principal distribution; and

562 3. Recomputing the fractional interests of all
563 beneficiaries in the remaining principal assets based upon the



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564 now restated carrying values.

565 ~~(d) The distribution date for purposes of this section may~~
566 ~~be the date as of which the fiduciary calculates the value of~~
567 ~~the assets if that date is reasonably near the date on which~~
568 ~~assets are actually distributed.~~

569 (3) If a fiduciary does not distribute all of the collected
570 but undistributed net income to each person as of a distribution
571 date, the fiduciary shall maintain appropriate records showing
572 the interest of each beneficiary in that net income.

573 (4) A fiduciary may apply the provisions of ~~rules in~~ this
574 section, to the extent the fiduciary considers appropriate, to
575 net gain or loss realized after the date of death or terminating
576 event or earlier distribution date from the disposition of a
577 principal asset if this section applies to the income from the
578 asset.

579 (5) The carrying value or fair market value of trust assets
580 shall be determined on an asset-by-asset basis and are ~~shall be~~
581 conclusive if reasonable and determined in good faith.
582 Determinations of fair market value based on appraisals
583 performed within 2 years before or after the valuation date are
584 ~~shall be~~ presumed reasonable. The values ~~value~~ of trust assets
585 are ~~shall be~~ conclusively presumed to be reasonable and
586 determined in good faith unless proven otherwise in a proceeding
587 commenced by or on behalf of a person interested in the trust
588 within the time provided in s. 736.1008.

589 (6) All distributions to a beneficiary shall be valued
590 based on their fair market value on the date of distribution.

591 Section 9. Subsection (4) of section 738.301, Florida
592 Statutes, is amended to read:



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593 738.301 When right to income begins and ends.—An income
594 beneficiary is entitled to net income from the date on which the
595 income interest begins.

596 (4) An income interest ends on the day before an income
597 beneficiary dies or another terminating event occurs, or on the
598 last day of a period during which there is no beneficiary to
599 whom a fiduciary trustee may distribute income.

600 Section 10. Subsections (1) and (2) of section 738.302,
601 Florida Statutes, are amended to read:

602 738.302 Apportionment of receipts and disbursements when
603 decedent dies or income interest begins.—

604 (1) A fiduciary trustee shall allocate an income receipt or
605 disbursement other than one to which s. 738.201(1) applies to
606 principal if the due date of the receipt or disbursement occurs
607 before a decedent dies in the case of an estate or before an
608 income interest begins in the case of a trust or successive
609 income interest.

610 (2) A fiduciary trustee shall allocate an income receipt or
611 disbursement to income if the due date of the receipt or
612 disbursement occurs on or after the date on which a decedent
613 dies or an income interest begins and the due date is a periodic
614 due date. An income receipt or disbursement shall be treated as
615 accruing from day to day if the due date of the receipt or
616 disbursement is not periodic or the receipt or disbursement has
617 no due date. The portion of the receipt or disbursement accruing
618 before the date on which a decedent dies or an income interest
619 begins shall be allocated to principal and the balance shall be
620 allocated to income.

621 Section 11. Subsections (2) and (3) of section 738.303,



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622 Florida Statutes, are amended to read:

623 738.303 Apportionment when income interest ends.—

624 (2) When a mandatory income interest ends, the fiduciary
625 ~~trustee~~ shall pay to a mandatory income beneficiary who survives
626 that date, or the estate of a deceased mandatory income
627 beneficiary whose death causes the interest to end, the
628 beneficiary's share of the undistributed income that is not
629 disposed of under the terms of the trust unless the beneficiary
630 has an unqualified power to revoke more than 5 percent of the
631 trust immediately before the income interest ends. In the latter
632 case, the undistributed income from the portion of the trust
633 that may be revoked shall be added to principal.

634 (3) When a fiduciary's ~~trustee's~~ obligation to pay a fixed
635 annuity or a fixed fraction of the value of the trust's assets
636 ends, the fiduciary ~~trustee~~ shall prorate the final payment if
637 and to the extent required by applicable law to accomplish a
638 purpose of the trust or its grantor relating to income, gift,
639 estate, or other tax requirements.

640 Section 12. Section 738.401, Florida Statutes, is amended
641 to read:

642 738.401 Character of receipts.—

643 (1) For purposes of this section, the term "entity" means a
644 corporation, partnership, limited liability company, regulated
645 investment company, real estate investment trust, common trust
646 fund, or any other organization in which a fiduciary ~~trustee~~ has
647 an interest other than a trust or estate to which s. 738.402
648 applies, a business or activity to which s. 738.403 applies, or
649 an asset-backed security to which s. 738.608 applies.

650 (2) Except as otherwise provided in this section, a



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651 fiduciary trustee shall allocate to income money received from
652 an entity.

653 (3) Except as otherwise provided in this section, a
654 fiduciary trustee shall allocate the following receipts from an
655 entity to principal:

656 (a) Property other than money.

657 (b) Money received in one distribution or a series of
658 related distributions in exchange for part or all of a trust's
659 or estate's interest in the entity.

660 (c) Money received in total or partial liquidation of the
661 entity.

662 (d) Money received from an entity that is a regulated
663 investment company or a real estate investment trust if the
664 money received distributed represents short-term or long-term
665 capital gain realized within the entity.

666 (e) Money received from an entity listed on a public stock
667 exchange during any year of the trust or estate which exceeds 10
668 percent of the fair market value of the trust's or estate's
669 interest in the entity on the first day of that year. The amount
670 to be allocated to principal must be reduced to the extent that
671 the cumulative distributions from the entity to the trust or
672 estate allocated to income does not exceed a cumulative annual
673 return of 3 percent of the fair market value of the interest in
674 the entity at the beginning of each year or portion of a year
675 for the number of years or portion of years in the period that
676 the interest in the entity has been held by the trust or estate.
677 If a trustee has exercised a power to adjust under s. 738.104
678 during any period the interest in the entity has been held by
679 the trust, the trustee, in determining the total income



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680 distributions from that entity, must take into account the
681 extent to which the exercise of that power resulted in income to
682 the trust from that entity for that period. If the income of the
683 trust for any period has been computed under s. 738.1041, the
684 trustee, in determining the total income distributions from that
685 entity for that period, must take into account the portion of
686 the unitrust amount paid as a result of the ownership of the
687 trust's interest in the entity for that period.

688 (4) If a fiduciary trustee elects, or continues an election
689 made by its predecessor, to reinvest dividends in shares of
690 stock of a distributing corporation or fund, whether evidenced
691 by new certificates or entries on the books of the distributing
692 entity, the new shares ~~shall~~ retain their character as income.

693 (5) Money is received in partial liquidation:

694 (a) To the extent the entity, at or near the time of a
695 distribution, indicates that such money is a distribution in
696 partial liquidation; or

697 (b) To the extent ~~If~~ the total amount of money and property
698 received in a distribution or series of related distributions
699 from an entity that is not listed on a public stock exchange
700 exceeds is greater than 20 percent of the trust's or estate's
701 pro rata share of the entity's gross assets, as shown by the
702 entity's year-end financial statements immediately preceding the
703 initial receipt.

704
705 This subsection does not apply to an entity to which subsection
706 (7) applies.

707 (6) Money may not ~~is not received in partial liquidation,~~
708 ~~nor may money~~ be taken into account in determining any excess



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709 under paragraph (5) (b), to the extent that the cumulative
710 distributions from the entity to the trust or the estate
711 allocated to income do not exceed the greater of: such money
712 does not exceed the amount of income tax a trustee or
713 beneficiary must pay on taxable income of the entity that
714 distributes the money.

715 (a) A cumulative annual return of 3 percent of the entity's
716 carrying value computed at the beginning of each period for the
717 number of years or portion of years that the entity was held by
718 the fiduciary. If a trustee has exercised a power to adjust
719 under s. 738.104 during any period the interest in the entity
720 has been held by the trust, the trustee, in determining the
721 total income distributions from that entity, must take into
722 account the extent to which exercise of the power resulted in
723 income to the trust from that entity for that period. If the
724 income of a trust for any period has been computed pursuant to
725 s. 738.1041, the trustee, in determining the total income
726 distributions from the entity for that period, must take into
727 account the portion of the unitrust amount paid as a result of
728 the ownership of the trust's interest in the entity for that
729 period; or

730 (b) If the entity is treated as a partnership, subchapter S
731 corporation, or a disregarded entity pursuant to the Internal
732 Revenue Code of 1986, as amended, the amount of income tax
733 attributable to the trust's or estate's ownership share of the
734 entity, based on its pro rata share of the taxable income of the
735 entity that distributes the money, for the number of years or
736 portion of years that the interest in the entity was held by the
737 fiduciary, calculated as if all of that tax was incurred by the



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738 fiduciary.

739 (7) The following applies ~~special rules shall apply~~ to
740 money ~~moneys~~ or property received by a private trustee as a
741 distribution from an investment entity ~~entities~~ described in
742 this subsection:

743 (a) The trustee shall first treat as income of the trust
744 all of the money or property received from the investment entity
745 in the current year which would be considered income under this
746 chapter if the trustee had directly held the trust's pro rata
747 share of the assets of the investment entity. For this purpose,
748 all distributions received in the current year must be
749 aggregated.

750 (b) The trustee shall next treat as income of the trust any
751 additional money or property received in the current year which
752 would have been considered income in the prior 2 years under
753 paragraph (a) if additional money or property had been received
754 from the investment entity in any of those prior 2 years. The
755 amount to be treated as income shall be reduced by any
756 distributions of money or property made by the investment entity
757 to the trust during the current and prior 2 years which were
758 treated as income under this paragraph.

759 (c) The remainder of the distribution, if any, is treated
760 as principal.

761 (d) As used in this subsection, the term:

762 1. "Investment entity" means an entity, other than a
763 business activity conducted by the trustee described in s.
764 738.403 or an entity that is listed on a public stock exchange,
765 which is treated as a partnership, subchapter S corporation, or
766 disregarded entity pursuant to the Internal Revenue Code of



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767 1986, as amended, and which normally derives 50 percent or more
768 of its annual cumulative net income from interest, dividends,
769 annuities, royalties, rental activity, or other passive
770 investments, including income from the sale or exchange of such
771 passive investments.

772 2. "Private trustee" means a trustee who is a natural
773 person, but only if the trustee is unable to use the power to
774 adjust between income and principal with respect to receipts
775 from entities described in this subsection pursuant to s.
776 738.104. A bank, trust company, or other commercial trustee is
777 not considered a private trustee.

778 (8) This section shall be applied before ss. 738.705 and
779 738.706 and does not modify or change any of the provisions of
780 those sections.

781 ~~(a) Moneys or property received from a targeted entity that~~
782 ~~is not an investment entity which do not exceed the trust's pro~~
783 ~~rata share of the undistributed cumulative net income of the~~
784 ~~targeted entity during the time an ownership interest in the~~
785 ~~targeted entity was held by the trust shall be allocated to~~
786 ~~income. The balance of moneys or property received from a~~
787 ~~targeted entity shall be allocated to principal.~~

788 ~~(b) If trust assets include any interest in an investment~~
789 ~~entity, the designated amount of moneys or property received~~
790 ~~from the investment entity shall be treated by the trustee in~~
791 ~~the same manner as if the trustee had directly held the trust's~~
792 ~~pro rata share of the assets of the investment entity~~
793 ~~attributable to the distribution of such designated amount.~~
794 ~~Thereafter, distributions shall be treated as principal.~~

795 ~~(c) For purposes of this subsection, the following~~



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796 ~~definitions shall apply:~~

797 ~~1. "Cumulative net income" means the targeted entity's net~~
798 ~~income as determined using the method of accounting regularly~~
799 ~~used by the targeted entity in preparing its financial~~
800 ~~statements, or if no financial statements are prepared, the net~~
801 ~~book income computed for federal income tax purposes, for every~~
802 ~~year an ownership interest in the entity is held by the trust.~~
803 ~~The trust's pro rata share shall be the cumulative net income~~
804 ~~multiplied by the percentage ownership of the trust.~~

805 ~~2. "Designated amount" means moneys or property received~~
806 ~~from an investment entity during any year that is equal to the~~
807 ~~amount of the distribution that does not exceed the greater of:~~

808 ~~a. The amount of income of the investment entity for the~~
809 ~~current year, as reported to the trustee by the investment~~
810 ~~entity for federal income tax purposes; or~~

811 ~~b. The amount of income of the investment entity for the~~
812 ~~current year and the prior 2 years, as reported to the trustee~~
813 ~~by the investment entity for federal income tax purposes, less~~
814 ~~any distributions of moneys or property made by the investment~~
815 ~~entity to the trustee during the prior 2 years.~~

816 ~~3. "Investment entity" means a targeted entity that~~
817 ~~normally derives 50 percent or more of its annual cumulative net~~
818 ~~income from interest, dividends, annuities, royalties, rental~~
819 ~~activity, or other passive investments, including income from~~
820 ~~the sale or exchange of such passive investments.~~

821 ~~4. "Private trustee" means a trustee who is an individual,~~
822 ~~but only if the trustee is unable to utilize the power to adjust~~
823 ~~between income and principal with respect to receipts from~~
824 ~~entities described in this subsection pursuant to s. 738.104. A~~



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825 ~~bank, trust company, or other commercial trustee shall not be~~
826 ~~considered to be a private trustee.~~

827 ~~5. "Targeted entity" means any entity that is treated as a~~
828 ~~partnership, subchapter S corporation, or disregarded entity~~
829 ~~pursuant to the Internal Revenue Code of 1986, as amended, other~~
830 ~~than an entity described in s. 738.403.~~

831 ~~6. "Undistributed cumulative net income" means the trust's~~
832 ~~pro rata share of cumulative net income, less all prior~~
833 ~~distributions from the targeted entity to the trust that have~~
834 ~~been allocated to income.~~

835 ~~(d) This subsection shall not be construed to modify or~~
836 ~~change any of the provisions of ss. 738.705 and 738.706 relating~~
837 ~~to income taxes.~~

838 ~~(8) A trustee may rely upon a statement made by an entity~~
839 ~~about the source or character of a distribution, about the~~
840 ~~amount of profits of a targeted entity, or about the nature and~~
841 ~~value of assets of an investment entity if the statement is made~~
842 ~~at or near the time of distribution by the entity's board of~~
843 ~~directors or other person or group of persons authorized to~~
844 ~~exercise powers to pay money or transfer property comparable to~~
845 ~~those of a corporation's board of directors.~~

846 Section 13. Section 738.402, Florida Statutes, is amended
847 to read:

848 738.402 Distribution from trust or estate.—A fiduciary
849 ~~trustee~~ shall allocate to income an amount received as a
850 distribution of income from a trust or an estate in which the
851 trust has an interest other than a purchased interest and ~~shall~~
852 allocate to principal an amount received as a distribution of
853 principal from such a trust or estate. If a fiduciary ~~trustee~~



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854 purchases an interest in a trust that is an investment entity,
855 or a decedent or donor transfers an interest in such a trust to
856 a fiduciary trustee, s. 738.401 or s. 738.608 applies to a
857 receipt from the trust.

858 Section 14. Section 738.403, Florida Statutes, is amended
859 to read:

860 738.403 Business and other activities conducted by
861 fiduciary trustee.—

862 (1) If a fiduciary trustee who conducts a business or other
863 activity determines that it is in the best interest of all the
864 beneficiaries to account separately for the business or activity
865 instead of accounting for the business or activity as part of
866 the trust's or estate's general accounting records, the
867 fiduciary trustee may maintain separate accounting records for
868 the transactions of the such business or other activity, whether
869 or not the assets of such business or activity are segregated
870 from other trust or estate assets.

871 (2) A fiduciary trustee who accounts separately for a
872 business or other activity may determine the extent to which the
873 net cash receipts of the such business or activity must be
874 retained for working capital, the acquisition or replacement of
875 fixed assets, and other reasonably foreseeable needs of the
876 business or activity, and the extent to which the remaining net
877 cash receipts are accounted for as principal or income in the
878 trust's or estate's general accounting records. If a fiduciary
879 trustee sells assets of the business or other activity, other
880 than in the ordinary course of the business or activity, the
881 fiduciary must trustee shall account for the net amount received
882 as principal in the trust's or estate's general accounting



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883 records to the extent the fiduciary trustee determines that the
884 amount received is no longer required in the conduct of the
885 business.

886 (3) Activities for which a fiduciary trustee may maintain
887 separate accounting records include:

888 (a) Retail, manufacturing, service, and other traditional
889 business activities.

890 (b) Farming.

891 (c) Raising and selling livestock and other animals.

892 (d) Management of rental properties.

893 (e) Extraction of minerals and other natural resources.

894 (f) Timber operations.

895 (g) Activities to which s. 738.607 ~~738.608~~ applies.

896 Section 15. Section 738.501, Florida Statutes, is amended
897 to read:

898 738.501 Principal receipts.—A fiduciary trustee shall
899 allocate to principal:

900 (1) To the extent not allocated to income under this
901 chapter, assets received from a donor transferor during the
902 donor's transferor's lifetime, a decedent's estate, a trust with
903 a terminating income interest, or a payor under a contract
904 naming the trust, estate, or fiduciary its trustee as
905 beneficiary.

906 (2) Money or other property received from the sale,
907 exchange, liquidation, or change in form of a principal asset,
908 including realized profit, subject to this section.

909 (3) Amounts recovered from third parties to reimburse the
910 trust or estate because of disbursements described in s.
911 738.702(1)(g) or for other reasons to the extent not based on



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912 the loss of income.

913 (4) Proceeds of property taken by eminent domain; however,
914 ~~but~~ a separate award made for the loss of income with respect to
915 an accounting period during which a current income beneficiary
916 had a mandatory income interest is income.

917 (5) Net income received in an accounting period during
918 which there is no beneficiary to whom a fiduciary ~~trustee~~ may or
919 shall distribute income.

920 (6) Other receipts as provided in ss. 738.601-738.608.

921 Section 16. Section 738.502, Florida Statutes, is amended
922 to read:

923 738.502 Rental property.—If ~~To the extent~~ a fiduciary
924 ~~trustee~~ accounts for receipts from rental property pursuant to
925 this section, the fiduciary ~~trustee~~ shall allocate to income an
926 amount received as rent of real or personal property, including
927 an amount received for cancellation or renewal of a lease. An
928 amount received as a refundable deposit, including a security
929 deposit or a deposit that is to be applied as rent for future
930 periods, must ~~shall~~ be added to principal and held subject to
931 the terms of the lease and is not available for distribution to
932 a beneficiary until the fiduciary's ~~trustee's~~ contractual
933 obligations have been satisfied with respect to that amount.

934 Section 17. Subsections (1), (2), and (3) of section
935 738.503, Florida Statutes, are amended to read:

936 738.503 Obligation to pay money.—

937 (1) An amount received as interest, whether determined at a
938 fixed, variable, or floating rate, on an obligation to pay money
939 to the fiduciary ~~trustee~~, including an amount received as
940 consideration for prepaying principal, shall be allocated to



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941 income without any provision for amortization of premium.

942 (2) Except as otherwise provided herein, a fiduciary
943 ~~trustee~~ shall allocate to principal an amount received from the
944 sale, redemption, or other disposition of an obligation to pay
945 money to the fiduciary ~~trustee~~.

946 (3) The increment in value of a bond or other obligation
947 for the payment of money bearing no stated interest but payable
948 at a future time in excess of the price at which it was issued
949 or purchased, if purchased after issuance, is distributable as
950 income. If the increment in value accrues and becomes payable
951 pursuant to a fixed schedule of appreciation, it may be
952 distributed to the beneficiary who was the income beneficiary at
953 the ~~this~~ time of increment from the first principal cash
954 available or, if none is available, when the increment is
955 realized by sale, redemption, or other disposition. If ~~When~~
956 unrealized increment is distributed as income but out of
957 principal, the principal must ~~shall~~ be reimbursed for the
958 increment when realized. If, in the reasonable judgment of the
959 fiduciary ~~trustee~~, exercised in good faith, the ultimate payment
960 of the bond principal is in doubt, the fiduciary ~~trustee~~ may
961 withhold the payment of incremental interest to the income
962 beneficiary.

963 Section 18. Subsections (1) and (2) of section 738.504,
964 Florida Statutes, are amended to read:

965 738.504 Insurance policies and similar contracts.—

966 (1) Except as otherwise provided in subsection (2), a
967 fiduciary ~~trustee~~ shall allocate to principal the proceeds of a
968 life insurance policy or other contract in which the trust,
969 estate, or fiduciary ~~its trustee~~ is named as beneficiary,



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970 including a contract that insures the trust, estate, or
971 fiduciary ~~its trustee~~ against loss for damage to, destruction
972 of, or loss of title to a trust or estate asset. The fiduciary
973 ~~trustee~~ shall allocate dividends on an insurance policy to
974 income if the premiums on the policy are paid from income and to
975 principal if the premiums are paid from principal.

976 (2) A fiduciary ~~trustee~~ shall allocate to income the
977 proceeds of a contract that insures the fiduciary ~~trustee~~
978 against loss of occupancy or other use by an income beneficiary,
979 loss of income, or, subject to s. 738.403, loss of profits from
980 a business.

981 Section 19. Section 738.601, Florida Statutes, is amended
982 to read:

983 738.601 Insubstantial allocations not required.—If a
984 fiduciary ~~trustee~~ determines that an allocation between
985 principal and income required by s. 738.602, s. 738.603, s.
986 738.604, s. 738.605, or s. 738.608 is insubstantial, the
987 fiduciary ~~trustee~~ may allocate the entire amount to principal
988 unless one of the circumstances described in s. 738.104(3)
989 applies to the allocation. This power may be exercised by a
990 cofiduciary under ~~co~~~~trustee~~ ~~in~~ the circumstances described in s.
991 738.104(4) and may be released for the reasons and in the manner
992 described in s. 738.104(5). An allocation is presumed to be
993 insubstantial if:

994 (1) The amount of the allocation would increase or decrease
995 net income in an accounting period, as determined before the
996 allocation, by less than 10 percent; or

997 (2) The value of the asset producing the receipt for which
998 the allocation would be made is less than 10 percent of the



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999 total value of the trust or estate ~~trust's~~ assets at the
1000 beginning of the accounting period.

1001 Section 20. Section 738.602, Florida Statutes, is amended
1002 to read:

1003 738.602 Payments from deferred compensation plans,
1004 annuities, and retirement plans or accounts.—

1005 (1) As used in ~~For purposes of~~ this section, the term:

1006 (a) "Fund" means a private or commercial annuity, an
1007 individual retirement account, an individual retirement annuity,
1008 a deferred compensation plan, a pension plan, a profit-sharing
1009 plan, a stock-bonus plan, an employee stock-ownership plan, or
1010 another similar arrangement in which federal income tax is
1011 deferred.

1012 (b) "Income of the fund" means income that is determined
1013 according to subsection (2) or subsection (3).

1014 (c) "Nonseparate account" means a fund for which the value
1015 of the participant's or account owner's right to receive
1016 benefits can be determined only by the occurrence of a date or
1017 event as defined in the instrument governing the fund.

1018 (d) "Payment" means a distribution from a fund that a
1019 fiduciary ~~trustee~~ may receive over a fixed number of years or
1020 during the life of one or more individuals because of services
1021 rendered or property transferred to the payor in exchange for
1022 future payments. The term includes a distribution made in money
1023 or property from the payor's general assets or from a fund
1024 created by the payor or payee.

1025 (e) "Separate account" means a fund holding assets
1026 exclusively for the benefit of a participant or account owner
1027 and:



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1028 1. The value of such assets or the value of the separate
1029 account is ascertainable at any time; or
1030 2. The administrator of the fund maintains records that
1031 show receipts and disbursements associated with such assets.
1032 (2) (a) For a fund that is a separate account, income of the
1033 fund shall be determined:
1034 1. As if the fund were a trust subject to the provisions of
1035 ss. 738.401-738.706; or
1036 2. As a unitrust amount calculated by multiplying the fair
1037 market value of the fund as of the first day of the first
1038 accounting period and, thereafter, as of the last day of the
1039 accounting period that immediately precedes the accounting
1040 period during which a payment is received by the percentage
1041 determined in accordance with s. 738.1041(2)(b)2.a. The
1042 fiduciary trustee shall determine such percentage as of the
1043 first month that the fiduciary's trustee's election to treat the
1044 income of the fund as a unitrust amount becomes effective. For
1045 purposes of this subparagraph, "fair market value" means the
1046 fair market value of the assets held in the fund as of the
1047 applicable valuation date determined as provided in this
1048 subparagraph. The fiduciary trustee is not liable for good faith
1049 reliance upon any valuation supplied by the person or persons in
1050 possession of the fund. If the fiduciary trustee makes or
1051 terminates an election under this subparagraph, the fiduciary
1052 ~~trustee~~ shall make such disclosure in a trust disclosure
1053 document that satisfies the requirements of s. 736.1008(4)(a).
1054 (b) The fiduciary may trustee ~~shall have discretion to~~
1055 elect the method of determining the income of the fund pursuant
1056 to this subsection and may change the method of determining



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1057 income of the fund for any future accounting period.

1058 (3) For a fund that is a nonseparate account, income of the
1059 fund is a unitrust amount determined by calculating the present
1060 value of the right to receive the remaining payments under 26
1061 U.S.C. s. 7520 of the Internal Revenue Code as of the first day
1062 of the accounting period and multiplying it by the percentage
1063 determined in accordance with s. 738.1041(2)(b)2.a. The
1064 fiduciary trustee shall determine the unitrust amount as of the
1065 first month that the fiduciary's trustee's election to treat the
1066 income of the fund as a unitrust amount becomes effective.

1067 (4) Except for those trusts described in subsection (5),
1068 the fiduciary trustee shall allocate to income the lesser of the
1069 payment received from a fund or the income determined under
1070 subsection (2) or subsection (3). Any remaining amount of the
1071 payment shall be allocated to principal ~~a payment from a fund as~~
1072 ~~follows:~~

1073 ~~(a) That portion of the payment the payor characterizes as~~
1074 ~~income shall be allocated to income, and any remaining portion~~
1075 ~~of the payment shall be allocated to principal.~~

1076 ~~(b) To the extent that the payor does not characterize any~~
1077 ~~portion of a payment as income or principal and the trustee can~~
1078 ~~ascertain the income of the fund by the fund's account~~
1079 ~~statements or any other reasonable source, the trustee shall~~
1080 ~~allocate to income the lesser of the income of the fund or the~~
1081 ~~entire payment and shall allocate to principal any remaining~~
1082 ~~portion of the payment.~~

1083 ~~(c) If the trustee, acting reasonably and in good faith,~~
1084 ~~determines that neither paragraph (a) nor paragraph (b) applies~~
1085 ~~and all or part of the payment is required to be made, the~~



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1086 ~~trustee shall allocate to income 10 percent of the portion of~~
1087 ~~the payment that is required to be made during the accounting~~
1088 ~~period and shall allocate the balance to principal. If no part~~
1089 ~~of a payment is required to be made or the payment received is~~
1090 ~~the entire amount to which the trustee is entitled, the trustee~~
1091 ~~shall allocate the entire payment to principal. For purposes of~~
1092 ~~this paragraph, a payment is not "required to be made" to the~~
1093 ~~extent the payment is made because the trustee exercises a right~~
1094 ~~of withdrawal.~~

1095 (5) For a trust that which, in order to qualify for the
1096 estate or gift tax marital deduction under the Internal Revenue
1097 Code or comparable law of any state, entitles the spouse to all
1098 of the income of the trust, and the terms of the trust are
1099 silent as to the time and frequency for distribution of the
1100 income of the fund, ~~then:~~

1101 (a) For a fund that is a separate account, unless the
1102 spouse directs the fiduciary trustee to leave the income of the
1103 fund in the fund, the fiduciary trustee shall withdraw and pay
1104 to the spouse, at least no less frequently than annually:

1105 1. All of the income of the fund determined in accordance
1106 with subparagraph (2) (a)1.; or

1107 2. The income of the fund as a unitrust amount determined
1108 in accordance with subparagraph (2) (a)2.

1109 (b) For a fund that is a nonseparate account, the fiduciary
1110 ~~trustee~~ shall withdraw and pay to the spouse, at least no less
1111 ~~frequently than~~ annually, the income of the fund as a unitrust
1112 amount determined in accordance with subsection (3).

1113 (6) This section does not apply to payments to which s.
1114 738.603 applies.



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1115 Section 21. Section 738.603, Florida Statutes, is amended
1116 to read:

1117 738.603 Liquidating asset.—

1118 (1) For purposes of this section, the term "liquidating
1119 asset" means an asset the value of which will diminish or
1120 terminate because the asset is expected to produce receipts for
1121 a period of limited duration. The term includes a leasehold,
1122 patent, copyright, royalty right, and right to receive payments
1123 for during a period of more than 1 year under an arrangement
1124 that does not provide for the payment of interest on the unpaid
1125 balance. The term does not include a payment subject to s.
1126 738.602, resources subject to s. 738.604, timber subject to s.
1127 738.605, an activity subject to s. 738.607, an asset subject to
1128 s. 738.608, or any asset for which the fiduciary trustee
1129 establishes a reserve for depreciation under s. 738.703.

1130 (2) A fiduciary trustee shall allocate to income 5 10
1131 percent of the receipts from the carrying value of a liquidating
1132 asset and the balance to principal. Amounts allocated to
1133 principal shall reduce the carrying value of the liquidating
1134 asset, but not below zero. Amounts received in excess of the
1135 remaining carrying value must be allocated to principal.

1136 Section 22. Subsections (1), (3), and (4) of section
1137 738.604, Florida Statutes, are amended to read:

1138 738.604 Minerals, water, and other natural resources.—

1139 (1) If To the extent a fiduciary trustee accounts for
1140 receipts from an interest in minerals or other natural resources
1141 pursuant to this section, the fiduciary trustee shall allocate
1142 such receipts as follows:

1143 (a) If received as nominal delay rental or nominal annual



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1144 rent on a lease, a receipt shall be allocated to income.

1145 (b) If received from a production payment, a receipt shall
1146 be allocated to income if and to the extent the agreement
1147 creating the production payment provides a factor for interest
1148 or its equivalent. The balance shall be allocated to principal.

1149 (c) If an amount received as a royalty, shut-in-well
1150 payment, take-or-pay payment, bonus, or delay rental is more
1151 than nominal, 90 percent shall be allocated to principal and the
1152 balance to income.

1153 (d) If an amount is received from a working interest or any
1154 other interest not provided for in paragraph (a), paragraph (b),
1155 or paragraph (c), 90 percent of the net amount received shall be
1156 allocated to principal and the balance to income.

1157 (3) This chapter applies whether or not a decedent or donor
1158 was extracting minerals, water, or other natural resources
1159 before the interest became subject to the trust or estate.

1160 (4) If a trust or estate owns an interest in minerals,
1161 water, or other natural resources on January 1, 2003, the
1162 fiduciary trustee may allocate receipts from the interest as
1163 provided in this chapter or in the manner used by the fiduciary
1164 trustee before January 1, 2003. If the trust or estate acquires
1165 an interest in minerals, water, or other natural resources after
1166 January 1, 2003, the fiduciary trustee shall allocate receipts
1167 from the interest as provided in this chapter.

1168 Section 23. Section 738.605, Florida Statutes, is amended
1169 to read:

1170 738.605 Timber.—

1171 (1) ~~If To the extent~~ a fiduciary trustee accounts for
1172 receipts from the sale of timber and related products pursuant



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1173 to this section, the fiduciary trustee shall allocate such the
1174 net receipts as follows:

1175 (a) To income to the extent the amount of timber removed
1176 from the land does not exceed the rate of growth of the timber
1177 during the accounting periods in which a beneficiary has a
1178 mandatory income interest;

1179 (b) To principal to the extent the amount of timber removed
1180 from the land exceeds the rate of growth of the timber or the
1181 net receipts are from the sale of standing timber;

1182 (c) To or between income and principal if the net receipts
1183 are from the lease of timberland or from a contract to cut
1184 timber from land owned by a trust or estate by determining the
1185 amount of timber removed from the land under the lease or
1186 contract and applying the rules in paragraphs (a) and (b); or

1187 (d) To principal to the extent advance payments, bonuses,
1188 and other payments are not allocated pursuant to paragraph (a),
1189 paragraph (b), or paragraph (c).

1190 (2) In determining net receipts to be allocated pursuant to
1191 subsection (1), a fiduciary trustee shall deduct and transfer to
1192 principal a reasonable amount for depletion.

1193 (3) This chapter applies whether or not a decedent or donor
1194 ~~transferor~~ was harvesting timber from the property before the
1195 property became subject to the trust or estate.

1196 (4) If a trust or estate owns an interest in timberland on
1197 January 1, 2003, the fiduciary trustee may allocate net receipts
1198 from the sale of timber and related products as provided in this
1199 chapter or in the manner used by the fiduciary trustee before
1200 January 1, 2003. If the trust or estate acquires an interest in
1201 timberland after January 1, 2003, the fiduciary trustee shall



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1202 allocate net receipts from the sale of timber and related
1203 products as provided in this chapter.

1204 Section 24. Subsection (1) of section 738.606, Florida
1205 Statutes, is amended to read:

1206 738.606 Property not productive of income.—

1207 (1) If a marital deduction under the Internal Revenue Code
1208 or comparable law of any state is allowed for all or part of a
1209 trust the income of which must ~~is required to~~ be distributed to
1210 the grantor's spouse and the assets of which consist
1211 substantially of property that does not provide the spouse with
1212 sufficient income from or use of the trust assets, and if the
1213 amounts the trustee transfers from principal to income under s.
1214 738.104 and distributes to the spouse from principal pursuant to
1215 the terms of the trust are insufficient to provide the spouse
1216 with the beneficial enjoyment required to obtain the marital
1217 deduction, the spouse may require the trustee to make property
1218 productive of income, convert property within a reasonable time,
1219 or exercise the power conferred by ss. 738.104 and 738.1041. The
1220 trustee may decide which action or combination of actions to
1221 take.

1222 Section 25. Subsections (2) and (3) of section 738.607,
1223 Florida Statutes, are amended to read:

1224 738.607 Derivatives and options.—

1225 (2) To the extent a fiduciary ~~trustee~~ does not account
1226 under s. 738.403 for transactions in derivatives, the fiduciary
1227 ~~trustee~~ shall allocate to principal receipts from and
1228 disbursements made in connection with those transactions.

1229 (3) If a fiduciary ~~trustee~~ grants an option to buy property
1230 from the trust or estate whether or not the trust or estate owns



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1231 the property when the option is granted, grants an option that
1232 permits another person to sell property to the trust or estate,
1233 or acquires an option to buy property for the trust or estate or
1234 an option to sell an asset owned by the trust or estate, and the
1235 fiduciary trustee or other owner of the asset is required to
1236 deliver the asset if the option is exercised, an amount received
1237 for granting the option shall be allocated to principal. An
1238 amount paid to acquire the option shall be paid from principal.
1239 A gain or loss realized upon the exercise of an option,
1240 including an option granted to a grantor of the trust or estate
1241 for services rendered, shall be allocated to principal.

1242 Section 26. Subsections (2) and (3) of section 738.608,
1243 Florida Statutes, are amended to read:

1244 738.608 Asset-backed securities.—

1245 (2) If a trust or estate receives a payment from interest
1246 or other current return and from other proceeds of the
1247 collateral financial assets, the fiduciary trustee shall
1248 allocate to income the portion of the payment which the payor
1249 identifies as being from interest or other current return and
1250 ~~shall~~ allocate the balance of the payment to principal.

1251 (3) If a trust or estate receives one or more payments in
1252 exchange for the trust's or estate's entire interest in an
1253 asset-backed security during a single accounting period, the
1254 fiduciary trustee shall allocate the payments to principal. If a
1255 payment is one of a series of payments that will result in the
1256 liquidation of the trust's or estate's interest in the security
1257 over more than a single accounting period, the fiduciary trustee
1258 shall allocate 10 percent of the payment to income and the
1259 balance to principal.



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1260 Section 27. Section 738.701, Florida Statutes, is amended
1261 to read:

1262 738.701 Disbursements from income.—A fiduciary ~~trustee~~
1263 shall make the following disbursements from income to the extent
1264 they are not disbursements to which s. 738.201(2) ~~(a) or (c)~~
1265 applies:

1266 (1) One-half of the regular compensation of the fiduciary
1267 ~~trustee~~ and of any person providing investment advisory or
1268 custodial services to the fiduciary ~~trustee~~.

1269 (2) One-half of all expenses for accountings, judicial
1270 proceedings, or other matters that involve both the income and
1271 remainder interests.

1272 (3) All of the other ordinary expenses incurred in
1273 connection with the administration, management, or preservation
1274 of trust property and the distribution of income, including
1275 interest, ordinary repairs, regularly recurring taxes assessed
1276 against principal, and expenses of a proceeding or other matter
1277 that concerns primarily the income interest.

1278 (4) Recurring premiums on insurance covering the loss of a
1279 principal asset or the loss of income from or use of the asset.

1280 Section 28. Subsection (1) of section 738.702, Florida
1281 Statutes, is amended to read:

1282 738.702 Disbursements from principal.—

1283 (1) A fiduciary ~~trustee~~ shall make the following
1284 disbursements from principal:

1285 (a) The remaining one-half of the disbursements described
1286 in s. 738.701(1) and (2).

1287 (b) All of the trustee's compensation calculated on
1288 principal as a fee for acceptance, distribution, or termination



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1289 and disbursements made to prepare property for sale.

1290 (c) Payments on the principal of a trust debt.

1291 (d) Expenses of a proceeding that concerns primarily
1292 principal, including a proceeding to construe the trust or will,
1293 or to protect the trust, estate, or its property.

1294 (e) Premiums paid on a policy of insurance not described in
1295 s. 738.701(4) of which the trust or estate is the owner and
1296 beneficiary.

1297 (f) Estate, inheritance, and other transfer taxes,
1298 including penalties, apportioned to the trust.

1299 (g) Disbursements related to environmental matters,
1300 including reclamation, assessing environmental conditions,
1301 remedying and removing environmental contamination, monitoring
1302 remedial activities and the release of substances, preventing
1303 future releases of substances, collecting amounts from persons
1304 liable or potentially liable for the costs of such activities,
1305 penalties imposed under environmental laws or regulations and
1306 other payments made to comply with those laws or regulations,
1307 statutory or common law claims by third parties, and defending
1308 claims based on environmental matters.

1309 (h) Payments representing extraordinary repairs or expenses
1310 incurred in making a capital improvement to principal, including
1311 special assessments; however, a fiduciary trustee may establish
1312 an allowance for depreciation out of income to the extent
1313 permitted by s. 738.703.

1314 Section 29. Subsection (2) of section 738.703, Florida
1315 Statutes, is amended to read:

1316 738.703 Transfers from income to principal for
1317 depreciation.-



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1318 (2) A fiduciary trustee may transfer to principal a
1319 reasonable amount of the net cash receipts from a principal
1320 asset that is subject to depreciation but may not transfer any
1321 amount for depreciation:

1322 (a) Of that portion of real property used or available for
1323 use by a beneficiary as a residence or of tangible personal
1324 property held or made available for the personal use or
1325 enjoyment of a beneficiary;

1326 (b) During the administration of a decedent's estate; or

1327 (c) Under this section if the fiduciary trustee is
1328 accounting under s. 738.403 for the business or activity in
1329 which the asset is used.

1330 Section 30. Subsections (1), (2), and (3) of section
1331 738.704, Florida Statutes, are amended to read:

1332 738.704 Transfers from income to reimburse principal.—

1333 (1) If a fiduciary trustee makes or expects to make a
1334 principal disbursement described in this section, the fiduciary
1335 ~~trustee~~ may transfer an appropriate amount from income to
1336 principal in one or more accounting periods to reimburse
1337 principal or to provide a reserve for future principal
1338 disbursements.

1339 (2) Principal disbursements to which subsection (1) applies
1340 include the following, but only to the extent the fiduciary
1341 ~~trustee~~ has not been and does not expect to be reimbursed by a
1342 third party:

1343 (a) An amount chargeable to income but paid from principal
1344 because the amount is unusually large.

1345 (b) Disbursements made to prepare property for rental,
1346 including tenant allowances, leasehold improvements, and



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1347 broker's commissions.

1348 (c) Disbursements described in s. 738.702(1)(g).

1349 (3) If the asset the ownership of which gives rise to the
1350 disbursements becomes subject to a successive income interest
1351 after an income interest ends, a fiduciary ~~trustee~~ may continue
1352 to transfer amounts from income to principal as provided in
1353 subsection (1).

1354 Section 31. Section 738.705, Florida Statutes, is amended
1355 to read:

1356 738.705 Income taxes.—

1357 (1) A tax required to be paid by a fiduciary ~~trustee~~ based
1358 on receipts allocated to income shall be paid from income.

1359 (2) A tax required to be paid by a fiduciary ~~trustee~~ based
1360 on receipts allocated to principal shall be paid from principal,
1361 even if the tax is called an income tax by the taxing authority.

1362 (3) A tax required to be paid by a fiduciary ~~trustee~~ on the
1363 trust's or estate's share of an entity's taxable income shall be
1364 paid proportionately:

1365 (a) From income to the extent receipts from the entity are
1366 allocated to income; ~~and~~

1367 (b) From principal to the extent:

1368 ~~1. receipts from the entity are allocated to principal; and~~

1369 ~~2. The trust's share of the entity's taxable income exceeds~~
1370 ~~the total receipts described in paragraph (a) and subparagraph~~
1371 ~~1.~~

1372 (c) From principal to the extent that the income taxes
1373 payable by the trust or estate exceed the total receipts from
1374 the entity.

1375 (4) After applying subsections (1)-(3), the fiduciary shall



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1376 adjust income or principal receipts to the extent that the
1377 trust's or estate's income taxes are reduced, but not
1378 eliminated, because the trust or estate receives a deduction for
1379 payments made to a beneficiary. The amount distributable to that
1380 beneficiary as income as a result of this adjustment shall be
1381 equal to the cash received by the trust or estate, reduced, but
1382 not below zero, by the entity's taxable income allocable to the
1383 trust or estate multiplied by the trust's or estate's income tax
1384 rate. The reduced amount shall be divided by the difference
1385 between 1 and the trust's or estate's income tax rate in order
1386 to determine the amount distributable to that beneficiary as
1387 income before giving effect to other receipts or disbursements
1388 allocable to that beneficiary's interest. For purposes of this
1389 section, receipts allocated to principal or income shall be
1390 reduced by the amount distributed to a beneficiary from
1391 principal or income for which the trust receives a deduction in
1392 calculating the tax.

1393 Section 32. Section 738.801, Florida Statutes, is amended
1394 to read:

1395 (Substantial rewording of section. See
1396 s. 738.801, F.S., for present text.)

1397 738.801 Apportionment of expenses; improvements.-

1398 (1) For purposes of this section, the term:

1399 (a) "Remainderman" means the holder of the remainder
1400 interests after the expiration of a tenant's estate in property.

1401 (b) "Tenant" means the holder of an estate for life or term
1402 of years in real property or personal property, or both.

1403 (2) If a trust has not been created, expenses shall be
1404 apportioned between the tenant and remainderman as follows:



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1405 (a) The following expenses are allocated to and shall be
1406 paid by the tenant:

1407 1. All ordinary expenses incurred in connection with the
1408 administration, management, or preservation of the property,
1409 including interest, ordinary repairs, regularly recurring taxes
1410 assessed against the property, and expenses of a proceeding or
1411 other matter that concerns primarily the tenant's estate or use
1412 of the property.

1413 2. Recurring premiums on insurance covering the loss of the
1414 property or the loss of income from or use of the property.

1415 3. Any of the expenses described in subparagraph (b)3.
1416 which are attributable to the use of the property by the tenant.

1417 (b) The following expenses are allocated to and shall be
1418 paid by the remainderman:

1419 1. Payments on the principal of a debt secured by the
1420 property, except to the extent the debt is for expenses
1421 allocated to the tenant.

1422 2. Expenses of a proceeding or other matter that concerns
1423 primarily the title to the property, other than title to the
1424 tenant's estate.

1425 3. Except as provided in subparagraph (a)3., expenses
1426 related to environmental matters, including reclamation,
1427 assessing environmental conditions, remedying and removing
1428 environmental contamination, monitoring remedial activities and
1429 the release of substances, preventing future releases of
1430 substances, collecting amounts from persons liable or
1431 potentially liable for the costs of such activities, penalties
1432 imposed under environmental laws or regulations and other
1433 payments made to comply with those laws or regulations,



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1434 statutory or common law claims by third parties, and defending
1435 claims based on environmental matters.

1436 4. Extraordinary repairs.

1437 (c) If the tenant or remainderman incurred an expense for
1438 the benefit of his or her own estate without consent or
1439 agreement of the other, he or she must pay such expense in full.

1440 (d) Except as provided in paragraph (c), the cost of, or
1441 special taxes or assessments for, an improvement representing an
1442 addition of value to property forming part of the principal
1443 shall be paid by the tenant if the improvement is not reasonably
1444 expected to outlast the estate of the tenant. In all other
1445 cases, only a part shall be paid by the tenant while the
1446 remainder shall be paid by the remainderman. The part payable by
1447 the tenant is ascertainable by taking that percentage of the
1448 total that is found by dividing the present value of the
1449 tenant's estate by the present value of an estate of the same
1450 form as that of the tenant, except that it is limited for a
1451 period corresponding to the reasonably expected duration of the
1452 improvement. The computation of present values of the estates
1453 shall be made by using the rate defined in 26 U.S.C. s. 7520,
1454 then in effect and, in the case of an estate for life, the
1455 official mortality tables then in effect under 26 U.S.C. s.
1456 7520. Other evidence of duration or expectancy may not be
1457 considered.

1458 (3) This section does not apply to the extent it is
1459 inconsistent with the instrument creating the estates, the
1460 agreement of the parties, or the specific direction of the
1461 taxing or other statutes.

1462 (4) The common law applicable to tenants and remaindermen



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1463 supplements this section, except as modified by this section or
1464 other laws.

1465 Section 33. This act shall take effect January 1, 2013.

1466
1467 ===== T I T L E A M E N D M E N T =====

1468 And the title is amended as follows:

1469 Delete everything before the enacting clause
1470 and insert:

1471 A bill to be entitled

1472 An act relating to fiduciaries; amending s. 701.04,
1473 F.S.; requiring a mortgage holder to provide certain
1474 information within a specified time relating to the
1475 unpaid loan balance due under a mortgage if a
1476 mortgagor, a record title owner of the property, a
1477 fiduciary or trustee lawfully acting on behalf of a
1478 record title owner, or any person lawfully authorized
1479 to act on behalf of a mortgagor or record title owner
1480 of the property makes a written request under certain
1481 circumstances; allowing financial institutions to
1482 release certain mortgagor information to specified
1483 persons without penalty; amending s. 738.102, F.S.;
1484 defining the term "carrying value"; amending s.
1485 738.103, F.S.; providing for application; amending s.
1486 738.104, F.S.; deleting a provision authorizing a
1487 trustee to release the power to adjust between
1488 principal and income if the trustee desires to convert
1489 the form of certain trusts; limiting the power to
1490 adjust a trust; deleting a provision that provides
1491 construction and application relating to the



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1492 administration of trusts in this state or under this
1493 state's law; amending s. 738.1041, F.S.; defining the
1494 term "average fair market value" and revising the term
1495 "unitrust amount"; deleting a duplicative provision
1496 relating to conclusive determinations of the terms of
1497 a unitrust; revising provisions relating to an express
1498 total return unitrust; amending s. 738.105, F.S.;
1499 substituting the term "trustee" for "fiduciary" with
1500 respect to judicial control of discretionary powers;
1501 amending s. 738.201, F.S.; revising provisions
1502 relating to the determination and distribution of net
1503 income; amending s. 738.202, F.S.; revising provisions
1504 relating to distributions to residuary and remainder
1505 beneficiaries; amending ss. 738.301, 738.302, and
1506 738.303, F.S.; substituting the term "fiduciary" for
1507 "trustee" to clarify that provisions apply to all
1508 fiduciaries; amending s. 738.401, F.S.; substituting
1509 the term "fiduciary" for "trustee" to clarify that
1510 provisions apply to all fiduciaries; revising how
1511 distributions from entities are allocated between
1512 income and principal; amending ss. 738.402, 738.403,
1513 738.501, 738.502, 738.503, 738.504, and 738.601, F.S.;
1514 substituting the term "fiduciary" for "trustee" to
1515 clarify that provisions apply to all fiduciaries;
1516 amending s. 738.602, F.S.; substituting the term
1517 "fiduciary" for "trustee" to clarify that provisions
1518 apply to all fiduciaries; revising provisions relating
1519 to allocations to trusts; amending s. 738.603, F.S.;
1520 substituting the term "fiduciary" for "trustee" to



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1521 clarify that provisions apply to all fiduciaries;
1522 revising provisions relating to the allocation between
1523 income and principal when liquidating assets; amending
1524 ss. 738.604, 738.605, 738.606, 738.607, 738.608,
1525 738.701, 738.702, 738.703, and 738.704, F.S.;
1526 substituting the term "fiduciary" for "trustee" to
1527 clarify that provisions apply to all fiduciaries;
1528 amending s. 738.705, F.S.; substituting the term
1529 "fiduciary" for "trustee" to clarify that provisions
1530 apply to all fiduciaries; revising the method for
1531 allocating income taxes between income and principal;
1532 amending s. 738.801, F.S.; clarifying the
1533 apportionment of expenses between tenants and
1534 remaindermen; providing an effective date.

By Senator Bogdanoff

25-00953-12

20121050__

1 A bill to be entitled
 2 An act relating to mortgages; amending s. 701.04,
 3 F.S.; requiring that the holder of a mortgage deliver
 4 an estoppel letter containing certain information
 5 regarding the unpaid balance of the loan secured by
 6 the mortgage to an owner of an interest in property
 7 encumbered by the mortgage, upon request; providing
 8 that if the requestor is not the mortgagor, the
 9 estoppel letter need not contain an itemization of the
 10 unpaid balance of the loan, but must include a per-day
 11 amount for the unpaid balance; requiring that an owner
 12 of an interest in property encumbered by a mortgage
 13 include, along with the request, a copy of the
 14 instrument showing an ownership interest in the
 15 property; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Subsection (1) of section 701.04, Florida
 20 Statutes, is amended to read:

21 701.04 Cancellation of mortgages, liens, and judgments.—

22 (1) Within 14 days after receiving a receipt of the written
 23 request by of a mortgagor or an owner of an interest in property
 24 encumbered by a mortgage, the holder of a mortgage shall
 25 deliver, or cause to be delivered through the mortgage servicer,
 26 to the requestor mortgagor at a place designated in the written
 27 request an estoppel letter setting forth the unpaid balance of
 28 the loan secured by the mortgage, including principal, interest,
 29 and any other charges properly due under or secured by the

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

25-00953-12

20121050__

30 mortgage and interest on a per-day basis for the unpaid balance.
 31 However, if the requestor is not the mortgagor, the estoppel
 32 letter need not contain an itemization of the unpaid balance of
 33 the loan secured by the mortgage, but must include a per-day
 34 amount for the unpaid balance. An owner of an interest in
 35 property encumbered by a mortgage shall include, along with the
 36 request, a copy of the instrument showing an ownership interest
 37 in the property. Whenever the amount of money due on any
 38 mortgage, lien, or judgment ~~is shall be~~ fully paid to the person
 39 or party entitled to the payment thereof, the mortgagee,
 40 creditor, or assignee, or the attorney of record in the case of
 41 a judgment, to whom such payment ~~has shall have~~ been made, shall
 42 execute in writing an instrument acknowledging satisfaction of
 43 the said mortgage, lien, or judgment and have the same
 44 acknowledged, or proven, and duly entered of record in the book
 45 provided by law for such purposes in the proper county. Within
 46 60 days ~~after of~~ the date of receiving receipt of the full
 47 payment of the mortgage, lien, or judgment, the person required
 48 to acknowledge satisfaction of the mortgage, lien, or judgment
 49 shall send or cause to be sent the recorded satisfaction to the
 50 person who has made the full payment. In the case of a civil
 51 action arising out of the provisions of this section, the
 52 prevailing party ~~is shall be~~ entitled to attorney attorney's
 53 fees and costs.

54 Section 2. This act shall take effect upon becoming a law.

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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 Health Regulation Committee

BILL: CS/SB 1052

INTRODUCER: Health Regulation Committee and Senator Ring

SUBJECT: Newborn Screening for Critical Congenital Heart Disease

DATE: January 26, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wilson	Stovall	HR	Fav/CS
2.	Burgess	Burgess	BI	Favorable
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:

The bill requires all licensed hospitals and licensed birth centers that provide maternity and newborn care to screen all newborns, prior to discharge, for Critical Congenital Heart Disease (CCHD). For a home birth, the health care provider in attendance is responsible for the screening for CCHD. A parent or legal guardian may object to the screening with a signed written objection. If the parent or legal guardian objects, the screening must not be completed.

The bill defines screening to mean measuring blood oxygen saturation using pulse oximetry to determine whether the newborn needs additional diagnostic evaluation for CCHD. The bill requires each hospital to designate a lead physician to be responsible for programmatic oversight of the screening and to ensure that appropriate referrals are completed. Each birth center must designate a licensed health care provider to provide programmatic oversight and to ensure that appropriate referrals are being completed.

The bill provides specific rulemaking authority to the Department of Health (DOH or department) and defines the powers and duties of the department for administering the screening requirements.

This bill creates section 383.146 of the Florida Statutes.

II. Present Situation:

Congenital Heart Disease

Congenital Heart Disease (CHD) is a term that embraces a variety of defects that are present in the structure of the heart at birth. Defects may involve the interior walls of the heart, valves inside the heart, or the arteries and veins that carry blood to the heart or out to the body. These congenital defects change the normal flow of blood through the heart, leading to a range of conditions and symptoms. CHD affects about 7 to 9 of every 1,000 live births in the United States and Europe and is the most common cause of death in the first year of life, with defects accounting for 3 percent of all infant deaths and more than 40 percent of all deaths due to congenital malformations.¹

Critical CHD is a subset of congenital heart defects that causes severe and life-threatening symptoms and requires intervention within the first days or first year of life. Critical Congenital Cyanotic Heart Disease is a group of congenital heart defects characterized by a diminished availability of oxygen to the body tissues.

Current methods for detecting CHD generally include prenatal ultrasound screening and careful and repeated clinical examinations, both in the hospital nursery and as part of routine well-child care. CCHD and Critical Congenital Cyanotic Heart Disease are often missed by hospital discharge and post-discharge clinical exams of infants.

Pulse oximetry screening can identify some newborns with CCHD. A pulse oximeter is a medical device that measures the percentage of hemoglobin in the blood that is saturated with oxygen. The device indirectly monitors the oxygen saturation of a patient's blood without the need to take a blood sample. It is estimated that one quarter of congenital heart defects could be detected and potentially treated by measuring blood oxygen saturation.² Neonates with abnormal pulse oximetry screening results need confirmatory testing for the cause of the low oxygen saturation, and immediate intervention, often involving a surgical procedure.

A screen is considered positive if: any oxygen saturation measure is less than 90 percent (in the initial screen or in repeat screens); oxygen saturation is less than 95 percent in the right hand and foot on three measures, each separated by 1 hour; or a greater than 3 percent absolute difference exists in oxygen saturation between the right hand and foot on three measures, each separated by one hour. Any screening that is greater than or equal to 95 percent in the right hand or foot with a

¹ Letter dated October 15, 2010, to The Honorable Kathleen Sebelius, Secretary of Health and Human Services, from R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children. Found at:

<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/criticalcongenital.pdf> (Last visited on January 23, 2012).

² Letter dated September 21, 2011, to R. Rodney Howell, M.D., Chairperson of the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children, from The Honorable Kathleen Sebelius, Secretary of Health and Human Services. Found at:

<http://www.hrsa.gov/advisorycommittees/mchbadvisory/heritabledisorders/recommendations/correspondence/cyanoticheartsecre09212011.pdf> (Last visited on January 23, 2012).

less than or equal to 3 percent absolute difference in oxygen saturation between the right hand or foot is considered a negative screen and screening would end.³

Any infant with a positive screen should have a diagnostic echocardiogram. The infant's pediatrician should be notified immediately and the infant might need to be seen by a cardiologist for follow-up.⁴

Newborn Screening

All babies born in the United States are checked for certain medical conditions soon after birth. This is called newborn screening. Over 4 million infants are screened each year. Newborn screening identifies conditions that can affect a child's long-term health or survival. Early detection, diagnosis, and intervention can prevent death or disability and enable children to reach their full potential. All babies are screened, even if they look healthy, because some medical conditions cannot be seen by just looking at the baby. Each state runs its own newborn screening program.

Newborn screening usually takes place before a newborn leaves the hospital. Most tests use a few drops of blood from pricking the baby's heel. The blood specimen is placed on a special filter paper and, in Florida, the specimen card is sent to the DOH Newborn Screening Laboratory in Jacksonville for testing. The laboratory receives about 250,000 specimens annually from babies born in Florida. The majority of the test results are reported within 24-48 hours. The DOH Children's Medical Services program provides the follow-up for all abnormal screening results.

Section 383.14, F.S., requires the Florida DOH to promote the screening of all newborns born in Florida for metabolic, hereditary, and congenital disorders known to result in significant impairment of health or intellect, *as screening programs accepted by current medical practice become available and practical in the judgment of the department.*

Section 383.145, F.S., establishes the state's newborn and infant hearing screening program. Hospitals perform the hearing screening on all babies prior to discharge. Licensed birth centers are required to provide referrals for the hearing screening. A hearing test involves placing a tiny earphone in the baby's ear and measuring his or her response to sound. If a screening test suggests a problem, the baby's doctor will follow up with further testing.

Most states screen for a standard number of conditions, but some states may screen for more conditions. Florida currently screens for 35 disorders, including hearing impairment, but does not screen for CHD.⁵ The National Newborn Screening and Genetics Resource Center provides a current list of conditions included in each state's newborn screening program. As of

³ *Pulse Oximetry Screening for Critical Congenital Heart Defects*, Centers for Disease Control and Prevention. Found at: <<http://www.cdc.gov/ncbddd/pediatricgenetics/pulse.html>> (Last visited on January 23, 2012).

⁴ *Id.*

⁵ See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

December 19, 2011, only one state (New Jersey) requires screening of all newborns for congenital heart disease, but the requirement has not yet been implemented.⁶

Adding Conditions to Required Screening

The DOH is required, after consultation with the Genetics and Newborn Screening Advisory Council, to adopt rules requiring every newborn in this state, prior to becoming 1 week of age, to be subjected to a test for phenylketonuria and, at the appropriate age, to be tested for other metabolic diseases and hereditary or congenital disorders *as the department deems necessary*.⁷ The purpose of the Genetics and Newborn Screening Advisory Council⁸ is to advise the department about:

- Conditions for which testing should be included under the screening program and the genetics program.
- Procedures for collection and transmission of specimens and recording of results.
- Methods whereby screening programs and genetics services for children now provided or proposed to be offered in the state may be more effectively evaluated, coordinated, and consolidated.

At the national level, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children advises the Secretary, U.S. Department of Health and Human Services, on the most appropriate application of universal newborn screening tests, technologies, policies, guidelines and standards. The advisory committee recommends conditions that should be added to the Recommended Uniform Screening Panel.

On September 17, 2010, the Secretary's Advisory Committee on Heritable Disorders in Newborns and Children recommended that Critical Congenital *Cyanotic* Heart Disease be added to the Recommended Uniform Screening Panel.⁹ Secretary Sebelius accepted the committee's recommendation on September 21, 2011, and CCHD screening was added to the Recommended Uniform Screening Panel as a core condition.¹⁰ The Secretary included a broader group of congenital heart defects (Critical CHD) than what the Advisory Committee had originally recommended (Critical Congenital Cyanotic Heart Disease).

On January 20, 2012, the Florida Genetics and Newborn Screening Advisory Council recommended that CHD be added to the panel of disorders screened in the Florida Newborn Screening Program.

⁶ National Newborn Screening Status Report, updated 11/21/11. Found at: <<http://genes-r-us.uthscsa.edu/nbsdisorders.pdf>> (Last visited on January 23, 2012).

⁷ s. 383.14(2), F.S.

⁸ s. 383.14(5), F.S.

⁹ Supra, fn 1.

¹⁰ Supra, fn 2.

Hospital, Birth Center, and Home Deliveries

In 2010 there were 214,519 resident live births in Florida.¹¹ Of these births, 211,485 (98.6 percent) occurred in hospitals and physicians attended 88.5 percent of the hospital births.¹² Midwives attended 10.9 percent of live births in hospitals. Birth centers accounted for 1,377 births (0.64 percent of live births) and midwives attended 96.9 percent of birth center births. Physicians attended 2.8 percent of birth center births. In 2010, there were 1,508 births in an identified place other than a hospital or birth center and 149 births where the place of delivery was unknown.¹³

Hospitals are licensed and regulated under ch. 395, F.S., and part II of ch. 408, F.S. Birth centers are licensed and regulated under ss. 383.30-383.335, F.S., and part II of ch. 408, F.S. There are 23 licensed birth centers in Florida.

Health Insurance

Section 627.6416, F.S., requires individual health insurance policies that provide coverage on an expense-incurred basis, which provide coverage for a member of a family of the insured or subscriber, to include, for children, coverage for child health supervision services. These services are covered from the moment of birth to age 16 years. The term “child health supervision services” means physician-delivered or physician-supervised services that include, at a minimum, periodic visits including a history, a physical examination, a developmental assessment and anticipatory guidance, and appropriate immunizations and laboratory tests. These services must be provided in accordance with prevailing medical standards consistent with the Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics. The recommendations currently include newborn metabolic and hemoglobin screening.

The same child health supervision requirements applicable to individual health insurance policies are also applied to group, blanket, and franchise health insurance policies under s. 627.6579, F.S., and to health maintenance organization contracts under s. 641.31(30), F.S.

Insurance Mandates

Pursuant to s. 624.215, F.S., every person or organization seeking consideration of a legislative proposal which would mandate a health coverage or the offering of a health coverage by an insurance carrier, health care service contractor, or health maintenance organization as a component of individual or group policies, must submit to the Agency for Health Care Administration (Agency) and the legislative committee having jurisdiction a report which assesses the social and financial impacts of the proposed coverage.

¹¹ Department of Health, *2010 Florida Vital Statistics Annual Report – Live Births*. Found at: <<http://www.flpublichealth.com/VSBOOK/pdf/2010/Births.pdf>> (Last visited on January 23, 2012).

¹² *Id.*

¹³ *Id.*

Medicaid

Medicaid is the medical assistance program that provides access to health care for low-income families and individuals. Medicaid also assists aged and disabled people with the costs of nursing facility care and other medical expenses. The Agency is responsible for Medicaid. Medicaid serves approximately 3.19 million people in Florida, with over half of those being children and adolescents 20 years of age or younger. Estimated Medicaid expenditures for FY 2011-2012 are approximately \$20.3 billion.

The total number of live births paid for by Medicaid through fee for service and health maintenance organizations during FY 2010-2011 was 130,989.¹⁴

Under s. 383.145(3)(j), F.S., which establishes the requirements for newborn and infant hearing screening, the Medicaid program must cover the initial procedure for screening the hearing of newborns or infants and any medically necessary follow-up reevaluations leading to diagnosis. These services are reimbursable under Medicaid as an expense compensated supplemental to the per diem rate for Medicaid patients enrolled in MediPass or Medicaid patients covered by a fee for service program. For Medicaid patients who are enrolled in a health maintenance organization, Medicaid must reimburse providers directly at the Medicaid rate. These services may not be considered a covered service for the purposes of establishing the payment rate for Medicaid health maintenance organizations. Nonhospital-based providers are eligible to bill Medicaid for the professional and technical component of each procedure code.

Medicaid pays hospitals a per diem rate for hospital inpatient services based on hospital cost reports. Cost reports are submitted annually and rates are adjusted as appropriate. Standard testing of a patient's vital signs is included in the per diem rate regardless of the Medicaid recipient's age. Measuring blood oxygen saturation using pulse oximetry is considered a standard part of testing a patient's vital signs. A separate screening for newborns for congenital heart disease is not currently reimbursed by Medicaid other than as a part of the hospital per diem rate. Medicaid currently does not reimburse separately for the screening of newborns for congenital heart disease in any other setting either.

III. Effect of Proposed Changes:

The bill requires each licensed hospital and birth center that provides maternity and newborn care services to screen all newborns, prior to discharge, for CCHD. This requirement must be implemented by October 1, 2012. For home births, the health care provider in attendance is responsible for the screening.

The bill defines screening to mean measuring blood oxygen saturation using pulse oximetry to determine whether the newborn needs additional diagnostic evaluation for CCHD.

A parent or legal guardian may object to the screening by providing a signed written objection, in which case the screening must not be completed. The physician, midwife, or other person who

¹⁴ See Agency for Health Care Administration 2012 Bill Analysis and Economic Impact Statement for SB 1052 – on file with the Senate Health Regulation Committee.

is attending the newborn is required to maintain a record that the screening has not been performed and attach the written objection.

Appropriate documentation of the screening completion, results, interpretation, and recommendations must be placed in the medical record within 24 hours after completion of the screening procedure.

The bill requires each hospital to formally designate a lead physician to be responsible for programmatic oversight of the newborn CCHD screening and to ensure that the appropriate referrals are being completed following a positive screening test result. The bill requires each birth center to designate a licensed health care provider to be responsible for programmatic oversight and to ensure that the appropriate referrals are being completed.

The DOH is provided with specific rulemaking authority. The bill requires the department to administer and provide services pursuant to this newly created section of law and specifically to:

- Furnish all physicians, county health departments, perinatal centers, birthing centers, and hospitals forms on which the results of tests for CCHD are to be reported to the department.
- Charge and collect fees sufficient to administer the newborn screening program for CCHD.

The effective date of the bill is July 1, 2012.

Other Potential Implications:

Section 383.14, F.S., gives the DOH, in consultation with the Genetics and Newborn Screening Advisory Council, the authority to, *by rule*, add to the list of disorders or diseases for which newborns must be screened. This provides a mechanism for newborn screening to be expanded as tests become available that are accepted by current medical practice and that are practical in the judgment of the department. If the department decides that infants should be tested for an additional condition, the department would need budget authority to cover the costs of conducting additional tests, however.

In regard to CCHD, both the federal and state advisory groups have recommended adding CCHD to the list of mandatory newborn screening. If the Legislature provides budget authority to the department, there is no need to specifically include CCHD in the Florida Statutes. If the Legislature does not provide this budget authority, the bill cannot be implemented.

Does the Legislature want to include all thirty-four current mandatory tests in statute and amend the statute in the future to add tests as they become available? Is the need for approval of budget authority a sufficient check to keep the list of mandatory tests from growing out of control? Is the need for approval of budget authority a sufficient check to keep impractical tests from being added to the list of mandatory tests?

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of the bill have no impact on public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

D. Other Constitutional Issues:

The requirement in the bill that the objection to screening must contain the parent's or guardian's signature may violate the right of privacy under the Florida Constitution, Article I, Section 23.

The bill may impair existing contracts since the requirement for health insurers and health maintenance organizations to cover screening for CCHD takes effect on July 1, 2012, and does not provide an exemption for existing contracts.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The DOH currently collects a maximum hospital fee of \$15 per live birth, as authorized in s. 383.14(3)(g), F.S., to cover the cost of newborn screening. Adding CCHD to the list of newborn screenings could require an increase in the hospital fee from \$15 to \$15.78 per live birth.

B. Private Sector Impact:

Hospitals, birth centers, and health care practitioners attending home births will have additional screening and reporting requirements.

Early detection with prompt early treatment may lead to a better outcome for babies born with severe heart disease. Detection prior to hospital discharge may also prevent unexpected events such as death or an emergency health crisis in the home setting.

The private sector fiscal impact is indeterminate at this point.

C. Government Sector Impact:

The DOH will need to create and implement a system to track CCHD test results within the existing program structure. The CCHD screening is similar to newborn hearing screening in that the birthing facility conducts the actual testing and the DOH tracks the results and provides surveillance activities for infants who fail the screening test.

The main costs of adding CCHD to the Florida Newborn Screening Program are related to the necessary modifications of the current data system to add the screening results and staff time to track infants who fail the screening test. Follow-up actions would include communicating with physicians and parents regarding the outcome of the confirmatory testing and obtaining the final diagnosis and outcome. The department estimates its expenditures to be \$166,191 in FY 2012-2013 and \$154,922 in FY 2013-2014.

Funding for the program could come from surplus revenue generated from billing for other disorders tested in the Newborn Screening program. The department must be provided budget authority to spend the surplus funding for this purpose. As of November 22, 2011, the Newborn Screening program had a surplus of revenue in FY 2010-2011 totaling \$2,110,778.¹⁵

The fiscal impact on the state group insurance plans is indeterminate at this point.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The requirement for a written signature for objecting to screening by a parent or guardian at lines 57 and 58 is more prescriptive than a similar requirement under s. 383.14(4), F.S., which does not require a signature.

Section 624.215, F.S., requires every person or organization seeking consideration of a legislative proposal mandating health coverage to submit to the Agency and the appropriate legislative committees having jurisdiction a report assessing the social and financial impacts of the proposed coverage. Neither the Committee on Health Regulation nor the Committee on Banking and Insurance received a report analyzing newborn screening for CCHD as created by the bill.

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 Health Regulation on January 25, 2012:

The CS narrows the screening requirements to apply to *Critical* Congenital Heart Disease

¹⁵ See Department of Health Bill Analysis, Economic Statement and Fiscal Note for SB 1052 – on file with the Senate Health Regulation Committee.

and specifies that screening means measuring blood oxygen saturation using pulse oximetry. The CS requires birth centers and the health care providers in attendance at home births to conduct the test rather than requiring them to refer the infant to a hospital or physician. The CS no longer requires a physician to conduct the screening test. The CS removes the requirement for Medicaid to pay for the screening in addition to its usual reimbursement to providers. It also removes the requirement for health insurers and health maintenance organizations to compensate providers for the screening test.

B. Amendments:

None.

By the Committee on Health Regulation; and Senator Ring

588-02355-12

20121052c1

A bill to be entitled

An act relating to newborn screening for critical congenital heart disease; creating s. 383.146, F.S.; providing definitions; providing requirements for screening newborns for critical congenital heart disease; providing an exception; requiring that the physician, midwife, or other person attending the newborn maintain a record if the screening has not been performed and attach a written objection signed by the parent or guardian; requiring appropriate documentation of the screening completion in the medical record; requiring that each hospital and each licensed birth center designate a lead physician and a licensed health care provider, respectively, to provide programmatic oversight for the screening; requiring that the screening for critical congenital heart disease be conducted on all newborns in hospitals and birth centers in this state; authorizing the Department of Health to adopt rules to administer the screening program; providing powers and duties of the department; providing an effective date.

WHEREAS, congenital heart disease is the most common birth defect in infants, affecting 8 out of every 1,000 newborn babies, and

WHEREAS, early detection of congenital heart disease is crucial to the health of a newborn baby because, if the condition goes undiagnosed, it can cause major problems later in the child's life, and

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

588-02355-12

20121052c1

WHEREAS, pulse oximetry is a noninvasive method of monitoring the oxygen level in the blood and is recommended as a method of screening a patient for critical congenital heart disease, and

WHEREAS, physical exertion and participation in sports can cause excess stress on the heart and, if the disease is not detected and is severe enough, participation in strenuous activity can result in death, NOW, THEREFORE,

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

Section 1. Section 383.146, Florida Statutes, is created to read:

383.146 Newborn screening for critical congenital heart disease.—

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

(a) "Department" means the Department of Health.

(b) "Newborn" means an age range from birth through 29 days.

(c) "Screening" means measuring blood oxygen saturation using pulse oximetry to determine whether a newborn needs additional diagnostic evaluation for critical congenital heart disease.

(2) REQUIREMENTS FOR SCREENING OF NEWBORNS; REFERRAL FOR ONGOING SERVICES.—

(a) Each licensed hospital that provides maternity and newborn care services shall ensure that, prior to discharge, all newborns are screened for the detection of critical congenital heart disease.

Page 2 of 4

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

588-02355-12

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59 (b) Each licensed birth center that provides maternity and
 60 newborn care services shall ensure that, prior to discharge, all
 61 newborns are screened for the detection of critical congenital
 62 heart disease.

63 (c) If the parent or legal guardian of the newborn objects
 64 to the screening, the screening must not be completed,
 65 notwithstanding any other provision of this section. In such
 66 case, the physician, midwife, or other person who is attending
 67 the newborn shall maintain a record that the screening has not
 68 been performed and attach a written objection that must be
 69 signed by the parent or guardian.

70 (d) For home births, the health care provider in attendance
 71 is responsible for the screening.

72 (e) Appropriate documentation of the screening completion,
 73 results, interpretation, and recommendations must be placed in
 74 the medical record within 24 hours after completion of the
 75 screening procedure.

76 (f) Each hospital shall formally designate a lead physician
 77 who is responsible for programmatic oversight of newborn
 78 congenital heart disease screening. Each licensed birth center
 79 shall designate a licensed health care provider to provide such
 80 programmatic oversight. Such physician or health care provider
 81 shall ensure that the appropriate referrals are completed
 82 following a positive screening test result.

83 (g) By October 1, 2012, screening for critical congenital
 84 heart disease must be conducted on all newborns in hospitals and
 85 birth centers in this state following birth admission.

86 (3) RULES.—After consultation with the Genetics and Newborn
 87 Screening Advisory Council, the department shall adopt and

588-02355-12

20121052c1

88 enforce rules requiring that every newborn in this state be
 89 screened for critical congenital heart disease. The department
 90 shall adopt such additional rules as are necessary for the
 91 administration of this section, including rules providing
 92 definitions of terms, rules relating to the methods used and
 93 time or times for testing as accepted medical practice
 94 indicates, rules relating to charging and collecting fees for
 95 the administration of the newborn screening program required by
 96 this section, rules for processing requests and releasing test
 97 and screening results, and rules requiring mandatory reporting
 98 of the results of tests and screenings for this condition to the
 99 department.

100 (4) POWERS AND DUTIES OF THE DEPARTMENT.—The department
 101 shall administer and provide services required pursuant to this
 102 section and shall:

103 (a) Furnish to all physicians, county health departments,
 104 perinatal centers, birth centers, and hospitals forms on which
 105 the results of tests for critical congenital heart disease shall
 106 be reported to the department.

107 (b) Have the authority to charge and collect fees
 108 sufficient to administer the newborn screening program required
 109 under this section.

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

THE FLORIDA SENATE
APPEARANCE RECORD

7 Feb 12

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

Meeting Date

Topic Newborn Screening Bill Number 1052
(if applicable)

Name James Mosteller Amendment Barcode _____
(if applicable)

Job Title Government Relations Director

Address 2851 Remington Green Circle, NE Phone 850/727-3712
Street

Tallahassee FL 32309
City State Zip

E-mail James.Mosteller@heart.org

Speaking: For Against Information

Representing American Heart Association

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

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/2012

Meeting Date

Topic _____

Bill Number 1052
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG

FLORIDA

33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

2/7/12
Meeting Date

Topic Newborn Screening for ~~CND~~

Bill Number SB 1052
(if applicable)

Name Karen Thurston Chavez

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____
Street

Phone 850-443-2984

City _____ State _____ Zip _____

E-mail Ktchavez@
brokenheartsofflorida.org

Speaking: For Against Information

Representing Broken Hearts of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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)

1/7/12
Meeting Date

Topic Congenital Heart Defect

Bill Number SB 1052
(if applicable)

Name JASON HAESERER

Amendment Barcode _____
(if applicable)

Job Title _____

Address 306 NE 7th Ave
Street
Gainesville FL
City State Zip

Phone _____

E-mail jhaeseler@cox.net

Speaking: For Against Information

Representing March of Dimes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
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 1476

INTRODUCER: Senator Richter

SUBJECT: Annuities

DATE: February 3, 2012 REVISED: _____

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

I. Summary:

Senate Bill 1476 substantially revises the Florida consumer protection laws related to sales of annuities by incorporating the 2010 National Association of Insurance Commissioners model regulation on annuity protections. The bill expands the scope of the consumer protection laws to include all consumers purchasing annuities. Under current law, the consumer protections only apply to senior consumers 65 years of age and older. However, the bill also deletes some consumer protections that are currently available to senior consumers. The bill’s provisions can be summarized as follows:

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer’s suitability information. Additional duties are placed on insurers or insurance agents when a transaction involves the exchange or replacement of an annuity.

Documentation of Sales Transaction – An agent or agent’s representative must make a record of any recommendation made to a consumer.

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer’s request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Agent Training – Agents are prohibited from selling annuity products unless they have sufficient knowledge of annuities and complete a one-time 4-hour annuity training course approved by the Department of Financial Services (DFS).

Provisions Related to Senior Consumers Repealed by the Bill – The bill repeals the following provisions related to annuity sales to senior consumers:

- Requirement to document suitability information on a form promulgated by the DFS that is signed by both the agent and consumer.
- Prior to entering into a contract to replace or exchange an annuity, the agent must provide a written disclosure to the consumer detailing the differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer.
- Prohibition against surrender charges or deferred sales charges in annuity contracts issued to a senior consumer exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.
- Requirement that unconditional refunds to senior consumers related to fixed or variable annuities must be available for 21 days and to be equal to the surrender value of the annuity contract.

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

This bill substantially amends the following sections of the Florida Statutes: 627.4554 and 626.99

II. Present Situation:

Annuities: Fixed vs. Variable¹

An annuity is a contract between a customer and an insurer for which the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. There are two basic annuity types. A fixed annuity guarantees fixed payments at a fixed interest rate to the annuitant, while a variable annuity provides a rate of return that is not guaranteed and is based on the success of the investment option that underlies the annuity. In a variable annuity, the premium dollars are placed into a variety of investments called subaccounts. The performance of the investments in the subaccounts determines the performance of the annuity. Variable annuities will often offer a wide range of subaccount investment options with varying degrees of risk. Fixed annuities are considered insurance products that may be sold by a licensed life insurance and annuity agent. Variable annuities are considered investment products and under the jurisdiction of both securities regulators and state insurance departments. Agents selling this type of annuity must hold a variable annuity license from the state insurance regulator, a securities license and an active securities registration with a broker/dealer. Variable annuity sales are subject to the suitability standards contained in the Financial Industry Regulatory Authority (FINRA) under FINRA Rule 2821.

¹ The Present Situation is based in part on *Florida Department of Financial Services 2008 White Paper on Annuities*, Roxanne Rehm (March 5, 2008).

Both fixed and variable annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer.

Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows on a tax-deferred basis. However, unlike some other investments that are subject to the capital gains tax (maximum 15 percent), a deferred annuity is subject to the ordinary income tax rates of up to 35 percent. Both deferred and immediate annuities are long-term contracts that typically restrict investor's ability to access money placed in the annuity. Deferred annuities may be unsuitable investments for many senior citizens because of this fact.

Equity Indexed Annuities

Equity indexed annuities are defined and regulated as fixed annuity products, but act more as a hybrid of a fixed and variable annuity. Equity indexed annuities provide a "minimum guaranteed" interest rate in combination with an index-linked component. This is different than a traditional fixed annuity which provides a specific guaranteed rate of interest.

Equity indexed annuities are one of the fastest growing segments of the insurance industry today and many insurance agents are aggressively marketing them to seniors in Florida. The products are touted as a vehicle for investors to realize gains similar to those in the stock market without the corresponding risk. However, such annuities rarely provide returns that are the equivalent of a stock market index. Additionally, even with a guaranteed minimum interest rate, investors may still lose money purchasing an equity indexed annuity if the rate is less than the premium or initial payment. Investors who need to cancel an annuity to access funds prior to the maturity of the contract may lose principal through surrender charges.

Equity indexed annuities are complex and can contain many detrimental features such as hidden penalties, fees, and large multi-year surrender charges. These annuities are not considered securities and not required to register with the federal Securities and Exchange Commission, as is the case with variable annuities. As a result, the law does not require equity indexed annuities to be accompanied with a prospectus that discloses possible investment risks. Additionally, unlike variable annuity products that may only be sold by agents with securities and insurance licenses, agents that have only an insurance license may sell equity indexed annuities.

Equity based annuities have several unique factors that may affect potential return. The unique factors used to calculate the interest an investor may receive often include:

- **Interest Rate Caps** – A maximum rate of interest that an investor will receive, even if the underlying stock market index performs well. For example, if an equity indexed annuity has

a cap of 6 percent the investor is limited to a 6 percent return even if the underlying investment index earns a much higher percentage.

- **Participation Rates** – Determines how much of the increase or return of the underlying stock market index will be used to calculate the annuity’s return on investment. For example, if the participation rate is 70 percent, and the index increases 20 percent, the return credited to the equity indexed annuity would be only 14 percent.
- **Index Crediting Methods** – Permit investors to choose the method by which interest will be credited to equity indexed annuities. For instance, the annual ratchet method usually credits an amount of interest based on the increase (if any) in value of the underlying index from the beginning to the end of the year. The point-to-point method credits an amount of interest based on any increase in the value of the underlying index from the beginning to the end of a specific period of time, sometimes based on the contract date.

Equity indexed annuities often have various fees and charges. These include:

- **Surrender Charges** – These vary dramatically among annuities and can be as high as 25 percent and be valid for up to 20 years.
- **Administrative Fees or Margins** – The fees in some equity indexed annuities amount to the difference between the percentage gain in the index and the actual amount credited to the investor. These fees or “margins” are not always disclosed clearly in marketing materials or contracts.
- **Market Value Adjustments** – Typically function to alter or reduce the cash value of an annuity dependent on changes in the interest rate since the contract’s issue. Such adjustments may result in a loss of previously credited bonuses or interest credits.
- **Asset Fees** – Charged by the company, based upon a percentage of the value of the annuity, sometimes subject to change annually.

It is important to note that whether an annuity is fixed, variable or equity indexed, the industry does not require that the annuity contract be provided to the consumer prior to or at the time of purchase. Thus, the consumer must rely on the representations of the agent. Florida requires that contracts contain a free look provision that allows consumers to read and review their contracts and request cancellation within 10 days after receiving the contract.

Common Types of Annuity and Life Insurance Fraud

When unsuitable annuities are sold to consumers, the transaction commonly involves inappropriate conduct by the agent such as misrepresentations and material omissions designed to hide the fact that the product is not suitable to meet the consumer’s needs. Forgeries are also commonplace. Annuity or life insurance transactions involving misrepresentations or material omissions are administratively prosecutable under the Unfair Insurance Trade Practices Act in ch. 626, F.S.

Two common unfair insurance trade practices are “twisting” and “churning.” Twisting involves knowingly making misleading representations, or incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer to take an action regarding their current insurance policy or take out an insurance

policy with another insurer.² Churning is similar to twisting, but instead involves the surrender or withdrawal from a product to fund another product issued by the same company.³ Agents that engage in these practices do so to obtain additional agent commissions.

Suitability of Annuity and Life Insurance Products

In Florida, the suitability—the appropriateness of a particular product relative to the consumer’s age, investment objectives, and current and future financial needs—is a primary concern with regard to transactions involving senior consumers. The Department of Financial Services indicates that consumer complaints regarding annuities have historically involved the suitability of the product itself, deceptive sales practices by agents, or both. In 2004, the Florida Legislature enacted the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.

Section 627.4554, F.S., provides standards and procedures that must be followed when recommending the purchase of an annuity product to senior consumers (age 65 and older). The section sets forth duties on insurers and insurance agents when recommending the purchase of an annuity by a senior. The agent or insurer must make reasonable efforts to obtain information about the senior’s financial status, tax status, and investment objectives prior to completing the sale of an annuity. Additionally, the agent or insurer must have objectively reasonable grounds for recommending the annuity on the basis of the facts disclosed by the senior consumer as to his or her investments, other insurance products, financial situation, and needs.⁴ If an agent recommends replacing or exchanging an existing annuity for a new annuity, the agent must provide a written summary detailing the differences between the existing annuity and the new annuity product.⁵ The disclosure must provide the benefits, terms, and limitations of each annuity, the fees and charges of each annuity, and the basis for the agent’s recommendation, including all relevant information the agent considered in making the recommendation.⁶ Insurers and insurance agents are required to develop written procedures designed to ensure compliance with the statutory disclosure requirements.

If a senior consumer is harmed due to the failure of an insurer or insurance agent to comply with the provisions, the insurer or insurance agent may be ordered to take corrective action.⁷ The Office of Insurance Regulation has authority to order the rescission of the annuity contract and order the refund of all premiums paid or the accumulation value of the annuity, whichever is greater. The Department of Financial Services may order an insurance agent to provide monetary restitution of all monies misappropriated, converted, or unlawfully withheld as well as restitution of penalties and fees incurred by a senior consumer. The DFS may also require insurance agencies to take reasonably appropriate corrective action for a senior consumer harmed by an agent’s noncompliance.

² Section 626.9541(1)(l), F.S.

³ Section 626.9541(1)(aa), F.S.

⁴ Section 627.4554(4), F.S.

⁵ Section 627.4554(4)(d), F.S.

⁶ The written disclosure must be made on a form developed by the DFS.

⁷ Section 627.4554(5), F.S.

Florida law also allows consumers to obtain an unconditional refund within 14 days of entering into a fixed or variable annuity contract.⁸ Senior consumers may obtain such refunds within 21 days. An annuity contract issued to a senior consumer also is prohibited from containing a surrender or deferred sales charge for a withdrawal of money that exceeds 10 percent of the amount withdrawn.⁹ Such charges must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later.

Unfair Insurance Trade Practices Act

The “Unfair Insurance Trade Practices Act” under s. 626.9541, F.S., specifies and prohibits practices which constitute unfair methods of competition or unfair or deceptive acts. Insurers, insurance agents, and any other person involved in the business of insurance can be fined for violating the act, up to \$5,000 for each non-willful violation up to an aggregate \$20,000 fine, and up to \$40,000 for each willful violation up to an aggregate \$200,000 fine. Willful violations of these provisions are also subject to criminal prosecution as a second degree misdemeanor (s. 624.15, F.S.).

Further, the unfair trade practice laws authorize the OIR or the DFS to issue cease and desist orders against insurers and agents that violate those provisions (s. 626.9581, F.S.). Violation of a cease and desist order is subject to a penalty not to exceed \$50,000 (s. 626.9601, F.S.). An insurance agent that violates this section is also subject to suspension or revocation of his or her license and an administrative penalty of up to \$500 or, for willful violations, up to \$3,500, under the authority of the DFS (s. 626.681, F.S.).

Certain violations are subject to increased penalties. The act contains increased penalties for “twisting” and “churning” Such violations are first degree misdemeanors. Each non-willful violation is subject to a \$5,000 fine up to an aggregate \$50,000 fine, while each willful violation is subject to a \$75,000 fine up to an aggregate \$250,000 fine. Willfully submitting fraudulent signatures on an application or policy-related document is a third degree felony, and is subject to an administrative fine not greater than \$5,000 for each nonwillful violation up to an aggregate fine of \$50,000, while each willful violation is subject to an administrative fine not greater than \$75,000 up to an aggregate fine of \$250,000.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.4554, F.S., which under current law contains standards and procedures for making annuity recommendations to senior consumers. The bill incorporates the 2010 National Association of Insurance Commissioners model regulation on annuity protections, which expands the scope of the section to include all annuity transactions and generally places additional duties on insurers. However, the bill also deletes some consumer protections that are currently available to senior consumers. The major provisions of the bill are as follows:

⁸ Section 626.99(4)(b), F.S.

⁹ Section 627.4554(9), F.S.

Duties of Insurers and Agents

Suitability of Annuities – The bill requires an insurer or insurance agent recommending the purchase or exchange of an annuity that results in an insurance transaction to have reasonable grounds for believing the recommendation is suitable for the consumer, based on the consumer’s suitability information. The insurer or agent must also have a reasonable basis to believe that:

- The consumer has been reasonably informed of:
 - The annuity’s features such as the potential surrender period and surrender charge;
 - Potential tax penalties if the consumer sells, exchanges, surrenders, or annuitizes the annuity;
 - Mortality and expense fees;
 - Investment advisory fees;
 - Riders, their features, and potential charges;
 - Limits on interest returns;
 - Insurance and investment components; and
 - Market risk.
- The consumer would benefit from certain features of the annuity such as tax-deferred growth, annuitization, or the death or living benefit.
- The annuity and any associated subaccounts, riders, and product enhancements are suitable. If the annuity is being exchanged or replaced, the annuity must be suitable for the particular consumer based on his or her suitability information.

Suitability of the Exchange or Replacement of an Annuity – Additional duties are placed on insurers or insurance agents when a transaction involves the exchange or replacement of an annuity. The bill provides criteria for determining whether the new annuity is suitable for a particular consumer. The insurer or agent must consider whether the consumer:

- Will incur a surrender charge; be subject to commencement of a new surrender period; lose existing benefits (death, living, or other contractual benefits), or be subject to increased fees (including investment advisory fees or charges for riders or other similar product enhancements).
- Will benefit from product enhancements and improvements; and
- Has had another annuity exchange or replacement, in particular within the past 36 months.

Requirement to Obtain Suitability Information – The bill retains the requirement in current law that the insurer or its agent must make reasonable efforts to obtain a consumer’s suitability information. An insurer may not issue an annuity unless there is a reasonable basis to believe the annuity is suitable based on the consumer’s suitability information. However, the insurer or its agent are not obliged to have a reasonable basis for believing the annuity is suitable if no recommendation has been made, the recommendation was based on materially inaccurate information, the consumer refuses to provide relevant suitability information and the annuity transaction is not recommended, or the consumer decides to enter into an annuity transaction not based on a recommendation of an insurer or its agent.

Documentation of Sales Transaction – An agent or agent’s representative must make a record of any recommendation made to a consumer. If the consumer refuses to provide suitability

information, the agent or representative must obtain a signed statement from the consumer documenting his or her refusal to provide suitability information. If the consumer enters into an annuity transaction that is not based on the recommendation of the insurer or insurance agent, the agent or representative must obtain a signed statement from the consumer acknowledging that the annuity transaction is not recommended.

Compliance Measures – As under current law, insurers must establish a supervision system designed to ensure insurer and agent compliance with the requirements of the statute. The measures include maintaining procedures to inform agents of their legal requirements when selling annuities, providing training and training materials that explain the insurer’s annuity products, maintaining procedures for reviewing each recommendation before issuing an annuity, procedures for detecting recommendations that are not suitable, and an annual report to senior managers. Insurers may contract with outside entities to perform these duties, but if an insurer does so, must supervise contractual performance.

Prohibitions on Agents – The bill prohibits agents from dissuading or attempting to dissuade a consumer from truthfully responding to the insurer’s request for suitability information, filing a complaint, or cooperating with the investigation of a complaint.

Agent Training – Agents are prohibited from selling annuity products unless they have sufficient knowledge of the product to recommend the annuity and the agent complies with the insurer’s standards for product training. All agents selling annuity products must also complete a one-time 4-hour annuity training course approved by the DFS. Each insurer must verify that the insurer’s agent has completed the annuity training course. Agents with a life insurance line of authority as of July 1, 2012, have 6 months from that date to complete the course; agents who obtain the line of authority after that date may not sell annuity products prior to taking the course.

Compliance and Penalties – Insurers are responsible for compliance with this section, both with regard to the insurer and its agents. The OIR may order an insurer to take reasonably appropriate corrective action for a consumer harmed the actions of the insurer or an insurer’s agent. Current law does not specify that insurers are responsible for their agent’s compliance; however, it does authorize the OIR to require the insurer to order rescission of the annuity policy and a full refund of premiums or accumulation value (whichever is greater).

The DFS is authorized to order insurance an insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer. The DFS must order an insurance agent to pay restitution to a consumer who is deprived of money due to the agent’s misappropriation, conversion, or unlawful withholding of moneys belonging to a senior consumer. The DFS also may order a managing general agency or insurance agency to take corrective action.

Insurance code penalties must be reduced or eliminated by the OIR or the DFS if corrective action for the consumer is promptly taken after the discovery of a violation. Violations under this section do not give rise to a cause of action.

Other Provisions – The bill also contains the following provisions:

- The bill defines “suitability information” as information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer.
- Annuity sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions must also comply with the requirements contained in this section. This requirement only applies when (1) the FINRA broker dealer sells an annuity and the suitability and supervision is similar to those applied to variable annuity sales; (2) the insurer monitors the FINRA member broker-dealer; and (3) the insurer provides information to the FINRA member broker-dealer in maintaining its supervision system.
- Insurers and agents must retain records of the annuity transaction for 5 years.
- The DFS has rulemaking authority to adopt rules to administer the section.

Provisions Related to Senior Consumers Repealed by the Bill – The bill repeals the following provisions related to annuity sales to senior consumers:

- Requirement to document suitability information on a form promulgated by the DFS that is signed by both the agent and consumer.
- Prior to entering into a contract to replace or exchange an annuity, the agent must provide a written disclosure to the consumer detailing the differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. The information shall include, at a minimum:
 - A comparison of the benefits, terms, and limitations between the annuity contracts;
 - A comparison of any fees and charges between the annuity contracts;
 - A written basis for the recommended exchange, including the overall advantages and disadvantages to the consumer if the recommendation is followed; and
 - Such other information used or considered to be relevant by the insurance agent or the insurer in making recommendations to the consumer regarding the replacement or exchange of an annuity contract.
- Authorization for the OIR to require an insurer to enact rescission of the policy or contract and a full refund of the premiums paid or the accumulation value, whichever is greater, for any senior consumer harmed by a violation of this section by the insurer or the insurer’s insurance agent. The bill does authorize the OIR to require insurers to take “reasonably corrective action” but does not specify whether such action may include ordering rescission of the contract or refunds.
- An annuity contract issued to a senior consumer may not contain a surrender charge or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge must be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later. The provision contains exceptions for purchases by accredited investors and contracts used to fund specified benefit plans, personal injury litigation settlements, or prepaid funeral contracts.

Section 2. Deletes from s. 626.99, F.S., requirements providing the means by which unconditional refunds to senior consumers related to fixed or variable annuities must be made. Current law requires the refund to be available for 21 days and to be equal to the surrender value of the annuity contract. The bill maintains current law, which requires the policy to authorize an unconditional refund of a fixed or variable annuity to any consumer within 14 days.

Section 3. The bill has an effective date of 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:

The consumer protections of s. 627.4554, F.S., will apply to all consumers purchasing annuities. However, certain consumer protections for senior consumers are deleted by the bill.

Agents selling annuities will be required to complete a 4-hour continuing education course in annuities, which will result in agents or their employers paying for such courses.

C. Government Sector Impact:

Representatives from the DFS assert that it will require an additional FTE (Insurance Analyst II) in the Division of Agent and Agency Services to assist in the administration of the bill's requirement that agents selling annuities take a 4-hour continuing education course on the subject.

VI. Technical Deficiencies:

Line 363 of the bill should provide the Office of Insurance Regulation and the Department of Financial Services with rulemaking authority to implement the requirements of the bill. The bill only provides such authority to the latter.

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: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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 627.4554, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.4554, F.S., for present text.)
627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions



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13 involving annuity products, and to establish a system for
14 supervising such recommendations in order to ensure that the
15 insurance needs and financial objectives of consumers are
16 appropriately addressed at the time of the transaction.

17 (2) SCOPE.—This section applies to any recommendation made
18 to a consumer to purchase, exchange, or replace an annuity by an
19 insurer or its agent, and which results in the purchase,
20 exchange, or replacement recommended.

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

22 (a) "Agent" has the same meaning as provided in s. 626.015.

23 (b) "Annuity" means an insurance product under state law
24 which is individually solicited, whether classified as an
25 individual or group annuity.

26 (c) "FINRA" means the Financial Industry Regulatory
27 Authority or a succeeding agency.

28 (d) "Insurer" has the same meaning as provided in s.
29 624.03.

30 (e) "Recommendation" means advice provided by an insurer or
31 its agent to a consumer which results in the purchase, exchange
32 or replacement of an annuity in accordance with that advice.

33 (f) "Replacement" means a transaction in which a new policy
34 or contract is to be purchased and it is known or should be
35 known to the proposing insurer or its agent that by reason of
36 such transaction an existing policy or contract will be:

37 1. Lapsed, forfeited, surrendered or partially surrendered,
38 assigned to the replacing insurer, or otherwise terminated;

39 2. Converted to reduced paid-up insurance, continued as
40 extended term insurance, or otherwise reduced in value due to
41 the use of nonforfeiture benefits or other policy values;



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42 3. Amended so as to effect a reduction in benefits or the
43 term for which coverage would otherwise remain in force or for
44 which benefits would be paid;

45 4. Reissued with a reduction in cash value; or

46 5. Used in a financed purchase.

47 (g) "Suitability information" means information related to
48 the consumer that is reasonably appropriate to determine the
49 suitability of a recommendation made to the consumer, including
50 the following:

51 1. Age;

52 2. Annual income;

53 3. Financial situation and needs, including the financial
54 resources used for funding the annuity;

55 4. Financial experience;

56 5. Financial objectives;

57 6. Intended use of the annuity;

58 7. Financial time horizon;

59 8. Existing assets, including investment and life insurance
60 holdings;

61 9. Liquidity needs;

62 10. Liquid net worth;

63 11. Risk tolerance; and

64 12. Tax status.

65 (4) EXEMPTIONS.—This section does not apply to transactions
66 involving:

67 (a) Direct-response solicitations where there is no
68 recommendation based on information collected from the consumer
69 pursuant to this section;

70 (b) Contracts used to fund:



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71 1. An employee pension or welfare benefit plan that is
72 covered by the federal Employee Retirement and Income Security
73 Act;

74 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
75 408(k), or s. 408(p) of the Internal Revenue Code, if
76 established or maintained by an employer;

77 3. A government or church plan defined in s. 414 of the
78 Internal Revenue Code, a government or church welfare benefit
79 plan, or a deferred compensation plan of a state or local
80 government or tax-exempt organization under s. 457 of the
81 Internal Revenue Code;

82 4. A nonqualified deferred compensation arrangement
83 established or maintained by an employer or plan sponsor;

84 5. Settlements or assumptions of liabilities associated
85 with personal injury litigation or any dispute or claim-
86 resolution process; or

87 6. Formal prepaid funeral contracts.

88 (5) DUTIES OF INSURERS AND AGENTS.—

89 (a) When recommending the purchase or exchange of an
90 annuity to a consumer which results in an insurance transaction
91 or series of insurance transactions, the agent, or the insurer
92 where no agent is involved, must have reasonable grounds for
93 believing that the recommendation is suitable for the consumer,
94 based on the consumer's suitability information, and that there
95 is a reasonable basis to believe all of the following:

96 1. The consumer has been reasonably informed of various
97 features of the annuity, such as the potential surrender period
98 and surrender charge; potential tax penalty if the consumer
99 sells, exchanges, surrenders, or annuitizes the annuity;



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100 mortality and expense fees; investment advisory fees; potential
101 charges for and features of riders; limitations on interest
102 returns; insurance and investment components; and market risk.

103 2. The consumer would benefit from certain features of the
104 annuity, such as tax-deferred growth, annuitization, or the
105 death or living benefit.

106 3. The particular annuity as a whole, the underlying
107 subaccounts to which funds are allocated at the time of purchase
108 or exchange of the annuity, and riders and similar product
109 enhancements, if any, are suitable; and, in the case of an
110 exchange or replacement, the transaction as a whole is suitable
111 for the particular consumer based on his or her suitability
112 information.

113 4. In the case of an exchange or replacement of an annuity,
114 the exchange or replacement is suitable after considering
115 whether the consumer:

116 a. Will incur a surrender charge; be subject to the
117 commencement of a new surrender period; lose existing benefits,
118 such as death, living, or other contractual benefits; or be
119 subject to increased fees, investment advisory fees, or charges
120 for riders and similar product enhancements;

121 b. Would benefit from product enhancements and
122 improvements; and

123 c. Has had another annuity exchange or replacement, in
124 particular, an exchange or replacement within the preceding 36
125 months.

126 (b) Before executing a purchase, exchange, or replacement
127 of an annuity resulting from a recommendation, an insurer or its
128 agent must make reasonable efforts to obtain the consumer's



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129 suitability information. The information shall be collected on
130 form DFS-H1-1980, which is hereby incorporated by reference, and
131 completed and signed by the applicant and agent. Questions
132 requesting this information must be presented in at least 12-
133 point type and be sufficiently clear so as to be readily
134 understandable by both the agent and the consumer. A true and
135 correct executed copy of the form must be provided by the agent
136 to the insurer, or to the person or entity that has contracted
137 with the insurer to perform this function as authorized by this
138 section, within 10 days after execution of the form, and must be
139 provided to the consumer by the date of delivery of the contract
140 or contracts.

141 (c) Except as provided under paragraph (d), an insurer may
142 not issue an annuity recommended to a consumer unless there is a
143 reasonable basis to believe the annuity is suitable based on the
144 consumer's suitability information.

145 (d) An insurer's issuance of an annuity must be reasonable
146 based on all the circumstances actually known to the insurer at
147 the time the annuity is issued. However, an insurer or its agent
148 does not have an obligation to a consumer related to an annuity
149 transaction under paragraph (a) or paragraph (c) if:

- 150 1. A recommendation has not been made;
- 151 2. A recommendation was made and is later found to have
152 been based on materially inaccurate information provided by the
153 consumer;
- 154 3. A consumer refuses to provide relevant suitability
155 information and the annuity transaction is not recommended; or
- 156 4. A consumer decides to enter into an annuity transaction
157 that is not based on a recommendation of an insurer or its



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158 agent.

159 (e) At the time of sale, the agent or the agent's
160 representative must:

161 1. Make a record of any recommendation made to the consumer
162 pursuant to paragraph (a);

163 2. Obtain the consumer's signed statement documenting his
164 or her refusal to provide suitability information, if
165 applicable; and

166 3. Obtain the consumer's signed statement acknowledging
167 that an annuity transaction is not recommended if he or she
168 decides to enter into an annuity transaction that is not based
169 on the insurer's or its agent's recommendation, if applicable.

170 (f) Before executing a replacement or exchange of an
171 annuity contract resulting from a recommendation, the agent must
172 provide on form DFS-H1-1981, which is incorporated by reference,
173 information that compares the differences between the existing
174 annuity contract and the annuity contract being recommended in
175 order to determine the suitability of the recommendation and its
176 benefit to the consumer. A true and correct executed copy of
177 this form must be provided by the agent to the insurer, or to
178 the person or entity that has contracted with the insurer to
179 perform this function as authorized by this section, within 10
180 days after execution of the form, and must be provided to the
181 consumer by the date of delivery of the contract or contracts.

182 (g) An insurer shall establish a supervision system that is
183 reasonably designed to achieve the insurer's and its agent's
184 compliance with this section.

185 1. Such system must include, but is not limited to:

186 a. Maintaining reasonable procedures to inform its agents



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187 of the requirements of this section and incorporating those
188 requirements into relevant agent training manuals;

189 b. Establishing standards for agent product training;

190 c. Providing product-specific training and training
191 materials that explain all material features of its annuity
192 products to its agents;

193 d. Maintaining procedures for the review of each
194 recommendation before issuance of an annuity which are designed
195 to ensure that there is a reasonable basis for determining that
196 a recommendation is suitable. Such review procedures may use a
197 screening system for identifying selected transactions for
198 additional review and may be accomplished electronically or
199 through other means, including, but not limited to, physical
200 review. Such electronic or other system may be designed to
201 require additional review only of those transactions identified
202 for additional review using established selection criteria;

203 e. Maintaining reasonable procedures to detect
204 recommendations that are not suitable. These may include, but
205 are not limited to, confirmation of consumer suitability
206 information, systematic customer surveys, consumer interviews,
207 confirmation letters, and internal monitoring programs. This
208 sub-subparagraph does not prevent an insurer from using sampling
209 procedures or from confirming suitability information after the
210 issuance or delivery of the annuity; and

211 f. Annually providing a report to senior managers,
212 including the senior manager who is responsible for audit
213 functions, which details a review, along with appropriate
214 testing, which is reasonably designed to determine the
215 effectiveness of the supervision system, the exceptions found,



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216 and corrective action taken or recommended, if any.

217 2. An insurer is not required to include in its supervision
218 system agent recommendations to consumers of products other than
219 the annuities offered by the insurer.

220 3. An insurer may contract for performance of a function
221 required under subparagraph 1.

222 a. If an insurer contracts for the performance of a
223 function, the insurer must include the supervision of
224 contractual performance as part of those procedures listed in
225 subparagraph 1. These include, but are not limited to:

226 (I) Monitoring and, as appropriate, conducting audits to
227 ensure that the contracted function is properly performed; and

228 (II) Annually obtaining a certification from a senior
229 manager who has responsibility for the contracted function that
230 the manager has a reasonable basis for representing that the
231 function is being properly performed.

232 b. An insurer is responsible for taking appropriate
233 corrective action and may be subject to sanctions and penalties
234 pursuant to subsection (8) regardless of whether the insurer
235 contracts for performance of a function and regardless of the
236 insurer's compliance with sub-subparagraph a.

237 (h) An agent may not dissuade, or attempt to dissuade, a
238 consumer from:

239 1. Truthfully responding to an insurer's request for
240 confirmation of suitability information;

241 2. Filing a complaint; or

242 3. Cooperating with the investigation of a complaint.

243 (i) Sales made in compliance with FINRA requirements
244 pertaining to the suitability and supervision of annuity



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245 transactions must satisfy the requirements of this section. This
246 paragraph applies to FINRA broker-dealer sales of variable
247 annuities and fixed annuities if the suitability and supervision
248 is similar to those applied to variable annuity sales. However,
249 this paragraph does not limit the ability of the office or the
250 department to enforce, including investigate, the provisions of
251 this section. For this paragraph to apply, an insurer must:

252 1. Monitor the FINRA member broker-dealer using information
253 collected in the normal course of an insurer's business; and

254 2. Provide to the FINRA member broker-dealer information
255 and reports that are reasonably appropriate to assist the FINRA
256 member broker-dealer in maintaining its supervision system.

257 (6) RECORDKEEPING.—

258 (a) Insurers and agents must maintain or be able to make
259 available to the office or department records of the information
260 collected from the consumer and other information used in making
261 the recommendations that were the basis for insurance
262 transactions for 5 years after the insurance transaction is
263 completed by the insurer. An insurer may maintain the
264 documentation on behalf of its agent.

265 (b) Records required to be maintained under this subsection
266 may be maintained in paper, photographic, microprocess,
267 magnetic, mechanical, or electronic media, or by any process
268 that accurately reproduces the actual document.

269 (7) COMPLIANCE MITIGATION; PENALTIES.—

270 (a) An insurer is responsible for compliance with this
271 section. If a violation occurs because of the action or inaction
272 of the insurer or its agent, the office may order an insurer to
273 take reasonably appropriate corrective action for a consumer



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274 harmed by the insurer's or by its agent's violation of this
275 section and may impose appropriate penalties and sanctions.

276 (b) The department may order:

277 1. An insurance agent to take reasonably appropriate
278 corrective action, including monetary restitution of penalties
279 or fees incurred by the consumer for any consumer harmed by a
280 violation of this section by the insurance agent and impose
281 appropriate penalties and sanctions.

282 2. A managing general agency or insurance agency that
283 employs or contracts with an insurance agent to sell or solicit
284 the sale of annuities to consumers must take reasonably
285 appropriate corrective action for a consumer harmed by a
286 violation of this section by the insurance agent.

287 (c) In addition to any other penalty authorized under
288 chapter 626, the department shall order an insurance agent to
289 pay restitution to a consumer who has been deprived of money by
290 the agent's misappropriation, conversion, or unlawful
291 withholding of moneys belonging to the senior consumer in the
292 course of a transaction involving annuities. The amount of
293 restitution may not exceed the amount misappropriated,
294 converted, or unlawfully withheld. This paragraph does not limit
295 or restrict a person's right to seek other remedies as provided
296 by law.

297 (d) Any applicable penalty under the Florida Insurance Code
298 for a violation of this section shall be reduced or eliminated
299 according to a schedule adopted by the office or the department,
300 as appropriate, if corrective action for the consumer was taken
301 promptly after a violation was discovered.

302 (e) A violation of this section does not create or imply a



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303 private cause of action.

304 (8) PROHIBITED CHARGES.—An annuity contract issued to a
305 senior consumer age 65 or older may not contain a surrender or
306 deferred sales charge for a withdrawal of money from an annuity
307 exceeding 10 percent of the amount withdrawn. The charge shall
308 be reduced so that no surrender or deferred sales charge exists
309 after the end of the 10th policy year or 10 years after the date
310 of each premium payment if multiple premiums are paid, whichever
311 is later. This subsection does not apply to annuities purchased
312 by an accredited investor, as defined in Regulation D as adopted
313 by the United States Securities and Exchange Commission, or to
314 those annuities specified in paragraph (4) (b).

315 (9) RULES.—The department may adopt rules to administer
316 this section.

317 Section 2. Subsection (4) of section 626.99, Florida
318 Statutes, is amended to read:

319 626.99 Life insurance solicitation.—

320 (4) DISCLOSURE REQUIREMENTS.—

321 (a) The insurer shall provide to each prospective purchaser
322 a buyer's guide and a policy summary prior to accepting the
323 applicant's initial premium or premium deposit, unless the
324 policy for which application is made provides an unconditional
325 refund for ~~a period of~~ at least 14 days, or unless the policy
326 summary contains an offer of such an unconditional refund. In
327 these instances, the buyer's guide and policy summary must be
328 delivered with the policy or before ~~prior to~~ delivery of the
329 policy.

330 (b) With respect to fixed and variable annuities, the
331 policy must provide an unconditional refund for ~~a period of~~ at



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332 least 21 ~~14~~ days. For fixed annuities, the buyer's guide must
333 ~~shall~~ be in the form ~~as~~ provided by the National Association of
334 Insurance Commissioners (NAIC) Annuity Disclosure Model
335 Regulation, until ~~such time as~~ a buyer's guide is developed by
336 the department, at which time the department guide must be used.
337 For variable annuities, a policy summary may be used, which may
338 be contained in a prospectus, until such time as a buyer's guide
339 is developed by NAIC or the department, at which time one of
340 those guides must be used. Unconditional refund means ~~if the~~
341 ~~prospective owner of an annuity contract is 65 years of age or~~
342 ~~elder:~~

343 1. An unconditional refund of premiums paid for a fixed
344 annuity contract, including any contract fees or charges, must
345 be available for a period of 21 days; and

346 2. An unconditional refund for variable or market value
347 annuity contracts must be available for a period of 21 days. The
348 unconditional refund shall be equal to the cash surrender value
349 provided in the annuity contract, plus any fees or charges
350 deducted from the premiums or imposed under the contract, or a
351 refund of all premiums paid. This subparagraph does not apply if
352 the prospective owner is an accredited investor, as defined in
353 Regulation D as adopted by the United States Securities and
354 Exchange Commission.

355 (c) The insurer shall attach a cover page to any annuity
356 contract ~~policy~~ informing the purchaser of the unconditional
357 refund period prescribed in paragraph (b). The cover page must
358 also provide contact information for the issuing company and the
359 selling agent, and the department's toll-free help line, ~~and any~~
360 ~~other information required by the department by rule.~~ The cover



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361 page must also contain the following disclosures in bold print
362 and at least 12-point type, if applicable:

363 1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY
364 CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO
365 YOUR FUNDS."

366 2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS
367 FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR
368 FURTHER DETAILS."

369 3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE
370 REFER TO YOUR POLICY FOR FURTHER DETAILS."

371 4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS
372 REQUIRED TO BE GIVEN TO YOU."

373
374 The cover page is part of the policy and is subject to
375 review by the office pursuant to s. 627.410.

376 (c)~~(d)~~ The insurer shall provide a buyer's guide and a
377 policy summary to a ~~any~~ prospective purchaser upon request.

378 Section 3. This act shall take effect October 1, 2012.

379
380 ===== T I T L E A M E N D M E N T =====

381 And the title is amended as follows:

382 Delete everything before the enacting clause
383 and insert:

384 A bill to be entitled
385 An act relating to annuities; amending s. 627.4554,
386 F.S.; providing that recommendations relating to
387 annuities made by an insurer or its agents apply to
388 all consumers not just to senior consumers; revising
389 and providing definitions; revising the duties of



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390 insurers and agents; providing that recommendations
391 must be based on consumer suitability information;
392 revising the information relating to annuities that
393 must be provided by the insurer or its agent to the
394 consumer; revising the requirements for monitoring
395 contractors that are providing certain functions for
396 the insurer relating to the insurer's system for
397 supervising recommendations; revising provisions
398 relating to the relationship between this act and the
399 federal Financial Industry Regulatory Authority;
400 deleting a provision providing a cap on surrender or
401 deferred sales charges; prohibiting specified charges
402 for annuities issued to persons 65 years of age or
403 older; amending s. 626.99, F.S.; increasing the period
404 of time that an unconditional refund must remain
405 available with respect to certain annuity contracts;
406 making such unconditional refunds available to all
407 prospective annuity contract buyers without regard to
408 the buyer's age; revising requirements for cover pages
409 of annuity contracts; providing an effective date.

By Senator Richter

37-01086-12

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1 A bill to be entitled
 2 An act relating to annuities; amending s. 627.4554,
 3 F.S.; providing that recommendations relating to
 4 annuities made by an insurer or its agents apply to
 5 all consumers not just to senior consumers; revising
 6 and providing definitions; revising the duties of
 7 insurers and agents; providing that recommendations
 8 must be based on consumer suitability information;
 9 deleting requirements relating to information that
 10 must be collected on certain forms adopted by rule of
 11 the Department of Financial Services; revising the
 12 information relating to annuities that must be
 13 provided by the insurer or its agent to the consumer;
 14 revising the requirements for monitoring contractors
 15 that are providing certain functions for the insurer
 16 relating to the insurer's system for supervising
 17 recommendations; revising provisions relating to the
 18 relationship between this act and the federal
 19 Financial Industry Regulatory Authority; providing
 20 training requirements for agents selling annuities;
 21 deleting a provision providing a cap on surrender or
 22 deferred sales charges; amending s. 626.99, F.S.;

23 deleting certain annuity policy requirements
 24 applicable to persons 65 years of age or older;
 25 providing an effective date.

26
 27 Be It Enacted by the Legislature of the State of Florida:

28
 29 Section 1. Section 627.4554, Florida Statutes, is amended

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30 to read:
 31 (Substantial rewording of section. See
 32 s. 627.4554, F.S., for present text.)
 33 627.4554 Annuity investments.--
 34 (1) PURPOSE.--The purposes of this section are to require
 35 insurers to set forth standards and procedures for making
 36 recommendations to consumers which result in transactions
 37 involving annuity products and to establish a system for
 38 supervising such recommendations in order to ensure that the
 39 insurance needs and financial objectives of consumers are
 40 appropriately addressed at the time of the transaction.
 41 (2) SCOPE.--This section applies to any recommendation made
 42 to a consumer to purchase, exchange, or replace an annuity by an
 43 insurer or its agent, and which results in the purchase,
 44 exchange, or replacement recommended.
 45 (3) DEFINITIONS.--As used in this section, the term:
 46 (a) "Agent" has the same meaning as provided in s. 626.015.
 47 (b) "Annuity" means an insurance product under state law
 48 which is individually solicited, whether classified as an
 49 individual or group annuity.
 50 (c) "FINRA" means the Financial Industry Regulatory
 51 Authority or a succeeding agency.
 52 (d) "Insurer" has the same meaning as provided in s.
 53 624.03.
 54 (e) "Recommendation" means advice provided by an insurer or
 55 its agent to a consumer which results in the purchase, exchange,
 56 or replacement of an annuity in accordance with that advice.
 57 (f) "Replacement" means a transaction in which a new policy
 58 or contract is to be purchased and it is known or should be

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59 known to the proposing insurer or its agent that by reason of
 60 such transaction an existing policy or contract will be:
 61 1. Lapsed, forfeited, surrendered or partially surrendered,
 62 assigned to the replacing insurer, or otherwise terminated;
 63 2. Converted to reduced paid-up insurance, continued as
 64 extended term insurance, or otherwise reduced in value due to
 65 the use of nonforfeiture benefits or other policy values;
 66 3. Amended so as to effect a reduction in benefits or the
 67 term for which coverage would otherwise remain in force or for
 68 which benefits would be paid;
 69 4. Reissued with a reduction in cash value; or
 70 5. Used in a financed purchase.
 71 (g) "Suitability information" means information related to
 72 the consumer that is reasonably appropriate to determine the
 73 suitability of a recommendation made to the consumer, including
 74 the following:
 75 1. Age;
 76 2. Annual income;
 77 3. Financial situation and needs, including the financial
 78 resources used for funding the annuity;
 79 4. Financial experience;
 80 5. Financial objectives;
 81 6. Intended use of the annuity;
 82 7. Financial time horizon;
 83 8. Existing assets, including investment and life insurance
 84 holdings;
 85 9. Liquidity needs;
 86 10. Liquid net worth;
 87 11. Risk tolerance; and

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88 12. Tax status.
 89 (4) EXEMPTIONS.—This section does not apply to transactions
 90 involving:
 91 (a) Direct-response solicitations if the recommendation is
 92 not based on suitability information collected from the consumer
 93 pursuant to this section;
 94 (b) Contracts used to fund:
 95 1. An employee pension or welfare benefit plan that is
 96 covered by the federal Employee Retirement and Income Security
 97 Act;
 98 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
 99 408(k), or s. 408(p) of the Internal Revenue Code, if
 100 established or maintained by an employer;
 101 3. A government or church plan defined in s. 414 of the
 102 Internal Revenue Code, a government or church welfare benefit
 103 plan, or a deferred compensation plan of a state or local
 104 government or tax-exempt organization under s. 457 of the
 105 Internal Revenue Code;
 106 4. A nonqualified deferred compensation arrangement
 107 established or maintained by an employer or plan sponsor;
 108 5. Settlements or assumptions of liabilities associated
 109 with personal injury litigation or any dispute or claim-
 110 resolution process; or
 111 6. Formal prepaid funeral contracts.
 112 (5) DUTIES OF INSURERS AND AGENTS.—
 113 (a) When recommending the purchase or exchange of an
 114 annuity to a consumer which results in an insurance transaction
 115 or series of insurance transactions, the insurer or its agent
 116 must have reasonable grounds for believing that the

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117 recommendation is suitable for the consumer, based on the
 118 consumer's suitability information, and that there is a
 119 reasonable basis to believe all of the following:

120 1. The consumer has been reasonably informed of various
 121 features of the annuity, such as the potential surrender period
 122 and surrender charge; potential tax penalty if the consumer
 123 sells, exchanges, surrenders, or annuitizes the annuity;
 124 mortality and expense fees; investment advisory fees; potential
 125 charges for and features of riders; limitations on interest
 126 returns; insurance and investment components; and market risk.

127 2. The consumer would benefit from certain features of the
 128 annuity, such as tax-deferred growth, annuitization, or the
 129 death or living benefit.

130 3. The particular annuity as a whole, the underlying
 131 subaccounts to which funds are allocated at the time of purchase
 132 or exchange of the annuity, and riders and similar product
 133 enhancements, if any, are suitable; and, in the case of an
 134 exchange or replacement, the transaction as a whole is suitable
 135 for the particular consumer based on his or her suitability
 136 information.

137 4. In the case of an exchange or replacement of an annuity,
 138 the exchange or replacement is suitable after taking into
 139 consideration whether the consumer:

140 a. Will incur a surrender charge; be subject to the
 141 commencement of a new surrender period; lose existing benefits,
 142 such as death, living, or other contractual benefits; or be
 143 subject to increased fees, investment advisory fees, or charges
 144 for riders and similar product enhancements;

145 b. Would benefit from product enhancements and

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146 improvements; and

147 c. Has had another annuity exchange or replacement, in
 148 particular, an exchange or replacement within the preceding 36
 149 months.

150 (b) Before executing a purchase, exchange, or replacement
 151 of an annuity resulting from a recommendation, an insurer or its
 152 agent must make reasonable efforts to obtain the consumer's
 153 suitability information.

154 (c) Except as provided under paragraph (d), an insurer may
 155 not issue an annuity recommended to a consumer unless there is a
 156 reasonable basis to believe the annuity is suitable based on the
 157 consumer's suitability information.

158 (d) An insurer's issuance of an annuity must be reasonable
 159 based on all the circumstances actually known to the insurer at
 160 the time the annuity is issued. However, an insurer or its agent
 161 does not have an obligation to a consumer related to an annuity
 162 transaction under paragraph (a) or paragraph (c) if:

163 1. A recommendation has not been made;

164 2. A recommendation was made and is later found to have
 165 been based on materially inaccurate information provided by the
 166 consumer;

167 3. A consumer refuses to provide relevant suitability
 168 information and the annuity transaction is not recommended; or

169 4. A consumer decides to enter into an annuity transaction
 170 that is not based on a recommendation of an insurer or its
 171 agent.

172 (e) At the time of sale, the agent or the agent's
 173 representative must:

174 1. Make a record of any recommendation made to the consumer

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175 pursuant to paragraph (a);

176 2. Obtain the consumer's signed statement documenting his
 177 or her refusal to provide suitability information, if
 178 applicable; and

179 3. Obtain the consumer's signed statement acknowledging
 180 that an annuity transaction is not recommended if he or she
 181 decides to enter into an annuity transaction that is not based
 182 on the insurer's or its agent's recommendation, if applicable.

183 (f) An insurer shall establish a supervision system that is
 184 reasonably designed to achieve the insurer's and its agent's
 185 compliance with this section.

186 1. Such system must include, but is not limited to:

187 a. Maintaining reasonable procedures to inform its agents
 188 of the requirements of this section and incorporating those
 189 requirements into relevant agent training manuals;

190 b. Establishing standards for agent product training and
 191 maintaining reasonable procedures that require its agents to
 192 comply with subsection (7);

193 c. Providing product-specific training and training
 194 materials that explain all material features of its annuity
 195 products to its agents;

196 d. Maintaining procedures for the review of each
 197 recommendation before issuance of an annuity which are designed
 198 to ensure that there is a reasonable basis for determining that
 199 a recommendation is suitable. Such review procedures may use a
 200 screening system for identifying selected transactions for
 201 additional review and may be accomplished electronically or
 202 through other means, including, but not limited to, physical
 203 review. Such electronic or other system may be designed to

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204 require additional review only of those transactions identified
 205 for additional review using established selection criteria;

206 e. Maintaining reasonable procedures to detect
 207 recommendations that are not suitable. These may include, but
 208 are not limited to, confirmation of consumer suitability
 209 information, systematic customer surveys, consumer interviews,
 210 confirmation letters, and internal monitoring programs. This
 211 sub-subparagraph does not prevent an insurer from using sampling
 212 procedures or from confirming suitability information after the
 213 issuance or delivery of the annuity; and

214 f. Annually providing a report to senior managers,
 215 including the senior manager who is responsible for audit
 216 functions, which details a review, along with appropriate
 217 testing, which is reasonably designed to determine the
 218 effectiveness of the supervision system, the exceptions found,
 219 and corrective action taken or recommended, if any.

220 2. An insurer is not required to include in its supervision
 221 system agent recommendations to consumers of products other than
 222 the annuities offered by the insurer.

223 3. An insurer may contract for performance of a function
 224 required under subparagraph 1.

225 a. If an insurer contracts for the performance of a
 226 function, the insurer must include the supervision of
 227 contractual performance as part of those procedures listed in
 228 subparagraph 1. These include, but are not limited to:

229 (I) Monitoring and, as appropriate, conducting audits to
 230 ensure that the contracted function is properly performed; and

231 (II) Annually obtaining a certification from a senior
 232 manager who has responsibility for the contracted function that

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233 the manager has a reasonable basis for representing that the
 234 function is being properly performed.

235 b. An insurer is responsible for taking appropriate
 236 corrective action and may be subject to sanctions and penalties
 237 pursuant to subsection (8) regardless of whether the insurer
 238 contracts for performance of a function and regardless of the
 239 insurer's compliance with sub-subparagraph a.

240 (g) An agent may not dissuade, or attempt to dissuade, a
 241 consumer from:

242 1. Truthfully responding to an insurer's request for
 243 confirmation of suitability information;

244 2. Filing a complaint; or

245 3. Cooperating with the investigation of a complaint.

246 (h) Sales made in compliance with FINRA requirements
 247 pertaining to the suitability and supervision of annuity
 248 transactions must satisfy the requirements of this section. This
 249 paragraph applies to FINRA broker-dealer sales of variable
 250 annuities and fixed annuities if the suitability and supervision
 251 is similar to those applied to variable annuity sales. However,
 252 this paragraph does not limit the ability of the office or the
 253 department to enforce, including investigate, the provisions of
 254 this section. For this paragraph to apply, an insurer must:

255 1. Monitor the FINRA member broker-dealer using information
 256 collected in the normal course of an insurer's business; and

257 2. Provide to the FINRA member broker-dealer information
 258 and reports that are reasonably appropriate to assist the FINRA
 259 member broker-dealer in maintaining its supervision system.

260 (6) RECORDKEEPING.—

261 (a) Insurers and agents must maintain or be able to make

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262 available to the office or department records of the information
 263 collected from the consumer and other information used in making
 264 the recommendations that were the basis for insurance
 265 transactions for 5 years after the insurance transaction is
 266 completed by the insurer. An insurer may maintain the
 267 documentation on behalf of its agent.

268 (b) Records required to be maintained under this subsection
 269 may be maintained in paper, photographic, microprocess,
 270 magnetic, mechanical, or electronic media, or by any process
 271 that accurately reproduces the actual document.

272 (7) AGENT TRAINING.—

273 (a) An agent may not solicit the sale of an annuity product
 274 unless the agent has sufficient knowledge of the product to
 275 recommend the annuity and the agent is in compliance with the
 276 insurer's standards for product training. An agent may rely on
 277 insurer-provided, product-specific training standards and
 278 materials in order to comply with this paragraph.

279 (b) An agent who engages in the sale of annuity products
 280 must complete a one-time annuity training course approved by the
 281 department.

282 1. The minimum length of the training course must be
 283 sufficient to qualify for at least 4 hours of continuing
 284 education under s. 626.2815, but may be longer.

285 2. The training must include information on the following
 286 topics:

287 a. The types of annuities and various classifications of
 288 annuities.

289 b. Identification of the parties to an annuity.

290 c. How fixed, variable, and indexed annuity contract

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291 provisions affect consumers.

292 d. Income taxation of qualified and nonqualified annuities.

293 e. The primary uses of annuities.

294 f. Appropriate sales practices, replacement, and disclosure

295 requirements.

296 3. The training course may be conducted and completed by

297 classroom or a self-study program in accordance with s.

298 626.2815.

299 (c) A provider of an annuity training course must comply

300 with s. 626.2816 and the rules applicable to continuing

301 education courses adopted under that section.

302 1. Providers must cover all topics listed in subparagraph

303 (b)2. and may not present any marketing information or provide

304 training on sales techniques or provide specific information

305 about a particular insurer's products. Additional topics may be

306 offered in conjunction with the required topics.

307 2. Providers must comply with the reporting requirements

308 and issue certificates of completion in accordance with s.

309 626.2815.

310 (d) An insurer shall verify that its agent has completed

311 the annuity training course required under this subsection

312 before allowing the agent to sell an annuity product for that

313 insurer. An insurer may satisfy this requirement by obtaining

314 certificates of completion of the training course or obtaining

315 reports provided by office-sponsored database systems or vendors

316 or from a reasonably reliable commercial database vendor that

317 has a reporting arrangement with approved insurance education

318 providers.

319 (e) Agents that hold a life insurance line of authority on

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320 July 1, 2012, and that desire to sell annuities must complete

321 the annuity training course within 6 months after that date.

322 Individuals who obtain a life insurance line of authority on or

323 after July 1, 2012, may not engage in the sale of annuities

324 until the annuity training course has been completed.

325 (f) Satisfaction of the training requirements of another

326 state which are substantially similar to this subsection satisfy

327 the training requirements of this subsection.

328 (8) COMPLIANCE MITIGATION; PENALTIES.—

329 (a) An insurer is responsible for compliance with this

330 section. If a violation occurs because of the action or inaction

331 of the insurer or its agent, the office may order an insurer to

332 take reasonably appropriate corrective action for a consumer

333 harmed by the insurer's or by its agent's violation of this

334 section and may impose appropriate penalties and sanctions.

335 (b) The department may order:

336 1. An insurance agent to take reasonably appropriate

337 corrective action, including monetary restitution of penalties

338 or fees incurred by the consumer for any consumer harmed by a

339 violation of this section by the insurance agent and impose

340 appropriate penalties and sanctions.

341 2. A managing general agency or insurance agency that

342 employs or contracts with an insurance agent to sell or solicit

343 the sale of annuities to consumers must take reasonably

344 appropriate corrective action for a consumer harmed by a

345 violation of this section by the insurance agent.

346 (c) In addition to any other penalty authorized under

347 chapter 626, the department shall order an insurance agent to

348 pay restitution to a consumer who has been deprived of money by

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349 the agent's misappropriation, conversion, or unlawful
 350 withholding of moneys belonging to the senior consumer in the
 351 course of a transaction involving annuities. The amount of
 352 restitution required to be paid may not exceed the amount
 353 misappropriated, converted, or unlawfully withheld. This
 354 paragraph does not limit or restrict a person's right to seek
 355 other remedies as provided by law.

356 (d) Any applicable penalty under the Florida Insurance Code
 357 for a violation of this section shall be reduced or eliminated
 358 according to a schedule adopted by the office or the department,
 359 as appropriate, if corrective action for the consumer was taken
 360 promptly after a violation was discovered.

361 (e) A violation of this section does not create or imply a
 362 private cause of action.

363 (9) RULES.—The department may adopt rules to administer
 364 this section.

365 Section 2. Subsection (4) of section 626.99, Florida
 366 Statutes, is amended to read:

367 626.99 Life insurance solicitation.—

368 (4) DISCLOSURE REQUIREMENTS.—

369 (a) The insurer shall provide to each prospective purchaser
 370 a buyer's guide and a policy summary prior to accepting the
 371 applicant's initial premium or premium deposit, unless the
 372 policy for which application is made provides an unconditional
 373 refund for ~~a period of~~ at least 14 days, or unless the policy
 374 summary contains an offer of such an unconditional refund. In
 375 these instances, the buyer's guide and policy summary must be
 376 delivered with the policy or before ~~prior to~~ delivery of the
 377 policy.

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378 (b) With respect to fixed and variable annuities, the
 379 policy must provide an unconditional refund for ~~a period of~~ at
 380 least 14 days. For fixed annuities, the buyer's guide must ~~shall~~
 381 be in the form ~~as~~ provided by the National Association of
 382 Insurance Commissioners (NAIC) Annuity Disclosure Model
 383 Regulation, until ~~such time as~~ a buyer's guide is developed by
 384 the department, at which time the department guide must be used.
 385 For variable annuities, a policy summary may be used, which may
 386 be contained in a prospectus, until such time as a buyer's guide
 387 is developed by NAIC or the department, at which time one of
 388 those guides must be used. ~~If the prospective owner of an~~
 389 ~~annuity contract is 65 years of age or older:~~

390 1. ~~An unconditional refund of premiums paid for a fixed~~
 391 ~~annuity contract, including any contract fees or charges, must~~
 392 ~~be available for a period of 21 days; and~~

393 2. ~~An unconditional refund for variable or market value~~
 394 ~~annuity contracts must be available for a period of 21 days. The~~
 395 ~~unconditional refund shall be equal to the cash surrender value~~
 396 ~~provided in the annuity contract, plus any fees or charges~~
 397 ~~deducted from the premiums or imposed under the contract. This~~
 398 ~~subparagraph does not apply if the prospective owner is an~~
 399 ~~accredited investor, as defined in Regulation D as adopted by~~
 400 ~~the United States Securities and Exchange Commission.~~

401 ~~(c) The insurer shall attach a cover page to any annuity~~
 402 ~~policy informing the purchaser of the unconditional refund~~
 403 ~~period prescribed in paragraph (b). The cover page must also~~
 404 ~~provide contact information for the issuing company and the~~
 405 ~~selling agent, the department's toll-free help line, and any~~
 406 ~~other information required by the department by rule. The cover~~

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407 ~~page is part of the policy and is subject to review by the~~
408 ~~office pursuant to s. 627.410.~~

409 (c) ~~(d)~~ The insurer shall provide a buyer's guide and a
410 policy summary to a ~~any~~ prospective purchaser upon request.

411 Section 3. 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)

Feb 7/2012

Meeting Date

Topic For Amendment i Bill

Bill Number 1476
(if applicable)

Name Tim Meenan

Amendment Barcode _____
(if applicable)

Job Title _____

Address 204 S. Monroe St.

Phone 681-6710

Tallahassee FL 32301
City State Zip

E-mail Tim@blawtan.com

Speaking: For Against Information

Representing National Association of Insurance & Financial Advisors

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)

2/7/12
Meeting Date

Topic ANNUITIES

Bill Number 1476
(if applicable)

Name JACK MERRAY

Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 W. COLLEGE ST, # 304
Street

Phone 850-577-5127

TLH FL 32301
City State Zip

E-mail jmeray@aar.org

Speaking: For Against Information

Representing AAAP

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)

2/9/12

Meeting Date

Topic Annuities

Bill Number SB 1426
(if applicable)

Name Brian Doffenbaugh

Amendment Barcode 443654
(if applicable)

Job Title Sr. Counsel

Address CC-22 Capitol
Street

Phone 413-5923

City

State

Zip

E-mail Brian.Doffenbaugh@myfloridacfo.com

Speaking: For ^{amendment} Against Information

Representing Office of Insurance Consumer Advocate

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)

2-7-12
Meeting Date

Topic _____

Bill Number SB 1476
(if applicable)

Name Paul Sanford

Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 S. Monroe St
Street
Tallahassee, FL 32301
City State Zip

Phone 222-7202

E-mail _____

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

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 458

INTRODUCER: Senator Bennett

SUBJECT: Uniform Fraudulent Transfer Act

DATE: February 2, 2012 REVISED: _____

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

I. Summary:

The Florida Uniform Fraudulent Transfer Act, ch. 726, F.S., provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation. Under the act, “clawback” actions provide a remedy for creditors who are victims of fraud, by allowing for the fraudulently transferred property to be surrendered or the transfer to be voided. The act provides that a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee. However, the act does not provide an exception for conveyances accepted by charitable organizations in good faith.

The Federal Bankruptcy Code provides that a trustee may avoid any transfer of property or any obligation by the debtor, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation. The code provides that a charitable contribution transferred to a qualified religious or charitable entity or organization is not considered to be a transfer in any case in which the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or if the contribution made by a debtor exceeded the 15 percent of gross annual income, if the transfer was consistent with the practices of the debtor in making charitable contributions.

The bill amends the Florida Uniform Fraudulent Transfer Act by defining an exempt organization as an organization exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. The bill provides that an exempt organization is deemed to have

exchanged a reasonably equivalent value for a charitable contribution that was accepted in good faith.

This bill substantially amends the following sections of the Florida Statutes: 718.704, 721.05, 726.102, and 726.109.

II. Present Situation:

Florida Uniform Fraudulent Transfer Act

The Florida Uniform Fraudulent Transfer Act (act), ch. 726, F.S., provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
 - Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
 - Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.¹

The act provides a statutory remedy for creditors who are victims of fraud by allowing for the fraudulently transferred property to be surrendered or the transfer to be voided, which is commonly referred to as a “clawback” action. The act provides for a 4 year statute of limitations on clawback actions. Under the act, a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.² The act provides that value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied.³ The act does not provide an exception for conveyances accepted by charitable organizations in good faith. The seventh Circuit Court of Appeal has ruled that a similar Illinois law, that did not specifically exclude charities, would not prevent a clawback action by a creditor to recover from a charity, even though the charity took the donation in good faith.⁴

Federal Bankruptcy Code

The Federal Bankruptcy Code (code) provides that a trustee may avoid any transfer of property or any obligation by the debtor, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation. The debtor must have been insolvent on the date the transfer was made or obligation was incurred, or became insolvent as a result of such transfer or obligation, engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an

¹ Section 726.105, F.S.

² Section 726.109(1), F.S.

³ Section 726. 104(1), F.S.

⁴ *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).

unreasonably small capital, intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as the debts matured; or made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.⁵ The code provides that a charitable contribution transferred to a qualified religious or charitable entity or organization is not considered to be a transfer in any case in which the amount of that contribution does not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the contribution is made; or if the contribution made by a debtor exceeded the 15 percent of gross annual income, if the transfer was consistent with the practices of the debtor in making charitable contributions.⁶ The code provides for a two year statute of limitation.

The code uses the Internal Revenue Code's (IRC) definition for a charitable contribution to a qualified religious or charitable entity or organization. Under the IRC, a charitable contribution to a qualified religious or charitable entity includes a contribution or gift to or for the use of a corporation, trust, or foundation created or organized in the United States, operating exclusively for certain purposes including religious and charitable, no part of the net earnings of which inures to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under s. 501(c)(3), I.R.C., by reason of attempting to influence legislation.⁷

III. Effect of Proposed Changes:

Senate bill 458 amends s. 726.102, F.S., of the Florida Uniform Fraudulent Transfer Act, by defining an exempt organization as an organization that is exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. The bill amends s. 726.109(1), F.S., by providing that an exempt organization is deemed to have exchanged a reasonably equivalent value for a charitable contribution that was accepted in good faith. Therefore, an organization exempt from federal income taxation under s. 501(c)(3) or (4) that accepted a charitable contribution in good faith would not be subject to clawback actions.

The bill corrects cross-references and provides that the act shall take effect upon becoming a law.

Other Potential Implications:

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

⁵ 11 U.S.C.A. §548(a)(1).

⁶ 11 U.S.C.A. §548(a)(2).

⁷ Section 170(c), I.R.C.

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, creditors would not be able to void fraudulent transfers to organizations exempt from federal income taxation under s. 501(c)(3) or (4) of the Internal Revenue Code. This would result in a disproportionate balance of protections against fraudulent transfers for the exempt organizations and the victim creditors.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Implementation of this bill may raise issues relating to uniformity between state and federal law and balance of protections for charitable organizations and creditors. Due to the discrepancy between the state and federal law, a different result may be obtained depending on which forum an action is brought, resulting in a potential for forum shopping. Under the bill charitable organizations would receive more protections from fraudulent transfers than creditors.

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: RCS	.	
02/07/2012	.	
	.	
	.	
	.	

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. Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of section 726.102, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), and (15), respectively, and new subsections (3) and (12) are added to that section, to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the



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13 Internal Revenue Code of 1986, if that contribution:

14 (a) Is made by a natural person or a qualified religious or
15 charitable entity or organization; and

16 (b) Consists of:

17 1. A financial instrument as that term is defined in s.
18 731(c)(2)(C) of the Internal Revenue Code of 1986; or

19 2. Cash.

20 (12) "Qualified religious or charitable entity or
21 organization" means:

22 (a) An entity described in s. 170(c)(1) of the Internal
23 Revenue Code of 1986; or

24 (b) An entity or organization described in s. 170(c)(2) of
25 the Internal Revenue Code of 1986.

26 Section 2. Subsection (7) is added to section 726.109,
27 Florida Statutes, to read:

28 726.109 Defenses, liability, and protection of transferee.—

29 (7) (a) Except as provided in paragraph (b), a transfer of a
30 charitable contribution that is received in good faith by a
31 qualified religious or charitable entity or organization is not
32 a transfer that is covered by this chapter.

33 (b) A transfer of a charitable contribution that was
34 received on or within 2 years before the date of commencement of
35 an action under this chapter or the commencement of proceedings
36 under any state or federal law, including the appointment of an
37 assignee for the benefit of creditors, appointment of a trustee
38 or receiver, or the filing of a petition under the Federal
39 Bankruptcy Code, is not entitled to the protection of paragraph

40 (a) unless the transfer was received in good faith, and:

41 1. The amount of the contribution does not exceed 15



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42 percent of the gross annual income of the transferor for the
43 year in which the transfer of the contribution is made; or

44 2. The contribution made by the transferor exceeded the
45 percentage amount of gross annual income specified in
46 subparagraph 1., if the transfer was consistent with the
47 practices of the transferor in making charitable contributions.

48 Section 3. This act shall take effect July 1, 2012, but
49 does not apply to transfers that are avoided by the entry of a
50 judgment prior to July 1, 2012.

51
52 ===== T I T L E A M E N D M E N T =====

53 And the title is amended as follows:

54 Delete everything before the enacting clause
55 and insert:

56 A bill to be entitled
57 An act relating to the Uniform Fraudulent Transfer
58 Act; amending s. 726.102, F.S.; defining the terms
59 "charitable contribution" and "qualified religious or
60 charitable entity or organization"; amending s.
61 726.109, F.S.; exempting certain transfers of
62 charitable contributions from the provisions of ch.
63 726, F.S.; providing for application of the act;
64 providing an effective date.

By Senator Bennett

21-00302-12

2012458__

1 A bill to be entitled
 2 An act relating to the Uniform Fraudulent Transfer
 3 Act; amending s. 726.102, F.S.; defining the term
 4 "exempt organization"; amending s. 726.109, F.S.;
 5 providing that a charitable contribution that was
 6 accepted in good faith by an exempt organization is
 7 not voidable; amending ss. 718.704 and 721.05, F.S.;
 8 conforming cross-references; providing legislative
 9 intent to clarify existing law; providing an effective
 10 date.
 11
 12 WHEREAS, the Uniform Fraudulent Transfer Act may
 13 potentially be construed to require an exempt organization to
 14 return a charitable contribution that was accepted in good
 15 faith, and
 16 WHEREAS, the application of the Uniform Fraudulent Transfer
 17 Act to an exempt organization has the potential to harm an
 18 exempt organization that accepts, in good faith, a charitable
 19 contribution for charitable purposes, and
 20 WHEREAS, this act clarifies that the Legislature does not
 21 intend for the Uniform Fraudulent Transfer Act to apply to
 22 certain innocent charitable organizations and nonprofit
 23 corporations that accept charitable contributions in good faith,
 24 NOW, THEREFORE,
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 726.102, Florida Statutes, is amended to
 29 read:

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

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2012458__

30 726.102 Definitions.—As used in ss. 726.101-726.112, the
 31 term:
 32 (1) "Affiliate" means:
 33 (a) A person who directly or indirectly owns, controls, or
 34 holds with power to vote, 20 percent or more of the outstanding
 35 voting securities of the debtor, other than a person who holds
 36 the securities:
 37 1. As a fiduciary or agent without sole discretionary power
 38 to vote the securities; or
 39 2. Solely to secure a debt, if the person has not exercised
 40 the power to vote.
 41 (b) A corporation 20 percent or more of whose outstanding
 42 voting securities are directly or indirectly owned, controlled,
 43 or held with power to vote, by the debtor or a person who
 44 directly or indirectly owns, controls, or holds, with power to
 45 vote, 20 percent or more of the outstanding voting securities of
 46 the debtor, other than a person who holds the securities:
 47 1. As a fiduciary or agent without sole power to vote the
 48 securities; or
 49 2. Solely to secure a debt, if the person has not in fact
 50 exercised the power to vote.
 51 (c) A person whose business is operated by the debtor under
 52 a lease or other agreement, or a person substantially all of
 53 whose assets are controlled by the debtor; or
 54 (d) A person who operates the debtor's business under a
 55 lease or other agreement or controls substantially all of the
 56 debtor's assets.
 57 (2) "Asset" means property of a debtor, but the term does
 58 not include:

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

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- 59 (a) Property to the extent it is encumbered by a valid
60 lien;
- 61 (b) Property to the extent it is generally exempt under
62 nonbankruptcy law; or
- 63 (c) An interest in property held in tenancy by the
64 entireties to the extent it is not subject to process by a
65 creditor holding a claim against only one tenant.
- 66 (3) "Claim" means a right to payment, whether or not the
67 right is reduced to judgment, liquidated, unliquidated, fixed,
68 contingent, matured, unmatured, disputed, undisputed, legal,
69 equitable, secured, or unsecured.
- 70 (4) "Creditor" means a person who has a claim.
- 71 (5) "Debt" means liability on a claim.
- 72 (6) "Debtor" means a person who is liable on a claim.
- 73 (7) "Exempt organization" means an organization that is
74 exempt from federal income taxation under s. 501(c)(3) or (4) of
75 the Internal Revenue Code.
- 76 (8)(7) "Insider" includes:
- 77 (a) If the debtor is an individual:
- 78 1. A relative of the debtor or of a general partner of the
79 debtor;
- 80 2. A partnership in which the debtor is a general partner;
- 81 3. A general partner in a partnership described in
82 subparagraph 2.; or
- 83 4. A corporation of which the debtor is a director,
84 officer, or person in control.†
- 85 (b) If the debtor is a corporation:
- 86 1. A director of the debtor;
- 87 2. An officer of the debtor;

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

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- 88 3. A person in control of the debtor;
- 89 4. A partnership in which the debtor is a general partner;
- 90 5. A general partner in a partnership described in
91 subparagraph 4.; or
- 92 6. A relative of a general partner, director, officer, or
93 person in control of the debtor.
- 94 (c) If the debtor is a partnership:
- 95 1. A general partner in the debtor;
- 96 2. A relative of a general partner in, a general partner
97 of, or a person in control of the debtor;
- 98 3. Another partnership in which the debtor is a general
99 partner;
- 100 4. A general partner in a partnership described in
101 subparagraph 3.; or
- 102 5. A person in control of the debtor.
- 103 (d) An affiliate, or an insider of an affiliate as if the
104 affiliate were the debtor.
- 105 (e) A managing agent of the debtor.
- 106 (9)(8) "Lien" means a charge against or an interest in
107 property to secure payment of a debt or performance of an
108 obligation, and includes a security interest created by
109 agreement, a judicial lien obtained by legal or equitable
110 process or proceedings, a common-law lien, or a statutory lien.
- 111 (10)(9) "Person" means an individual, partnership,
112 corporation, association, organization, government or
113 governmental subdivision or agency, business trust, estate,
114 trust, or any other legal or commercial entity.
- 115 (11)(10) "Property" means anything that may be the subject
116 of ownership.

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117 ~~(12)~~~~(11)~~ "Relative" means an individual related by
 118 consanguinity within the third degree as determined by the
 119 common law, a spouse, or an individual related to a spouse
 120 within the third degree as so determined, and includes an
 121 individual in an adoptive relationship within the third degree.

122 ~~(13)~~~~(12)~~ "Transfer" means every mode, direct or indirect,
 123 absolute or conditional, voluntary or involuntary, of disposing
 124 of or parting with an asset or an interest in an asset, and
 125 includes payment of money, release, lease, and creation of a
 126 lien or other encumbrance.

127 ~~(14)~~~~(13)~~ "Valid lien" means a lien that is effective
 128 against the holder of a judicial lien subsequently obtained by
 129 legal or equitable process or proceedings.

130 Section 2. Section 726.109, Florida Statutes, is amended to
 131 read:

132 726.109 Defenses, liability, and protection of transferee.—

133 (1) A transfer or obligation is not voidable under s.
 134 726.105(1) (a) against a person who took in good faith and for a
 135 reasonably equivalent value or against any subsequent transferee
 136 or obligee. An exempt organization is deemed to have exchanged a
 137 reasonably equivalent value for a charitable contribution that
 138 was accepted in good faith.

139 (2) Except as otherwise provided in this section, to the
 140 extent a transfer is voidable in an action by a creditor under
 141 s. 726.108(1) (a), the creditor may recover judgment for the
 142 value of the asset transferred, as adjusted under subsection

143 (3), or the amount necessary to satisfy the creditor's claim,
 144 whichever is less. The judgment may be entered against:

145 (a) The first transferee of the asset or the person for

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146 whose benefit the transfer was made; or

147 (b) Any subsequent transferee other than a good faith
 148 transferee who took for value or from any subsequent transferee.

149 (3) If the judgment under subsection (2) is based upon the
 150 value of the asset transferred, the judgment must be for an
 151 amount equal to the value of the asset at the time of the
 152 transfer, subject to adjustment as the equities may require.

153 (4) Notwithstanding voidability of a transfer or an
 154 obligation under ss. 726.101-726.112, a good faith transferee or
 155 obligee is entitled, to the extent of the value given the debtor
 156 for the transfer or obligation, to:

157 (a) A lien on or a right to retain any interest in the
 158 asset transferred;

159 (b) Enforcement of any obligation incurred; or

160 (c) A reduction in the amount of the liability on the
 161 judgment.

162 (5) A transfer is not voidable under s. 726.105(1) (b) or s.
 163 726.106 if the transfer results from:

164 (a) Termination of a lease upon default by the debtor when
 165 the termination is pursuant to the lease and applicable law; or

166 (b) Enforcement of a security interest in compliance with
 167 Article 9 of the Uniform Commercial Code.

168 (6) A transfer is not voidable under s. 726.106(2):

169 (a) To the extent the insider gave new value to or for the
 170 benefit of the debtor after the transfer was made unless the new
 171 value was secured by a valid lien;

172 (b) If made in the ordinary course of business or financial
 173 affairs of the debtor and the insider; or

174 (c) If made pursuant to a good faith effort to rehabilitate

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175 the debtor and the transfer secured present value given for that
176 purpose as well as an antecedent debt of the debtor.

177 Section 3. Subsection (4) of section 718.704, Florida
178 Statutes, is amended to read:

179 718.704 Assignment and assumption of developer rights by
180 bulk assignee; bulk buyer.—

181 (4) An acquirer of condominium parcels is not a bulk
182 assignee or a bulk buyer if the transfer to such acquirer was
183 made:

184 (a) Before the effective date of this part;

185 (b) With the intent to hinder, delay, or defraud any
186 purchaser, unit owner, or the association; or

187 (c) By a person who would be considered an insider under s.
188 726.102 ~~s. 726.102(7)~~.

189 Section 4. Paragraph (e) of subsection (10) of section
190 721.05, Florida Statutes, is amended to read:

191 721.05 Definitions.—As used in this chapter, the term:

192 (10) "Developer" includes:

193 (e) A successor or concurrent developer is ~~shall be~~ exempt
194 from any liability inuring to a predecessor or concurrent
195 developer of the same timeshare plan, except as provided in s.
196 721.15(7), provided that this exemption does ~~shall~~ not apply to
197 any of the successor or concurrent developer's responsibilities,
198 duties, or liabilities with respect to the timeshare plan that
199 accrue after the date the successor or concurrent developer
200 became a successor or concurrent developer, and provided that
201 such transfer does not constitute a fraudulent transfer. In
202 addition to other ~~provisions of~~ law, a transfer by a predecessor
203 developer to a successor or concurrent developer is ~~shall be~~

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204 deemed fraudulent if the predecessor developer made the
205 transfer:

206 1. With actual intent to hinder, delay, or defraud any
207 purchaser or the division; or

208 2. To a person that would constitute an insider under s.
209 726.102 ~~s. 726.102(7)~~.

210
211 ~~The provisions of~~ This paragraph does ~~shall not be construed to~~
212 relieve any successor or concurrent developer from the
213 obligation to comply with the provisions of any applicable
214 timeshare instrument.

215 Section 5. The amendment to s. 726.109, Florida Statutes,
216 made by this act is intended to clarify existing law.

217 Section 6. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/12
Meeting Date

Topic Fraudulent Transfer Bill Number 438
Name Stephanie Keltz Amendment Barcode _____
Job Title Executive Director - Girls Inc. Sarasota County (if applicable)
Address 201 S. Tuttle Ave Phone 941-366-6646
Sarasota, FL 34237 E-mail Stephanie@girlsinc.org
Street City State Zip

Speaking: For Against Information

Representing Girls Inc

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-7-12

Meeting Date

Topic Fraudulent Transfers - Charities

Bill Number SB 458 (Bennett)
(if applicable)

Name John Patterson

Amendment Barcode _____
(if applicable)

Job Title Attorney

Address 46 N. Washington Blvd. #1

Phone 941-365-0550

Street

Sarasota FL 34236

City

State

Zip

E-mail jpatterson@lpspa.com

Speaking: For Against Information

Representing Girls Incorporated of Sarasota County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-7-12

Meeting Date

Topic UNIFORM FRAUDULENT TRANSFER ACT

Bill Number SB 458
(if applicable)

Name BILL WILEY

Amendment Barcode _____
(if applicable)

Job Title ATTORNEY

Address 3647 LETITIA LANE
Street

Phone 850-545-7438

TALLAHASSEE FL 32312
City State Zip

E-mail wb.wiley@billwileylaw.com

Speaking: For Against Information

Representing BUSINESS LAW SECTION, THE FLORIDA BAR

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)

2/7/12

Meeting Date

Topic Uniform Fraudulent Transfer

Bill Number SB 458
(if applicable)

Name MARY MARX

Amendment Barcode _____
(if applicable)

Job Title CEO

Address 1 W. Adams
Street

Phone _____

Jax FL 32202
City State Zip

E-mail _____

Speaking: For Against Information

Representing PACE Center for Girls

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 1518
INTRODUCER: Senator Hays
SUBJECT: Property and Casualty Insurance
DATE: January 31, 2012 **REVISED:** _____

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

I. Summary:

The bill repeals s. 627.3519, F.S., which requires the Financial Services Commission to provide to the Legislature an annual report on probable maximum losses, financing options, and potential assessments for the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation.

This bill repeals the following section of the Florida Statutes: 627.3519.

II. Present Situation:

In 2006¹ the Legislature enacted s. 627.3519, F.S., which requires the Financial Services Commission (FSC) to provide the Legislature, by February 1st each year, a report on the probable maximum losses for the Florida Hurricane Catastrophe Fund (Fund) and Citizens Property Insurance Corporation (Citizens), resulting from a 50-year, 100-year, and 250-year storm. The report must lay out financing options for the Fund and Citizens, including the need for assessments. Additionally, the report is to include analysis of all reasonable financing strategies for each such event, including the amount and term of debt instruments; specification of the percentage assessments that would be needed to support each of the financing strategies; and calculations of the aggregate assessment burden on Florida property and casualty policyholders for each event.

The Office of Insurance Regulation (OIR) prepares the report on behalf of the FSC. The OIR does not compute or generate the information required to be reported. Much of the information

¹ s. 20, ch. 2006-12 L.O.F.

needed in the report is already computed by the Fund and by Citizens and provided to various stakeholders, such as potential bond investors, rating agencies, public policymakers, and the advisory and governing boards of the Fund and Citizens. Thus, the information contained in the report is readily available from other resources.

III. Effect of Proposed Changes:

Section 1: Repeals s. 627.3519, F.S., relating to an annual report of aggregate net probable maximum losses, financing options, and potential assessments.

Section 2: Provides an effective date of 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:

None.

C. Government Sector Impact:

The Office of Insurance Regulation staff will no longer have to compile a duplicative report that is currently available through other sources.

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.

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

By Senator Hays

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A bill to be entitled

An act relating to property and casualty insurance;
repealing s. 627.3519, F.S.; deleting a requirement
that the Financial Services Commission provide an
annual report to the Legislature consisting of
specified data and analysis related to the aggregate
net probable maximum losses, financing options, and
potential assessments of the Florida Hurricane
Catastrophe Fund and Citizens Property Insurance
Corporation; providing an effective date.

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

Section 1. Section 627.3519, Florida Statutes, is repealed.

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)

2-7-12

Meeting Date

Topic PML REPORT

Bill Number 1518
(if applicable)

Name Monte Stevens

Amendment Barcode _____
(if applicable)

Job Title Government Affairs Director

Address 200 E. Gaines St., Ste. 121

Phone (850) 413-5042

Tallahassee FL 32399
City State Zip

E-mail monte.stevens@flair.com

Speaking: For Against Information

Representing OIR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/2012

Meeting Date

Topic _____

Bill Number 1518
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH

Phone 727/897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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
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 1794

INTRODUCER: Senator Hays

SUBJECT: Continuing Education Advisory Board

DATE: February 3, 2012 REVISED: _____

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

I. Summary:

The bill repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents. The purpose of the Board was to advise the Department of Insurance (DOI)¹ on establishing a continuing education program for insurance agents. The Board has not been active in over 10 years, and with the breakup of DOI, the Insurance Commissioner and the Chief Financial Officer (CFO) have not appointed any members. The bill simply repeals this section of the Florida Statutes to conform to current practice.

This bill repeals the following section of the Florida Statutes: 626.2815(6).

II. Present Situation:

In 1989², the Florida Legislature enacted s. 626.2815(6), F.S., creating the Continuing Education Advisory Board (Board). The purpose of the Board was to advise the Department of Insurance (DOI) on establishing a continuing education program for insurance agents. The Board was originally intended to sunset on June 30, 1992.

In 1996³, the Legislature reestablished the Board so its members could assist the DOI in creating evaluation standards by which continuing education courses could be categorized (basic, intermediate, or advanced). As a result, administrative rules establishing new education standards

¹ DOI was replaced by the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS).

² ss. 1, 2, ch. 89-210 L.O.F.

³ s. 1, ch. 96-377 L.O.F.

were promulgated by the DOI in 2001.⁴ Since the adoption of the new standards back in 2001, the Board has no longer been active.

III. Effect of Proposed Changes:

Section 1: Repeals s. 626.2815(6), F.S., which created the Continuing Education Advisory Board for insurance agents.

Section 2: Provides 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.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴ 69B-228, F.A.C.

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.

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

By Senator Hays

20-01211-12

20121794__

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A bill to be entitled

An act relating to the continuing education advisory board; repealing s. 626.2815(6), F.S.; deleting authority for the creation of the continuing education advisory board whose purpose is to advise the Department of Financial Services in determining standards by which courses for certain persons licensed to solicit or sell insurance may be evaluated and categorized; deleting all requirements and procedures with respect to the board; providing an effective date.

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

Section 1. Subsection (6) of section 626.2815, Florida Statutes, is repealed.

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)

2 17 2012

Meeting Date

Topic _____

Bill Number 1794
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVENUE SOUTH
Street

Phone 727/897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

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)

2/7/12
Meeting Date

Topic SB 1794

Bill Number 1794
(if applicable)

Name Logan McFaddin

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address Capitol LL 26
Street

Phone 850-413-2890

Tallahassee FL 32399
City State Zip

E-mail logan.mcfaddin@myfloridazcfo.com

Speaking: For Against Information

Representing Dept. of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

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 1796
 INTRODUCER: Senator Hays
 SUBJECT: Preferred Worker Program
 DATE: February 1, 2012 REVISED: _____

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

I. Summary:

The bill repeals the Preferred Worker Program (PWP) which was created by the Legislature in 1993.¹ The PWP provided a reimbursement of workers' compensation insurance premiums to employers who hired employees that had suffered a past workplace injury and were unable to return to work for their previous employer.

In 1997² the legislature amended the program to only allow employees injured prior to January 1, 1998 to apply. Furthermore, injured employees had to file for the program within 2 years of their date of injury³ and employers were only afforded the reimbursement for up to 3 years.⁴ As a result the program could no longer accept applicants by January 1, 2001, and no employers are currently allowed by statute to continue to receive the reimbursement.

This bill repeals the following section of the Florida Statutes: 440.49(8) and amends 440.50, 624.4626.

II. Present Situation:

The Preferred Worker Program (PWP) was approved by the Legislature and became effective January 1, 1994.⁵ The program provides financial incentives for employers to hire employees

¹ s. 43, ch.93-415 L.O.F.

² s. 1, ch.97-262 L.O.F

³ 69L-11.006, F.A.C.

⁴ s. 440.49(8), F.S.

⁵ s. 43, ch.93-415 L.O.F.

who suffered a workplace injury resulting in permanent physical disability and are unable to return to work for their previous employer. The PWP incentivizes the hiring of such injured workers by reimbursing the workers' compensation insurance premiums the employer was required to pay to cover the preferred worker. This reimbursement of insurance premiums was paid from the Special Disability Trust Fund (SDTF) through the Office of the Chief Financial Officer.⁶ The PWP also provides that the Department of Financial Services and the Department of Education have rulemaking authority to implement the program.

In 1997⁷ the Legislature amended s. 440.49, F.S., to provide that the SDTF could not disperse funds for accidents that occurred after January 1, 1998. In addition, rule 69L-11.006, F.A.C., requires that an application for PWP benefits must be filed within 2 years of the employee's workplace accident. Therefore, claims filed after January 1, 2000, could not be accepted. This limitation effectively created an end point to the program. Lastly, s. 440.49(8), F.S., permits employer reimbursement for only 3 years, as a result no employers are currently allowed to continue to receive the reimbursement.

III. Effect of Proposed Changes:

The bill repeals the Preferred Worker Program. The Program can no longer accept applicants nor reimburse employers for premiums paid on workers compensation insurance. The Preferred Worker Program has become statutorily dormant and there is no effect to its repeal from statute.

The act shall take effect 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.

⁶ s. 440.49(8), F.S.

⁷ s. 1, ch.97-262 L.O.F.

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 Senator Hays

20-01209-12

20121796__

A bill to be entitled

An act relating to the preferred worker program; amending s. 440.49, F.S.; deleting a preferred worker program for permanently impaired workers who are unable to return to work; conforming cross-references; amending ss. 440.50 and 624.4626, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (9) through (12) of section 440.49, Florida Statutes, are renumbered as subsections (8) through (11), respectfully, and subsections (4) and (5), paragraphs (c) and (d) of subsection (7), and present subsections (8) and (11) of that section are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER OTHER PHYSICAL IMPAIRMENT.—

(a) *Permanent impairment.*—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, her or his employment which merges with the preexisting permanent physical impairment to cause a permanent impairment, the employer shall, in the first instance, pay all benefits provided by this chapter; but, subject to the limitations specified in subsection (6), such employer shall be reimbursed from the Special Disability Trust Fund ~~created by~~

20-01209-12

20121796__

~~subsection (9)~~ for 50 percent of all impairment benefits which the employer has been required to provide pursuant to s. 440.15(3) as a result of the subsequent accident or occupational disease.

(b) *Permanent total disability.*—If an employee who has a preexisting permanent physical impairment incurs a subsequent permanent impairment from injury or occupational disease arising out of, and in the course of, her or his employment which merges with the preexisting permanent physical impairment to cause permanent total disability, the employer shall, in the first instance, pay all benefits provided by this chapter; but, subject to the limitations specified in subsection (6), such employer shall be reimbursed from the Special Disability Trust Fund ~~created by subsection (9)~~ for 50 percent of all compensation for permanent total disability.

(c) *Temporary compensation and medical benefits; aggravation or acceleration of preexisting condition or circumstantial causation.*—If an employee who has a preexisting permanent physical impairment experiences an aggravation or acceleration of the preexisting permanent physical impairment as a result of an injury or occupational disease arising out of and in the course of her or his employment, or suffers an injury as a result of a merger as defined in paragraph (2)(c), the employer shall provide all benefits provided by this chapter, but, subject to the limitations specified in subsection (7), the employer shall be reimbursed by the Special Disability Trust Fund ~~created by subsection (9)~~ for 50 percent of its payments for temporary, medical, and attendant care benefits.

(5) WHEN DEATH RESULTS.—If death results from the

20-01209-12 20121796
 59 subsequent permanent impairment contemplated in subsection (4)
 60 within 1 year after the subsequent injury, or within 5 years
 61 after the subsequent injury when disability has been continuous
 62 since the subsequent injury, and it is determined that the death
 63 resulted from a merger, the employer shall, in the first
 64 instance, pay the funeral expenses and the death benefits
 65 prescribed by this chapter; but, subject to the limitations
 66 specified in subsection (6), she or he shall be reimbursed from
 67 the Special Disability Trust Fund ~~created by subsection (9)~~ for
 68 the last 50 percent of all compensation allowable and paid for
 69 such death and for 50 percent of the amount paid as funeral
 70 expenses.

71 (7) REIMBURSEMENT OF EMPLOYER.—

72 (c) A proof of claim must be filed on each notice of claim
 73 on file as of June 30, 1997, within 1 year after July 1, 1997,
 74 or the right to reimbursement of the claim shall be barred. A
 75 notice of claim on file on or before June 30, 1997, may be
 76 withdrawn and refiled if, at the time refiled, the notice of
 77 claim remains within the limitation period specified in
 78 paragraph (a). Such refiling shall not toll, extend, or
 79 otherwise alter in any way the limitation period applicable to
 80 the withdrawn and subsequently refiled notice of claim. Each
 81 proof of claim filed shall be accompanied by a proof-of-claim
 82 fee as provided in paragraph (8) (d) ~~(9) (d)~~. The Special
 83 Disability Trust Fund shall, within 120 days after receipt of
 84 the proof of claim, serve notice of the acceptance of the claim
 85 for reimbursement. This paragraph shall apply to all claims
 86 notwithstanding the provisions of subsection (11) ~~(12)~~.

87 (d) Each notice of claim filed or refiled on or after July

20-01209-12 20121796
 88 1, 1997, must be accompanied by a notification fee as provided
 89 in paragraph (8) (d) ~~(9) (d)~~. A proof of claim must be filed
 90 within 1 year after the date the notice of claim is filed or
 91 refiled, accompanied by a proof-of-claim fee as provided in
 92 paragraph (8) (d) ~~(9) (d)~~, or the claim shall be barred. The
 93 notification fee shall be waived if both the notice of claim and
 94 proof of claim are submitted together as a single filing. The
 95 Special Disability Trust Fund shall, within 180 days after
 96 receipt of the proof of claim, serve notice of the acceptance of
 97 the claim for reimbursement. This paragraph shall apply to all
 98 claims notwithstanding the provisions of subsection (11) ~~(12)~~.

99 ~~(8) PREFERRED WORKER PROGRAM. The Department of Education~~
 100 ~~or administrator shall issue identity cards to preferred workers~~
 101 ~~upon request by qualified employees and the Department of~~
 102 ~~Financial Services shall reimburse an employer, from the Special~~
 103 ~~Disability Trust Fund, for the cost of workers' compensation~~
 104 ~~premium related to the preferred workers payroll for up to 3~~
 105 ~~years of continuous employment upon satisfactory evidence of~~
 106 ~~placement and issuance of payroll and classification records and~~
 107 ~~upon the employee's certification of employment. The Department~~
 108 ~~of Financial Services and the Department of Education may by~~
 109 ~~rule prescribe definitions, forms, and procedures for the~~
 110 ~~administration of the preferred worker program. The Department~~
 111 ~~of Education may by rule prescribe the schedule for submission~~
 112 ~~of forms for participation in the program.~~

113 (10) ~~(11)~~ EFFECTIVE DATES.—This section does not apply to
 114 any case in which the accident causing the subsequent injury or
 115 death or the disablement or death from a subsequent occupational
 116 disease occurred prior to July 1, 1955, or on or after January

20-01209-12 20121796__
 117 1, 1998. In no event shall the Special Disability Trust Fund be
 118 liable for, or reimburse employers or carriers for, any case in
 119 which the accident causing the subsequent injury or death or the
 120 disablement or death from a subsequent occupational disease
 121 occurred on or after January 1, 1998. The Special Disability
 122 Trust Fund shall continue to reimburse employers or carriers for
 123 subsequent injuries occurring prior to January 1, 1998, and the
 124 department shall continue to assess for and the department or
 125 administrator shall fund reimbursements as provided in
 126 subsection (8) ~~(9)~~ for this purpose.

127 Section 2. Paragraph (b) of subsection (1) of section
 128 440.50, Florida Statutes, is amended to read:

129 440.50 Workers' Compensation Administration Trust Fund.—

130 (1)

131 (b) The department is authorized to transfer as a loan an
 132 amount not in excess of \$250,000 from such special fund to the
 133 Special Disability Trust Fund established by s. 440.49(8)
 134 ~~440.49(9)~~, which amount shall be repaid to said special fund in
 135 annual payments equal to not less than 10 percent of moneys
 136 received for such Special Disability Trust Fund.

137 Section 3. Subsection (2) of section 624.4626, Florida
 138 Statutes, is amended to read:

139 624.4626 Electric cooperative self-insurance fund.—

140 (2) A self-insurance fund that meets the requirements of
 141 this section is subject to the assessments set forth in ss.
 142 440.49(8) ~~440.49(9)~~, 440.51(1), and 624.4621(7), but is not
 143 subject to any other provision of s. 624.4621 and is not
 144 required to file any report with the department under s.
 145 440.38(2) (b) which is uniquely required of group self-insurer

20-01209-12 20121796__
 146 funds qualified under s. 624.4621.
 147 Section 4. 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)

2.7.12

Meeting Date

Topic public worker repeal

Bill Number 1794
(if applicable)

Name Ashley Mayer

Amendment Barcode _____
(if applicable)

Job Title Dr. Policy / by plan

Address Capital - PC-11

Phone 413-2863

Tallahassee FL

E-mail ashley.mayer@nyflorida.com

City State Zip

Speaking: For Against Information

Representing Geo Kwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

S-001 (10/20/11)

CourtSmart Tag Report

Room: KN 412

Case:

Caption: Senate Banking and Insurance Committee - 412kb 1:30pm

Type:

Judge:

Started: 2/7/2012 1:34:46 PM

Ends: 2/7/2012 3:00:41 PM Length: 01:25:56

1:34:57 PM Meeting called to order by Chair Richter
1:35:10 PM Roll call --quorum present
1:35:52 PM TAB 1 - SB 1586 by Sen. Thrasher - Money Services Businesses.
1:36:14 PM Amd. 133150 by Sen. Gaetz -- explanation of amendment by Sen. Thrasher
1:40:31 PM Brian Pitts, Justice - 2-Jesus
1:41:41 PM Sen. Sobel motion for CS -- adopted
1:41:52 PM Roll call -- passed
1:42:21 PM TAB 2 - SB 1584 by Sen. thrasher - Money Srvs. Business
1:42:40 PM Explanation of bill by Sen. Thrasher
1:43:16 PM Roll Call on SB 1584 -- adopted
1:44:20 PM TAB 5 --SB 1476 by Sen. Richter
1:44:56 PM Explanation of bill by Sen. Richter's delete all amendment
1:45:13 PM Amend. 443654 -delete all -- without objection -- adopted
1:46:46 PM Amend. 443654 -delete all -- without objection -- adopted
1:47:30 PM Question by Senator Fasano to sponsor
1:48:49 PM Paul Sanford --providing information on bill
1:50:40 PM Brian Pitts, Justice-2-Jesus
1:56:10 PM Brian Deffenbaugh, Office of Insurance Consumer Advocate
1:57:10 PM Robin Westcott, Insurance Consumer Advocate
1:57:40 PM Jack McRay representing AARP
2:00:28 PM Tim Meenam - National Assoc. of Insur. and Financial Advisors
2:01:45 PM Motion for CS by Sen. Gaetz
2:01:56 PM Roll call vote on SB 1476 -- passed
2:02:47 PM TAB 3 - SB 1050 by Sen. Bogdanoff --Mortgages
2:03:17 PM Explanation of bill by Sen. Bogdanoff
2:05:19 PM Delete all amendment 536194 -- without objection -- adopted
2:06:20 PM Sen. Negrón moves a CS
2:06:39 PM Roll Call on SB 1050 -- passed
2:07:07 PM TAB 4 - CS/SB 1052 by Sen. Ring - Newborn Screening for Critical Congenital Heart Disease
2:07:52 PM Explanation of bill by Senator Ring
2:11:39 PM Question by Sen. Oelrich
2:13:46 PM Brian Pitts, Justice-2-Jesus
2:15:00 PM Karen Thurston Chavez - Broken Hearts of Florida
2:16:09 PM Jason Haesezer - March of Dimes
2:17:33 PM Sen. Negrón recognized for a question
2:18:42 PM Sen. Sobel recognized for debate
2:20:03 PM Sen. Sobel recognized for debate
2:20:04 PM Sen. Oelrich questions costs of program
2:20:47 PM Sen. Hays for question on bill
2:21:30 PM Sen. Bennett for comments on bill
2:21:57 PM Senator Ring closes on bill
2:23:14 PM Senator Ring closes on bill
2:23:17 PM roll call on CS/SB 1052 --passed
2:25:54 PM TAB 6 by Sen. Bennett --Uniform Fraudulent Transfer Act
2:26:17 PM Explanation of bill by Sen. Bennett
2:28:52 PM Amd. 130000 - delete all amendment--Sen. Bennett explains delete all amendment
2:29:54 PM Amd. 130000 -- without objection -- adopted
2:30:47 PM Senator Fasano recognized for question
2:31:48 PM Sen. Margolis recognized for question
2:34:00 PM Sen. Sobel recognized for question
2:36:57 PM Stephanie Feltz, Executive Dir., Girls Inc.
2:49:29 PM John Patterson, Attorney, Girls Incorp. of Sarasota County

2:51:38 PM Sen. Bennett recognized to close on bill
2:52:38 PM Sen. Oelrich moves CS
2:52:44 PM Roll call on SB 458 --passed
2:53:33 PM TAB 7 -- SB 1518 by Senator Hays --Property and Casualty Insurance
2:54:02 PM Sen. Hays explains the bill
2:54:47 PM Brian Pitts, Justice-2-Jesus
2:55:58 PM Roll call on SB 1518 --passed
2:56:35 PM Tab 8 - SB 1794 by Sen. Hays -Continuing Edu. Advisory BD.
2:57:37 PM Brian Pitts
2:58:38 PM Roll call on SB 1794 --passed
2:58:53 PM TAB 9 --SB 1790 by Sen. Hays--Preferred Worker Program
2:59:40 PM Explanation of bill by Sen. Hays
3:00:02 PM Roll call on SB 1796 -- passed
3:00:15 PM Meeting Adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget, *Chair*
Rules, *Vice Chair*
Agriculture
Banking and Insurance
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Education Pre-K - 12
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

SENATOR JD ALEXANDER

17th District

February 6, 2012

Senator Garrett S. Richter, Chair
Committee on Banking & Insurance
322 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Richter,

I respectfully request permission to be absent from the Committee on Banking & Insurance, tomorrow, February 7, 2012. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "JD Alexander".

JD Alexander
Senator, District 17

Xc: Steve Burgess

REPLY TO:

- 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore