

Tab 1	SB 1026 by Cruz; (Identical to H 01099) Living Organ Donors in Insurance Policies						
611868	D	S	RCS	BI, Cruz	Delete everything after	01/19 05:48 PM	

Tab 2	SB 1274 by Broxson; (Identical to H 01123) Ratification of Rules of the Department of Financial Services						
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Tab 3	SB 1292 by Gruters; (Identical to H 00749) Fraud Prevention						
745764	D	S	RCS	BI, Gruters	Delete everything after	01/19 04:41 PM	

Tab 4	SB 1402 by Burgess; (Compare to H 00951) Domestic Surplus Lines Insurance						
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Tab 5	SB 1430 by Burgess; (Identical to H 01023) Insolvent Insurers						
179644	A	S	RCS	BI, Brandes	Before L.33:	01/19 04:41 PM	
157610	A	S	WD	BI, Brandes	btw L.191 - 192:	01/19 04:41 PM	

Tab 6	SB 1536 by Boyd; (Similar to H 00389) Money Services Businesses						
571054	A	S	RCS	BI, Boyd	Delete L.262 - 357:	01/19 09:15 AM	

Tab 7	SB 1680 by Gruters; (Compare to H 00431) Financial Institutions						
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Tuesday, January 18, 2022
TIME: 3:30—5:00 p.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1026 Cruz (Identical H 1099)	Living Organ Donors in Insurance Policies; Defining the term "policy"; prohibiting insurers, health maintenance organizations, and prepaid health clinics under specified policies from declining or limiting coverages and discriminating against persons based solely on their status as living organ donors, and from precluding insureds or subscribers from donating organs; authorizing the Financial Services Commission to adopt rules and take actions to enforce specified laws, etc. BI 01/18/2022 Fav/CS HP RC	Fav/CS Yeas 10 Nays 0
2	SB 1274 Broxson (Identical H 1123)	Ratification of Rules of the Department of Financial Services; Ratifying a specified rule relating to the Florida Workers' Compensation Health Care Provider Reimbursement Manual, for the sole and exclusive purpose of satisfying any condition on effectiveness pursuant to s. 120.541(3), F.S., which requires ratification of any rule meeting any specified thresholds for likely adverse impact or increase in regulatory costs, etc. BI 01/18/2022 Favorable AEG AP	Favorable Yeas 9 Nays 0
3	SB 1292 Gruters (Identical H 749)	Fraud Prevention; Requiring sellers to allow consumers to cancel in a specified manner and by specified means service contracts that have automatic renewal provisions; revising maximum fines for public adjusters and public adjuster apprentices for certain violations under a specified circumstance; authorizing the Department of Financial Services to impose an administrative fine on insurers under certain circumstances; revising felony violations for which prosecutions must be commenced within a specified timeframe, etc. BI 01/18/2022 Fav/CS AEG AP	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, January 18, 2022, 3:30—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1402 Burgess (Compare H 951)	Domestic Surplus Lines Insurance; Defining the term "domestic surplus lines insurer"; providing for the eligibility of domestic surplus lines insurers; subjecting and exempting surplus lines insurers and surplus lines policies from certain requirements, etc. BI 01/18/2022 Favorable AEG AP	Favorable Yeas 9 Nays 0
5	SB 1430 Burgess (Identical H 1023)	Insolvent Insurers; Providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; revising a requirement for information regarding assessment percentages which must be specified by the Office of Insurance Regulation in orders levying assessments; providing reconciliation requirements for surcharges collected from policyholders; requiring insurers to treat the failure of an insured to pay a surcharge, rather than a recoupment charge, as a failure to pay the premium; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, etc. BI 01/18/2022 Fav/CS AEG AP	Fav/CS Yeas 9 Nays 0
6	SB 1536 Boyd (Similar H 389)	Money Services Businesses; Authorizing the Financial Services Commission to adopt rules; prohibiting the Office of Insurance Regulation from issuing licenses unless certain criteria are met; authorizing the office to bar persons from holding a license or acting as control persons of money services businesses under certain circumstances; providing that a rule may require reports to contain declarations by control persons, rather than officers or other responsible persons; requiring licensees to report changes in control persons, rather than certain other entities or persons, etc. BI 01/18/2022 Fav/CS CM RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Tuesday, January 18, 2022, 3:30—5:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 1680 Gruters (Compare H 431)	Financial Institutions; Providing that the failure of foreign nationals to appear through video conference at certain hearings is grounds for denial of certain applications; providing that the imposition of fees or charges upon consumers for online audit verifications of financial institution accounts is a violation of the Florida Deceptive and Unfair Trade Practices Act; revising the circumstances pursuant to which the Office of Financial Regulation is required to conduct certain examinations; requiring the office, upon receiving applications for authority to organize a bank or trust company, to investigate the need for new bank facilities in a primary service area or for a target market and the ability of such service area or target market to support new and existing bank facilities, etc. BI 01/18/2022 Favorable AP RC	Favorable Yeas 9 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1026

INTRODUCER: Banking and Insurance Committee and Senator Cruz

SUBJECT: Living Organ Donors in Insurance Policies

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	FAV/CS
2.			HP	
3.			RC	

I. Summary:

SB 1026 revises Florida’s Unfair Insurance Trade Practices law (part IX of ch. 626, F.S.) and several parts of Florida’s Insurance Rates and Contracts law (ch. 627, F.S.) to make unlawful the discrimination against living organ donors in insurance coverage. The insurance types specifically included in SB 1026 are: life insurance, including industrial life insurance¹ and group life insurance;² credit life insurance and credit disability insurance;³ and long-term care insurance.⁴

The bill has an effective date of July 1, 2022.

II. Present Situation:

The Florida Office of Insurance Regulation

The Office of Insurance Regulation (OIR) licenses and regulates the activities of life, health, property, and casualty insurers, health maintenance organizations (HMOs), and other risk-

¹ Section 627.502, F.S. defines industrial life insurance as that form of life insurance written under policies under which premiums are payable monthly or more often, bearing the words “industrial policy” or “weekly premium policy” or words of similar import imprinted upon the policies as part of the descriptive matter, and issued by an insurer that, as to such industrial life insurance, is operating under a system of collecting a debit by its agent.

² Group life insurance is a type of life insurance policy insuring the lives of more than one individual. Pursuant to s. 627.551, F.S., groups eligible for such coverage include employee, debtor, labor union, and trustee groups, among others.

³ Section 627.677, F.S., defines “credit life insurance” as insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction and defines “credit disability insurance as: insurance under which a borrower of money or a purchaser or a lessee of goods is insured in connection with a specific loan or credit transaction against loss of time resulting from accident or sickness.

⁴ Section 627.9404, F.S., defines a “long-term care insurance policy” as an insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.

bearing entities. The OIR is an office within the Financial Services Commission (FSC). The FSC is composed of the Governor, the Attorney General, the Chief Financial Officer, and the Commissioner of Agriculture. The FSC members serve as the agency head for purposes of rulemaking under ss. 120.536-120.565, F.S.⁵

Organ Donation

Organ and tissue donation is the process of surgically removing an organ or tissue from one person (the donor) and transplanting it into another person (the recipient) to save the life of, or enhance the life of, the organ recipient. Transplantation is generally necessary because the recipient's organ has failed or has been damaged by disease or injury. Transplantable organs include the kidneys, liver, heart, lungs, pancreas and intestine.⁶ Certain tissue is also transplantable and includes skin used as a temporary dressing for burns, serious abrasions and other exposed areas; heart valves used to replace defective valves; tendons used to repair torn ligaments on knees or other joints; veins used in cardiac bypass surgery; corneas used to restore sight; and bone used in orthopedic surgery to facilitate healing of fractures or prevent amputation.⁷

A single person can save up to eight lives through organ donation, and dozens more lives may be improved through tissue donation. Nearly 120,000 children and adults are presently awaiting potentially life-saving organ transplants and every day 22 people die awaiting organ transplant.⁸ While most organ and tissue donations occur after the donor has died, some organs and tissues can be donated while the donor is alive, such as a kidney or part of a liver or lung.⁹ There are approximately as many living donors every year as there are deceased donors and only about three in every 1,000 people actually become donors—despite 169 million in the United States being registered.¹⁰ According to United Network for Organ Sharing (UNOS), between 2017 and 2021, there were an average of 6,539 living donor transplants per year in the United States.¹¹

Organ Donation, Procurement, and Transplant Process

Established by the National Organ Transplant Act (NOTA) of 1984, the Organ Procurement and Transplantation Network (OPTN) is a public-private partnership that links all professionals involved in the nation's donation and transplant system.¹² The UNOS, a private, non-profit organization serves as the OPTN under contract with the U.S. Department of Health and Human Services.¹³ UNOS coordinates how donor organs are matched and allocated to patients on the

⁵ Section 20.121(3), F.S.

⁶ Donate Life Florida, *Frequently Asked Questions*, available at <https://www.donateliflorida.org/categories/donation/> (last visited Jan. 13, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *How Organ Donation Works*, available at <https://organdonor.gov/about/process.html> (last visited Jan. 13, 2022).

¹⁰ *Id.*

¹¹ UNOS, *Living Donation*, <https://unos.org/transplant/living-donation/> (Jan 13, 2022).

¹² U.S. Department of Health and Human Services, *Organ Procurement and Transplantation Network – About the OPTN*, available at <https://optn.transplant.hrsa.gov/governance/about-the-optn/> (last visited Jan. 13, 2022).

¹³ *Id.* and UNOS, *Who we are*, available at: <https://unos.org/about/> (last visited Jan 13, 2022).

waiting list.¹⁴ Non-profit, federally designated organ procurement organizations (OPOs) work closely with UNOS, hospitals, and transplant centers to facilitate the organ donation and transplantation process.¹⁵

Potential Financial Impacts Relating to Organ Donation

The buying and selling of organs is unlawful under the National Organ Transplant Act of 1984.¹⁶ However, certain organ donor expenses relating to transplant may be paid for by the recipient (or their insurer). Generally, an organ donor and their family are not charged for the medical care required to donate an organ.¹⁷ Costs related to living or deceased donation are paid by the recipient, usually through insurance.¹⁸ Typically, any cost that falls outside of the transplant center's donor evaluation or actual surgery, such as travel, lodging, lost wages, and other non-medical expenses, is borne by the living donor or recipient.¹⁹ In addition, treatment for conditions discovered during the evaluation portion of the donation process and some post-donation follow-up expenses are not covered. UNOS also warns potential donors that "living donation may have a negative impact on the ability to obtain, maintain, or afford health, disability and life insurance."²⁰

Obtaining and Affording Insurance

In 2014, the *American Journal of Transplantation* published a study of 1,046 donors who underwent living kidney donation at Johns Hopkins Hospital. Of these donors, 25 percent of those who reporting attempting to obtain new or revise life insurance policies post-procedure reported difficulty in doing so. The difficulties reported included outright denials in obtaining coverage, higher premiums, and the notation of a pre-existing condition relating to the kidney donation. The same survey also noted that of the surveyed donors who reported attempting to obtain new or revise health insurance policies post-procedure, 7 percent reported difficulties in doing so.²¹

Another study, also published in the *American Journal of Transplantation* (in 2007), which reviewed 23 different studies over a 35-year period, concluded that a significant number of living kidney donors do encounter difficulties in obtaining or maintaining insurance (with anywhere between 3 to 11 percent of those surveyed reporting difficulties). That same study also found that insurability issues caused significant stress for between 11 and 13 percent of kidney donors and that "insurability may negatively influence one's decision to become a living organ donor."²²

¹⁴ U.S. Government Information on Organ Donation and Transplantation, U.S. Department of Health & Human Services, *The Organ Transplant Process*, available at <https://organdonor.gov/about/process/transplant-process.html> (last visited Jan. 13, 2022).

¹⁵ Donate Life Florida, *Organ Procurement Organizations and Transplant Centers*, available at <https://www.donateliflorida.org/local-resources/transplant-centers/> (last visited Jan 13, 2022).

¹⁶ National Organ Transplant Act, 42 U.S.C. s. 274.

¹⁷ Health Resources Services Administration, *Organ Donation Frequently Asked Questions*, available at <https://www.organdonor.gov/learn/faq> (last visited Jan. 13, 2022).

¹⁸ *Id.*

¹⁹ UNOS, *Living Donation Costs*, available at <https://transplantliving.org/financing-a-transplant/living-donation-costs/> (last visited Mar. 23, 2021).

²⁰ *Id.*

²¹ B.J. Boyarsky, et al, *Experiences Obtaining Insurance After Live Kidney Donation*, 14(9) AM J TRANSPLANT. 2168-72 (2014).

²² R.C. Yang, et al, *Insurability of Living Organ Donors: A Systematic Review*, 7(6) AM J TRANSPLANT. 1547-48 (2007).

This same study also found that these insurability issues are not isolated to kidney donors.²³ The National Kidney Foundation also advises potential donors, in accessing the risk of donation, that “some donors have reported difficulty in getting, affording, or keeping disability or life insurance.”

There is some evidence that these increased difficulties and costs in obtaining life insurance is not always based on the actual additional loss risk that organ donation presents. A 2015 study of living kidney donors found that such donation “does not appear to increase long-term mortality compared with controls;” however, the study did advise that it was limited in scope and more research was needed.²⁴ A study of living kidney donors in Korea, published in 2019, found that, “the risk of all-cause mortality was comparable between live kidney donors and matched non-donor healthy controls with similar health status.”²⁵ A 2012 study of live liver donors found that while 90-day mortality rates were elevated for such donors, the rates of long-term mortality were essentially the same for live liver donors, for live kidney donors, and for healthy controls.²⁶

III. Effect of Proposed Changes:

Bill Provisions

Section 1 creates s. 626.97075, F.S. within Florida’s Unfair Trade Practices law (part IX of ch. 626). The section creates a definition of “policy” as a life insurance policy, including those for industrial life insurance and group life insurance; a credit life insurance and credit disability insurance policy; and a long-term care insurance policy. The section specifies that an insurer may not, in a policy, as defined by the section:

- Decline or limit coverage of a person solely due to that person’s status as a living organ donor;
- Preclude an insured person from donating all, or part of, an organ as a condition to continuing to receive coverage under that person’s insurance policy; or
- Otherwise discriminate in the offering, issuance, cancellation, coverage, premium, or any other condition of a person’s policy without any additional actuarial risk, and based solely on that person’s status as a living organ donor.

This section also grants the Financial Services Commission the authority to adopt rules and enforce these prohibitions.

Pursuant to s. 626.9521, F.S., which specifies penalties for violations of part IX of ch. 626, F.S., a violation of proposed s. 626.97075, F.S., would subject a person a fine of up to \$5,000 for each nonwillful violation and up to \$40,000 for each willful violation. Insurers violating the proposed section may be fined an aggregate amount of up to \$20,000 for all nonwillful violations arising out of the same action or an aggregate amount of up to \$200,000 for all willful violations arising

²³ *Id.* and Nissing MH & Hayashi PH, *Right hepatic lobe donation adversely affects donor life insurability up to one year after donation*, 11 LIVER TRANSPL 843–847 (2005).

²⁴ K.L. Lentine & A. Patel, *Risks and outcomes of living donation*, 19(4) ADV CHRONIC KIDNEY DIS. 220-8 (2012).

²⁵ Y. Kim, et al, *Long-term Mortality Risks Among Living Kidney Donors in Korea*. 75(6) Am J Kidney Dis. 925 (2019).

²⁶ A.D. Muzaale, et al, *Estimates of early death, acute liver failure, and long-term mortality among live liver donors*, 142(2) Gastroenterology 273-80 (2012).

out of the same action. These specified fines may be imposed in addition to any specified penalty elsewhere in law.

Section 2 provides an effective date of the bill of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Passage of this bill should have minimal fiscal impact on insurers. Given the apparent minimal to no impact on long term mortality for the living donation of organs, the passage of this bill should have little impact on risk carried by insurers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the section 626.97075 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on January 18, 2022:

The committee substitute deleted all provisions in SB 1026 relating to health insurance; group, blanket, and franchise health insurance; health maintenance contracts provided by health maintenance organizations; and prepaid health contracts. The amended bill also deletes redundant portions of the bill which placed into individual insurance chapters the prohibitions specified in Section 1 of the bill (which creates a new section under Florida's Unfair Insurance Trade Practices law).

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 626.97075, Florida Statutes, is created
to read:

626.97075 Life insurance, disability insurance, and long-
term care insurance; discrimination against living organ donors
prohibited.—

(1) As used in this section, the term "policy" means any of



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11 the following:

12 (a) An individual or group life insurance policy.

13 (b) An industrial life insurance policy, as the term
14 "industrial life insurance" is defined in s. 627.502(1).

15 (c) A credit life insurance or credit disability insurance
16 policy, as defined in s. 627.677(1) and (2), respectively.

17 (d) A long-term care insurance policy as defined in s.
18 627.9404(1).

19 (2) Notwithstanding any other law, an insurer may not,
20 under a policy:

21 (a) Decline or limit coverage of a person solely due to his
22 or her status as a living organ donor;

23 (b) Preclude an insured from donating all or part of an
24 organ as a condition to continuing to receive coverage under the
25 policy; or

26 (c) Otherwise discriminate in the offering, issuance,
27 cancellation, coverage, premium, or any other condition of the
28 policy for a person without any additional actuarial risk and
29 based solely on his or her status as a living organ donor.

30 (3) The commission may adopt rules and take actions
31 necessary to enforce this section.

32 Section 2. This act shall take effect July 1, 2022.

33

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

35 And the title is amended as follows:

36 Delete everything before the enacting clause
37 and insert:

38 A bill to be entitled

39 An act relating to living organ donors in insurance



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40 policies; creating s. 626.97075, F.S.; defining the
41 term "policy"; prohibiting insurers under specified
42 policies from declining or limiting coverages and
43 discriminating against persons based solely on their
44 status as living organ donors, and from precluding
45 insureds from donating organs; authorizing the
46 Financial Services Commission to adopt rules and take
47 actions to enforce specified laws; providing an
48 effective date.

By Senator Cruz

18-01052-22

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1 A bill to be entitled
 2 An act relating to living organ donors in insurance
 3 policies; creating s. 626.97075, F.S.; defining the
 4 term "policy"; prohibiting insurers, health
 5 maintenance organizations, and prepaid health clinics
 6 under specified policies from declining or limiting
 7 coverages and discriminating against persons based
 8 solely on their status as living organ donors, and
 9 from precluding insureds or subscribers from donating
 10 organs; authorizing the Financial Services Commission
 11 to adopt rules and take actions to enforce specified
 12 laws; creating ss. 627.4795, 627.5215, 627.5585,
 13 627.6443, 627.65624, 627.6813, and 627.94065, F.S.;
 14 prohibiting insurers under life insurance policies,
 15 industrial life insurance policies, group life
 16 insurance policies, individual health insurance
 17 policies, group, blanket, and franchise health
 18 insurance policies, credit life and disability
 19 insurance policies, and long-term care insurance
 20 policies, respectively, from declining or limiting
 21 coverages and discriminating against persons based
 22 solely on their status as living organ donors, and
 23 from precluding insureds from donating organs;
 24 authorizing the commission to adopt rules and take
 25 actions to enforce specified laws; creating ss.
 26 641.31065 and 641.4275, F.S.; prohibiting health
 27 maintenance organizations under health maintenance
 28 contracts and prepaid health clinics under prepaid
 29 health clinic contracts, respectively, from declining

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

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30 or limiting coverages and discriminating against
 31 persons based on their status as living organ donors,
 32 and from precluding subscribers from donating organs;
 33 authorizing the commission to adopt rules and take
 34 actions to enforce specified laws; providing an
 35 effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Section 626.97075, Florida Statutes, is created
 40 to read:
 41 626.97075 Life insurance, health insurance, disability
 42 insurance, and long-term care insurance; discrimination against
 43 living organ donors prohibited.-
 44 (1) As used in this section, the term "policy" means any of
 45 the following:
 46 (a) An individual or group life insurance policy.
 47 (b) An industrial life insurance policy, as the term
 48 "industrial life insurance" is defined in s. 627.502(1).
 49 (c) An individual or a group, blanket, or franchise health
 50 insurance policy, as the term "health insurance" is defined in
 51 s. 624.603.
 52 (d) A credit life insurance or credit disability insurance
 53 policy, as defined in s. 627.677(1) and (2), respectively.
 54 (e) A long-term care insurance policy as defined in s.
 55 627.9404(1).
 56 (f) A health maintenance contract as defined s. 641.19(11).
 57 (g) A prepaid health clinic contract as defined in s.
 58 641.402.

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

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59 (2) Notwithstanding any other law, an insurer, a health
60 maintenance organization, or a prepaid health clinic may not,
61 under a policy:

62 (a) Decline or limit coverage of a person solely due to his
63 or her status as a living organ donor;

64 (b) Preclude an insured or a subscriber from donating all
65 or part of an organ as a condition to continuing to receive
66 coverage under the policy; or

67 (c) Otherwise discriminate in the offering, issuance,
68 cancellation, coverage, premium, or any other condition of the
69 policy for a person without any additional actuarial risk and
70 based solely on his or her status as a living organ donor.

71 (3) The commission may adopt rules and take actions
72 necessary to enforce this section.

73 Section 2. Section 627.4795, Florida Statutes, is created
74 to read:

75 627.4795 Discrimination against living organ donors
76 prohibited.—

77 (1) Notwithstanding any other law, an insurer may not,
78 under a life insurance policy:

79 (a) Decline or limit coverage of a person solely due to his
80 or her status as a living organ donor;

81 (b) Preclude an insured from donating all or part of an
82 organ as a condition to continuing to receive coverage under the
83 policy; or

84 (c) Otherwise discriminate in the offering, issuance,
85 cancellation, coverage, premium, or any other condition of the
86 policy for a person without any additional actuarial risk and
87 based solely on his or her status as a living organ donor.

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88 (2) The commission may adopt rules and take actions
89 necessary to enforce this section.

90 Section 3. Section 627.5215, Florida Statutes, is created
91 to read:

92 627.5215 Discrimination against living organ donors
93 prohibited.—

94 (1) Notwithstanding any other law, an insurer may not,
95 under an industrial life insurance policy:

96 (a) Decline or limit coverage of a person solely due to his
97 or her status as a living organ donor;

98 (b) Preclude an insured from donating all or part of an
99 organ as a condition to continuing to receive coverage under the
100 policy; or

101 (c) Otherwise discriminate in the offering, issuance,
102 cancellation, coverage, premium, or any other condition of the
103 policy for a person without any additional actuarial risk and
104 based solely on his or her status as a living organ donor.

105 (2) The commission may adopt rules and take actions
106 necessary to enforce this section.

107 Section 4. Section 627.5585, Florida Statutes, is created
108 to read:

109 627.5585 Discrimination against living organ donors
110 prohibited.—

111 (1) Notwithstanding any other law, an insurer may not,
112 under a group life insurance policy:

113 (a) Decline or limit coverage of a person solely due to his
114 or her status as a living organ donor;

115 (b) Preclude an insured from donating all or part of an
116 organ as a condition to continuing to receive coverage under the

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117 policy; or

118 (c) Otherwise discriminate in the offering, issuance,
 119 cancellation, coverage, premium, or any other condition of the
 120 policy for a person without any additional actuarial risk and
 121 based solely on his or her status as a living organ donor.

122 (2) The commission may adopt rules and take actions
 123 necessary to enforce this section.

124 Section 5. Section 627.6443, Florida Statutes, is created
 125 to read:

126 627.6443 Discrimination against living organ donors
 127 prohibited.—

128 (1) Notwithstanding any other law, an insurer may not,
 129 under a health insurance policy:

130 (a) Decline or limit coverage of a person solely due to his
 131 or her status as a living organ donor;

132 (b) Preclude an insured from donating all or part of an
 133 organ as a condition to continuing to receive coverage under the
 134 policy; or

135 (c) Otherwise discriminate in the offering, issuance,
 136 cancellation, coverage, premium, or any other condition of the
 137 policy for a person without any additional actuarial risk and
 138 based solely on his or her status as a living organ donor.

139 (2) The commission may adopt rules and take actions
 140 necessary to enforce this section.

141 Section 6. Section 627.65624, Florida Statutes, is created
 142 to read:

143 627.65624 Discrimination against living organ donors
 144 prohibited.—

145 (1) Notwithstanding any other law, an insurer may not,

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146 under a group, blanket, or franchise health insurance policy:

147 (a) Decline or limit coverage of a person solely due to his
 148 or her status as a living organ donor;

149 (b) Preclude an insured from donating all or part of an
 150 organ as a condition to continuing to receive coverage under the
 151 policy; or

152 (c) Otherwise discriminate in the offering, issuance,
 153 cancellation, coverage, premium, or any other condition of the
 154 policy for a person without any additional actuarial risk and
 155 based solely on his or her status as a living organ donor.

156 (2) The commission may adopt rules and take actions
 157 necessary to enforce this section.

158 Section 7. Section 627.6813, Florida Statutes, is created
 159 to read:

160 627.6813 Discrimination against living organ donors
 161 prohibited.—

162 (1) Notwithstanding any other law, an insurer may not,
 163 under a credit life insurance or credit disability insurance
 164 policy:

165 (a) Decline or limit coverage of a person solely due to his
 166 or her status as a living organ donor;

167 (b) Preclude an insured from donating all or part of an
 168 organ as a condition to continuing to receive coverage under the
 169 policy; or

170 (c) Otherwise discriminate in the offering, issuance,
 171 cancellation, coverage, premium, or any other condition of the
 172 policy for a person without any additional actuarial risk and
 173 based solely on his or her status as a living organ donor.

174 (2) The commission may adopt rules and take actions

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175 necessary to enforce this section.

176 Section 8. Section 627.94065, Florida Statutes, is created
177 to read:

178 627.94065 Discrimination against living organ donors
179 prohibited.-

180 (1) Notwithstanding any other law, an insurer may not,
181 under a long-term care insurance policy:

182 (a) Decline or limit coverage of a person solely due to his
183 or her status as a living organ donor;

184 (b) Preclude an insured from donating all or part of an
185 organ as a condition to continuing to receive coverage under the
186 policy; or

187 (c) Otherwise discriminate in the offering, issuance,
188 cancellation, coverage, premium, or any other condition of the
189 policy for a person without any additional actuarial risk and
190 based solely on his or her status as a living organ donor.

191 (2) The commission may adopt rules and take actions
192 necessary to enforce this section.

193 Section 9. Section 641.31065, Florida Statutes, is created
194 to read:

195 641.31065 Discrimination against living organ donors
196 prohibited.-

197 (1) Notwithstanding any other law, a health maintenance
198 organization may not, under a health maintenance contract:

199 (a) Decline or limit coverage of a person solely due to his
200 or her status as a living organ donor;

201 (b) Preclude a subscriber from donating all or part of an
202 organ as a condition to continuing to receive coverage under the
203 contract; or

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204 (c) Otherwise discriminate in the offering, issuance,
205 cancellation, coverage, premium, or any other condition of the
206 contract for a person without any additional actuarial risk and
207 based solely on his or her status as a living organ donor.

208 (2) The commission may adopt rules and take actions
209 necessary to enforce this section.

210 Section 10. Section 641.4275, Florida Statutes, is created
211 to read:

212 641.4275 Discrimination against living organ donors
213 prohibited.-

214 (1) Notwithstanding any other law, a prepaid health clinic
215 may not, under a prepaid health clinic contract:

216 (a) Decline or limit coverage of a person solely due to his
217 or her status as a living organ donor;

218 (b) Preclude a subscriber from donating all or part of an
219 organ as a condition to continuing to receive coverage under the
220 contract; or

221 (c) Otherwise discriminate in the offering, issuance,
222 cancellation, coverage, premium, or any other condition of the
223 contract for a person without any additional actuarial risk and
224 based solely on his or her status as a living organ donor.

225 (2) The commission may adopt rules and take actions
226 necessary to enforce this section.

227 Section 11. This act shall take effect July 1, 2022.



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: December 14, 2021

I respectfully request that **Senate Bill # 1026**, relating to Living Organ Donors in Insurance Policies, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Janet Cruz
Florida Senate, District 18

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
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1/18/22
Meeting Date

BANKING AND INSURANCE
Committee

SB 1026
Bill Number or Topic

Amendment Barcode (if applicable)

Name TASHA CARTER, INSURANCE CONSUMER ADV.

Phone 850-413-2868

Address 200 E GRIMS STREET
Street

Email TASHA.CARTER@MYFLORIDA.COM

TALLAHASSEE FL 32399
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

OFFICE OF THE INSURANCE
CONSUMER ADVOCATE

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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01/18/2022

Meeting Date

Banking & Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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DUPLICATE

SB -1026

Bill Number or Topic

Name E. Ivonne Fernandez

Phone 954-850-7262

Amendment Barcode (if applicable)

Address 215 S Monroe St. #603

Email ifernandez@aarp.org

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

SB 1026

1/18/2022

Meeting Date

Bill Number or Topic

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SENATE BANKING & INSURANCE

Committee

Amendment Barcode (if applicable)

Name Bob Reynolds

Phone 850-422-0656

Address P.O. Box 4369

Email RRRASSOCIATES@EARTHLINK.NET

Street

TALL

FLA

32315

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

FRESENIUS MEDICAL CARE NORTH AMERICA

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. 511.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flisenate.gov\)](#)

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Meeting Date

The Florida Senate APPEARANCE RECORD

SB 1026

Bill Number or Topic

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Banking / Insurance

Committee

Amendment Barcode (if applicable)

Name Ron Watson

Phone 850 567-1202

Address 9114 Seafair Lane

Email watson.strategies@comcast.net

Street

Tallahassee

FL

State

32317

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Rental Coalition

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

01/18/22

Meeting Date

Banking / Insurance

Committee

The Florida Senate APPEARANCE RECORD

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Amendment to SB 1026

Bill Number or Topic

01868

Amendment Barcode (if applicable)

Name Ron Watson

Phone 850 567-1202

Address 9114 Seafair Lane

Email Watson.Strategies@comcast.net

Street

Tallahassee

FL

State

32317

Zip

Speaking: For Against Information

OR

Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FL Rental Coalition

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1274

INTRODUCER: Senator Broxson

SUBJECT: Ratification of Rules of the Department of Financial Services

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Favorable
2.			AEG	
3.			AP	

I. Summary:

SB 1274 ratifies rule 69L-7.020, F.A.C.

The Department of Financial Services (DFS) has adopted an amendment to Rule 69L-7.020, F.A.C., incorporating by reference the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual (Manual). The Manual contains reimbursement policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished under the Workers' Compensation statutes. The Manual also contains reimbursement policies and payment methodologies for pharmacists and medical suppliers.

The National Council on Compensation Insurance, Inc. (NCCI) estimates that the implementation of the Manual will increase workers' compensation system costs by 0.2 percent (\$8 million). Because the Statement of Estimated Regulatory Costs (SERC) for this rule exceeds \$1 million within 5 years of adoption, Legislative ratification is required for this rule to become effective, pursuant to s. 120.541(3), F.S.

This bill is effective July 1, 2022.

II. Present Situation:

Rulemaking Authority and Legislative Ratification

A rule is an "agency statement of general applicability that implements, interprets, or prescribes law or policy."¹ Rulemaking authority is delegated by the Legislature in law to an agency, and authorizes an agency to adopt, develop, establish, or otherwise create a rule.² An agency may not

¹ Section 120.52(16), F.S.

² Section 120.52(17), F.S.

engage in rulemaking unless it has a legislative grant of authority to do so.³ The statutory authority for rulemaking must be specific enough to guide an agency's rulemaking and an agency rule must not exceed the bounds of authority granted by the Legislature.⁴

Prior to the adoption, amendment, or repeal of any rule, an agency must file a notice of the proposed rule in the Florida Administrative Register.⁵ The notice of the proposed rule must include:

- An explanation of the purpose and effect;
- The specific legal authority for the rule;
- The full text of the rule; and
- A summary of the agency's statement of estimated regulatory costs (SERC), if one is prepared.⁶

Within 21 days of the notice, the public may provide an agency with information regarding the SERC or provide proposals for a lower cost alternative to the rule.⁷

SERC Requirements

Agencies must prepare the SERC for a rule that has an adverse impact on small businesses or that increases regulatory costs more than \$200,000 within one year after implementation of the rule.⁸

A SERC must include estimates of:

- The number of people and entities effected by the proposed rule;
- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.⁹

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of \$1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,¹⁰ productivity, or innovation; or
- Regulatory costs, including any transactional costs.¹¹

³ See ss. 120.52(8) and 120.536, F.S.

⁴ See *Sloban v. Florida Board of Pharmacy*, 982 So.2d 26 (Fla. 1st DCA 2008) and *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So.2d 594 (Fla 1st DCA 2000).

⁵ See ss. 120.54(2)(a) and 120.55(1)(b), F.S.

⁶ Section 120.54(3)(a)1., F.S.

⁷ See ss. 120.54(3)(a)1., and 120.541(1)(a), F.S.

⁸ Section 120.541(1)(a), F.S.

⁹ Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less.

¹⁰ Business competitiveness includes the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

¹¹ Section 120.541(2)(a), F.S.

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the Legislature must ratify the rule in order for it to take effect.¹²

Workers' Compensation Maximum Reimbursement Allowances

The Department of Financial Services (DFS), Division of Workers' Compensation, provides regulatory oversight of Florida's workers' compensation system. Florida's workers' compensation law provides for medically necessary treatment and care of injured employees, including medications. The law provides reimbursement formulas and methodologies to compensate providers of health services, subject to maximum reimbursement allowances (MRAs).

A three-member panel (panel) consisting of the Chief Financial Officer (CFO) or CFO's designee and two Governor's appointees sets the MRAs.¹³ The DFS incorporates the statewide schedules of the MRAs by rule in reimbursement manuals. In establishing the MRA manuals, the panel considers the usual and customary levels of reimbursement for treatment, services, and care;¹⁴ the cost impact to employers for providing reimbursement that ensures that injured workers have access to necessary medical care;¹⁵ and the financial impact of the MRAs on healthcare providers and facilities;¹⁶ Florida law requires the panel to develop MRA manuals that are reasonable, promote the workers' compensation system's healthcare cost containment and efficiency, and are sufficient to ensure that medically necessary treatment is available for injured workers.¹⁷

The panel develops four different reimbursement manuals to determine statewide schedules of maximum reimbursement allowances. The healthcare provider manual limits the maximum reimbursement for licensed physicians to 110 percent of Medicare reimbursement,¹⁸ while reimbursement for surgical procedures is limited to 140 percent of Medicare.¹⁹ The hospital manual sets maximum reimbursement for outpatient scheduled surgeries at 60 percent of usual and customary charges,²⁰ while other outpatient services are limited to 75 percent of usual and customary charges.²¹ Reimbursement of inpatient hospital care is limited based on a schedule of per diem rates approved by the panel.²² The ambulatory surgical centers manual limits reimbursement to 60 percent of usual and customary as such services are generally scheduled outpatient surgeries. The prescription drug reimbursement manual limits reimbursement to the average wholesale price plus a \$4.18 dispensing fee.²³ Repackaged or relabeled prescription

¹² Section 120.541(3), F.S. Legislative ratification is not required for adoption of federal standards, amendments to the Florida Building Code, or amendments to the Florida Fire Prevention Code. *See s. 120.541(4), F.S.*

¹³ Section 440.13(12)(a), F.S.

¹⁴ Section 440.13(12)(d)1., F.S.

¹⁵ Section 440.13(12)(d)2., F.S.

¹⁷ Section 440.13(12)(d)3., F.S.

¹⁷ Section 440.13(12)(d)3., F.S.

¹⁸ Section 440.13(12)(b)4., F.S.

¹⁹ Section 440.13(12)(b)5., F.S.

²⁰ Section 440.13(12)(b)3., F.S.

²¹ Section 440.13(12)(a), F.S.

²² Section 440.13(12)(a), F.S.

²³ Section 440.13(12)(c), F.S.

medication dispensed by a dispensing practitioner has a maximum reimbursement of 112.5 percent of the average wholesale price plus an \$8.00 dispensing fee.²⁴ Fees may not exceed the schedules adopted under Ch. 440, F.S., and department rule.²⁵

The Legislature previously ratified Rule 69L-7.020, F.A.C., which incorporates by reference the 2016 Edition of the Florida Workers' Compensation Health Care Provider Manual, providing for reimbursement of healthcare providers under the increased MRAs approved by the panel. The DFS has subsequently adopted amended versions of the rule, incorporating by referenced the Manual. NCCI estimates that the Manual will increase workers' compensation system costs by 0.2 percent (\$8 million).²⁶ According to the SERC, the revisions to the MRAs in the updated manual are projected to result in increased costs to the overall compensation system of \$8 million over the next five years.²⁷

Because the SERC for these rules exceeds \$1 million within five years of adoption, Legislative ratification is required for these rules to become effective, pursuant to s. 120.541(3), F.S.

III. Effect of Proposed Changes:

The bill ratifies Rule 69L-7.020, F.A.C., allowing the rules to go into effect. The bill solely meets the condition for effectiveness imposed by s. 120.541(3), F.S. The bill expressly limits ratification to the effectiveness of the rules. The bill provides that it will not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

The effective date is July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

²⁴ *Id.*

²⁵ Section 440.13(13)(b), F.S. The department also has broad rulemaking authority under s. 440.591, F.S.

²⁶ National Council on Compensation Insurance, Inc., *Analysis of Florida Medical Fee Schedule Changes Proposed to be Effective July 1, 2021*, November 16, 2020 (on file with the Senate Committee on Banking and Insurance).

²⁷ Florida Department of Financial Services, *Statement of Estimated Regulatory Costs Rule 69L-7.020, F.A.C.* (November 2021)(on file with the Senate Committee on Banking and Insurance).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

The NCCI estimates the implementing the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will increase workers' compensation system costs by \$8 million.²⁸

C. Government Sector Impact:

The Department of Financial Services estimates that adoption of the 2020 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual will have the following financial impact on the workers' compensation expenses of the Division of Risk Management:²⁹

- Fiscal Year 2022-23: \$232,400
- Fiscal Year 2023-24: 235,000
- Fiscal Year 2024-25: \$235,800

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

²⁸ See note 27.

²⁹ Florida Department of Financial Services, *SB 404 Bill Analysis*, January 4, 2022 (on file with the Senate Committee on Banking and Insurance).

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Broxson

1-01657B-22

20221274__

1 A bill to be entitled
 2 An act relating to ratification of rules of the
 3 Department of Financial Services; ratifying a
 4 specified rule relating to the Florida Workers'
 5 Compensation Health Care Provider Reimbursement
 6 Manual, for the sole and exclusive purpose of
 7 satisfying any condition on effectiveness pursuant to
 8 s. 120.541(3), F.S., which requires ratification of
 9 any rule meeting any specified thresholds for likely
 10 adverse impact or increase in regulatory costs;
 11 providing applicability; providing an effective date.

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

15 Section 1. (1) The following rule is ratified for the sole
 16 and exclusive purpose of satisfying any condition on
 17 effectiveness imposed under s. 120.541(3), Florida Statutes:
 18 Rule 69L-7.020, Florida Administrative Code, titled "Florida
 19 Workers' Compensation Health Care Provider Reimbursement
 20 Manual," as filed for adoption with the Department of State
 21 pursuant to the certification package dated October 22, 2021.

22 (2) This act serves no other purpose and may not be
 23 codified in the Florida Statutes. After this act becomes a law,
 24 its enactment and effective dates shall be noted in the Florida
 25 Administrative Code, the Florida Administrative Register, or
 26 both, as appropriate. This act does not alter rulemaking
 27 additions delegated by prior law, does not constitute
 28 legislative preemption of or exception to any provision of law
 29 governing adoption or enforcement of the rule cited, and is

Page 1 of 2

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

1-01657B-22

20221274__

30 intended to preserve the status of any cited rule as a rule
 31 under chapter 120, Florida Statutes. This act does not cure any
 32 rulemaking defect or preempt any challenge based on a lack of
 33 authority or a violation of the legal requirements governing the
 34 adoption of any rule cited.

35 Section 2. This act shall take effect July 1, 2022.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 10, 2022

I respectfully request that **Senate Bill # 1274**, relating to Ratification of Rules of the Department of Financial Services, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script, appearing to read "Doug Broxson".

Senator Doug Broxson
Florida Senate, District 1

The Florida Senate

APPEARANCE RECORD

1274

1/18/22

Meeting Date

Bill Number or Topic

Banking & Insurance

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Austin Stowers

Phone 850/413/5939

Address 200 E Gaines St.

Email austin.stowers@myfloridacfo.com

Street

Tallahassee FL 32399

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

CFO & State Fire Marshal Jimmy Patronis

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1292

INTRODUCER: Banking and Insurance Committee and Senator Gruters

SUBJECT: Fraud Prevention

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Favorable
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1292 modifies provisions in several areas that are related to the prevention of various forms of fraud. The bill:

- Requires the electronic credentialing system administered by DHSMV to display driver vehicle registration and insurance information, provide the driver notice of any lapse in insurance coverage, and allow the driver to use the system to update policy information;
- Requires DHSMV to provide recommendations on the means by which DHSMV, law enforcement agencies, and other entities authorized by DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.
- Requires a seller of a service contract with an automatic renewal provision to allow a consumer to cancel the contract in the same manner, and by the same means, as the contract was executed;
- Subjects a public adjuster, public adjuster apprentice, or other person not otherwise exempt from licensure as a public adjuster, to a fine not to exceed \$20,000 per act for a violation of prohibited acts under s. 626.854, F.S., during a state of emergency;
- Authorizes DFS to impose a \$2,000 per day administrative fine on an insurer that fails or refuses to comply with s. 626.989, F.S., related to insurance fraud investigations, or s. 633.126, F.S., related to fraudulent insurance claims and crimes with respect to a fire and explosion;
- Authorizes the DFS Division of Investigative and Forensic Services (DIFS) to adopt rules to administer s. 626.989, F.S. related to insurance fraud investigations, and s. 633.126, F.S. related to fraudulent insurance claims and crimes with respect to a fire and explosion;

- Requires a motor vehicle service agreement company's written advertisement to fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company;
- Requires a motor vehicle service agreement company's radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company;
- Requires a motor vehicle service agreement company's telephone solicitation fully identify the soliciting licensed salesperson's full legal name and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends;
- Provides a technical change under s. 775.15, F.S., related to time limitations for prosecuting criminal offenses, to allow separate prosecutions of workers' compensation fraud under s. 440.105, F.S., and false and fraudulent insurance claims under s. 817.234, F.S., within 5 years of a violation of either section;
- Authorizes an insurer damaged as a result of insurance fraud to recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

The bill takes effect upon becoming a law, except as otherwise provided.

II. Present Situation:

Electronic Credentialing System

The 2021 Legislature¹ created the electronic credentialing system within the DHSMV for purposes of establishing a secure and uniform system for issuing an optional digital proof of driver license or identification card.² The electronic credentialing system may not retain internet protocol addresses, geolocation data, or other information that describes the location, computer, computer system, or computer network from which a customer accesses the system.³

Required Notification of New, Cancelled, Nonrenewed, and Lapsed Motor Vehicle Insurance Coverages

Section 324.0221, F.S., requires insurers to report new, cancelled, or nonrenewed personal injury protection or property damage insurance coverages to DHSMV within 10 days. Prior to notifying DHSMV, the insurer must provide the named insured, or the first-named insured in the case of a commercial fleet policy, with written notice that the cancellation or nonrenewal will be reported to DHSMV. The notice must also inform the named insured that failure to maintain personal injury protection and property damage insurance coverages on a motor vehicle when required by law may result in the loss of registration and driving privileges in Florida and inform the named insured of the amount of any reinstatement fees.

¹ Chapter 2021-235, L.O.F.

² Section 322.032(2)(a), F.S.

³ Section 322.032(2)(b), F.S.

Service Contracts with Automatic Renewal Provisions

Florida law governs the automatic renewal provisions of service contracts such that a service contract may automatically renew at the end of its term without any additional action required by either party under certain circumstances.

If the automatic renewal provision renews a service contract for more than one month and caused the service contract to be in effect for more than six months after the service contract was executed, the seller must clearly and conspicuously disclose the automatic renewal provision to the consumer. Renewal is effective unless the consumer and the consumer does not give notice to the seller of intent to terminate the service contract.⁴ However, in the case of a service contract with a term of 12 months that automatically renews for more than one month, the seller must provide written or electronic notification to consumers no more than 60 and no less than 30 days prior to the cancellation deadline pursuant to the automatic renewal provision.⁵

Violations of the disclosure and notice requirements void an automatic renewal provision, rendering it unenforceable,⁶ unless the seller demonstrates:

- It has established and implemented written procedures to comply with, and enforce, the requirements as part of their routine business practice;
- The failure to comply was the result of error; and
- It has provided, as part of its routine business practice, a refund or credit for the unearned portion of the renewed contract, starting from the date the seller is notified of the error.⁷

State and federal financial institutions or any subsidiary or affiliate thereof, health studios,⁸ licensed insurers, warranty associations,⁹ health care service organizations¹⁰ and programs,¹¹ electric utilities,¹² and private companies providing certain municipal services¹³ are expressly exempt.

Department of Financial Services

The Department of Financial Services (DFS) is statutorily responsible for:

⁴ Section 501.165(2)(a), F.S.

⁵ Section 501.165(2)(b), F.S.

⁶ Section 501.165(2)(e), F.S.

⁷ Section 501.165(2)(b), F.S.

⁸ Pursuant to s. 501.0125(1), F.S., any person who is engaged in the sale of services for instruction, training, or assistance in a program of physical exercise or in the sale of services for the right or privilege to use equipment or facilities in furtherance of a program of physical exercise. The term does not include an individual acting as a personal trainer.

⁹ Chapter 634, F.S., includes motor vehicle service agreement companies, home warranty associations, and service warranty associations.

¹⁰ Chapter 641, F.S., includes health maintenance organizations, prepaid health clinics, and health care services.

¹¹ Chapter 636, F.S., includes prepaid limited health service organizations and discount plan organizations.

¹² Pursuant to s. 366.02(2), F.S., any municipal electric utility, investor-owner electric utility, or rural electric cooperative which owns, maintains, or operates an electric generation, transmission, or distribution system within the state.

¹³ Pursuant to s. 180.05, F.S., any company or corporation duly authorized under the laws of the state to construct or operate water works systems, sewerage systems, sewage treatment works, garbage collection, and garbage disposal plants.

- Carrying out the state’s accounting and auditing functions, including preparing the state’s Comprehensive Annual Financial Report; monitoring state contracts; and making payment for state expenditures;
- Implementing state fire prevention and control measures, including the investigation of arson and other suspicious fires; training and certification of firefighter candidates; and regulation of explosive storage and use;
- Operating the state’s risk management program and securing insurance and reinsurance for covered state liabilities;
- Managing the state Treasury and directing safekeeping and the investment of all state funds;
- Managing the deferred compensation program for state employees;
- Investigating fraud, including insurance fraud, public assistance fraud, and false claims against the state;
- Regulating cemeteries and funeral homes;
- Licensing and oversight of insurance agents and agencies;
- Ensuring that Florida employers provide workers’ compensation coverage for their employees in a cost effective manner;
- Assisting consumers in the resolution of issues pertaining to insurance and funeral services; and
- Collecting and returning unclaimed property belonging to Florida residents.¹⁴

The DFS is composed of the following divisions and office:

- Accounting and Auditing;
- Administration;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Insurance Consumer Advocate
- Investigative and Forensic Services;
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property; and
- Workers’ Compensation.¹⁵

DFS Division of Investigative and Forensic Services

The Division of Investigative and Forensic Services (DIFS) houses all law enforcement and forensic components residing within DFS. The DIFS has broad authority to investigate a wide range of fraudulent and criminal acts within and outside the state including, but not limited to, insurance fraud; workers’ compensation fraud investigations; fire, arson, and explosives

¹⁴ Florida Department of Financial Services, *Statement of Agency Organization and Operation*, <https://www.myfloridacfo.com/sitePages/required/agencyorg.htm>, (last visited January 10, 2022).

¹⁵ Section 20.121(2), F.S.

investigations; and fire and explosive sample analysis.¹⁶ The DIFS also refers any records tending to show criminal violations to state or federal law enforcement or prosecutorial agencies, and provides investigative to those agencies as required, when DIFS believes that a criminal law of the state has been violated.¹⁷

The division is composed of the following bureaus and office:

- Forensic Services;
- Fire, Arson, and Explosives Investigations;
- Fiscal Integrity;
- Insurance Fraud; and
- Workers' Compensation Fraud.¹⁸

DFS Division of State Fire Marshal

The Division of State Fire Marshal (State Fire Marshal) works to reduce the loss of life and property to fire and other disasters statewide through internal and external leadership, standards and training, and prevention and education. The State Fire Marshal has the expressed authority to enforce all laws and adopted rules related to:

- The prevention of fire and explosion through the regulation of conditions which could cause fire or explosion, the spread of fire, and panic resulting therefrom;
- Installation and maintenance of fire alarm systems and fire protection systems, including fire suppression systems, fire-extinguishing equipment, and fire sprinkler systems;
- Servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The training and licensing of persons engaged in the business of servicing, repairing, recharging, testing, marking, inspecting, installing, maintaining, and tagging of fire extinguishers, preengineered systems, and individually designed fire protection systems;
- The maintenance of fire cause and loss records; and
- Suppression of arson and the investigation of the cause, origin, and circumstances of fire.¹⁹

The State Fire Marshal is composed of the following bureaus:

- Fire Prevention; and
- Fire Standards and Training.²⁰

Authority of DFS to Compel Production of Records Related to Insurance Fraud and Arson Investigations

Section 626.989, F.S., provides DFS and DIFS with several tools to compel production of records for purposes of investigating insurance fraud. The DFS and DIFS may administer oaths and affirmations, request the attendance of witnesses or proffering of matter, and collect evidence, if, by its own inquiries or as the result of complaints, it has reason to believe that a

¹⁶ See supra note 11.

¹⁷ Section 20.121(2)(e), F.S.

¹⁸ *Id.*

¹⁹ Section 633.104(2), F.S.

²⁰ See supra note 11.

person has engaged in, or is engaging in, a fraudulent insurance act.²¹ The DFS and DIFS may request that an individual who refuses to comply with any such request be ordered by the circuit court to provide the testimony or matter.²² DIFS investigators also have the power to make arrests and execute arrest and search warrants for criminal investigations established as a result of investigations.²³

Under section 633.126, F.S., State Fire Marshal and DIFS investigators may request any insurance company or its agent, adjuster, employee, or attorney, investigating a claim under an insurance policy or contract with respect to a fire or explosion to release any information whatsoever in the possession of the insurance company or its agent, adjuster, employee, or attorney relative to a loss from that fire or explosion. A person who willfully refuses to release any information requested by a State Fire Marshal or DISF investigator commits a first degree misdemeanor.²⁴

Regulation of Insurance Adjusters

Florida law requires all insurance adjusters to be licensed by DFS and appointed by the appropriate entity or person²⁵ in order to adjust claims. General requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.²⁶

Under s. 626.864, F.S., there are both public adjusters and all-lines adjuster license types, with all-lines appointments further divided into independent adjusters,²⁷ company employee adjusters,²⁸ and public adjuster apprentices.²⁹ The same adjuster may not be concurrently licensed as a public adjuster and an all-lines adjuster.³⁰ In the case of an all-lines adjuster, the adjuster may be appointed as an independent adjuster, company employee adjuster, or public adjuster apprentice, but not more than one concurrently.³¹

A public adjuster is any person, other than a licensed attorney, who, for compensation, prepares, completes, or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of an insured or third party.³² Public adjusters operate independently and are not affiliated with any insurer.

²¹ Section 626.989(2), F.S.

²² Section 626.989(4)(a), F.S.

²³ Section 626.989(7), F.S.

²⁴ Section 633.126(9), F.S.

²⁵ See s. 626.015(4), F.S., defining “appointment” as the authority given by an insurer or employer to a licensee to adjust claims on behalf of an insurer or employer.

²⁶ Section 626.171, F.S.

²⁷ Section 626.855, F.S.

²⁸ Section 626.856, F.S.

²⁹ Section 626.8561, F.S.

³⁰ Section 626.864(2), F.S.

³¹ Section 626.864(3), F.S.

³² Section 626.854(1), F.S.

An all-lines adjuster is any person who, for compensation, ascertains and determines the amount of any claim, loss, or damage payable under an insurance contract or settles such claim, loss, or damage on behalf of a public adjuster or insurer.³³

An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage, or to settle an insurance claim under an insurance contract.³⁴

A company employee adjuster is any person employed in-house by an insurer, or a wholly owned subsidiary of the insurer, who ascertains and determines the amount of an insurance claim, loss, or damage, or settles such claim, loss or damage.³⁵

Discretion of DFS to Act Against Licensees

Section 626.621, F.S., grants the DFS discretion, under certain circumstances, to deny applications for, revoke, or refuse to renew, the licenses or appointments of agents, adjusters, customer representatives, service representatives, and managing general agents. Examples of circumstances that can lead to such agency action include violation of the Florida Insurance Code, violation of lawful orders or rules of the DFS, and engaging in unfair and deceptive trade practices.³⁶

Discretion of DFS Act Against Public Adjusters

Section 626.854, F.S., grants the DFS discretion to discipline public adjusters who engage in certain prohibited acts. In addition to denying, suspending, or revoking a license, the DFS may subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not exceed \$10,000 per prohibited act. Examples of prohibited acts under s. 626.854, F.S., include unfair and deceptive insurance trade practices or offering inducements in exchange for inspecting a residential property owner's roof or making an insurance claim for damage to a residential property owner's roof.

Motor Service Agreement Company Advertisements

Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. A motor vehicle service agreement indemnifies the vehicle owner (or holder of the agreement) against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended.³⁷ Motor vehicle service agreements can only be sold by a licensed and appointed salesperson.³⁸ Salespersons are licensed in the same manner as insurance representatives under ch. 626, F.S., with some exceptions to the requirements applied to insurance representatives.³⁹

³³ Section 626.8548, F.S.

³⁴ Section 626.855, F.S.

³⁵ Section 626.856, F.S.

³⁶ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code."

³⁷ Section 634.011(8), F.S.

³⁸ Section 634.031, F.S.

³⁹ Section 634.171, F.S.

It is a second degree misdemeanor for a motor vehicle service agreement company or salesperson to issue or cause to be issued an advertisement that:

- Does not fully disclose in boldfaced type the name, address, and license number of the service agreement company;
- In any respect is in violation of or does not comply with the Motor Vehicle Service Agreement Companies law, applicable provision of the Florida Insurance Code, or applicable rule of the Financial Services Commission;
- Is ambiguous, misleading, or deceptive; or
- Is false, deceptive, or misleading with respect to:
 - The service agreement company's affiliation with a motor vehicle manufacturer;
 - The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;
 - The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or
 - Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty.⁴⁰

DFS also has the enforcement authority to deny, suspend, revoke, or refuse to renew or continue the appointment or license of any motor vehicle service agreement company or salesperson that violates these advertising disclosure requirements.⁴¹

Time Limitations for Prosecuting Workers' Compensation Fraud and False and Fraudulent Insurance Claims

Under s. 775.15(11), F.S., a prosecution for workers' compensation fraud under s. 440.105, F.S., and false and fraudulent insurance claims under s. 817.234, F.S., must be commenced within 5 years after the violation is committed. There is general confusion as to whether the intent of the subsection is to tie the two violations together under a single prosecution within the 5-year time limitation, or whether violations under either statute may be prosecuted separately within the 5-year time limitation.

Attorney Fees for False and Fraudulent Insurance Claims

Under current law, an insurer damaged as a result of a false or fraudulent insurance claim can bring a cause of action to recover compensatory damages plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts, after there has been a criminal adjudication of guilt.⁴²

⁴⁰ Section 634.095(3), F.S.

⁴¹ Section 634.095, F.S.

⁴² Section 817.234, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by DHSMV to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system.

The bill requires DHSMV to provide recommendations on the means by which DHSMV, law enforcement agencies, and other entities authorized by DHSMV may electronically verify a driver's compliance with ch. 324, F.S., the Financial Responsibility Law of 1955.

Section 2 amends s. 501.165, F.S., related to automatic renewals of service contracts, to require a service contract seller to allow a consumer to cancel a service contract with an automatic renewal provision in the same manner, and by the same means, as the service contract was executed.

Section 3 amends s. 626.854(22), F.S., related to prohibited acts by public adjusters, to subject public adjusters, public adjuster apprentices, and other persons not otherwise exempt from licensure, to a fine not to exceed \$20,000 per act for a violation of prohibited acts under the subsection during a state of emergency declared either by executive order or proclamation of the Governor.

Section 4 amends s. 626.989, F.S., related to investigations by DFS or DIFS under Florida's Unfair Insurance Trade Practices statutes, to authorize DFS to impose an administrative fine of not more than \$2,000 per day on an insurer that fails or otherwise refuses to comply with this section

The bill also grants DIFS rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determines the grade of penalty, and specify mitigating and aggravating factors for any violation.

Section 5 amends s. 633.126, F.S., related to investigations of fraudulent insurance claims and crimes with respect to a fire or explosion, to authorize DFS to impose an administrative fine of not more than \$2,000 per day on an insurer that fails or otherwise refuses to comply with this section.

The bill grants DIFS rulemaking authority to administer this section, provided any rules may not enlarge upon or extend the provisions of this section, identify specific factors that determine the grade of penalty, and specify mitigating and aggravating factors for any violation.

Section 6 amends s. 634.095, F.S., related to prohibited acts by motor vehicle service agreement companies, to require a written advertisement fully disclose in at least 12-point, boldface font, the name, address, and Florida Company Code of the motor vehicle service agreement company.

The bill requires a radio or television advertisement to fully disclose the full legal name of the licensed salesperson or the motor vehicle agreement company.

The bill also requires a telephone solicitation fully identify the soliciting licensed salesperson's full legal names and license number at the beginning of the telephone solicitation, and the salesperson's telephone number when the telephone solicitation ends. The telephone number may be the number on file with DFS or the number at which the salesperson may be contacted.

This section is effective January 1, 2023.

Section 7 amends s. 775.15, F.S., related to time limitations for prosecuting criminal offenses, to provide a technical change allowing separate prosecutions of violations of s. 440.105, F.S., or s. 817.234, F.S., within 5 years of a violation of either section.

Section 8 amends s. 817.234, F.S., related to false and fraudulent insurance claims, to provide that an insurer damaged as a result of insurance fraud may recover reasonable investigation and litigation expense, including attorney fees, at the trial and appellate court, if the insurer had reported the possible fraudulent insurance act to DIFS and the possible fraudulent insurance act was criminally adjudicated as guilty.

Section 9 provides that except as otherwise expressly provided for in this act, this act is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 501.165, 626.854, 626.989, 633.126, 634.095, 775.15, and 817.234.

This bill creates section 324.252 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Banking and Insurance on January 18, 2022:

The committee substitute:

- Removes the provisions from Section 3 and 4 of the original bill that revised the definition of an active investigation for purposes of specified public records exemptions;
- Creates s. 324.252, F.S., related to electronic insurance verification, to require the electronic credentialing system administered by DHSMV to display driver vehicle registration and insurance information, provide the driver with notification on any lapse in personal injury or property damage insurance coverages, and allow the driver to update his or her policy information via the electronic credentialing system; and
- Requires DHSMV to provide recommendations on the means by which DHSMV, law enforcement agencies, and other entities authorized by DHSMV may electronically verify a driver's compliance with ch. 324, F.S, the Financial Responsibility Law of 1955.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 324.252, Florida Statutes, is created to
read:

324.252 Electronic insurance verification.-

(1) In order to empower drivers in this state and reduce
the incidence of automobile insurance fraud within this state,
by July 1, 2023, the electronic credentialing system, as defined



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11 in s. 322.032(1), must display driver vehicle registration and
12 insurance information, provide a driver with notification of any
13 lapse in his or her insurance coverage needed for compliance
14 with the financial responsibility requirements of this chapter,
15 and allow the driver to update his or her policy information via
16 the system.

17 (2) By October 1, 2023, the department shall provide the
18 Legislature with recommendations on the means by which the
19 department, law enforcement agencies, and other entities
20 authorized by the department may electronically verify a
21 driver's compliance with the financial responsibility
22 requirements of this chapter.

23 Section 2. Subsection (2) of section 501.165, Florida
24 Statutes, is amended to read:

25 501.165 Automatic renewal of service contracts.—

26 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

27 (a) A Any seller that sells, leases, or offers to sell or
28 lease any service to a consumer pursuant to a service contract
29 that has an automatic renewal provision, unless the consumer
30 cancels that contract, shall disclose the automatic renewal
31 provision clearly and conspicuously in the contract or contract
32 offer.

33 (b) A Any seller that sells or offers to sell any service
34 to a consumer pursuant to a service contract the term of which
35 is a specified period of 12 months or more and that
36 automatically renews for a specified period of more than 1
37 month, unless the consumer cancels the contract, shall provide
38 the consumer with written or electronic notification of the
39 automatic renewal provision. Notification shall be provided to



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40 the consumer no less than 30 days or no more than 60 days before
41 the cancellation deadline pursuant to the automatic renewal
42 provision. Such notification shall disclose clearly and
43 conspicuously:

44 1. That unless the consumer cancels the contract the
45 contract will automatically renew.

46 2. Methods by which the consumer may obtain details of the
47 automatic renewal provision and cancellation procedure, whether
48 by contacting the seller at a specified telephone number or
49 address, by referring to the contract, or by any other method.

50 (c) A seller that fails to comply with the requirements of
51 this subsection violates ~~is in violation of~~ this subsection
52 unless the seller demonstrates that:

53 1. As part of the seller's routine business practice, the
54 seller has established and implemented written procedures to
55 comply with this section and enforces compliance with the
56 procedures;

57 2. Any failure to comply with this subsection is the result
58 of error; and

59 3. As part of the seller's routine business practice, where
60 an error has caused the failure to comply with this subsection,
61 the unearned portion of the contract subject to the automatic
62 renewal provision is refunded as of the date on which the seller
63 is notified of the error.

64 (d) A seller shall allow a consumer to cancel a service
65 contract that has an automatic renewal provision in the same
66 manner, and by the same means, as the service contract was
67 entered into.

68 (e) This subsection does not apply to:



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69 1. A financial institution as defined in s. 655.005 or any
70 depository institution as defined in 12 U.S.C. s. 1813(c)(2).

71 2. A foreign bank maintaining a branch or agency licensed
72 under the laws of any state of the United States.

73 3. Any subsidiary or affiliate of an entity described in
74 subparagraph 1. or subparagraph 2.

75 4. A health studio as defined in s. 501.0125.

76 5. Any entity licensed under chapter 624, chapter 627,
77 chapter 634, chapter 636, or chapter 641.

78 6. Any electric utility as defined in s. 366.02.

79 7. Any private company as defined in s. 180.05 providing
80 services described in chapter 180 which is competing against a
81 governmental entity or has a governmental entity providing
82 billing services on its behalf.

83 ~~(f)(e)~~ A violation of this subsection renders the automatic
84 renewal provision void and unenforceable.

85 Section 3. Paragraphs (b) and (c) of subsection (22) of
86 section 626.854, Florida Statutes, are amended, and paragraph
87 (a) of that subsection is republished, to read:

88 626.854 "Public adjuster" defined; prohibitions.—The
89 Legislature finds that it is necessary for the protection of the
90 public to regulate public insurance adjusters and to prevent the
91 unauthorized practice of law.

92 (22) (a) Any following act by a public adjuster, a public
93 adjuster apprentice, or a person acting on behalf of a public
94 adjuster or public adjuster apprentice is prohibited and shall
95 result in discipline as applicable under this part:

96 1. Offering to a residential property owner a rebate, gift,
97 gift card, cash, coupon, waiver of any insurance deductible, or



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98 any other thing of value in exchange for:

99 a. Allowing a contractor, a public adjuster, a public
100 adjuster apprentice, or a person acting on behalf of a public
101 adjuster or public adjuster apprentice to conduct an inspection
102 of the residential property owner's roof; or

103 b. Making an insurance claim for damage to the residential
104 property owner's roof.

105 2. Offering, delivering, receiving, or accepting any
106 compensation, inducement, or reward for the referral of any
107 services for which property insurance proceeds would be used for
108 roofing repairs or replacement.

109 (b) Notwithstanding the fine set forth in s. 626.8698, a
110 public adjuster or public adjuster apprentice may be subject to
111 a fine not to exceed \$10,000 per act for a violation of this
112 subsection and a fine not to exceed \$20,000 per act for a
113 violation of this subsection that occurs during a state of
114 emergency declared by executive order or proclamation of the
115 Governor pursuant to s. 252.36.

116 (c) A person who engages in an act prohibited by this
117 subsection and who is not a public adjuster or a public adjuster
118 apprentice, or is not otherwise exempt from licensure, is guilty
119 of the unlicensed practice of public adjusting and may be:

120 1. Subject to all applicable penalties set forth in this
121 part.

122 2. Notwithstanding subparagraph 1., subject to a fine not
123 to exceed \$10,000 per act for a violation of this subsection and
124 a fine not to exceed \$20,000 per act for a violation of this
125 subsection that occurs during a state of emergency declared by
126 executive order or proclamation of the Governor pursuant to s.



127 252.36.

128 Section 4. Present subsections (7), (8), and (9) of section
129 626.989, Florida Statutes, are redesignated as subsections (9),
130 (10), and (11), respectively, new subsections (7) and (8) and
131 subsection (12) are added to that section, and subsection (6) of
132 that section is amended, to read:

133 626.989 Investigation by department or Division of
134 Investigative and Forensic Services; compliance; immunity;
135 confidential information; reports to division; division
136 investigator's power of arrest.—

137 (6) Any person, other than an insurer, agent, or other
138 person licensed under the code, or an employee thereof, having
139 knowledge or who believes that a fraudulent insurance act or any
140 other act or practice which, upon conviction, constitutes a
141 felony or a misdemeanor under the code, or under s. 817.234, is
142 being or has been committed may send to the Division of
143 Investigative and Forensic Services a report or information
144 pertinent to such knowledge or belief and such additional
145 information relative thereto as the department may request. Any
146 professional practitioner licensed or regulated by the
147 Department of Business and Professional Regulation, except as
148 otherwise provided by law, any medical review committee as
149 defined in s. 766.101, any private medical review committee, and
150 any insurer, agent, or other person licensed under the code, or
151 an employee thereof, having knowledge or who believes that a
152 fraudulent insurance act or any other act or practice which,
153 upon conviction, constitutes a felony or a misdemeanor under the
154 code, or under s. 817.234, is being or has been committed shall
155 send to the Division of Investigative and Forensic Services a



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156 report or information pertinent to such knowledge or belief and
157 such additional information relative thereto as the department
158 may require.

159 (7) If an insurer fails or otherwise refuses to comply with
160 this section, the department may impose an administrative fine
161 of not more than \$2,000 per day for such failure until the
162 department deems the insurer to be in compliance.

163 (8) The Division of Investigative and Forensic Services
164 shall review such information or reports and select such
165 information or reports as, in its judgment, may require further
166 investigation. It shall then cause an independent examination of
167 the facts surrounding such information or report to be made to
168 determine the extent, if any, to which a fraudulent insurance
169 act or any other act or practice which, upon conviction,
170 constitutes a felony or a misdemeanor under the code, or under
171 s. 817.234, is being committed. The Division of Investigative
172 and Forensic Services shall report any alleged violations of law
173 which its investigations disclose to the appropriate licensing
174 agency and state attorney or other prosecuting agency having
175 jurisdiction with respect to any such violation, as provided in
176 s. 624.310. If prosecution by the state attorney or other
177 prosecuting agency having jurisdiction with respect to such
178 violation is not begun within 60 days of the division's report,
179 the state attorney or other prosecuting agency having
180 jurisdiction with respect to such violation shall inform the
181 division of the reasons for the lack of prosecution.

182 (12) The Division of Investigative and Forensic Services
183 may adopt reasonable rules as are necessary to administer this
184 section. Such rules must meet all of the following requirements:



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185 (a) They may not enlarge upon or extend the provisions of
186 this section.

187 (b) They must identify specific factors that determine the
188 grades of penalty.

189 (c) They must specify mitigating and aggravating factors
190 for a violation of this section.

191 Section 5. Subsection (9) of section 633.126, Florida
192 Statutes, is amended, subsection (10) is added to that section,
193 and subsection (2) of that section is republished, to read:

194 633.126 Investigation of fraudulent insurance claims and
195 crimes; immunity of insurance companies supplying information.-

196 (2) If an insurance company has reason to suspect that a
197 fire or explosion loss to its insured's real or personal
198 property was caused by intentional means, the company shall
199 notify the State Fire Marshal and shall furnish her or him with
200 all material acquired by the company during its investigation.
201 The State Fire Marshal may adopt rules to implement this
202 subsection.

203 (9) If an insurance company fails or otherwise refuses to
204 comply with this section, the department may impose an
205 administrative fine of not more than \$2,000 per day for such
206 failure until the department deems the insurance company to be
207 in compliance ~~A person who willfully violates this section~~
208 ~~commits a misdemeanor of the first degree, punishable as~~
209 ~~provided in s. 775.082 or s. 775.083.~~

210 (10) The Division of Investigative and Forensic Services
211 may adopt reasonable rules as are necessary to administer this
212 section. Such rules must meet all of the following requirements:

213 (a) They may not enlarge upon or extend the provisions of



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214 this section.

215 (b) They must identify specific factors that determine the
216 grades of penalty.

217 (c) They must specify mitigating and aggravating factors
218 for a violation of this section.

219 Section 6. Effective January 1, 2023, present paragraphs
220 (b), (c), and (d) of subsection (3) of section 634.095, Florida
221 Statutes, are redesignated as paragraphs (d), (e), and (f),
222 respectively, new paragraphs (b) and (c) are added to that
223 subsection, and paragraph (a) of that subsection is amended, to
224 read:

225 634.095 Prohibited acts.—Any service agreement company or
226 salesperson that engages in one or more of the following acts
227 is, in addition to any applicable denial, suspension,
228 revocation, or refusal to renew or continue any appointment or
229 license, guilty of a misdemeanor of the second degree,
230 punishable as provided in s. 775.082 or s. 775.083:

231 (3) Issuing or causing to be issued any advertisement that
232 which:

233 (a) Does not fully disclose in a written advertisement, in
234 at least 12-point, boldface ~~boldfaced~~ type, the name, address,
235 and Florida Company Code license number of the service agreement
236 company.

237 (b) Does not fully disclose in a radio or television
238 advertisement the full legal name of the licensed salesperson or
239 the service agreement company.

240 (c) Does not fully identify the soliciting licensed
241 salesperson's full legal name and license number when the
242 salesperson begins, and the soliciting salesperson's telephone



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243 number when the salesperson concludes, each outbound telephone
244 solicitation. For the purposes of this paragraph, the actual
245 telephone number of the salesperson may be the number on file
246 with the department or the number at which the salesperson may
247 be contacted.

248 Section 7. Subsection (11) of section 775.15, Florida
249 Statutes, is amended to read:

250 775.15 Time limitations; general time limitations;
251 exceptions.—

252 (11) A prosecution for a felony violation of s. 440.105 or
253 s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5
254 years after the violation is committed.

255 Section 8. Subsection (5) of section 817.234, Florida
256 Statutes, is amended to read:

257 817.234 False and fraudulent insurance claims.—

258 (5) (a) Any insurer damaged as a result of a violation of
259 any provision of this section when there has been a criminal
260 adjudication of guilt shall have a cause of action to recover
261 compensatory damages, plus all reasonable investigation and
262 litigation expenses, including attorney ~~attorneys'~~ fees, at the
263 trial and appellate courts.

264 (b) If an insurer damaged as a result of a violation of any
265 provision of this section has reported the possible fraudulent
266 insurance act to the Division of Investigative and Forensic
267 Services pursuant to s. 626.9891 and if there has been a
268 criminal adjudication of guilt, the insurer is entitled to
269 recover reasonable investigation and litigation expenses,
270 including attorney fees, at the trial and appellate courts.

271 Section 9. Except as otherwise expressly provided in this



272 act, this act shall take effect upon becoming a law.

273

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

275 And the title is amended as follows:

276 Delete everything before the enacting clause

277 and insert:

278 A bill to be entitled

279 An act relating to fraud prevention; creating s.

280 324.252, F.S.; requiring that the electronic

281 credentialing system display certain vehicle

282 information for specified purposes by a specified

283 date; requiring the Department of Highway Safety and

284 Motor Vehicles to provide the Legislature with

285 recommendations for compliance verification with

286 certain financial responsibility requirements by a

287 specified date; amending s. 501.165, F.S.; requiring

288 sellers to allow consumers to cancel in a specified

289 manner and by specified means service contracts that

290 have automatic renewal provisions; amending s.

291 626.854, F.S.; revising maximum fines for public

292 adjusters and public adjuster apprentices for certain

293 violations under a specified circumstance; revising

294 maximum fines for certain violations by certain

295 persons under a specified circumstance; amending s.

296 626.989, F.S.; authorizing the Department of Financial

297 Services to impose an administrative fine on insurers

298 under certain circumstances; authorizing the Division

299 of Investigative and Forensic Services to adopt

300 certain rules; amending s. 633.126, F.S.; authorizing



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301 the department to impose an administrative fine on
302 insurance companies under certain circumstances;
303 deleting criminal penalties; authorizing the division
304 to adopt certain rules; amending s. 634.095, F.S.;
305 revising requirements for advertisements issued or
306 caused to be issued by service agreement companies or
307 salespersons; amending s. 775.15, F.S.; revising
308 felony violations for which prosecutions must be
309 commenced within a specified timeframe; amending s.
310 817.234, F.S.; providing that certain insurers are
311 entitled to recover specified expenses at the trial
312 and appellate courts under certain circumstances;
313 providing effective dates.

By Senator Gruters

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1 A bill to be entitled
 2 An act relating to fraud prevention; amending s.
 3 501.165, F.S.; requiring sellers to allow consumers to
 4 cancel in a specified manner and by specified means
 5 service contracts that have automatic renewal
 6 provisions; amending s. 626.854, F.S.; revising
 7 maximum fines for public adjusters and public adjuster
 8 apprentices for certain violations under a specified
 9 circumstance; revising maximum fines for certain
 10 violations by certain persons under a specified
 11 circumstance; amending s. 626.989, F.S.; redefining
 12 the term "active"; deleting provisions relating to
 13 circumstances under which investigations are
 14 considered active; authorizing the Department of
 15 Financial Services to impose an administrative fine on
 16 insurers under certain circumstances; authorizing the
 17 Division of Investigative and Forensic Services to
 18 adopt certain rules; amending s. 633.112, F.S.;
 19 redefining the term "active"; deleting provisions
 20 relating to circumstances under which investigations
 21 are considered active; amending s. 633.126, F.S.;
 22 authorizing the department to impose an administrative
 23 fine on insurance companies under certain
 24 circumstances; deleting criminal penalties;
 25 authorizing the division to adopt certain rules;
 26 amending s. 634.095, F.S.; revising requirements for
 27 advertisements issued or caused to be issued by
 28 service agreement companies or salespersons; amending
 29 s. 775.15, F.S.; revising felony violations for which

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30 prosecutions must be commenced within a specified
 31 timeframe; amending s. 817.234, F.S.; providing that
 32 certain insurers are entitled to recover specified
 33 expenses at the trial and appellate courts under
 34 certain circumstances; providing effective dates.
 35

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

37
 38 Section 1. Subsection (2) of section 501.165, Florida
 39 Statutes, is amended to read:

40 501.165 Automatic renewal of service contracts.—

41 (2) SERVICE CONTRACTS WITH AUTOMATIC RENEWAL PROVISIONS.—

42 (a) A ~~Any~~ seller that sells, leases, or offers to sell or
 43 lease any service to a consumer pursuant to a service contract
 44 that has an automatic renewal provision, unless the consumer
 45 cancels that contract, shall disclose the automatic renewal
 46 provision clearly and conspicuously in the contract or contract
 47 offer.

48 (b) A ~~Any~~ seller that sells or offers to sell any service
 49 to a consumer pursuant to a service contract the term of which
 50 is a specified period of 12 months or more and that
 51 automatically renews for a specified period of more than 1
 52 month, unless the consumer cancels the contract, shall provide
 53 the consumer with written or electronic notification of the
 54 automatic renewal provision. Notification shall be provided to
 55 the consumer no less than 30 days or no more than 60 days before
 56 the cancellation deadline pursuant to the automatic renewal
 57 provision. Such notification shall disclose clearly and
 58 conspicuously:

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59 1. That unless the consumer cancels the contract the
60 contract will automatically renew.

61 2. Methods by which the consumer may obtain details of the
62 automatic renewal provision and cancellation procedure, whether
63 by contacting the seller at a specified telephone number or
64 address, by referring to the contract, or by any other method.

65 (c) A seller that fails to comply with the requirements of
66 this subsection ~~violates is in violation of~~ this subsection
67 unless the seller demonstrates that:

68 1. As part of the seller's routine business practice, the
69 seller has established and implemented written procedures to
70 comply with this section and enforces compliance with the
71 procedures;

72 2. Any failure to comply with this subsection is the result
73 of error; and

74 3. As part of the seller's routine business practice, where
75 an error has caused the failure to comply with this subsection,
76 the unearned portion of the contract subject to the automatic
77 renewal provision is refunded as of the date on which the seller
78 is notified of the error.

79 (d) A seller shall allow a consumer to cancel a service
80 contract that has an automatic renewal provision in the same
81 manner, and by the same means, as the service contract was
82 entered into.

83 (e) This subsection does not apply to:

84 1. A financial institution as defined in s. 655.005 or any
85 depository institution as defined in 12 U.S.C. s. 1813(c)(2).

86 2. A foreign bank maintaining a branch or agency licensed
87 under the laws of any state of the United States.

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88 3. Any subsidiary or affiliate of an entity described in
89 subparagraph 1. or subparagraph 2.

90 4. A health studio as defined in s. 501.0125.

91 5. Any entity licensed under chapter 624, chapter 627,
92 chapter 634, chapter 636, or chapter 641.

93 6. Any electric utility as defined in s. 366.02.

94 7. Any private company as defined in s. 180.05 providing
95 services described in chapter 180 which is competing against a
96 governmental entity or has a governmental entity providing
97 billing services on its behalf.

98 (f) ~~(e)~~ A violation of this subsection renders the automatic
99 renewal provision void and unenforceable.

100 Section 2. Paragraphs (b) and (c) of subsection (22) of
101 section 626.854, Florida Statutes, are amended, and paragraph
102 (a) of that subsection is republished, to read:

103 626.854 "Public adjuster" defined; prohibitions.—The
104 Legislature finds that it is necessary for the protection of the
105 public to regulate public insurance adjusters and to prevent the
106 unauthorized practice of law.

107 (22) (a) Any following act by a public adjuster, a public
108 adjuster apprentice, or a person acting on behalf of a public
109 adjuster or public adjuster apprentice is prohibited and shall
110 result in discipline as applicable under this part:

111 1. Offering to a residential property owner a rebate, gift,
112 gift card, cash, coupon, waiver of any insurance deductible, or
113 any other thing of value in exchange for:

114 a. Allowing a contractor, a public adjuster, a public
115 adjuster apprentice, or a person acting on behalf of a public
116 adjuster or public adjuster apprentice to conduct an inspection

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117 of the residential property owner's roof; or

118 b. Making an insurance claim for damage to the residential
119 property owner's roof.

120 2. Offering, delivering, receiving, or accepting any
121 compensation, inducement, or reward for the referral of any
122 services for which property insurance proceeds would be used for
123 roofing repairs or replacement.

124 (b) Notwithstanding the fine set forth in s. 626.8698, a
125 public adjuster or public adjuster apprentice may be subject to
126 a fine not to exceed \$10,000 per act for a violation of this
127 subsection and a fine not to exceed \$20,000 per act for a
128 violation of this subsection that occurs during a state of
129 emergency declared by executive order or proclamation of the
130 Governor pursuant to s. 252.36.

131 (c) A person who engages in an act prohibited by this
132 subsection and who is not a public adjuster or a public adjuster
133 apprentice, or is not otherwise exempt from licensure, is guilty
134 of the unlicensed practice of public adjusting and may be:

135 1. Subject to all applicable penalties set forth in this
136 part.

137 2. Notwithstanding subparagraph 1., subject to a fine not
138 to exceed \$10,000 per act for a violation of this subsection and
139 a fine not to exceed \$20,000 per act for a violation of this
140 subsection that occurs during a state of emergency declared by
141 executive order or proclamation of the Governor pursuant to s.
142 252.36.

143 Section 3. Present subsections (7), (8), and (9) of section
144 626.989, Florida Statutes, are redesignated as subsections (9),
145 (10), and (11), respectively, new subsections (7) and (8) and

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146 subsection (12) are added to that section, and subsections (5)
147 and (6) of that section are amended, to read:

148 626.989 Investigation by department or Division of
149 Investigative and Forensic Services; compliance; immunity;
150 confidential information; reports to division; division
151 investigator's power of arrest.—

152 (5) The office's and the department's papers, documents,
153 reports, or evidence relative to the subject of an investigation
154 under this section are confidential and exempt from ~~the~~
155 ~~provisions of s. 119.07(1) until such investigation is completed~~
156 ~~or ceases to be active. For purposes of this subsection, the~~
157 ~~term an investigation is considered "active" has the same~~
158 ~~meaning as in s. 119.011(3)(d) while the investigation is being~~
159 ~~conducted by the office or department with a reasonable, good~~
160 ~~faith belief that it could lead to the filing of administrative,~~
161 ~~civil, or criminal proceedings. An investigation does not cease~~
162 ~~to be active if the office or department is proceeding with~~
163 ~~reasonable dispatch and has a good faith belief that action~~
164 ~~could be initiated by the office or department or other~~
165 ~~administrative or law enforcement agency. After an investigation~~
166 ~~is completed or ceases to be active, portions of records~~
167 ~~relating to the investigation shall remain exempt from the~~
168 ~~provisions of s. 119.07(1) if disclosure would:~~

169 (a) Jeopardize the integrity of another active
170 investigation;

171 (b) Impair the safety and soundness of an insurer;

172 (c) Reveal personal financial information;

173 (d) Reveal the identity of a confidential source;

174 (e) Defame or cause unwarranted damage to the good name or

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175 reputation of an individual or jeopardize the safety of an
 176 individual; or

177 (f) Reveal investigative techniques or procedures. Further,
 178 such papers, documents, reports, or evidence relative to the
 179 subject of an investigation under this section shall not be
 180 subject to discovery until the investigation is completed or
 181 ceases to be active. Office, department, or division
 182 investigators shall not be subject to subpoena in civil actions
 183 by any court of this state to testify concerning any matter of
 184 which they have knowledge pursuant to a pending insurance fraud
 185 investigation by the division.

186 (6) Any person, other than an insurer, agent, or other
 187 person licensed under the code, or an employee thereof, having
 188 knowledge or who believes that a fraudulent insurance act or any
 189 other act or practice which, upon conviction, constitutes a
 190 felony or a misdemeanor under the code, or under s. 817.234, is
 191 being or has been committed may send to the Division of
 192 Investigative and Forensic Services a report or information
 193 pertinent to such knowledge or belief and such additional
 194 information relative thereto as the department may request. Any
 195 professional practitioner licensed or regulated by the
 196 Department of Business and Professional Regulation, except as
 197 otherwise provided by law, any medical review committee as
 198 defined in s. 766.101, any private medical review committee, and
 199 any insurer, agent, or other person licensed under the code, or
 200 an employee thereof, having knowledge or who believes that a
 201 fraudulent insurance act or any other act or practice which,
 202 upon conviction, constitutes a felony or a misdemeanor under the
 203 code, or under s. 817.234, is being or has been committed shall

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204 send to the Division of Investigative and Forensic Services a
 205 report or information pertinent to such knowledge or belief and
 206 such additional information relative thereto as the department
 207 may require.

208 (7) If an insurer fails or otherwise refuses to comply with
 209 this section, the department may impose an administrative fine
 210 of not more than \$2,000 per day for such failure until the
 211 department deems the insurer to be in compliance.

212 (8) The Division of Investigative and Forensic Services
 213 shall review such information or reports and select such
 214 information or reports as, in its judgment, may require further
 215 investigation. It shall then cause an independent examination of
 216 the facts surrounding such information or report to be made to
 217 determine the extent, if any, to which a fraudulent insurance
 218 act or any other act or practice which, upon conviction,
 219 constitutes a felony or a misdemeanor under the code, or under
 220 s. 817.234, is being committed. The Division of Investigative
 221 and Forensic Services shall report any alleged violations of law
 222 which its investigations disclose to the appropriate licensing
 223 agency and state attorney or other prosecuting agency having
 224 jurisdiction with respect to any such violation, as provided in
 225 s. 624.310. If prosecution by the state attorney or other
 226 prosecuting agency having jurisdiction with respect to such
 227 violation is not begun within 60 days of the division's report,
 228 the state attorney or other prosecuting agency having
 229 jurisdiction with respect to such violation shall inform the
 230 division of the reasons for the lack of prosecution.

231 (12) The Division of Investigative and Forensic Services
 232 may adopt reasonable rules as are necessary to administer this

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233 section. Such rules must meet all of the following requirements:

234 (a) They may not enlarge upon or extend the provisions of
235 this section.

236 (b) They must identify specific factors that determine the
237 grades of penalty.

238 (c) They must specify mitigating and aggravating factors
239 for a violation of this section.

240 Section 4. Subsection (7) of section 633.112, Florida
241 Statutes, is amended to read:

242 633.112 State Fire Marshal; hearings; investigations;
243 recordkeeping and reports; subpoenas of witnesses; orders of
244 circuit court.-

245 (7) The State Fire Marshal shall keep a record of all fires
246 and explosions occurring in this state upon which she or he had
247 caused an investigation to be made and all facts concerning the
248 same. These records, obtained or prepared by the State Fire
249 Marshal pursuant to her or his investigation, include documents,
250 papers, letters, maps, diagrams, tapes, photographs, films,
251 sound recordings, and evidence. These records are confidential
252 and exempt from ~~the provisions of s. 119.07(1) until the~~
253 ~~investigation is completed or ceases to be active. For purposes~~
254 ~~of this section, the term an investigation is considered~~
255 ~~"active" has the same meaning as in s. 119.011(3)(d) while such~~
256 ~~investigation is being conducted by the department with a~~
257 ~~reasonable, good faith belief that it may lead to the filing of~~
258 ~~administrative, civil, or criminal proceedings. An investigation~~
259 ~~does not cease to be active if the department is proceeding with~~
260 ~~reasonable dispatch, and there is a good faith belief that~~
261 ~~action may be initiated by the department or other~~

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262 ~~administrative or law enforcement agency.~~ Further, these
263 documents, papers, letters, maps, diagrams, tapes, photographs,
264 films, sound recordings, and evidence relative to the subject of
265 an investigation ~~are shall not be~~ subject to subpoena until the
266 investigation is completed or ceases to be active, unless the
267 State Fire Marshal consents. These records shall be made daily
268 from the reports furnished the State Fire Marshal by her or his
269 agents or others.

270 Section 5. Subsection (9) of section 633.126, Florida
271 Statutes, is amended, subsection (10) is added to that section,
272 and subsection (2) of that section is republished, to read:

273 633.126 Investigation of fraudulent insurance claims and
274 crimes; immunity of insurance companies supplying information.-

275 (2) If an insurance company has reason to suspect that a
276 fire or explosion loss to its insured's real or personal
277 property was caused by intentional means, the company shall
278 notify the State Fire Marshal and shall furnish her or him with
279 all material acquired by the company during its investigation.
280 The State Fire Marshal may adopt rules to implement this
281 subsection.

282 (9) If an insurance company fails or otherwise refuses to
283 comply with this section, the department may impose an
284 administrative fine of not more than \$2,000 per day for such
285 failure until the department deems the insurance company to be
286 in compliance ~~A person who willfully violates this section~~
287 ~~commits a misdemeanor of the first degree, punishable as~~
288 ~~provided in s. 775.082 or s. 775.083.~~

289 (10) The Division of Investigative and Forensic Services
290 may adopt reasonable rules as are necessary to administer this

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

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291 section. Such rules must meet all of the following requirements:

292 (a) They may not enlarge upon or extend the provisions of
293 this section.

294 (b) They must identify specific factors that determine the
295 grades of penalty.

296 (c) They must specify mitigating and aggravating factors
297 for a violation of this section.

298 Section 6. Effective January 1, 2023, present paragraphs
299 (b), (c), and (d) of subsection (3) of section 634.095, Florida
300 Statutes, are redesignated as paragraphs (d), (e), and (f),
301 respectively, new paragraphs (b) and (c) are added to that
302 subsection, and paragraph (a) of that subsection is amended, to
303 read:

304 634.095 Prohibited acts.—Any service agreement company or
305 salesperson that engages in one or more of the following acts
306 is, in addition to any applicable denial, suspension,
307 revocation, or refusal to renew or continue any appointment or
308 license, guilty of a misdemeanor of the second degree,
309 punishable as provided in s. 775.082 or s. 775.083:

310 (3) Issuing or causing to be issued any advertisement that
311 which:

312 (a) Does not fully disclose in a written advertisement, in
313 at least 12-point, boldface ~~boldfaced~~ type, the name, address,
314 and Florida Company Code ~~license number~~ of the service agreement
315 company.

316 (b) Does not fully disclose in a radio or television
317 advertisement the full legal name of the licensed salesperson or
318 the service agreement company.

319 (c) Does not fully identify the soliciting licensed

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320 salesperson's full legal name and license number when the
321 salesperson begins, and the soliciting salesperson's telephone
322 number when the salesperson concludes, each telephone
323 solicitation. For the purposes of this paragraph, the actual
324 telephone number of the salesperson may be the number on file
325 with the department or the number at which the salesperson may
326 be contacted.

327 Section 7. Subsection (11) of section 775.15, Florida
328 Statutes, is amended to read:

329 775.15 Time limitations; general time limitations;
330 exceptions.—

331 (11) A prosecution for a felony violation of s. 440.105 or
332 s. 817.234 ~~ss. 440.105 and 817.234~~ must be commenced within 5
333 years after the violation is committed.

334 Section 8. Subsection (5) of section 817.234, Florida
335 Statutes, is amended to read:

336 817.234 False and fraudulent insurance claims.—

337 (5) (a) Any insurer damaged as a result of a violation of
338 any provision of this section when there has been a criminal
339 adjudication of guilt shall have a cause of action to recover
340 compensatory damages, plus all reasonable investigation and
341 litigation expenses, including attorney ~~attorneys'~~ fees, at the
342 trial and appellate courts.

343 (b) If an insurer damaged as a result of a violation of any
344 provision of this section has reported the possible fraudulent
345 insurance act to the Division of Investigative and Forensic
346 Services pursuant to s. 626.9891 and if there has been a
347 criminal adjudication of guilt, the insurer is entitled to
348 recover reasonable investigation and litigation expenses,

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349 including attorney fees, at the trial and appellate courts.

350 Section 9. Except as otherwise expressly provided in this

351 act, this act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Jim Boyd, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: January 14, 2022

I respectfully request that **Senate Bill #1292**, relating to Fraud Prevention, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

Please reach out with any questions.

Sincerely,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

Cc: James Knudson, Staff Director
Lisa Johnson, Deputy Staff Director
Amaura Canty, Committee Administrative Assistant

The Florida Senate

APPEARANCE RECORD

1/18/2022

Meeting Date

SB 1292

Bill Number or Topic

BAI committee

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name Paul Handman

Phone 561 704 0428

Address 120 S. Monroe Street
Street

Email Paul@rambaconsulting.com

Tallahassee FL 32301
City State Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FAPIA

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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1/18/22

1292

Meeting Date

Bill Number or Topic

Banking & Insurance

Committee

Amendment Barcode (if applicable)

Name Austin Stowers

Phone 850/413/5939

Address 200 E Gaines St.

Email austin.stowers@myflorida.cfo.com

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

CFO & State Fire Marshal Jimmy Patronis

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

SB -1292

Bill Number or Topic

01/18/2022

Meeting Date

Banking & Insurance

Committee

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Amendment Barcode (if applicable)

954-850-7262

Name E. Ivonne Fernandez

Phone

Address 215 S Monroe St. #603

Email ifernandez@aarp.org

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

AARP

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

The Florida Senate

APPEARANCE RECORD

SB 1292

Bill Number or Topic

1/18/22

Meeting Date

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BANKING AND INSURANCE
Committee

Amendment Barcode (if applicable)

Name TASHA CARTER, INSURANCE CONSUMER ADV.

Phone 850-413-2868

Address 200 E Gaines Street
Street

Email TASHA.CARTER@myfloridacfo.com

Tallahassee FL 32399
City State Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Office of INSURANCE CONSUMER ADVOCATE

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

APPEARANCE RECORD

SB 1292

Jan. 8, 2022

Meeting Date

Banking & Insurance

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

745764

Amendment Barcode (if applicable)

Name **Reggie Garcia**

Phone **(850) 933-7150**

Address **218 S. Monroe St**

Email **reggiegarcialaw@icloud.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

Florida Justice Association

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

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S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1402

INTRODUCER: Senator Burgess

SUBJECT: Domestic Surplus Lines Insurance

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Favorable
2.			AEG	
3.			AP	

I. Summary:

The bill allows a domestic insurer possessing surplus as to policyholders of at least \$15 million to be made eligible to transact surplus lines insurance as a domestic surplus lines insurer if approved by the Office of Insurance Regulation (OIR).

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted, but are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and

- Florida Workers' Compensation Guaranty Association.

II. Present Situation:

The general public policy of each state is to require insurers to obtain licensure with, and submit to the regulatory jurisdiction of, that particular state, though the insurer's state of domicile serves as the primary regulator for an insurer. In Florida, this public policy can be observed in s. 624.401, F.S., which requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation. The admitted market refers to insurers that have a certificate of authority to transact insurance in this state issued by the Office of Insurance Regulation.¹ Thus, such insurers are referred to as "authorized insurers."

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code² and the authority of the Office of Insurance Regulation (OIR) and the Department of Financial Services (DFS). The Florida Insurance Code establishes various requirements for authorized admitted market insurers. Under the Florida Insurance Code, the OIR generally has authority over authorized insurers regarding insurer solvency and financial strength, insurance policy forms and rates, and the market conduct of insurers. The DFS has licenses insurance agents and agencies, conducts the rehabilitation and liquidation of insurers, and provides consumer services.

Surplus Lines Insurance

However, the states also recognize that there are risks for which insurance in the admitted market cannot be procured. Thus, each state allows insurers that do not have a certificate of authority in that state to sell "surplus lines insurance" for such risks on a limited basis if certain requirements are met. Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.³ In Florida, s. 624.402, F.S. specifies that a certificate of authority is not required of an insurer with respect to lawfully written surplus lines coverage transactions.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code,⁴ which means they do not obtain a certificate of authority from the OIR to transact insurance in Florida.⁵ Rather, surplus lines insurers are "unauthorized" insurers,⁶ but may transact surplus lines insurance if they are made "eligible" by the OIR. Except as specifically stated as applicable, surplus lines insurers are not subject to regulation under ch. 627, F.S., of the Florida Insurance Code, which includes, in part, provisions related to ratings standard, contracts, and

¹ See s. 624.404, F.S.

² Section 624.404, F.S., provides that to qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with the Florida Insurance Code.

³ The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.

⁴ Section 624.01, F.S., provides that the Florida Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S.

⁵ Section 624.09(1), F.S.

⁶ Section 624.09(2), F.S.

attorney fees for authorized insurers.⁷ Surplus lines insurers are, however, subject to the requirements of the Unfair Insurance Trade Practices Act.⁸

There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus Lines Law

Florida's Surplus Lines Law is designed to provide within the state orderly access to insurers unauthorized in Florida, specifically for insurance coverage not procurable from authorized insurers. Section 626.915, F.S., provides four general requirements that must be met for insurance to be exported to a surplus lines insurer:

- The insurance must be eligible for export under s. 626.916, F.S., or s. 626.917, F.S.;
- The insurer must be an eligible surplus lines insurer under s. 626.917, F.S., or s. 626.918, F.S.;
- The insurance must be placed through a licensed Florida Surplus Lines Agent; and
- All other applicable provisions of the Surplus Lines Law must be met.

Eligibility for Export to a Surplus Lines Insurer

Insurance coverage is eligible to be exported to a surplus lines insurer only if:

- The insurance is not procurable from an authorized insurer after the producing agent has made a diligent effort to place the insurance with authorized insurer.
 - The surplus lines agent must verify that a diligent effort was made by requiring a properly documented statement of diligent effort from the retail or producing agent. A "diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing the same type of coverage and documenting these rejections, however, if a residential structure has a dwelling replacement cost of \$700,000 or more, coverage need only be sought with one such authorized insurer.⁹
- The premium rate for the surplus lines coverage may not be lower than the rate in actual and current use by a majority of authorized insurers for the same coverage on a similar risk.¹⁰

⁷ Section 626.913(4), F.S.

⁸ Sections 626.951 – 626.99, F.S. Under s. 626.9521, F.S., no person may engage in this state in any unfair insurance trade practice. "Person" is defined by s. 626.9511(1), F.S., to mean any individual, corporation, association, partnership...or any entity involved in the business of insurance.

⁹ Section 626.914(4), F.S.

¹⁰ Section 626.916(1)(b), F.S.

- The surplus lines coverage may not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverage on similar risks.¹¹
- The policy of surplus lines insurance may not provide a deductible that is generally unavailable from authorized insurers; this does not apply to extended coverage for fire insurance or windstorm insurance.¹²

The foregoing do not apply to the following lines of insurance:

- Wet marine and transportation or aviation risks, which are instead subject to s. 626.917, F.S.;
- Classes of insurance which are related to indemnity of deductibles for property insurance or are kinds of insurance and types of commercial lines risks that are subject to s. 627.062(3)(d)1., F.S.;¹³ and
- Any class of insurance the Financial Services Commission by rule declares eligible after making a finding that there is not reasonable or adequate market among authorized insurers.¹⁴

Requirements for Eligibility of Surplus Lines Insurers

An unauthorized insurer may only be made an eligible surplus lines insurer if the following requirements are met:¹⁵

- The insurer must be currently an authorized insurer in the state or country of its domicile as to the kinds of insurance it would transact in Florida. Generally, the insurer must transact such insurance for 3 years in its state of domicile,¹⁶ however, the OIR may waive this requirement if the insurer has capital and surplus of at least \$25 million and either is offering a product not readily available in Florida or has operated successfully for at least the immediately preceding year.
- The OIR must receive a duly authenticated copy of its current annual financial statement.
- The insurer must have and maintain surplus as to policyholders of not less than \$15 million.¹⁷The \$15 million surplus requirement does not apply to:

¹¹ Section 626.916(1)(c), F.S.; the statute contains an exception for a unique policy form designed for use with respect to a particular subject of insurance if certain requirements are met.

¹² Section 626.916(1)(d), F.S.

¹³ Section 626.915(3), F.S. The kinds of insurance and types of commercial lines subject to s. 627.062(3)(d)1., F.S., are excess or umbrella insurance; surety and fidelity insurance; boiler and machinery and leakage and fire extinguishing equipment; errors and omissions; directors and officers, employment practices, fiduciary liability, and management liability; intellectual property and patent infringement liability; advertising injury and Internet liability insurance; property risks rated under a highly protected risks rating plan; general liability; nonresidential property, except for collateral protection insurance; nonresidential multiperil; excess property; burglary and theft; travel insurance if issued as a master group policy with a situs in another state if certain requirements as to premiums are met; medical malpractice for certain facilities; medical malpractice for a health care practitioners that is not a Florida-licensed physician, dentist, chiropractor, podiatrist, pharmacist, or pharmacy technician; and other types of commercial insurance or commercial risks designated by the OIR if the office makes certain determinations.

¹⁴ Section 626.915(2), F.S.

¹⁵ Section 626.918, F.S.

¹⁶ Or be a wholly owned subsidiary of such an insurer.

¹⁷ An alien insurer (domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by the OIR, in an account of at least \$5.4 million.

- Insurance exchanges created by the laws of a state if such exchange meets that state's capital and surplus requirements or maintains at capital and surplus of at least \$50 million; and
- A surplus lines insurer that is a member of an insurance holding company that includes a member which is a Florida Domestic insurer, may instead meet the surplus and capital requirements applicable to authorized insurers under s. 624.408, F.S., and must comply with ch. 625, F.S., regarding accounting, investments, and deposits by insurers.
- The insurer must be of good reputation as to providing service to its policyholders and the payment of losses and claims.
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.

The foregoing do not apply to an insurer writing wet marine and transportation risks that are not used solely for personal pleasure, family use, or used by the insurer for transportation. Instead the only requirements for eligibility is that the insurer furnishes information indicating the insurer is well able to meet its financial obligation and the coverage is placed by a licensed Florida surplus lines agent.¹⁸

Notwithstanding these requirements, the Surplus Lines Law specifies that the OIR does not have any duty or responsibility to determine the actual financial condition or claims practices of any unauthorized insurer. The OIR, when determining a surplus lines insurer is eligible is based only on the insurer appearing to be sound financially and have satisfactory claims practices, and that the OIR has no credible evidence to the contrary.¹⁹

Requirement to Place Surplus Lines Insurance Through a Licensed Florida Surplus Lines Agent

Surplus lines insurance must be placed with an eligible surplus lines insurer by a licensed Florida surplus lines agent. Licensure as a surplus lines agent may be obtained by a Florida-licensed general lines agent if such agent has at least 1 year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours²⁰ in surplus and excess lines and passes a licensure exam. Such licensure is solely for the purpose of placing with surplus lines insurers property, marine, casualty, or surety coverages originated by general lines agents. Licensure as a nonresident surplus lines licensure may be obtained by nonresidents licensed in their home state as a resident general lines agent and a surplus lines agent, if the home state has similar licensure requirements as Florida and provides reciprocity regarding residents of Florida obtaining licensure as a nonresident surplus lines agent.²¹

Mandatory Disclosures

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Act and that surplus lines policy rates and forms are

¹⁸ Section 626.917, F.S.

¹⁹ Section 626.918(4), F.S.

²⁰ Prelicensure coursework is not required for an applicant who is a member or Veteran

²¹ Section 626.9272, F.S.

not subject to any Florida regulatory agency.²² Specifically, the first page of an insurance policy, certificate, cover note, or confirmation of insurance must state:

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS
LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO
NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE
GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR
THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

The first page of surplus lines policies must have the following disclosure:

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT
APPROVED BY ANY FLORIDA REGULATORY AGENCY.

When a policy is exported to a surplus lines insurer, the insured must sign or provide documented acknowledgement of the following disclosure:

You are agreeing to place coverage in the surplus lines market. Coverage may be
available in the admitted market. Persons insured by surplus lines carriers are not
protected under the Florida Insurance Guaranty Act with respect to any right of
recovery for the obligation of an insolvent unlicensed insurer.

The Florida Surplus Lines Service Office

Section 626.921, F.S., creates the Florida Surplus Lines Service Office (FSLSO). The FSLSO is a self-regulating, nonprofit association designed to act as a “self-regulating organization” to permit better access by consumers to approved surplus lines insurers.²³ The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida as well as the eligible surplus lines insurers.²⁴ The FSLSO is operated under the supervision of a board of governors.²⁵ All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with the FSLSO.²⁶ The Florida Surplus Lines Association membership includes surplus lines agency firms, surplus lines insurance companies, reinsurers, premium finance companies, surveyors and claim adjustment companies.

The Florida Surplus Lines Service Office is required to conduct the following activities:²⁷

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the service office and perform reports as required by the Financial Services Commission;
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit to the DFS the surplus lines tax as provided for in s. 626.932, F.S.;
- Reconcile the policies provided by non-admitted insurers with the policies reported to the service office by agents;

²² Section 626.924, F.S.

²³ Section 626.921(1), F.S.

²⁴ See id.

²⁵ Section 626.921(4), F.S.

²⁶ Section 626.921(2), F.S.

²⁷ See generally subsections s. 626.921(3), F.S.

- Collect monthly from each surplus lines agent a service fee of .06 percent;²⁸ and
- Other activities as specified by statute.

Surplus Lines Tax

Premiums charged for surplus lines coverages are subject to a premium receipts tax of 4.94 percent of all gross premiums charged for the insurance.²⁹ The tax is collected from insureds by surplus lines agents who must remit the tax to the Florida Surplus Lines Service Office. The FSLSO then remits the tax to the Department of Financial Services. The DFS deposits 8.8 percent of the taxes collected into the Insurance Regulatory Trust Fund and the other 91.2 percent into the General Revenue Fund.

Domestic Surplus Lines Insurance

Historically, surplus lines insurers generally may not write surplus lines insurance in their state of domicile. In recent years, however, some states have enacted laws authorizing the creation of domestic surplus lines insurers, which are surplus lines insurers that offer surplus lines policies in their state of domicile. Prior to the creation of the domestic surplus lines laws, a surplus lines seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.³⁰ A review of the state laws authorizing domestic surplus lines insurers show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

- The domestic insurer must meet a policyholder surplus requirement, usually \$15 million or \$20 million;
- The domestic insurer must be an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile;
- The board of directors of the domestic insurer must pass a resolution seeking to be a domestic lines insurer; and
- The insurance commissioner has made the domestic surplus lines insurer eligible in the state.

Certain commonalities are also present in laws authorizing domestic surplus lines insurers regarding the application of state and federal laws on insurance:

- Domestic surplus lines insurers are subject to the state's solvency requirements for domestic insurers, unless a domestic surplus lines insurer is specifically exempted;

²⁸ See <https://www.fslso.com/compliance/agent-procedures-manual>, (last accessed January 13, 2022). Section 626.921(3)(f), F.S. The Florida Surplus Lines Service Office is authorized to collect up to .3 percent of total gross premium. The fee is used to pay for the cost of operating the Service Office and is to be paid by the insurer.

²⁹ Section 626.932, F.S.

³⁰ Arizona (*see* s. 20-407.01, Az. S.), Arkansas (*see* s. 23-65-350, Ar. C.), Connecticut (*see* s. 38a-271a, Ct. S.), Delaware (*see* 18 Del. C. s. 1932), Georgia (*see* 33-5-20.2, Ga. C.), Illinois (*see* 215 Il. C.S 5/445a), Iowa (*see* s. 5151.4A, Ia. C.A.), Louisiana (*see* s. 22:436.1, La. R.S.), Missouri (*see* s. 384.018, V.A.M.S), Nebraska (*see* s. 44-5506.01, Neb. R.S.), Nevada (*see* s. 685A.082, Nev. R.S.), New Hampshire (*see* s. 405:24, N.H. Rev. Stat.), New Jersey (*see* s. 17:22-6.69b, N.J. Rev. St.), North Carolina (*see* s. 58-21-21, N.C.G.S.A.), North Dakota (*see* s. 26.1-44-03.2, NDCC), Ohio (*see* s. 3905.332, Oh. Rev. C.), Oklahoma (*see* 36 Ok. S.A. s. 1101.1), Texas (*see* s. 981.071-981.074, Tex. Ins. Code), Vermont (*see* 8 V.S.A. s. 5023a), Virginia (*see* s. 38.2-4811.1, V.C.A), and Wisconsin (s. 618.41(13), W.S.A.).

- Domestic surplus lines insurers are exempt from requirements relating to rates, forms, policy cancellation;
- Policies must be placed in accordance with the requirements of the state’s surplus lines law; and
- Policies are not covered by any of the state’s guaranty associations.

The number of domestic surplus lines insurers has increased since 2011 from 15 to over 70, with the majority domiciled in Illinois and Delaware.³¹

Federal Nonadmitted and Reinsurance Reform Act of 2010

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA). The NRRRA states that the placement of surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured’s home state.³² The act provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.³³ States are authorized to establish procedures to allocate tax revenues properly to states for multi-state risks and an insured’s home state may require surplus lines brokers and insureds to annually file tax allocation reports detailing the portion of the policy premium attributable to exposure located in each state. States must participate in the national insurance producer database of the NAIC or an equivalent uniform national database for the licensure of surplus lines brokers; a state that does not do so is prohibited from collecting fees related to licensing surplus lines brokers.³⁴ The eligibility requirements for surplus lines insurer must conform to the Non-Admitted Insurance Model Act of the National Association of Insurance Commissioners unless the state adopts requirements that comply with the NRRRA’s requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements.³⁵ The NRRRA also prohibits state laws requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing surplus lines insurance for an exempt commercial purchaser³⁶ if certain disclosures are made.³⁷

Florida Insurance Guaranty Association

The Florida Insurance Guaranty Association (FIGA) provides a “mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer.”³⁸ It issues guaranty fund payments and provides related services for all lines of property and casualty

³¹ John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual*, pg. 1.6 (2021). Available at <https://surplusmanual.lockelord.com/preface/> (last accessed January 13, 2022).

³² 15 U.S.C. s. 8202

³³ 15 U.S.C. s. 8201(a)

³⁴ 15 U.S.C. s. 8203

³⁵ 15 U.S.C. s. 8204

³⁶ Defined in 15 U.S.C. s. 8206(5) as a person purchasing commercial insurance if such person has a qualified risk manager to negotiate insurance coverage, has paid nationwide property and casualty insurance premiums in excess of \$100,000 in the preceding 12 months, and meets one of five specified requirements regarding the net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.

³⁷ 15 U.S.C. s. 8205

³⁸ Section 631.51, F.S.

insurance³⁹ with certain exceptions.⁴⁰ Florida law provides that FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than \$300,000.⁴¹ For policies providing homeowner's insurance coverage, FIGA provides for up to an additional \$200,000 for the portion of a covered claim, which related to the damage to the structure and contents.⁴²

Florida Workers' Compensation Insurance Guaranty Association

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.⁴³ The FWCIGA services workers' compensation claims against insolvent workers' compensation insurers⁴⁴ and self-insurance funds.⁴⁵ For purposes of FWCIGA, "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of \$300,000 or the limits of the policy.⁴⁶

Florida Life and Health Insurance Guaranty Association

The Florida Life and Health Insurance Guaranty Association (FLHIGA) exists to "protect policyowners, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the failure of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency."⁴⁷ The maximum obligation of FLHIGA to provide payment for any covered claim or policy is:

- For life insurance, \$100,000 in net cash surrender and net cash withdrawal values.
- For deferred annuity contracts, \$250,000 in net cash surrender and net cash withdrawal values.
- For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, \$500,000.
- For all other benefits, including in long-term care policies, \$300,000, including cash values.

³⁹ Section 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.

⁴⁰ *Id.*

⁴¹ Section 631.57(1), F.S.

⁴² *Id.*

⁴³ Section 631.902, F.S.

⁴⁴ "Insurer" means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S." Section 631.904(5), F.S.

⁴⁵ 'Self-insurance fund' means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S." Section 631.904(6), F.S.

⁴⁶ Section 631.904(2), F.S.

⁴⁷ Section 631.712, F.S.

III. Effect of Proposed Changes:

The bill allows a domestic insurer possessing surplus as to policyholders of at least \$15 million, upon a resolution by its board of directors, to be made eligible as a domestic surplus lines insurer if approved by the Office of Insurance Regulation.

Eligible domestic surplus lines insurers may:

- Issue surplus lines insurance coverage in any jurisdiction, including this state;
- Issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue; and
- Issue coverage only if placed with the domestic surplus lines insurer by a surplus lines agent pursuant to the Surplus Lines Law.

Domestic surplus lines insurers are subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted.

Insurance policies issued by a domestic surplus lines insurer, however, are exempt from all requirements relating to insurance rating and rating plans, policy forms, premiums charged to insureds, policy cancellation, nonrenewal, and renewal, and other requirements in the same manner and to the same extent as surplus lines policies issued by an insurer domiciled in another state.

Policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies are exempt from other taxes levied upon domestic and foreign admitted insurers.

Policies issued by a domestic surplus lines insurer are not eligible to participate in the:

- Florida Insurance Guaranty Association;
- Florida Life and Health Insurance Guaranty Association; and
- Florida Workers' Compensation Guaranty Association.

A domestic surplus lines insurer is considered an unauthorized insurer for purposes of the Surplus Lines Law. This has the effect of applying the Surplus Lines Law to domestic surplus lines insurers because s. 626.915, F.S., specifies that surplus lines insurance may be procured from unauthorized insurers, but only if the following conditions are met:

- The insurance is eligible for export;
- The insurer is an eligible surplus lines insurer;
- The insurance is placed through a licensed Florida surplus lines agent; and
- The other applicable provisions of the Surplus Lines Law are met.

The bill also specifies that a domestic surplus lines insurer is considered a nonadmitted insurer as defined in 15 U.S.C. s. 8506⁴⁸ for the purposes of the Federal Nonadmitted and Reinsurance

⁴⁸ Under 15 U.S.C. s. 8206(9) a “nonadmitted insurer” means, with respect to a state, an insurer not licensed to engage in the business of insurance in such state, but does not include a risk retention group, as that term is defined in 15 U.S.C. 3901(a)(4).

Reform Act of 2010. This clarifies that the provisions of that law apply to domestic surplus lines insurers.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill may have an indeterminate impact on tax collections as policies issued in Florida by a domestic surplus lines insurer are subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including the surplus lines tax in s. 626.932, F.S. Such policies, however, are exempt from other taxes levied upon domestic and foreign admitted insurers.

B. Private Sector Impact:

The bill will allow insurers domiciled in Florida to be made eligible to transact surplus lines insurance in Florida.

When fewer domestic insurers are willing to write a particular line of insurance, more insurance is likely to be written with surplus lines insurers. An example of this principle can be observed with the Florida property insurance market. Here are the amounts in total premium that surplus lines insurers collected for some common lines of property insurance:

Coverage	2017 Premium ⁴⁹	2020 Premium ⁵⁰
Commercial Property	\$1.711 billion	\$2.708 billion
Homeowners (HO-3)	\$360.582 million	\$437.225 million
Dwelling Property	\$97.844 million	\$165.739 million

Allowing domestic insurers to become eligible to transact surplus lines insurance may increase the number of property insurance policies written by surplus lines insurers. During a period of decreasing availability of property insurance from admitted insurance companies and often sizable rate increases by those admitted companies willing to write coverage, surplus lines carriers have taken on an increasing role in the Florida market. Consumers may benefit from the additional availability of coverage that domestic surplus lines insurers may provide. However, surplus lines property insurance policies are not subject to the jurisdiction of the OIR regarding rates and forms and if a surplus lines carrier becomes insolvent, surplus lines policies are not backed by the Florida Insurance Guaranty Association.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.914 of the Florida Statutes.
This bill creates section 626.9182 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

⁴⁹ Florida Surplus Lines Service Office, *2020 Annual Report*, pg. 17, (https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/2017-annual-report.pdf?sfvrsn=a4041835_0) (last accessed January 12, 2022).

⁵⁰ Florida Surplus Lines Service Office, *2017 Annual Report*, pg. 19, (https://www.fslso.com/docs/default-source/uploadedfiles/reports/annual-reports-archive/big-picture-2020-annual-report.pdf?sfvrsn=112a8e82_5) (last accessed January 14, 2022).

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

By Senator Burgess

20-00879-22

20221402__

A bill to be entitled

An act relating to domestic surplus lines insurance; amending s. 626.914, F.S.; revising the definition of the term "eligible surplus lines insurer"; defining the term "domestic surplus lines insurer"; creating s. 626.9182, F.S.; providing for the eligibility of domestic surplus lines insurers; subjecting and exempting surplus lines insurers and surplus lines policies from certain requirements; providing construction; reenacting ss. 458.320(1)(b) and (2)(b), 459.0085(1)(b) and (2)(b), and 464.0123(2)(a), F.S., relating to financial responsibility for the practice of medicine, financial responsibility for the practice of osteopathic medicine, and autonomous practice by an advanced practice registered nurse, respectively, to incorporate the amendment made to s. 626.914, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (2) of section 626.914, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(2) "Eligible surplus lines insurer" means an unauthorized insurer ~~that which~~ has been made eligible by the office to issue insurance coverage under this Surplus Lines Law; or a domestic surplus lines insurer.

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(5) "Domestic surplus lines insurer" means any domestic insurer that has been made eligible by the office to issue surplus lines insurance coverage.

Section 2. Section 626.9182, Florida Statutes, is created to read:

626.9182 Domestic surplus lines insurers.—

(1) Notwithstanding any other law, a domestic insurer possessing surplus as to policyholders of at least \$15 million may, pursuant to a resolution by its board of directors, and with the approval of the office, be made eligible as a domestic surplus lines insurer. Upon approval of the office, a domestic surplus lines insurer:

(a) May issue surplus lines insurance coverage in any jurisdiction, including this state.

(b) Is deemed an eligible surplus lines insurer and may issue any type of insurance coverage that an unauthorized insurer not domiciled in this state is eligible to issue.

(c) May issue surplus lines insurance coverage only if the coverage has been placed with the insurer by a surplus lines agent pursuant to the Surplus Lines Law.

(2) A domestic surplus lines insurer is subject to all financial and solvency requirements imposed upon domestic admitted insurers unless otherwise exempted.

(3) Surplus lines insurance policies issued by a domestic surplus lines insurer are exempt from all requirements relating to insurance rating and rating plans; policy forms; premiums charged to insureds; policy cancellation, nonrenewal, and renewal; and other requirements in the same manner and to the same extent as surplus lines policies issued by a surplus lines

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59 insurer domiciled in another state.

60 (4) Notwithstanding any other law, policies issued in this
 61 state by a domestic surplus lines insurer are subject to taxes
 62 assessed upon surplus lines policies issued by nonadmitted
 63 insurers, including the surplus lines tax prescribed by s.
 64 626.932, but are exempt from other taxes levied upon domestic
 65 and foreign admitted insurers.

66 (5) Policies issued in this state by a domestic surplus
 67 lines insurer are not subject to part II, part III, or part V of
 68 chapter 631.

69 (6) For the purposes of the Surplus Lines Law, a domestic
 70 surplus lines insurer is considered an unauthorized insurer.

71 (7) For the purposes of the federal Nonadmitted and
 72 Reinsurance Reform Act of 2010 (NRRA), a domestic surplus lines
 73 insurer is considered a nonadmitted insurer as defined in 15
 74 U.S.C. s. 8206 with respect to risks insured in this state.

75 Section 3. For the purpose of incorporating the amendment
 76 made by this act to section 626.914, Florida Statutes, in
 77 references thereto, paragraph (b) of subsection (1) and
 78 paragraph (b) of subsection (2) of section 458.320, Florida
 79 Statutes, are reenacted to read:

80 458.320 Financial responsibility.—

81 (1) As a condition of licensing and maintaining an active
 82 license, and prior to the issuance or renewal of an active
 83 license or reactivation of an inactive license for the practice
 84 of medicine, an applicant must by one of the following methods
 85 demonstrate to the satisfaction of the board and the department
 86 financial responsibility to pay claims and costs ancillary
 87 thereto arising out of the rendering of, or the failure to

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88 render, medical care or services:

89 (b) Obtaining and maintaining professional liability
 90 coverage in an amount not less than \$100,000 per claim, with a
 91 minimum annual aggregate of not less than \$300,000, from an
 92 authorized insurer as defined under s. 624.09, from a surplus
 93 lines insurer as defined under s. 626.914(2), from a risk
 94 retention group as defined under s. 627.942, from the Joint
 95 Underwriting Association established under s. 627.351(4), or
 96 through a plan of self-insurance as provided in s. 627.357. The
 97 required coverage amount set forth in this paragraph may not be
 98 used for litigation costs or attorney's fees for the defense of
 99 any medical malpractice claim.

100 (2) Physicians who perform surgery in an ambulatory
 101 surgical center licensed under chapter 395 and, as a continuing
 102 condition of hospital staff privileges, physicians who have
 103 staff privileges must also establish financial responsibility by
 104 one of the following methods:

105 (b) Obtaining and maintaining professional liability
 106 coverage in an amount not less than \$250,000 per claim, with a
 107 minimum annual aggregate of not less than \$750,000 from an
 108 authorized insurer as defined under s. 624.09, from a surplus
 109 lines insurer as defined under s. 626.914(2), from a risk
 110 retention group as defined under s. 627.942, from the Joint
 111 Underwriting Association established under s. 627.351(4),
 112 through a plan of self-insurance as provided in s. 627.357, or
 113 through a plan of self-insurance which meets the conditions
 114 specified for satisfying financial responsibility in s. 766.110.
 115 The required coverage amount set forth in this paragraph may not
 116 be used for litigation costs or attorney's fees for the defense

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117 of any medical malpractice claim.

118

119 This subsection shall be inclusive of the coverage in subsection
120 (1).

121 Section 4. For the purpose of incorporating the amendment
122 made by this act to section 626.914, Florida Statutes, in
123 references thereto, paragraph (b) of subsection (1) and
124 paragraph (b) of subsection (2) of section 459.0085, Florida
125 Statutes, are reenacted to read:

126 459.0085 Financial responsibility.—

127 (1) As a condition of licensing and maintaining an active
128 license, and prior to the issuance or renewal of an active
129 license or reactivation of an inactive license for the practice
130 of osteopathic medicine, an applicant must by one of the
131 following methods demonstrate to the satisfaction of the board
132 and the department financial responsibility to pay claims and
133 costs ancillary thereto arising out of the rendering of, or the
134 failure to render, medical care or services:

135 (b) Obtaining and maintaining professional liability
136 coverage in an amount not less than \$100,000 per claim, with a
137 minimum annual aggregate of not less than \$300,000, from an
138 authorized insurer as defined under s. 624.09, from a surplus
139 lines insurer as defined under s. 626.914(2), from a risk
140 retention group as defined under s. 627.942, from the Joint
141 Underwriting Association established under s. 627.351(4), or
142 through a plan of self-insurance as provided in s. 627.357. The
143 required coverage amount set forth in this paragraph may not be
144 used for litigation costs or attorney's fees for the defense of
145 any medical malpractice claim.

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146 (2) Osteopathic physicians who perform surgery in an
147 ambulatory surgical center licensed under chapter 395 and, as a
148 continuing condition of hospital staff privileges, osteopathic
149 physicians who have staff privileges must also establish
150 financial responsibility by one of the following methods:

151 (b) Obtaining and maintaining professional liability
152 coverage in an amount not less than \$250,000 per claim, with a
153 minimum annual aggregate of not less than \$750,000 from an
154 authorized insurer as defined under s. 624.09, from a surplus
155 lines insurer as defined under s. 626.914(2), from a risk
156 retention group as defined under s. 627.942, from the Joint
157 Underwriting Association established under s. 627.351(4),
158 through a plan of self-insurance as provided in s. 627.357, or
159 through a plan of self-insurance that meets the conditions
160 specified for satisfying financial responsibility in s. 766.110.
161 The required coverage amount set forth in this paragraph may not
162 be used for litigation costs or attorney's fees for the defense
163 of any medical malpractice claim.

164
165 This subsection shall be inclusive of the coverage in subsection
166 (1).

167 Section 5. For the purpose of incorporating the amendment
168 made by this act to section 626.914, Florida Statutes, in a
169 reference thereto, paragraph (a) of subsection (2) of section
170 464.0123, Florida Statutes, is reenacted to read:

171 464.0123 Autonomous practice by an advanced practice
172 registered nurse.—

173 (2) FINANCIAL RESPONSIBILITY.—

174 (a) An advanced practice registered nurse registered under

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175 this section must, by one of the following methods, demonstrate
176 to the satisfaction of the board and the department financial
177 responsibility to pay claims and costs ancillary thereto arising
178 out of the rendering of, or the failure to render, nursing care,
179 treatment, or services:

180 1. Obtaining and maintaining professional liability
181 coverage in an amount not less than \$100,000 per claim, with a
182 minimum annual aggregate of not less than \$300,000, from an
183 authorized insurer as defined in s. 624.09, from a surplus lines
184 insurer as defined in s. 626.914(2), from a risk retention group
185 as defined in s. 627.942, from the Joint Underwriting
186 Association established under s. 627.351(4), or through a plan
187 of self-insurance as provided in s. 627.357; or

188 2. Obtaining and maintaining an unexpired, irrevocable
189 letter of credit, established pursuant to chapter 675, in an
190 amount of not less than \$100,000 per claim, with a minimum
191 aggregate availability of credit of not less than \$300,000. The
192 letter of credit must be payable to the advanced practice
193 registered nurse as beneficiary upon presentment of a final
194 judgment indicating liability and awarding damages to be paid by
195 the advanced practice registered nurse or upon presentment of a
196 settlement agreement signed by all parties to such agreement
197 when such final judgment or settlement is a result of a claim
198 arising out of the rendering of, or the failure to render,
199 nursing care and services.

200 Section 6. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

SB 1402

1/18/2022

Meeting Date

Bill Number or Topic

Bank Committee

Committee

Deliver both copies of this form to Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Paul Handman

Phone

561 704 0428

Address

120 S Monroe Street

Email

Paul@ramboconsulting.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking: For Against Information OR Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FAIR

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

Meeting Date

Banking and Insurance
Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

1462

Amendment Barcode (if applicable)

Name George Feijoo Phone 3057207099

Address 108 S. Monroe St. Email grfeijoo@gmail.com

Street

Tallahassee FL 32312

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FCCI

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1430

INTRODUCER: Banking and Insurance Committee and Senator Burgess

SUBJECT: Insolvent Insurers

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Arnold	Knudson	BI	Favorable
2.			AEG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1430 amends several provisions of the Florida Insurance Code related to the Office of Insurance Regulation (OIR) and the Florida Insurance Guaranty Association (FIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). FWCIGA provides a mechanism for the payment of covered workers' compensation claims to avoid delay and financial loss to claimants due to the insolvency of a workers' compensation insurer. FIGA provides a mechanism for the payment of covered claims under certain lines of property and casualty insurance policies to avoid delay and financial loss due to the financial insolvency of an insurer. Specifically, the bill:

- Provides that past loss experience and prospective loss experience for insolvent insurers must be used in the determination and fixing of workers' compensation rates, and that data previously reported by insolvent insurers may be used to assess the impact on rates;
- Authorizes insurers to make advance assessment payments to FIGA in quarterly installments;
- Authorizes an insurer to forego recouping advances of assessments to FIGA;
- Requires insurers making assessment payments to FIGA to file reconciliation reports on a form and schedule adopted by FIGA regardless of assessment payment method;
- Authorizes the Workers' Compensation Insurance Guaranty Association (WCIGA) to allow an insurer to make advance assessment payments in a single payment or on a quarterly basis based on cash-flow needs;
- Reduces the frequency of annual reconciliation reports subsequently filed with the WCIGA after the assessment year from a period of 3 years to a period of 2 years;

- Clarifies that an assessment paid before surcharges are collected is an advance; and
- Makes additional technical and conforming changes.

The bill provides that the officers and directors of an insolvent insurer may thereafter serve as an officer or director of an authorized insurer unless the OIR enters an order under s. 624.310, F.S., demonstrating that the personal actions or omissions of the officer or director were a significant contributing cause to the insolvency.

The bill takes effective July 1, 2022.

II. Present Situation:

Officers and Directors of Insolvent Insurers

In general, Florida law gives OIR broad authority to deny, suspend, or revoke an insurer's authority to transact insurance in Florida if it finds the insurer's officers and directors to be:

- Incompetent or untrustworthy;
- So lacking in insurance company managerial experience as to make the proposed operation hazardous to the insurance-buying public;
- So lacking in insurance experience, ability, and standing as to jeopardize the reasonable promise of successful operation; or
- Affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person or persons whose business operations are or have been marked, to the detriment of policyholders, stockholders, investors, creditors, or the public, by manipulation of assets, accounts, or reinsurance or by bad faith.¹

When an insurer becomes insolvent, current law requires OIR to deny an officer or director of the insolvent insurer from thereafter serving in the same capacity for another insurer if the officer or director served in that capacity within 2 years preceding the insolvency of the insurer, unless the officer or director demonstrates to OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.²

Regulation of Property Insurance Rates

Part I of ch. 627, F.S., is the Rating Law³ governing property, casualty, and surety insurance that covers subjects of insurance resident, located, or to be performed in this state.⁴ The Rating Law provides that the rates for all classes of insurance it governs may not be excessive, inadequate, or unfairly discriminatory.⁵ Though the terms "rate" and "premium" are often used interchangeably, the rating law specifies that "rate" is the unit charge that is multiplied by the measure of exposure or amount of insurance specified in the policy to determine the premium, which is the consideration paid by the consumer.⁶

¹ Section 624.404(3)(a), F.S.

² Section 624.4073, F.S.

³ Section 627.011, F.S.

⁴ Section 627.021, F.S.

⁵ Section 627.062(1), F.S.

⁶ Section 627.041, F.S.

All insurers or rating organizations must file rates with the OIR either 90 days before the proposed effective date of a new rate, which is considered a “file and use” rate filing, or 30 days after the effective date of a new rate, which is considered a “use and file” rate filing.

Upon receiving a rate filing, the OIR reviews the filing to determine if the rate is excessive, inadequate, or unfairly discriminatory. The OIR makes that determination in accordance with generally acceptable actuarial techniques and, in a property insurance rate filing, considers the following:

- Past and prospective loss experience.
- Past and prospective expenses.
- The degree of competition among insurers for the risk insured.
- Investment income reasonably expected by the insurer.
- The reasonableness of the judgment reflected in the rate filing.
- Dividends, savings, or unabsorbed premium deposits returned to policyholders.
- The adequacy of loss reserves.
- The cost of reinsurance.
- Trend factors, including trends in actual losses per insured unit for the insurer.
- Conflagration and catastrophe hazards.
- Projected hurricane losses.
- Projected flood losses, if the policy covers the risk of flood.
- A reasonable margin for underwriting profit and contingencies.
- Other relevant factors that affect the frequency or severity of claims or expenses.

Workers’ Compensation Reporting Requirements and Rating Factors

Florida law currently requires workers’ compensation insurers to record and report certain loss, expense, and claims experience to aid OIR in making determinations concerning the adequacy of worker’s compensation experience for ratemaking purposes.⁷ Additionally, insurers are required to provide the following information annually on both Florida experience and nationwide experience separately:

- Payrolls by classification.
- Manual premiums by classification.
- Standard premiums by classification.
- Losses by classification and injury type.
- Expenses.⁸

Section 627.072, F.S., in turn governs the admissibility of factors to be used in the determination and fixing of workers’ compensation insurance rates. The following factors are used for such purpose:

- The past loss experience and prospective loss experience within and outside Florida;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;

⁷ Section 627.914(1), F.S.

⁸ Section 627.914(2), F.S.

- Dividends, savings, and unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both countrywide and those specifically applicable to Florida; and
- All other relevant factors, including judgment factors, within and outside of Florida.⁹

Insurers satisfy the reporting requirements above by providing their data to the National Council on Compensation Insurance, Inc. (NCCI).¹⁰ When an insurer goes into receivership due to insolvency, it ceases reporting to NCCI and, therefore, its data is no longer reported to OIR and not used in the determination and fixing of rates.

Guaranty Associations

Under federal law, insurance companies cannot file for bankruptcy.¹¹ Instead, they are either rehabilitated or liquidated by their state of domicile. Florida law establishes the system for the treatment of impaired or insolvent insurers¹² in Florida and sets up guaranty payments where necessary.¹³ Florida law provides for guaranty associations to ensure policyholders of insolvent insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.¹⁴ A guaranty association is a not-for-profit corporation created by law and directed to protect policyholders from financial losses and delays in claims payment and settlements due to the insolvency of an insurer.¹⁵ Authorized insurers are required to participate in the guaranty associations as a condition of transacting insurance business in Florida. Florida operates four guaranty associations including FIGA¹⁶ and FWCIGA.¹⁷

Florida Insurance Guaranty Association

FIGA provides a “mechanism for the payment of covered claims under certain insurance policies to avoid” delay and financial loss due to the financial insolvency of an insurer.¹⁸ It issues guaranty fund payments and provides related services for all lines of property and casualty insurance with certain exceptions.¹⁹ When a Florida property and casualty insurer becomes insolvent, FIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

⁹ Section 627.072(1), F.S.

¹⁰ See Rule 69O-189.0055, F.A.C.

¹¹ 11 U.S.C. s. 109(b)(2).

¹² An “insolvent insurer” means an insurer that was authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction if such order has become final by the exhaustion of appellate review. Section. 631.904(4), F.S.

¹³ Chapter 631, F.S.

¹⁴ See *id.*

¹⁵ See *e.g.*, ss. 631.51 and 631.902, F.S.

¹⁶ Chapter 631, part II, F.S.

¹⁷ Chapter 631, part V, F.S.

¹⁸ Section 631.51, F.S.

¹⁹ Section 631.52, F.S.

FIGA is funded through the liquidation of insolvent insurers. If an insurer's assets are insufficient to pay all claims, FIGA can request, and OIR can levy post-insolvency assessments against property and casualty insurers to obtain funds to pay the remaining claims.²⁰ All assessments paid by the insurer pursuant to the levied assessment constitute advances of funds from the insurer to FIGA.²¹ The insurer may then, in turn, recoup the advance by applying the uniform assessment percentage levied by OIR to all its policies of the same kind or line of business as were considered by OIR in determining its assessment on the insurer.²²

When FIGA issues an assessment, it may require that each member insurer pay the assessment either in a single payment before policy surcharges are collected (pay and recover), or in quarterly installments after the policy surcharges are collected (collect and remit).²³

Assessments paid before policy surcharges are collected result in a receivable for policy surcharges collected in the future. Insurers under this assessment methods are further required to file a reconciliation report with FIGA within 90 days of the end of the assessment year that indicates:

- The amount of the initial payment before the assessment year;
- Whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection;
- The amount actually collected during the assessment year; and
- Such information contained on a form adopted by FIGA and provided to the insurer in advance.²⁴

Florida Workers' Compensation Insurance Guaranty Association

FWCIGA "provides a mechanism for the payment of covered claims under chapter 440, F.S., to avoid" delay and financial loss to claimants due to the insolvency of a workers' compensation insurer.²⁵ FWCIGA services workers' compensation claims against insolvent workers' compensation insurers²⁶ and self-insurance funds.²⁷ When a workers' compensation insurer or self-insurance fund becomes insolvent, FWCIGA takes over the claims of that insurer and pays the claims of its policyholders, ensuring that policyholders are not left with unpaid claims.

²⁰ Section 631.57, F.S.

²¹ Section 631.57(3)(c), F.S.

²² *See id.*

²³ *See id.*

²⁴ Section 631.57(3)(f)1.d, F.S.

²⁵ Section 631.902, F.S.

²⁶ "Insurer" means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For purposes of this act, "insurer" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., or an individual self-insurer as defined in s. 440.385, F.S." Section 631.904(5), F.S.

²⁷ "Self-insurance fund" means a group self-insurance fund authorized under s. 624.4621, F.S., a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, F.S., an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, F.S., or an individual self-insurer as defined in s. 440.385, F.S." Section 631.904(6), F.S.

Like FIGA, FWCIGA is funded through the liquidation of insolvent insurers, including a portion of the estates of insolvent insurers in other states. If the assets of the liquidated insurer are insufficient to pay claims, FWCIGA, in conjunction with OIR, may order assessments of workers' compensation insurers and self-insurance funds writing workers' compensation coverage in Florida.²⁸

In 2016, the method of assessment for FWCIGA was amended to be more consistent with the methods used to levy assessments by the other Florida guaranty associations.²⁹ Since the 2016 amendments, the law has provided for two methods by which FWCIGA can collect assessments from workers' compensation insurers and self-insurance funds.³⁰ FWCIGA may choose to fund an assessment by either of the following methods:³¹

Single payment, subject to true-up (pay and recover)³² – under this method, the insurer pays the assessment to the FWCIGA and then recovers its payment from its insureds through policy surcharges. The assessment payment is due and payable no earlier than 30 days following written notice of the assessment order. For accounting purposes, the billed surcharges are a receivable and an asset for the purposes of the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles Number 4³³ and would be recorded separately from the liability for OIR reports.

Installment (collect and remit or pass-through) – under this method, the insurer would bill the insured for the surcharge as policies are written and remit the collected surcharges to the FWCIGA quarterly.³⁴

The insurer is required to submit a reconciliation report within 120 days following the end of the 12-month assessment recovery period showing the amount initially paid and the amount of the surcharge collected.³⁵ This results in a "true-up" of the actual assessment amount if the initial calculation and payment was too low or too high.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, to require the Office of Insurance Regulation enter an order pursuant to s. 624.310, F.S., demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency, in order to prevent the officer or director from serving in the same capacity for another insurer. The bill thus eliminates an automatic prohibition against a person serving as an officer or director of an authorized insurer, or having direct or indirect control over selecting or appointing an officer or director, if such person was an officer or director of an insolvent insurer in the 2 years prior to the insolvency. That prohibition

²⁸ Section 631.914, F.S.

²⁹ Chapter 16-170, L.O.F.

³⁰ See s. 631.914, F.S.

³¹ See *id.*

³² Section 631.914(1)(d), F.S.

³³ See National Association of Insurance Commissioners & The Center for Insurance Policy and Research, *Statutory Accounting Principles*, http://www.naic.org/cipr_topics/topic_statutory_accounting_principles.htm (last visited November 4, 2019).

³⁴ Section 631.914(1)(d), F.S.

³⁵ Section 631.914(1)(d)3., F.S.

³⁶ See *id.*

under current law does not apply if the officer or director can demonstrate to the OIR that his or her personal actions or omissions were not a significant contributing cause to the insolvency.

Section 2 amends s. 627.072, F.S., to provide factors used in the determination and fixing of workers' compensation rates must include past loss experience and prospective loss experience for insolvent insurers. The prior reported data for such insurers and other relevant information may be used to assess the impact on rates.

Section 3 amends s. 631.57, F.S., related to the powers and duties of the Florida Insurance Guaranty Association, to authorize the association to request the Office of Insurance Regulation's assessment order authorize insurers to make advance assessment payments in quarterly installments.

The bill provides an insurer discretion to forego recouping advances of assessments made to the association.

The bill specifies that insurers, regardless of the required assessment payment method, must file one or more reconciliation reports with the association. Each reconciliation report must indicate the amount actually collected during the assessment year and such other information using a form and schedule adopted by the association and provided to the insurer in advance.

The bill makes additional technical changes specific to surcharges.

Section 4 amends s. 631.914, F.S., related to Workers' Compensation Insurance Guaranty Association assessments, to provide the association with discretion to authorize an insurer that is required to pay an assessment before surcharges are collected, to pay the assessment either in a single payment or on a quarterly basis based on cash-flow needs.

The bill reduces the frequency of annual reconciliation reports subsequently filed after the assessment year from a period of 3 years to a period of 2 years.

The bill clarifies that an assessment paid before surcharges are collected is an advance.

The bill provides technical changes by replacing the term "installment method" with "pass-through method" to reflect current operational terminology of the association.

The bill makes additional conforming changes.

Section 5 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.4073, 627.072, 631.57, and 631.914

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Banking and Insurance on January 18, 2022:

The committee substitute:

- Amends s. 624.4073, F.S., related to officers and directors of insolvent insurers, shifts the burden for demonstrating the personal actions or omissions of the officer or director of an insolvent insurer were a significant contributing cause of the insolvency to the Office of Insurance Regulation, rather than on the officer or director to demonstrate his or her personal actions or omissions were not a significant contributing cause of the insolvency.

B. Amendments:

None.

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



179644

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Before line 33

insert:

Section 1. Section 624.4073, Florida Statutes, is amended to read:

624.4073 Officers and directors of insolvent insurers.—Any person who was an officer or director of an insurer doing business in this state and who served in that capacity within the 2-year period before the date the insurer became insolvent,



179644

11 for any insolvency that occurs on or after July 1, 2002, may ~~not~~
12 thereafter serve as an officer or director of an insurer
13 authorized in this state or have direct or indirect control over
14 the selection or appointment of an officer or director through
15 contract, trust, or by operation of law, unless the office
16 enters an order pursuant to s. 624.310 demonstrating that the
17 ~~officer or director demonstrates that his or her personal~~
18 actions or omissions of the officer or director were ~~not~~ a
19 significant contributing cause to the insolvency.

20
21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Between lines 2 and 3

24 insert:

25 624.4073, F.S.; revising a prohibition against certain
26 insolvent insurers' former officers or directors
27 serving as officers or directors of an insurer or
28 having direct or indirect control over certain
29 selection or appointment of officers or directors, to
30 allow such activities unless the Office of Insurance
31 Regulation enters a specified order; amending s.



157610

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
01/19/2022	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 191 and 192

insert:

Section 3. Subsection (5) is added to section 631.62, Florida Statutes, to read:

631.62 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies:

(5) Within 3 months after an insurer becomes insolvent, the board of directors shall give notice and hold a public meeting



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11 at which the officers and directors of the insolvent insurer
12 shall present to the board and the public detailed information
13 regarding the cause of its insolvency. The board shall provide
14 to the office written recommendations using information
15 presented at the meeting for the purpose of preventing insurer
16 insolvencies.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete line 24

21 and insert:

22 revising construction; amending s. 631.62, F.S.;

23 requiring the board of directors of the Florida

24 Insurance Guaranty Association, Incorporated, to give

25 notice and hold a public meeting within a certain

26 timeframe after an insurer's insolvency; requiring the

27 officers and directors of insolvent insurers to

28 present certain information; requiring the board to

29 provide written recommendations to the office using

30 specified information; amending s. 631.914, F.S.;

By Senator Burgess

20-00793B-22

20221430__

1 A bill to be entitled
 2 An act relating to insolvent insurers; amending s.
 3 627.072, F.S.; providing required factors to be used
 4 in the determination and fixing of rates for premiums
 5 paid to insolvent insurers for specified coverages;
 6 amending s. 631.57, F.S.; authorizing insurers
 7 remitting assessments to the Florida Insurance
 8 Guaranty Association, Incorporated, to elect not to
 9 recoup advances; revising a requirement for
 10 information regarding assessment percentages which
 11 must be specified by the Office of Insurance
 12 Regulation in orders levying assessments; authorizing
 13 the association to request that orders levying
 14 assessments issued by the office authorize a certain
 15 installment frequency for the remittance of advance
 16 payments by insurers; revising the requirement that
 17 certain insurers make payments, rather than initial
 18 payments, on a certain basis; revising insurer
 19 reconciliation reporting requirements; providing
 20 reconciliation requirements for surcharges collected
 21 from policyholders; requiring insurers to treat the
 22 failure of an insured to pay a surcharge, rather than
 23 a recoupment charge, as a failure to pay the premium;
 24 revising construction; amending s. 631.914, F.S.;
 25 revising provisions relating to insurers' collection
 26 of surcharges and payments of assessments to the
 27 Florida Workers' Compensation Insurance Guaranty
 28 Association, Incorporated; providing an effective
 29 date.

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsection (1) of section 627.072, Florida
 34 Statutes, is amended to read:
 35 627.072 Making and use of rates.—
 36 (1) As to workers' compensation and employer's liability
 37 insurance, the following factors must ~~shall~~ be used in the
 38 determination and fixing of rates:
 39 (a) The past loss experience and prospective loss
 40 experience within and outside this state;
 41 (b) The impact resulting from the past loss experience and
 42 prospective loss experience for insurers whose data are missing
 43 from statewide experience due to insolvency. Prior reported data
 44 for such insurers and all other relevant information may be used
 45 to assess the impact on rates;
 46 (c) The conflagration and catastrophe hazards;
 47 (d) ~~(e)~~ A reasonable margin for underwriting profit and
 48 contingencies;
 49 (e) ~~(d)~~ Dividends, savings, or unabsorbed premium deposits
 50 allowed or returned by insurers to their policyholders, members,
 51 or subscribers;
 52 (f) ~~(e)~~ Investment income on unearned premium reserves and
 53 loss reserves;
 54 (g) ~~(f)~~ Past expenses and prospective expenses, both those
 55 countrywide and those specifically applicable to this state; and
 56 (h) ~~(g)~~ All other relevant factors, including judgment
 57 factors, within and outside this state.
 58 Section 2. Paragraphs (c) and (f) through (i) of subsection

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59 (3) of section 631.57, Florida Statutes, are amended to read:
 60 631.57 Powers and duties of the association.—
 61 (3)
 62 (c) The Legislature finds and declares that all assessments
 63 paid by an insurer or insurer group as a result of a levy by the
 64 office, including assessments levied pursuant to paragraph (a)
 65 and emergency assessments levied pursuant to paragraph (e),
 66 constitute advances of funds from the insurer to the
 67 association. An insurer may fully recoup such advances by
 68 applying the uniform assessment percentage levied by the office
 69 to all policies of the same kind or line as were considered by
 70 the office in determining the assessment liability of the
 71 insurer or insurer group as set forth in paragraph (f). An
 72 insurer remitting an assessment to the association as required
 73 by subparagraph (f)1. or subparagraph (f)2. may elect not to
 74 recoup advances.
 75 1. Assessments levied under subparagraph (f)1. are paid
 76 before policy surcharges are collected and result in a
 77 receivable for policy surcharges collected in the future. This
 78 amount, to the extent it is likely that it will be realized,
 79 meets the definition of an admissible asset as specified in the
 80 National Association of Insurance Commissioners' Statement of
 81 Statutory Accounting Principles No. 4. The asset ~~must shall~~ be
 82 established and recorded separately from the liability
 83 regardless of whether it is based on a retrospective or
 84 prospective premium-based assessment. If an insurer is unable to
 85 fully recoup the amount of the assessment because of a reduction
 86 in writings or withdrawal from the market, the amount recorded
 87 as an asset ~~must shall~~ be reduced to the amount reasonably

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88 expected to be recouped.
 89 2. Assessments levied under subparagraph (f)2. are paid
 90 after policy surcharges are collected so that the recognition of
 91 assets is based on actual premium written offset by the
 92 obligation to the association.
 93 (f)1. The association, office, and insurers remitting
 94 assessments pursuant to paragraph (a) or paragraph (e) must
 95 comply with the following:
 96 a. In the order levying an assessment, the office shall
 97 specify the actual percentage amount to be advanced to the
 98 association and thereafter collected uniformly from all the
 99 policyholders of insurers subject to the assessment and the date
 100 on which the assessment year begins, which may not begin before
 101 90 days after the association board certifies such an
 102 assessment.
 103 b. Insurers shall make an initial payment to the
 104 association before the beginning of the assessment year on or
 105 before the date specified in the order of the office. Each
 106 insurer shall have at least 30 days' written notice as to the
 107 date on which the initial assessment payment is due and payable.
 108 The association may request that the order issued by the office
 109 authorize insurers to remit the advance payments in four
 110 quarterly installments throughout the assessment year.
 111 c. Insurers that have written insurance in the calendar
 112 year before the year in which the assessment is certified by the
 113 board shall make ~~payments an initial payment~~ based on the direct
 114 written premium in this state for the classes protected by the
 115 account from the previous calendar year as set forth in the
 116 insurer's annual statement, multiplied by the uniform percentage

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117 of premium specified in the order issued by the office. Insurers
 118 that have not written insurance in the previous calendar year in
 119 any of the lines under the account which are being assessed, but
 120 which are writing insurance as of, or after, the date the board
 121 certifies the assessment to the office, shall pay an amount
 122 based on a good faith estimate of the amount of direct written
 123 premium anticipated to be written in the subject lines of
 124 business for the assessment year, multiplied by the uniform
 125 percentage of premium specified in the order issued by the
 126 office.

127 d. Insurers shall file one or more ~~a~~ reconciliation reports
 128 ~~report~~ with the association which indicate ~~indicates~~ the amount
 129 of ~~the initial~~ payment to the association ~~before the assessment~~
 130 ~~year~~, whether such amount was based on direct written premium
 131 contained in a previous calendar year annual statement or a good
 132 faith projection, the amount actually collected during the
 133 assessment year, and such other information contained on a form
 134 and schedule adopted by the association and provided to the
 135 insurers in advance. If the insurer collected from policyholders
 136 more surcharges than the amount initially paid, the insurer
 137 shall pay the excess amount to the association. If the insurer
 138 collected surcharges from policyholders in an amount that ~~which~~
 139 is less than the amount initially paid to the association, the
 140 association shall credit the insurer that amount against future
 141 assessments. Such payment reconciliation report, and any payment
 142 of excess amounts collected from policyholders, shall be
 143 completed and remitted to the association within 90 days after
 144 the end of the assessment year. The association shall send a
 145 final reconciliation report on all insurers to the office within

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146 120 days after each assessment year.

147 e. Insurers remitting reconciliation reports under this
 148 paragraph to the association are subject to s. 626.9541(1)(e).

149 2. For assessments required under paragraph (a) or
 150 paragraph (e), the association may use a quarterly installment
 151 method instead of the method described in sub-subparagraphs 1.b.
 152 and c. or in combination thereof based on the association's
 153 projected cash flow. If the association projects that it has
 154 cash on hand for the payment of anticipated claims in the
 155 applicable account for at least 6 months, the board may make an
 156 estimate of the assessment needed and may recommend to the
 157 office the assessment percentage that may be collected as a
 158 quarterly assessment. The office may, in the order levying the
 159 assessment on insurers, specify that the assessment is due and
 160 payable quarterly as the funds are collected from insureds
 161 throughout the assessment year, in which case the assessment
 162 shall be a uniform percentage of premium collected during the
 163 assessment year and shall be collected from all policyholders
 164 with policies in the classes protected by the account. All
 165 insurers shall collect the assessment without regard to whether
 166 the insurers reported premium in the year preceding the
 167 assessment. Insurers are not required to advance funds if the
 168 association and the office elect to use the quarterly
 169 installment option. All funds collected shall be retained by the
 170 association for the payment of current or future claims. This
 171 subparagraph does not alter the obligation of an insurer to
 172 remit assessments levied pursuant to this subsection to the
 173 association. Insurers shall file one or more reconciliation
 174 reports with the association which indicate the amount actually

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175 collected during the assessment year and such other information
 176 using a form and schedule adopted by the association and
 177 provided to the insurers in advance.

178 (g) Insurers shall treat the failure of an insured to pay a
 179 surcharge ~~recoupment charge~~ as a failure to pay the premium.

180 (h) Assessments levied under this subsection are levied
 181 upon insurers. This subsection does not create a cause of action
 182 by a policyholder with respect to the levying of, or a
 183 policyholder's duty to pay, such assessments and related
 184 surcharges.

185 (i) Assessments levied under this subsection are not
 186 premium and are not subject to the premium tax, to any fees, or
 187 to any commissions. An insurer is liable for any surcharges
 188 ~~emergency assessments~~ that the insurer collects and ~~shall treat~~
 189 ~~the failure of an insured to pay an emergency assessment as a~~
 190 ~~failure to pay the premium. An insurer~~ is not liable for
 191 uncollectible surcharges ~~emergency assessments.~~

192 Section 3. Paragraphs (c) and (d) of subsection (1) and
 193 paragraph (c) of subsection (4) of section 631.914, Florida
 194 Statutes, are amended to read:

195 631.914 Assessments.—

196 (1)

197 (c) The office shall levy the uniform surcharge percentage
 198 on all policies of the same kind or line as were considered by
 199 the office in determining the assessment liability of the
 200 insurer. Member insurers shall collect policy surcharges at a
 201 uniform percentage rate on new and renewal policies issued and
 202 effective during the assessment year ~~period of 12 months~~
 203 beginning on January 1, April 1, July 1, or October 1, whichever

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204 is the first day of the following calendar quarter as specified
 205 in an order issued by the office. The policy surcharge may not
 206 begin until 90 days after the board of directors certifies the
 207 assessment.

208 (d) The association may use a pass-through ~~an installment~~
 209 ~~method~~ to require the insurer to remit the policy surcharge as
 210 collected or may require the insurer to remit the assessment to
 211 the association before collecting the policy surcharge.

212 1. If the association elects to use the pass-through
 213 ~~installment~~ method, the office may, in the order levying the
 214 assessment on insurers, specify that the policy surcharge is due
 215 and payable quarterly as collected throughout the assessment
 216 year. Insurers shall collect policy surcharges at a uniform
 217 percentage rate specified by order as described in paragraph

218 (c). Insurers are not required to advance funds if the
 219 association and the office elect to use the pass-through
 220 ~~installment~~ option. Assessments levied under this subparagraph
 221 are paid after policy surcharges are collected, and the
 222 recognition of assets is based on actual policy surcharges
 223 collected offset by the obligation to the association.

224 2. If the association elects to require insurers to remit
 225 the assessment before surcharging the policy, the following
 226 shall apply:

227 a. On or before the date specified in the order of the
 228 office, insurers shall make an initial advance payment to the
 229 association of the percentage specified in the order multiplied
 230 by the insurer's direct written premiums received in this state
 231 for the preceding calendar year for the kinds of insurance
 232 included within such account before the beginning of the

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233 assessment year. The board may authorize an insurer to pay an
 234 assessment in a single payment or on a quarterly basis, based on
 235 cash-flow needs.

236 b. The levy order shall provide each insurer so assessed at
 237 least 30 days' written notice of the date the initial assessment
 238 payment is due and payable by the insurer.

239 c. Insurers shall collect policy surcharges at a uniform
 240 percentage rate specified by the order, as described in
 241 paragraph (c).

242 d. Assessments levied under this subparagraph and paid by
 243 an insurer constitute advances of funds from the insurer to the
 244 association and result in a receivable for policy surcharges to
 245 be billed in the future. The amount of billed policy surcharges,
 246 to the extent it is likely that it will be realized, meets the
 247 definition of an admissible asset as specified in the National
 248 Association of Insurance Commissioners' Statement of Statutory
 249 Accounting Principles No. 4. The asset shall be established and
 250 recorded separately from the liability. If an insurer is unable
 251 to fully recoup the amount of the assessment, the amount
 252 recorded as an asset shall be reduced to the amount reasonably
 253 expected to be recouped.

254 3. Insurers must submit a reconciliation report to the
 255 association within 120 days after the end of the 12-month
 256 assessment ~~year period~~ and annually thereafter for a period of 2
 257 ~~3~~ years. The report must indicate the amount of the initial
 258 payment or installment payments made to the association and the
 259 amount of policy surcharges collected for the assessment year.
 260 If the insurer's reconciled obligation is more than the amount
 261 paid to the association, the insurer shall pay the excess policy

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262 surcharges collected to the association. If the insurer's
 263 reconciled obligation is less than the initial amount paid to
 264 the association, the association shall return the overpayment to
 265 the insurer.

266 (4)

267 ~~(e) The board may allow an insurer to pay an assessment on~~
 268 ~~a quarterly basis.~~

269 Section 4. This act shall take effect July 1, 2022.

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The Florida Senate
APPEARANCE RECORD

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1/18/22

Meeting Date

1430

Bill Number or Topic

BoI

Committee

Amendment Barcode (if applicable)

Name Robert Reyes

Phone 850 509 1802

Address 817 Ingle side Ave

Email rreyes@capitolgrp.com

TAl

32301

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Florida Workers Compensation Guarant Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

SB 1430

1/18/2022

Meeting Date

Bill Number or Topic

Banking & INS Committee

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Committee

Amendment Barcode (if applicable)

Name Paul Handahan

Phone 561 704 0428

Address 120 S Monroe Street

Email Paul@randaconsulting.com

Street

Tallahassee FL 32301

City

State

Zip

Speaking: [X] For [] Against [] Information OR Waive Speaking: [] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[X] I am a registered lobbyist, representing:

FAIR

[] I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. 2020-2022 Joint Rules.pdf (flsenate.gov)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1-18-22

1430

Meeting Date

Bill Number or Topic

Banking & Insurance

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157610

Committee

Amendment Barcode (if applicable)

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Tim Meenan

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Street

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City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

(1) Florida Insurance Guaranty Association

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](https://www.flsenate.gov/2020-2022/jointrules.pdf)

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

(2) President, Jim Boyd Appreciation Society

The Florida Senate

APPEARANCE RECORD

SB 1430

1/18/2022

Meeting Date

Bill Number or Topic

B + I Committee

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179644

Amendment Barcode (if applicable)

Committee

Paul Handerman

Name

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561 704 0428

Address

120 S Mural Street

Email

Paul@handermanconsult.com

Street

Tallahassee

State

FL

32301

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

FAIR

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1536

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Money Services Businesses

DATE: January 19, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Fav/CS
2.			CM	
3.			RC	

I. Summary:

SB 1536 revises provisions and definitions regarding the persons in control of a money services business (MSB) and makes conforming changes. The purpose of these revisions is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application.

The effective date of the bill is October 1, 2022.

II. Present Situation:

Licensing of Money Services Businesses

The OFR is responsible for the regulatory oversight of Florida’s financial services industry. As part the OFR’s responsibilities, OFR oversees MSBs, which are regulated under three license categories created under ch. 560, F.S. The first category, money transmitters and persons selling or issuing payment instruments, is regulated under part II of ch. 560, F.S. The second category, check cashers and foreign currency exchangers, is regulated under part III of ch. 560, F.S.

To be licensed under ch. 560, F.S., an MSB applicant must:

- Demonstrate to the office the character and general fitness necessary to command the confidence of the public and warrant the belief that the MSB or deferred presentment provider shall be operated lawfully and fairly;
- Be legally authorized to do business in Florida;
- Be registered as a money services business with the Financial Crimes Enforcement Network as required by 31 C.F.R. s. 1022.380, if applicable;
- Have an anti-money laundering program in place which meets the requirements of 31 C.F.R. s. 1022.210; and

- Provide the OFR with all the information required under this chapter and related rules.¹

To apply as a money services business under ch. 560, F.S., a person must submit:

- An application to OFR for an MSB license that must include, on a form prescribed by rule, all of the following:
 - The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business;
 - The date of the applicant's formation and the state where the applicant was formed, if applicable;
 - The name, social security number, alien identification or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.;
 - A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded;
 - The applicant's history of operations in other states, if applicable, and a description of the money services business or deferred presentment provider activities the applicant proposes to conduct in Florida;
 - If the applicant or its parent is a publicly traded company, for the preceding year, copies of all filings made by the applicant with the United States Securities and Exchange Commission (SEC); or, if publicly traded in a country other than the United States, such filings with that country's regulator similar to the SEC;
 - The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating within Florida. For each branch office and each location of an authorized vendor, the applicant must include the nonrefundable fee required by s. 560.143, F.S.;
 - The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable;
 - The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld;
 - The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each executive officer, director, controlling shareholder, and responsible person;
 - The name of the registered agent in this state for service of process unless the applicant is a sole proprietor; and
 - Any other information specified in ch. 560, F.S. or by rule.²
- A nonrefundable application fee, is specified in 560.143, F.S.³
- Fingerprints, for live-scan processing in accordance with rules adopted by the Financial Services Commission (Commission), for each officer, director, responsible person, the

¹ Section 560.1401, F.S.

² Section 560.141(1)(a), F.S.

³ Section 560.141(1)(b), F.S.

compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127, F.S.

Regarding such fingerprints:

- They may be submitted through a third-party vendor authorized by the Florida Department of Law Enforcement (FDLE) to provide live-scan fingerprinting. The FDLE must also conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation. The OFR must review the results of this background check
- The cost of processing and retaining the fingerprints are borne by the person subject to the background checks to determine license eligibility.
- Fingerprints are not required from publicly traded corporations.⁴
- A copy of the applicant's written anti-money laundering program required under 31 C.F.R. s. 1022.210.⁵
- Within the time allotted by rule, any information needed to resolve any deficiencies found in the application.⁶

Licenses issued to MSBs cannot be for more than 2 years,⁷ after which, the MSB must reapply for licensure pursuant to s. 560.142, F.S.

Federal Bureau of Investigation Determination Regarding Access to Criminal History Record Information

As stated above, MSB applicant fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal check is conducted through the FBI, which manages a criminal history record information (CHRI) system, through which this information can be obtained. The purpose the CHRI system is to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.⁸ Federal Public Law 92-544, authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes. However, this access can only be authorized by a state statute which has been subsequently approved by the Attorney General of the United States. Section 560.141, F.S. (the statute authorizing background checks for MSB applicants), had been previously approved for access to CHRI; however, the situation has recently changed.

In an effort to obtain CHRI for applicants to a recently created (in 2020) Financial Technology Sandbox under s. 559.952, F.S., the Florida Department of Law Enforcement sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to access criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, which derives its fingerprinting authority from s. 560.141, F.S. CJILU

⁴ Section 560.141(1)(c), F.S.

⁵ Section 560.141(1)(d), F.S.

⁶ Section 560.141(1)(e), F.S.

⁷ Section 560.141(2), F.S.

⁸ 28 C.F.R. s. 20.1.

responded to this request stating that s. 560.141, F.S. did not qualify for CHRI because the terms “responsible person” and “control of a money services business” as used in section 560.141, F.S., were overly broad and, thus, did not sufficiently define the categories of people subject to the background check.⁹ The CJILU did express that sense it had previously approved s. 560.141, F.S., it would continue to honor fingerprints submitted for MSB applicants during a grace period in order to allow Florida to amend 560.141, F.S., but it would not extend this grace period to other types of applicants.

III. Effect of Proposed Changes:

Section 1 amends s. 560.103, F.S., to revise certain definitions relating to MSBs in order to better define the persons subject to fingerprinting under the chapter. The section creates an extensive definition of a “control person” for an MSB. Such person would be defined as a person who possesses the power, directly or indirectly, to direct the management or policies of an MSB, whether through ownership of securities, by contract, or through other means, and regardless of whether such person has an official title or receives a salary or other compensation. The definition also provides that the following persons are presumed to be control persons:

- The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer.
- A person holding any of the officer positions named by the money services business’s governing documents.
- A person holding any position named by the money services business’s directors and officers liability insurance coverage, if the business has such coverage; and
- A director of the money services business’s board of directors.

The definition also provides that for certain specified entities, additional persons are control persons. These are:

- For corporations that are not publicly traded: Any shareholder that owns 25 percent or more or that has the power to vote 25 percent or more of a class of voting securities is a control person.
- For partnerships: All general partners and limited or special partners that have contributed 25 percent or more, or that have the right to receive, upon dissolution, 25 percent or more of the partnership’s capital.
- For trusts: Each trustee.
- For limited liability companies: All managers and those members that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the limited liability company’s capital account.

The section also simplifies the definition of “affiliated party” to be a control person, employee, or foreign affiliate of an MSB. Finally, the section deletes the definitions of “officer” and “responsible person.”

⁹ Office of Financial Regulation, Senate Bill 1536 Analysis (January 12, 2022) (on file with the Senate Committee on Banking and Insurance), and Letter from Heather R. Postletwait, Paralegal Specialist for the FBI CJILU, to Nathan Pate, Florida Dept. of Law Enforcement, (Mar. 22, 2022) (on file with the Senate Committee on Banking and Insurance).

The intent of the revisions in this section is to more specifically define the persons subject to fingerprinting and background checks pursuant to an MSB application and to make this definition less broad. The purpose of which is to address the specificity concerns of the CJILU and, thereby, maintaining the OFR's access to the FBI's CHRI.

Sections 2, 3, 4, and 6 revise s. 560.118, F.S. (relating to the filing of quarterly reports by MSBs), s. 560.123, F.S. (the Florida Control of Money Laundering in Money Services Business Act), s. 560.126, F.S., (required noticing by MSBs), and s. 560.141, F.S. (relating to MSB license applications), respectively, to conform to the revisions made in **Section 1**. **Section 4** also deletes provisions requiring persons proposing to acquire a controlling interest in an MSB to file a new application with the OFR, and deletes a rulemaking authorization regarding waivers of this application requirement.

Section 5 repeals s. 560.127, F.S., to delete a provision that establishes when a person controls an MSB, as this section is no longer necessary with the revisions to **Section 1**.

Section 7 revises s. 560.143, F.S., to delete a cross-reference to conform to the changes in **Section 1**.

Section 8 re-enacts s. 559.952(4)(a), relating to the Financial Technology Sandbox, to incorporate the changes made to ss. 560.118 and 560.141, F.S.

Section 9 re-enacts s. 560.114(2)(c), relating to disciplinary actions and penalties, to incorporate the changes made to s. 560.114, F.S.

Section 10 provides an effective date of October 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 560.103, 560.118, 560.123, 560.126, 560.141, and 560.143.

This bill repeals section 560.127 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes. 559.952 and 560.114.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on January 18, 2022:

The committee substitute deletes from SB 1536 the following provisions:

- Creation of rulemaking authority to establish disqualifying periods for where a money services business is prohibited from licensure for specified violations.
- Authorization for the OFR to bar a person from licensure, or from acting as a control person of an MSB, for that person's violation of ch. 560, F.S., agency rules or orders, or written agreement with the OFR; and
- Authorization for OFR to suspend the license of an MSB if its control person is arrested for certain offenses.

B. Amendments:

None.

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



571054

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/19/2022	.	
	.	
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The Committee on Banking and Insurance (Boyd) recommended the following:

Senate Amendment (with title amendment)

Delete lines 262 - 357

and insert:

Section 2. For the purpose of incorporating the amendment made by this act to section 560.141, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 560.114, Florida Statutes, is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(2) Pursuant to s. 120.60(6), the office may summarily



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11 suspend the license of a money services business if the office
12 finds that a licensee poses an immediate, serious danger to the
13 public health, safety, and welfare. A proceeding in which the
14 office seeks the issuance of a final order for the summary
15 suspension of a licensee shall be conducted by the commissioner
16 of the office, or his or her designee, who shall issue such
17 order. The following acts are deemed to constitute an immediate
18 and serious danger to the public health, safety, and welfare,
19 and the office may immediately suspend the license of a money
20 services business if:

21 (c) A natural person required to be listed on the license
22 application for a money services business pursuant to s.
23 560.141(1)(a)3. is criminally charged with, or arrested for, a
24 crime described in paragraph (1)(o), paragraph (1)(p), or
25 paragraph(1)(q).

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete lines 5 - 19

30 and insert:

31 definitions; reenacting s. 560.114(2)(c), F.S.,
32 relating to license applications for money services
33 businesses, to incorporate the amendments made to s.
34 560.141, F.S., in a reference thereto; amending s.
35 560.118, F.S.;

By Senator Boyd

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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 the terms "control person"
 4 and "publicly traded"; revising and deleting
 5 definitions; amending s. 560.105, F.S.; authorizing
 6 the Financial Services Commission to adopt rules;
 7 specifying requirements and authorized procedures for
 8 such rules; providing construction; prohibiting the
 9 Office of Insurance Regulation from issuing licenses
 10 unless certain criteria are met; providing
 11 applicability; amending s. 560.114, F.S., and
 12 reenacting paragraph (2)(c), relating to license
 13 applications; authorizing the office to bar persons
 14 from holding a license or acting as control persons of
 15 money services businesses under certain circumstances;
 16 authorizing the office to suspend the license of a
 17 money services business under certain circumstances;
 18 specifying requirements for orders of suspension;
 19 providing construction; amending s. 560.118, F.S.;
 20 providing that a rule may require reports to contain
 21 declarations by control persons, rather than officers
 22 or other responsible persons; amending s. 560.123,
 23 F.S.; providing that control persons, rather than
 24 officers, are not liable for loss or damages under
 25 certain circumstances; amending s. 560.126, F.S.;
 26 requiring licensees to report changes in control
 27 persons, rather than certain other entities or
 28 persons; deleting a requirement for certain persons to
 29 submit a licensure application under certain

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30 circumstances; deleting the definition of the term
 31 "controlling interest"; providing that the addition of
 32 a control person, rather than certain other entities
 33 or persons, is subject to certain requirements;
 34 deleting a requirement for the commission to adopt
 35 rules; repealing s. 560.127, F.S., relating to control
 36 of a money services business; amending s. 560.141,
 37 F.S.; revising requirements for applications for
 38 licensure as a money services business; amending s.
 39 560.143, F.S.; revising a limitation for certain fees
 40 to apply to a change in control, rather than in a
 41 controlling interest; reenacting s. 559.952(4)(a),
 42 F.S., relating to the Financial Technology Sandbox, to
 43 incorporate the amendments made to ss. 560.118 and
 44 560.141, F.S., in references thereto; providing an
 45 effective date.
 46
 47 Be It Enacted by the Legislature of the State of Florida:
 48
 49 Section 1. Section 560.103, Florida Statutes, is amended to
 50 read:
 51 560.103 Definitions.—As used in this chapter, the term:
 52 (1) "Affiliated party" means a control director, officer,
 53 ~~responsible~~ person, employee, or foreign affiliate of a money
 54 services business, ~~or a person who has a controlling interest in~~
 55 ~~a money services business as provided in s. 560.127.~~
 56 (2) "Appropriate regulator" means a state, federal, or
 57 foreign agency that has been granted authority to enforce state,
 58 federal, or foreign laws related to a money services business or

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59 deferred presentment provider.

60 (3) "Authorized vendor" means a person designated by a
61 money services business licensed under part II of this chapter
62 to act on behalf of the licensee at locations in this state
63 pursuant to a written contract with the licensee.

64 (4) "Branch office" means the physical location, other than
65 the principal place of business, of a money services business
66 operated by a licensee under this chapter.

67 (5) "Cashing" means providing currency for payment
68 instruments except for travelers checks.

69 (6) "Check casher" means a person who sells currency in
70 exchange for payment instruments received, except travelers
71 checks.

72 (7) "Commission" means the Financial Services Commission.

73 (8) "Compliance officer" means the individual in charge of
74 overseeing, managing, and ensuring that a money services
75 business is in compliance with all state and federal laws and
76 rules relating to money services businesses, as applicable,
77 including all money laundering laws and rules.

78 (9) "Conductor" means a natural person who presents himself
79 or herself to a licensee for purposes of cashing a payment
80 instrument.

81 (10) "Control person" means:

82 (a) A person who possesses the power, directly or
83 indirectly, to direct the management or policies of a money
84 services business, whether through ownership of securities, by
85 contract, or through other means, and regardless of whether such
86 person has an official title or receives a salary or other
87 compensation. The following persons are each presumed to be a

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88 control person:

89 1. The president, chief executive officer, chief financial
90 officer, chief operations officer, chief legal officer, and
91 chief compliance officer.

92 2. A person holding any of the officer positions named by
93 the money services business's governing documents.

94 3. A person holding any position named by the money
95 services business's directors and officers liability insurance
96 coverage, if the business has such coverage; and

97 4. A director of the money services business's board of
98 directors.

99 (b) For a corporation not publicly traded, each shareholder
100 that, directly or indirectly, owns 25 percent or more or that
101 has the power to vote 25 percent or more of a class of voting
102 securities. For purposes of this paragraph, the term "publicly
103 traded" means a stock currently traded on a national securities
104 exchange registered with the Securities and Exchange Commission
105 or traded on an exchange in a country other than the United
106 States regulated by a regulator equivalent to the Securities and
107 Exchange Commission and the disclosure and reporting
108 requirements of such regulator are substantially similar to
109 those of the commission.

110 (c) For a partnership, all general partners and limited or
111 special partners that have contributed 25 percent or more or
112 that have the right to receive, upon dissolution, 25 percent or
113 more of the partnership's capital.

114 (d) For a trust, each trustee.

115 (e) For a limited liability company, all managers and those
116 members that have contributed 25 percent or more or that have

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117 the right to receive, upon dissolution, 25 percent or more of
 118 the limited liability company's capital account.

119 ~~(11)(10)~~ "Corporate payment instrument" means a payment
 120 instrument on which the payee named on the instrument's face is
 121 other than a natural person.

122 ~~(12)(11)~~ "Currency" means the coin and paper money of the
 123 United States or of any other country which is designated as
 124 legal tender and which circulates and is customarily used and
 125 accepted as a medium of exchange in the country of issuance.
 126 Currency includes United States silver certificates, United
 127 States notes, and Federal Reserve notes. Currency also includes
 128 official foreign bank notes that are customarily used and
 129 accepted as a medium of exchange in a foreign country.

130 ~~(13)(12)~~ "Deferred presentment provider" means a person who
 131 is licensed under part II or part III of this chapter and has
 132 filed a declaration of intent with the office to engage in
 133 deferred presentment transactions as provided under part IV of
 134 this chapter.

135 ~~(14)(13)~~ "Department" means the Department of Financial
 136 Services.

137 ~~(15)(14)~~ "Electronic instrument" means a card, tangible
 138 object, or other form of electronic payment for the transmission
 139 or payment of money or the exchange of monetary value, including
 140 a stored value card or device that contains a microprocessor
 141 chip, magnetic stripe, or other means for storing information;
 142 that is prefunded; and for which the value is decremented upon
 143 each use.

144 ~~(16)(15)~~ "Financial audit report" means a report prepared
 145 in connection with a financial audit that is conducted in

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146 accordance with generally accepted auditing standards prescribed
 147 by the American Institute of Certified Public Accountants by a
 148 certified public accountant licensed to do business in the
 149 United States, and which must include:

150 (a) Financial statements, including notes related to the
 151 financial statements and required supplementary information,
 152 prepared in conformity with accounting principles generally
 153 accepted in the United States. The notes must, at a minimum,
 154 include detailed disclosures regarding receivables that are
 155 greater than 90 days, if the total amount of such receivables
 156 represents more than 2 percent of the licensee's total assets.

157 (b) An expression of opinion regarding whether the
 158 financial statements are presented in conformity with accounting
 159 principles generally accepted in the United States, or an
 160 assertion to the effect that such an opinion cannot be expressed
 161 and the reasons.

162 ~~(17)(16)~~ "Foreign affiliate" means a person located outside
 163 this state who has been designated by a licensee to make
 164 payments on behalf of the licensee to persons who reside outside
 165 this state. The term also includes a person located outside of
 166 this state for whom the licensee has been designated to make
 167 payments in this state.

168 ~~(18)(17)~~ "Foreign currency exchanger" means a person who
 169 exchanges, for compensation, currency of the United States or a
 170 foreign government to currency of another government.

171 ~~(19)(18)~~ "Fraudulent identification paraphernalia" means
 172 all equipment, products, or materials of any kind that are used,
 173 intended for use, or designed for use in the misrepresentation
 174 of a customer's identity. The term includes, but is not limited

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175 to:

176 (a) A signature stamp, thumbprint stamp, or other tool or
177 device used to forge a customer's personal identification
178 information.

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

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

187 (d) Counterfeit, fictitious, or fabricated information in
188 the similitude of a customer's personal identification
189 information that, although not authentic, would in context lead
190 a reasonably prudent person to credit its authenticity.

191 (20)~~(19)~~ "Licensee" means a person licensed under this
192 chapter.

193 (21)~~(20)~~ "Location" means a branch office, mobile location,
194 or location of an authorized vendor whose business activity is
195 regulated under this chapter.

196 (22)~~(21)~~ "Monetary value" means a medium of exchange,
197 whether or not redeemable in currency.

198 (23)~~(22)~~ "Money services business" means any person located
199 in or doing business in this state, from this state, or into
200 this state from locations outside this state or country who acts
201 as a payment instrument seller, foreign currency exchanger,
202 check cashier, or money transmitter.

203 (24)~~(23)~~ "Money transmitter" means a corporation, limited

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204 liability company, limited liability partnership, or foreign
205 entity qualified to do business in this state which receives
206 currency, monetary value, or payment instruments for the purpose
207 of transmitting the same by any means, including transmission by
208 wire, facsimile, electronic transfer, courier, the Internet, or
209 through bill payment services or other businesses that
210 facilitate such transfer within this country, or to or from this
211 country.

212 (25)~~(24)~~ "Net worth" means assets minus liabilities,
213 determined in accordance with United States generally accepted
214 accounting principles.

215 (26)~~(25)~~ "Office" means the Office of Financial Regulation
216 of the commission.

217 ~~(26) "Officer" means an individual, other than a director,
218 who participates in, or has authority to participate in, the
219 major policymaking functions of a money services business,
220 regardless of whether the individual has an official title or
221 receives a salary or other compensation.~~

222 (27) "Outstanding money transmission" means a money
223 transmission to a designated recipient or a refund to a sender
224 that has not been completed.

225 (28) "Outstanding payment instrument" means an unpaid
226 payment instrument whose sale has been reported to a licensee.

227 (29) "Payment instrument" means a check, draft, warrant,
228 money order, travelers check, electronic instrument, or other
229 instrument, payment of money, or monetary value whether or not
230 negotiable. The term does not include an instrument that is
231 redeemable by the issuer in merchandise or service, a credit
232 card voucher, or a letter of credit.

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233 (30) "Payment instrument seller" means a corporation,
 234 limited liability company, limited liability partnership, or
 235 foreign entity qualified to do business in this state which
 236 sells a payment instrument.

237 (31) "Person" means an individual, partnership,
 238 association, trust, corporation, limited liability company, or
 239 other group, however organized, but does not include a public
 240 agency or instrumentality thereof.

241 (32) "Personal identification information" means a
 242 customer's name that, alone or together with any of the
 243 following information, may be used to identify that specific
 244 customer:

245 (a) Customer's signature.

246 (b) Photograph, digital image, or other likeness of the
 247 customer.

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

251 ~~(33) "Responsible person" means an individual who is~~
 252 ~~employed by or affiliated with a money services business and who~~
 253 ~~has principal active management authority over the business~~
 254 ~~decisions, actions, and activities of the money services~~
 255 ~~business in this state.~~

256 (33)(34) "Sells" means to sell, issue, provide, or deliver.

257 (34)(35) "Stored value" means funds or monetary value
 258 represented in digital electronic format, whether or not
 259 specially encrypted, and stored or capable of storage on
 260 electronic media in such a way as to be retrievable and
 261 transferred electronically.

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262 Section 2. Paragraph (c) is added to subsection (2) of
 263 section 560.105, Florida Statutes, to read:
 264 560.105 Supervisory powers; rulemaking.—
 265 (2) The commission may adopt rules pursuant to ss.
 266 120.536(1) and 120.54 to administer this chapter.

267 (c)1. The commission may adopt rules establishing time
 268 periods during which a money services business is precluded from
 269 holding a license due to prior criminal convictions of or guilty
 270 or nolo contendere pleas by an applicant's control person,
 271 regardless of adjudication which:

272 a. Must provide a 15-year disqualifying period for felonies
 273 involving fraud, dishonesty, breach of trust, money laundering,
 274 or other acts of moral turpitude.

275 b. Must provide a 7-year disqualifying period for all other
 276 felonies.

277 c. Must provide a 5-year disqualifying period for
 278 misdeemeanors involving fraud, dishonesty, or any other act of
 279 moral turpitude.

280 d. May provide for an additional disqualification period
 281 due to dates of imprisonment or community supervision, the
 282 commitment of multiple crimes, and other factors reasonably
 283 related to the applicant's criminal history.

284 e. May provide for mitigating factors and reduce by no more
 285 than half the disqualifying period for crimes identified in sub-
 286 subparagraphs a., b., and c. Mitigating factors are limited to
 287 the following:

288 (I) Demonstration that the applicant's control person would
 289 not pose a significant threat to the public welfare if the
 290 applicant were to be licensed as a money services business with

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291 the control person.

292 (II) Demonstration that the applicant's control person was,
 293 at the time of the specified crime, impaired or substance abuse
 294 impaired as defined in s. 397.311 and that the control person
 295 has successfully completed a substance abuse treatment program
 296 with a licensed service provider as defined in s. 397.311 or
 297 with a similarly licensed provider in another jurisdiction.

298 (III) The applicant's control person was under the age of
 299 21 when the crime was committed.

300 (IV) The absence of other disciplinary history involving a
 301 license granted by the office or criminal history for the
 302 applicant's control person.

303 (V) Demonstration that the applicant's control person has
 304 timely made restitution or rectified the consequences of the
 305 crime committed.

306 2. For purposes of this paragraph, the disqualifying period
 307 begins on the date the applicant's control person was found
 308 guilty, pled guilty, or pled nolo contendere to a crime. The
 309 office may not issue a license to an applicant unless all of the
 310 control person's related fines, court costs and fees, and court-
 311 ordered restitution have been paid.

312 3. Section 112.011 does not apply to eligibility for
 313 licensure under this part.

314 Section 3. Subsections (9) and (10) are added to section
 315 560.114, Florida Statutes, and paragraph (c) of subsection (2)
 316 of that section is reenacted for the purpose of incorporating
 317 the amendment to section 560.141, Florida Statutes, in a
 318 reference thereto, to read:

319 560.114 Disciplinary actions; penalties.-

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320 (2) Pursuant to s. 120.60(6), the office may summarily
 321 suspend the license of a money services business if the office
 322 finds that a licensee poses an immediate, serious danger to the
 323 public health, safety, and welfare. A proceeding in which the
 324 office seeks the issuance of a final order for the summary
 325 suspension of a licensee shall be conducted by the commissioner
 326 of the office, or his or her designee, who shall issue such
 327 order. The following acts are deemed to constitute an immediate
 328 and serious danger to the public health, safety, and welfare,
 329 and the office may immediately suspend the license of a money
 330 services business if:

331 (c) A natural person required to be listed on the license
 332 application for a money services business pursuant to s.
 333 560.141(1)(a)3. is criminally charged with, or arrested for, a
 334 crime described in paragraph (1)(o), paragraph (1)(p), or
 335 paragraph(1)(q).

336 (9) The office may bar, permanently or for a specific time
 337 period, any person found to have violated any provision of this
 338 chapter, any rule or order adopted by the commission or office,
 339 or any written agreement entered into with the office, from
 340 holding a license with the office or from acting as a control
 341 person of a money services business.

342 (10) The office may suspend the license of a money services
 343 business issued pursuant to s. 560.141 if a control person of a
 344 money services business is arrested for any conduct that would
 345 authorize revocation under subsection (1).

346 (a) Any order of suspension under this subsection must:
 347 1. Take effect only after a hearing, unless no hearing is
 348 requested by the licensee or unless the suspension is made in

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349 accordance with s. 120.60(6).

350 2. Contain a finding that evidence of a prima facie case
 351 supports the charge made in the criminal prosecution.

352 3. Operate for no longer than 10 calendar days after
 353 receipt of notice by the office of termination of the pending
 354 criminal prosecution.

355 (b) For purposes of this subsection, a criminal prosecution
 356 is considered pending upon filing of criminal charges and is
 357 considered terminated upon conviction, acquittal, or dismissal.

358 Section 4. Subsection (2) of section 560.118, Florida
 359 Statutes, is amended to read:

360 560.118 Reports.—

361 (2) Each licensee must submit quarterly reports to the
 362 office in a format and include information as specified by rule.
 363 The rule may require the report to contain a declaration by a
 364 control an officer, or any other responsible person authorized
 365 to make such declaration, that the report is true and correct to
 366 the best of her or his knowledge and belief.

367 Section 5. Paragraph (d) of subsection (3) of section
 368 560.123, Florida Statutes, is amended to read:

369 560.123 Florida Control of Money Laundering in Money
 370 Services Business Act.—

371 (3) A money services business shall keep a record of each
 372 financial transaction occurring in this state which it knows to
 373 involve currency or other payment instrument, as prescribed by
 374 the commission, having a value greater than \$10,000; to involve
 375 the proceeds of specified unlawful activity; or to be designed
 376 to evade the reporting requirements of this section or chapter
 377 896. The money services business must maintain appropriate

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

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378 procedures to ensure compliance with this section and chapter
 379 896.

380 (d) A money services business, or control person officer,
 381 employee, or agent thereof, that files a report in good faith
 382 pursuant to this section is not liable to any person for loss or
 383 damage caused in whole or in part by the making, filing, or
 384 governmental use of the report, or any information contained
 385 therein.

386 Section 6. Subsection (3) of section 560.126, Florida
 387 Statutes, is amended to read:

388 560.126 Required notice by licensee.—

389 (3) Each licensee must report any change in the control
 390 ~~partners, officers, members, joint venturers, directors,~~
 391 ~~controlling shareholders, or responsible persons~~ of the licensee
 392 or changes in the form of business organization by written
 393 amendment in such form and at such time as specified by rule.

394 ~~(a) If any person, directly or indirectly or acting by or~~
 395 ~~through one or more persons, proposes to purchase or acquire a~~
 396 ~~controlling interest in a licensee, such person or group must~~
 397 ~~submit an application for licensure as a money services business~~
 398 ~~or deferred presentment provider before such purchase or~~
 399 ~~acquisition at such time and in such form as prescribed by rule.~~
 400 ~~As used in this subsection, the term "controlling interest"~~
 401 ~~means the same as described in s. 560.127.~~

402 ~~(b) The addition of a control person partner, officer,~~
 403 ~~member, joint venturer, director, controlling shareholder, or~~
 404 ~~responsible person of the applicant who does not have a~~
 405 ~~controlling interest and who has not previously complied with~~
 406 the applicable provisions of ss. 560.1401 and 560.141 is subject

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407 to such provisions. If the office determines that the licensee
 408 does not continue to meet the licensure requirements, the office
 409 may bring an administrative action in accordance with s. 560.114
 410 to enforce the provisions of this chapter.

411 ~~(e) The commission shall adopt rules providing for the~~
 412 ~~waiver of the license application required by this subsection if~~
 413 ~~the person or group of persons proposing to purchase or acquire~~
 414 ~~a controlling interest in a licensee has previously complied~~
 415 ~~with the applicable provisions of ss. 560.1401 and 560.141 under~~
 416 ~~the same legal entity or is currently licensed under this~~
 417 ~~chapter.~~

418 Section 7. Section 560.127, Florida Statutes, is repealed.

419 Section 8. Paragraph (a) of subsection (1) of section
 420 560.141, Florida Statutes, is amended to read:

421 560.141 License application.—

422 (1) To apply for a license as a money services business
 423 under this chapter, the applicant must submit:

424 (a) An application to the office on forms prescribed by
 425 rule which includes the following information:

426 1. The legal name and address of the applicant, including
 427 any fictitious or trade names used by the applicant in the
 428 conduct of its business.

429 2. The date of the applicant's formation and the state in
 430 which the applicant was formed, if applicable.

431 3. The name, social security number, alien identification
 432 or taxpayer identification number, business and residence
 433 addresses, and employment history for the past 5 years for each
 434 control person officer, director, responsible person, the
 435 ~~compliance officer, each controlling shareholder, and any other~~

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436 ~~person who has a controlling interest in the money services~~
 437 ~~business as provided in s. 560.127.~~

438 4. A description of the organizational structure of the
 439 applicant, including the identity of any parent or subsidiary of
 440 the applicant, and the disclosure of whether any parent or
 441 subsidiary is publicly traded.

442 5. The applicant's history of operations in other states if
 443 applicable and a description of the money services business or
 444 deferred presentment provider activities proposed to be
 445 conducted by the applicant in this state.

446 6. If the applicant or its parent is a publicly traded
 447 company, copies of all filings made by the applicant with the
 448 United States Securities and Exchange Commission, or with a
 449 similar regulator in a country other than the United States,
 450 within the preceding year.

451 7. The location at which the applicant proposes to
 452 establish its principal place of business and any other
 453 location, including branch offices and authorized vendors
 454 operating in this state. For each branch office and each
 455 location of an authorized vendor, the applicant shall include
 456 the nonrefundable fee required by s. 560.143.

457 8. The name and address of the clearing financial
 458 institution or financial institutions through which the
 459 applicant's payment instruments are drawn or through which the
 460 payment instruments are payable.

461 9. The history of the applicant's material litigation,
 462 criminal convictions, pleas of nolo contendere, and cases of
 463 adjudication withheld.

464 10. The history of material litigation, arrests, criminal

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465 convictions, pleas of nolo contendere, and cases of adjudication
466 withheld for each control ~~executive officer, director,~~
467 ~~controlling shareholder, and responsible~~ person.

468 11. The name of the registered agent in this state for
469 service of process unless the applicant is a sole proprietor.

470 12. Any other information specified in this chapter or by
471 rule.

472 Section 9. Subsection (1) of section 560.143, Florida
473 Statutes, is amended to read:

474 560.143 Fees.-

475 (1) LICENSE APPLICATION FEES.-The applicable non-refundable
476 fees must accompany an application for licensure:

477 (a) Part II.....\$375.

478 (b) Part III.....\$188.

479 (c) Per branch office.....\$38.

480 (d) For each location of an authorized
481 vendor.....\$38.

482 (e) Declaration as a deferred presentment
483 provider.....\$1,000.

484 (f) Fingerprint retention fees as prescribed by rule.

485 (g) License application fees for branch offices and
486 authorized vendors are limited to \$20,000 when such fees are
487 assessed as a result of a change in control ~~controlling interest~~
488 ~~as defined in s. 560.127.~~

489 Section 10. For the purpose of incorporating the amendment
490 made by this act to sections 560.118 and 560.141, Florida
491 Statutes, in references thereto, paragraph (a) of subsection (4)
492 of section 559.952, Florida Statutes, is reenacted to read:

493 559.952 Financial Technology Sandbox.-

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494 (4) EXCEPTIONS TO GENERAL LAW AND WAIVERS OF RULE
495 REQUIREMENTS.-

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

500 1. Section 516.03(1), except for the application fee, the
501 investigation fee, the requirement to provide the social
502 security numbers of control persons, evidence of liquid assets
503 of at least \$25,000, and the office's authority to investigate
504 the applicant's background. The office may prorate the license
505 renewal fee for an extension granted under subsection (7).

506 2. Section 516.05(1) and (2), except that the office shall
507 investigate the applicant's background.

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

511 4. Section 560.118(2).

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

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

521 7. Section 560.128.

522 8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-

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523 10. and (b), (c), and (d).

524 9. Section 560.142(1) and (2), except that the office may
525 prorate, but may not entirely eliminate, the license renewal
526 fees in s. 560.143 for an extension granted under subsection
527 (7).

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

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

535 12. Section 560.205(2).

536 13. Section 560.208(2).

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

544 Section 11. This act shall take effect October 1, 2022.

1/18/2022

Meeting Date

Banking and Insurance

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1536

Bill Number or Topic

Amendment Barcode (if applicable)

Name Commissioner Russ Weigel Phone _____

Address 101 E. Gaines St Email Russell.Weigel@flofr.gov

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Office of Financial Regulation

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1680

INTRODUCER: Senator Gruters

SUBJECT: Financial Institutions

DATE: January 14, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Schrader	Knudson	BI	Favorable
2.	_____	_____	AP	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1680 makes a number of revisions to Florida law relating to financial institutions. The bill:

- Allows foreign nationals proposing to own 10 percent or more of any class of voting securities of a proposed or established bank to appear by video during the public hearing considering approval of the application;
- Prohibits the direct or indirect charging of a fee to a customer by a third-party agent or other entity for an online audit verification of the associated balance of an account which is maintained by a financial institution;
- Revises the required scheduling dates for examination of financial institutions;
- Allows the Office of Financial Regulation (OFR) 90 additional days to meet its statutory obligation to periodically examine a financial institution when a federal agency suspends or cancels a previously scheduled examination;
- Changes from “all or substantially all” assets to 50 percent of assets, liabilities, or a combination of assets and liabilities, the limit of assets that a mutual financial institution may sell to a stock financial institution, absent first converting to a capital stock financial institution;
- Revises the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act;
- Requires credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to notify the OFR;
- Revises the scope of the OFR’s investigation of applicants seeking authority to start a bank or trust company to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of the target market to support the proposed bank or trust company;

- Revises a requirement that the proposed president or chief executive officer of a proposed banking corporation have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years to repeal the 5-year requirement;
- Requires that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the OFR within 90 days after acquiring such interest;
- Defines a “de novo branch” for the purposes of an existing de novo interstate branching provision;
- Authorizes a family trust company or licensed family trust company to maintain the deposit account, required under current law, with any bank that is insured by the Federal Deposit Insurance Corporation, or with any credit union insured by the National Credit Union Administration, either of which must be located within the United States;
- Revises when family trust companies, licensed family trust companies, or foreign licensed family trust companies must file a required annual renewal application;
- Allows international bank agencies and international branches to maintain a required deposit in banks outside of Florida, provided the deposit is in a bank within the United States; and
- Requires qualified limited service affiliates to suspend otherwise permissible activities if the jurisdiction of an international trust entity served by the qualified limited service affiliate is identified on the Financial Action Task Force’s list of High-Risk Jurisdictions subject to a Call for Action (black list) or on the list of Jurisdictions Under Increased Monitoring (grey list).

The bill is effective July 1, 2022.

II. Present Situation:

Regulation of Financial Institutions

Florida law defines the term “financial institution” broadly; the term includes “state and federal savings or thrift associations, banks, savings banks, trust companies, international bank agencies, international banking corporations, international branches, international representative offices, international administrative offices, international trust entities, international trust company representative offices, qualified limited service affiliates, credit unions, agreement corporations operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. and Edge Act corporations organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq.”¹

However, not all financial institutions are expressly authorized to accept or hold deposits or certificates of deposits.²

¹ Section 655.005(1)(i), F.S.

² For instance, holding a deposit does not fall within the enumerated permissible activities of an international representative office, an international administrative office, an international trust company representative office, or a qualified limited service affiliate. *See* ss. 663.062, 663.063, 663.409, and 663.531, F.S.

Dual Regulatory System

Banks and credit unions may be either state or federally chartered. The Office of Financial Regulation (OFR) is responsible for chartering and supervising state financial institutions, including state-chartered banks and state-chartered credit unions.³

National banks are chartered pursuant to the National Bank Act and supervised by the Office of the Comptroller of the Currency (OCC).⁴ National banks are required to be members of the Federal Reserve System; state banks may apply for membership.⁵ The Federal Reserve is the primary federal regulator of state member banks, and also serves as the primary regulator of bank holding companies and financial holding companies.⁶

Federally-chartered credit unions are chartered and supervised by the National Credit Union Administration (NCUA).⁷ Both state- and federally-chartered credit unions must obtain insurance of their accounts and are subject to examination by the NCUA.⁸

Consumer Protection Florida Deceptive and Unfair Trade Practices Act (FDUTPA)

History and Purpose of FDUTPA

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) is a consumer and business protection measure that prohibits unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in trade or commerce.⁹ The state attorney or the Department of Legal Affairs may bring actions when it is in the public interest on behalf of consumers or governmental entities.¹⁰ The Office of the State Attorney may enforce violations of the FDUTPA if the violations take place in its jurisdiction. The Department of Legal Affairs has enforcement authority if the violation is multi-jurisdictional, the state attorney defers in writing, or the state attorney fails to act within 90 days after a written complaint is filed.¹¹ Consumers may also file suit through private actions.¹²

Remedies under the FDUTPA

The Department of Legal Affairs and the State Attorney, as enforcing authorities, may seek the following remedies:

- Declaratory judgments;
- Injunctive relief;
- Actual damages on behalf of consumers and businesses;

³ Section 655.012(1)(a), F.S.

⁴ 12 U.S.C. s. 481.

⁵ 12 U.S.C. s. 208.3 and 222.

⁶ 12 U.S.C. s. 248.

⁷ See 12 U.S.C. s. 1751, et. seq.

⁸ Section 657.033, F.S.; 12 U.S.C. s. 1784.

⁹ Section 501.202, F.S.

¹⁰ Sections 501.207 and 501.202, F.S. David J. Federbush, *FDUTPA for Civil Antitrust: Additional Conduct, Party, and Geographic Coverage; State Actions for Consumer Restitution*, 76 FLA. B.J. 52, December 2002, available at http://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/99aa165b7d8ac8a485256c8300791ec1!OpenDocument&Highlight=0,business,Division* (last visited on Jan. 13, 2022).

¹¹ Section 501.203(2), F.S.

¹² Section 501.211, F.S.

- Cease and desist orders;
- Civil penalties of up to \$10,000 per willful violation; and
- Civil penalties of up to \$15,000 per willful violation where certain aggravating factors are found.¹³

Remedies for private parties are limited to:

- A declaratory judgment and an injunction where a person is aggrieved by a FDUTPA violation; and
- Actual damages, attorney fees and court costs, where a person has suffered a loss due to a FDUTPA violation.¹⁴

Exemptions under the FDUTPA

FDUTPA exempts certain entities from its governance, including:¹⁵

- Any person or activity regulated under laws administered by the Office of Insurance Regulation of the Financial Services Commission (OIR);
- Banks, credit unions, and savings and loan associations regulated by the OFR;
- Banks, credit unions, or savings and loan associations regulated by federal agencies; or
- Any person or activity regulated under the laws administered by the former Department of Insurance, which are now administered by the Department of Financial Services (DFS).

Examination of Financial Institutions

Pursuant to s. 655.045(1), F.S., the OFR is required to conduct an examination of each state financial institution at least every 18 months. Section 655.045(1)(a), F.S.; however, allows the OFR to accept an examination from an appropriate federal regulatory agency or may conduct a joint or concurrent examination of the institution with the federal agency. However, at least once every 36 months, the OFR must conduct an examination of each state financial institution in a manner that allows the preparation of a complete examination report not subject to the right of a federal or other non-Florida entity to limit access to the information contained therein. The alternating, joint, or concurrent examination authorized by this provision reduces regulatory burden on the financial institutions subject to dual regulation, and the OFR works in coordination with these federal agencies when possible.¹⁶

According to OFR, many of the documents it must analyze in these examinations are paper files with digital copies not available. As such, examiners must be physically present at an institution to perform examinations. The COVID-19 pandemic has created issues in adhering to examination schedules. Additionally, other natural disasters (such as hurricanes) can create problematic examination environments.¹⁷

¹³ Sections 501.207(1), 501.2075, 501.2077, and 501.208, F.S.

¹⁴ Sections 501.211(1)-(2) and 501.2105, F.S.

¹⁵ Section 501.212(4), F.S.

¹⁶ Office of Financial Regulation, *SB 1680 Analysis* (Jan. 12, 2022) (on file with the Senate Committee on Banking and Insurance).

¹⁷ *Id.*

Financial Institution Acquisition of Assets and Assumption of Liabilities

Current law allows a financial entity, under s. 655.414, F.S., to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. Similarly, subsection (6) of the statute states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, subject to certain conditions. For both of these provisions, the term “substantially all” is not defined and may be subject to some conjecture. According to the OFR, this undefined term has caused some confusion in the financial industry.¹⁸

Money Laundering and Terrorist Financing in Financial Institutions Act

The Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act, under s. 655.50, F.S., was created to require the submission certain reports to the OFR and the maintenance of certain records involving currency or monetary instruments or suspicious activities where such reports and records deter the use of financial institutions to conceal, move, or provide proceeds relating to criminal or terrorist activities and if such reports and records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. Subsection (3) of the act defines “financial institutions” a financial institution, as defined in 31 U.S.C. s. 5312, as amended, including a credit card bank, located in this state. This definition is quite broad, and includes a number of entities over which the OFR generally does not have regulatory authority—such as the United States Postal Service, casinos, travel agencies—or are obsolete—such as telegraph companies.¹⁹

Credit Union Boards of Directors

Section 657.021(1)-(6), F.S., specifies the minimum requirements for boards of directors for credit unions, including the filling of vacancies, meeting requirements, and conduct requirements. As part of these requirements, subsection (2) requires that directors assuming office in a credit union make a prescribed oath, and a signed copy of the oath must be filed with the OFR within 30 days after election. According to the OFR, at the Federal-level, the NCUA historically required credit unions to submit a record of the names and addresses of the members of the board of directors, members of the committees on a particular form called “Report of Officials.” The OFR had access to these documents through agreements with the NCUA. However, in 2009, the NCUA moved to a web-based system to collect this data and the forms were no longer collected.²⁰ At present Florida law does not require state-chartered credit unions to submit a similar report.

¹⁸ *Supra* note **Error! Bookmark not defined.**

¹⁹ The world’s last telegram was sent in 2013. Monica Sarkar, *The Day Telegrams Came to a Final STOP*, CNN (July 15, 2013).

²⁰ *NCUA Supervisory Letter 09-CU-17*, “Credit Union Online: Credit Union Profile and 5300 Call Report,” National Credit Union Administration, available at <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/credit-union-online-credit-union-profile-and-5300-call-report> (August 2009).

Target Markets

According to the American Bankers Association, nearly 75 percent of United States residents most often access their bank accounts via electronic platforms (i.e., via mobile device or personal computer).²¹ With this ever-growing trend, and branch traffic slowing, many banks have been closing bank branches at a growing pace and making investments in electronic platforms.²²

While the trend in banking has been to de-emphasize the local branch, a Florida application for authority to organize a banking corporation or trust company must describe the community where the principal office of the bank will be located²³ and part of the OFR's approval process looks at the need for, and ability to support, the proposed bank or trust company in the entity's primary service area.²⁴ In order for an application to be approved, the local conditions in the primary service area must indicate a reasonable promise of successful operation.²⁵ The OFR evaluates the viability of the business plan in light of current conditions in the primary service area and the metropolitan statistical area or county, as well as in the industry in general.²⁶

Applications for Authority to Organize a Banking Corporation or Trust Company

Section 658.19, F.S., specifies the requirements for an application for authority to organize a banking corporation or trust company, which must be filed with the OFR by the proposed directors, and what the application must include. Upon the submission of this application, pursuant to s. 658.20, F.S., the OFR must investigate the:

- Character, reputation, financial standing, business experience, and business qualifications of the proposed officers and directors;
- Need for bank or trust facilities or additional bank or trust facilities, as the case may be, in the primary service area where the proposed bank or trust company is to be located; and
- Ability of the primary service area to support the proposed bank or trust company and all other existing bank or trust facilities in the primary service area.

Section 658.20, F.S., also authorizes the OFR to obtain criminal record information from the National Crime Information Center or from the Florida Department of Law Enforcement (FDLE) to conduct the required investigation.

To approve an application, the OFR must find, in part, that:²⁷

- Local conditions indicate reasonable promise of successful operation for the proposed state bank or trust company;
- The proposed capitalization is in such amount as the OFR deems adequate;
- The proposed capital structure is in such form as the OFR may require;

²¹ *Survey: Bank Customers Preference for Digital Channels Continues to Grow*, American Bankers Association, <https://bankingjournal.aba.com/2019/11/aba-survey-customer-preference-for-digital-banking-continues-to-grow> (November 5, 2019).

²² *Id.*

²³ Section 658.19, F.S.

²⁴ Section 658.20, F.S.

²⁵ Rule 69U-105.206(2)(a), F.A.C.

²⁶ Rule 69U-105.206(2)(a)1.-2., F.A.C.

²⁷ Section 658.21, F.S.

- The proposed officers have sufficient financial institution experience, ability, standing, and reputation in order to be approved. As part of this requirement, the proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years;
- The corporate name of the proposed state bank or trust company is approved by the OFR; and
- Provision has been made for suitable quarters at the location specified in the application.

In regards to the requirement that the proposed president or chief executive officer have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years, the OFR has expressed a concern that this provision narrows the pool of otherwise qualified potential executive officers who may serve in that capacity at a new Florida-chartered bank. By comparison, proposed chief executive officers of proposed nationally chartered banks are not subject to a similar restriction.²⁸

Trust Representative Offices

According to 12 C.F.R. s. 9.2(k), a trust representative office is an office of a national bank, other than a main office or a branch, at which the bank engages in certain activities relating to their fiduciary business. Examples of such activities include advertising, marketing, and soliciting for fiduciary business; contacting existing or potential customers, answering questions, and providing information about matters related to their accounts; acting as a liaison between the trust office and the customer; and inspecting or maintaining custody of fiduciary assets or holding title to real property.

In Florida, the OFR supervises state-chartered banks with trust powers and state-chartered trust companies. The determination of whether an entity qualifies as a “trust company” is dependent on whether an entity has “trust powers” and is engaging in “trust business,” defined as follows:²⁹

- “Trust powers” means the rights and powers necessary to act as a fiduciary and, when the context so requires or admits, the term also means the authority granted to a bank, state or federal association, or trust company by, or pursuant to, the laws of this or any other jurisdiction to engage in trust business.
- “Trust business” means the business of acting as a fiduciary when such business is conducted by a bank, a state or federal association, or a trust company, or when conducted by any other business organization for compensation that the OFR does not consider to be de minimis.

Based on this definition, an office that provides just ancillary fiduciary services to a nationally-chartered bank or trust company (or one chartered by another state) would not qualify as a trust company.

²⁸ *Supra* note **Error! Bookmark not defined.**

²⁹ Section 658.12, F.S.

Controlling Interests in State Banks and Trust Companies

Under s. 658.28, F.S., for the purposes of determining whether a party has acquired control of a bank or trust company, in general, a party will be presumed to have such control if any of the following are true:

- The party directly or indirectly owns, control, or has the power to vote 25 percent or more of any class of voting securities of the institution;
- The party controls, in any manner, the election of a majority of the directors, trustees, or other governing body of the institution;
- The party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution; or
- The OFR determines, after notice and opportunity for a hearing, that the person or persons directly or indirectly exercises a controlling influence over the bank or trust company.

In addition, the OFR is not limited to the above standards or criteria in determining whether any such person may be deemed to be acting by or through one or more other persons. The presumption above, regarding where a party owns, controls, or has the power to vote 10 percent or more of any class of voting securities and exercise a controlling influence over management or policies of the institution, is rebuttable by notifying the OFR and presenting information rebutting control at an informal conference.³⁰ After such hearing, if the OFR determines that the party in question does, in fact, have control of the bank or trust company, the party must file the application required under s. 658.28(1), F.S.

Section 658.28(1), F.S., also requires persons seeking to purchase or otherwise acquire controlling interest in a state bank or trust company, to first apply with the OFR for a certificate of approval. Approval is based upon the OFR's determination, after investigation and review, that the proposed new owners are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company and that the interests of the other stockholders, if any, the depositors and creditors of the bank or trust company, and the public generally will not be jeopardized by the proposed change.

Florida law does not currently contemplate the acquisition of a controlling interest without prior approval. However, according to the OFR, not every such acquisition is planned. Shares may pass to an unapproved owner by operation of law, such as by way of inheritance. For example, if a controlling shareholder dies and their shares pass to an unapproved beneficiary, the unapproved beneficiary commits an unavoidable, technical violation of statute upon becoming the owner of the shares.³¹

De Novo Interstate Branching by State Banks

Section 658.2953(11)(a), F.S., permits state banks to, with approval of the OFR, establish and maintain a de novo branch or acquire a branch in a state other than Florida by submitting an

³⁰ Section 658.28(3), F.S.

³¹ *Supra* note **Error! Bookmark not defined.**

application to the OFR. Section 658.2953(11)(a), F.S., also allows out-of-state bank meeting certain conditions to establish and maintain a de novo branch or acquire a branch in Florida.

Family Trust Companies

A family trust company provides trust services to wealthy families and cannot provide services to the general public. These services include serving as a trustee of trusts held for the benefit of the family members, as well as providing other fiduciary, investment advisory, wealth management, and administrative services to the family. A family might wish to form a family trust company in order to keep family matters more private than they would be if turned over to an independent trustee, to gain liability protection, to establish its own trust fee structure, and to obtain tax advantages. Traditional trust companies require regulatory oversight, licensing of investment personnel, public disclosure and capitalization requirements considered by practitioners to be overbroad and intrusive for the family trust.

In 2014, the Legislature authorized the creation of family trust companies in Florida.³² The Florida Family Trust Company Act is codified in ch. 662, F.S. The Act allows for the creation of family trust companies in Florida and provides differing degrees of regulatory oversight by the OFR.

Chapter 662, F.S., creates three types of family trust companies: family trust companies, licensed family trust companies, and foreign licensed family trust companies. A “family trust company” is a corporation or limited liability company that is exclusively owned by one or more family members, is organized or qualified to do business in this state, and acts or proposes to act as a fiduciary to serve one or more family members.³³ A “licensed family trust company” means a family trust company that has been issued a license that has not been revoked or suspended by the OFR.³⁴ A “foreign licensed family trust company” means a family trust company that is licensed by a state other than Florida, or the District of Columbia.³⁵ Family trust companies that are not licensed and foreign family trust companies must register the OFR and renew such registration annually.³⁶ Family trust companies and licensed family trust companies must maintain a deposit account with a state-chartered or national financial institution that has a principal or branch office in Florida.³⁷

Asset Maintenance or Capital Equivalency for International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a state-chartered financial institution in regards to loans, extension of credit, or investment. An international bank agency may act as custodian and may furnish investment

³² Chapter 2014-97, Laws of Fla.

³³ See s. 662.111(12), F.S., and does not serve as a fiduciary for a person, entity, trust, or estate that is not a family member, except that it may serve as a fiduciary for up to 35 individuals who are not family members if the individuals are current or former employees of the family trust company or one or more trusts, companies, or other entities that are family members

³⁴ See s. 662.111(16), F.S.

³⁵ See s. 662.111(15), F.S.

³⁶ See ss. 662.122 and 662.128, F.S.

³⁷ Section 662.1225(1), F.S.

management, and investment advisory services, to nonresident entities or persons whose principal places of business or domicile are outside the United States and to resident entities or persons with respect to international, foreign, or domestic investments.³⁸ An international branch has the same rights and privileges as a federally-licensed international branch.³⁹ Under s. 663.07, F.S., each international bank agency and international branch must maintain, with one or more banks in this state evidence of dollar deposits or investment securities, as specified by the OFR, of the type that may be held by a state bank.

Financial Action Task Force (FATF)

The FATF is an international global money laundering and terrorist financing watchdog group. It is an intergovernmental policy-making body that sets international standards and advocates to bring about national legislative and regulatory reforms.⁴⁰ The FATF currently comprises 39 member jurisdictions and two regional organizations (the European Council and the Gulf Cooperation Council). These members represent most major global financial centers.⁴¹ As part of its activities, the FATF publishes, three times per year, two public documents that identify jurisdictions having weak measures to combat money laundering and terrorist financing: 1) High-Risk Jurisdictions subject to a Call for Action, and 2) Jurisdictions under Increased Monitoring.⁴²

High-Risk Jurisdictions subject to a Call for Action

According to FATF, the jurisdictions identified on the High-Risk Jurisdictions subject to a Call for Action (also known as the “black list”) have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing, and financing of proliferation. For such jurisdictions, the FATF calls on all of its members and urges all jurisdictions to apply enhanced due diligence, and in the most serious cases, countries are called upon to apply counter-measures to protect the international financial system from the ongoing money laundering, terrorist financing, and proliferation financing risks emanating from the country.⁴³ Due to the ongoing COVID-19 pandemic, FATF has paused the review process for countries on the list of High-Risk Jurisdictions subject to a Call for Action given that the countries on the list—North Korea and Iran—are already subject to the FATF’s call for countermeasures.⁴⁴

Jurisdictions under Increased Monitoring

Jurisdictions identified as being under increased monitoring (also known as the “grey list”) by the FATF are actively working with the organization to address strategic deficiencies in their

³⁸ Section 663.061, F.S.

³⁹ Section 663.064, F.S.

⁴⁰ *About*, Financial Action Task Force, <https://www.fatf-gafi.org/about/> (last visited Jan. 13, 2022).

⁴¹ *FATF Members and Observers*, Financial Action Task Force, <https://www.fatf-gafi.org/about/membersandobservers/> (last visited Jan. 13, 2022).

⁴² *Topic: High-risk and other monitored jurisdictions*, Financial Action Task Force, [https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf_releasedate\)](https://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate)) (last visited Jan. 13, 2022).

⁴³ *Id.*

⁴⁴ *High-Risk Jurisdictions subject to a Call for Action - October 2021*, Financial Action Task Force, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/call-for-action-october-2021.html> (Oct. 21, 2021).

regimes to counter money laundering, terrorist financing, and proliferation financing. Jurisdictions identified as such are subject to increased monitoring, but have committed to swiftly resolve the deficiencies identified by the FATF within an agreed upon timeframe.⁴⁵

Qualified Limited Service Affiliates of International Trust Entities (QLSA)

Part IV of Chapter 663, F.S., regulates QLSAs in Florida. Pursuant to s. 663.530, F.S., a QLSA means a person or entity that is qualified under this part to perform the permissible activities outlined in s. 663.531, F.S., related to or for the benefit of an affiliated international trust entity. This section also defines an “international trust entity” as an international trust company or organization, or any similar business entity, or an affiliated or subsidiary entity that is licensed, chartered, or similarly permitted to conduct trust business in a foreign country or countries under the laws where such entity is organized and supervised. Section 663.531(1), F.S., allows a QLSA to engage in:

- Marketing and liaison services related to or for the benefit of the affiliated international trust entities, directed exclusively at professionals and current or prospective nonresident clients of an affiliated international trust entity;
- Advertising and marketing at trade, industry, or professional events;
- Transmission of documents between the international trust entity and its current or prospective clients or a designee of such clients; and
- Transmission of information about the trust or trust holdings of current clients between current clients or their designees and the international trust entity.

To qualify as a QLSA, the entity must file a written notice with the OFR that includes, in part, a declaration (under penalty of perjury) that jurisdiction of the international trust entity or its offices, subsidiaries, or any affiliates that are directly involved in or facilitate the financial services functions, banking, or fiduciary activities of the international trust entity is not listed on the Financial Action Task Force Public Statement or on its list of jurisdictions with deficiencies in anti-money laundering or counterterrorism.⁴⁶ While this is a required disclosure, the OFR asserts that it does not have a mechanism to suspend or revoke the qualification of the QLSA if the jurisdiction of the international trust entity is later added to this list.⁴⁷

III. Effect of Proposed Changes:

Section 1 amends s. 120.80(3)(a), F.S., to allow a foreign national proposing to own or control 10 percent or more of any class of voting securities of a proposed or established bank, trust company, or capital stock savings association to appear at the public hearing required to be held for such matter via video conference in lieu of appearing personally.

⁴⁵ *Jurisdictions under Increased Monitoring - October 2021*, Financial Action Task Force, <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2021.html> (Oct. 21, 2021). Countries currently on the grey list, as of the most recent October 2021 update are: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe. Botswana and Mauritius were most recently removed from the list.

⁴⁶ Section 663.532(1)(i)3., F.S.

⁴⁷ *Supra* note **Error! Bookmark not defined.**

Section 2 amends s. 475.01, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 3 creates s. 501.2076, F.S., to make the direct or indirect charging of a customer a fee, by a third-party agent or other entity, for an online audit verification of the associated balance of an account which is maintained by a financial institution, a violation of the FDUTPA.

Section 4 amends s. 518.117, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 5 amends s. 655.045(1)(a), F.S., to revise the specific date of July 1, 2014, to July 1, 2023, which the scheduling of examinations are pegged to for financial institutions.

The section also creates s. 655.045(1)(f), F.S., to allow the OFR an additional 90 days to meet the examination frequency requirement under the section when a federal agency suspends or cancels a previously scheduled examination. The examination requirement would be considered to have been met upon the federal agency in question conducting the examination—or the OFR conducting the examination instead.

The section also amends s. 655.045(4), F.S., to require each director of a state financial institution to sign a receipt regarding an examination report, with the signature certifying that the director has read the report. The signed receipt must be returned to the OFR.

Section 6 amends s. 655.414, F.S., to revise language allowing financial entities to acquire “all or substantially all” of the assets of, or assume all or any part of the liabilities of, any other financial institution subject to certain conditions. The bill updates this language to read “50 percent or more of the assets of, liabilities of, or a combination of assets and liabilities of.” The 50 percent is calculated based on the most recent quarterly reporting date.

Similarly, subsection (6) of the section presently states that a mutual financial institution may not sell “all or substantially all” of its assets to a stock financial institution, without certain conditions being met. The bill also updates this to read “50 percent or more.”

Section 7 amends s. 655.50, F.S., to revise the definition of “financial institution” for the Florida Control of Money Laundering and Terrorist Financing in Financial Institutions Act. The definition is changed to repeal a reference to federal law and to instead mean any financial institution, as defined in Florida law,⁴⁸ other than an international representative office, an international administrative office, or a qualified limited service affiliate.

Section 8 creates s. 657.021(2), F.S., to require credit unions, within 30 days following a meeting where any director, officer, member of the supervisory or audit committee, member of the credit committee, or credit manager is elected or appointed, to submit to the OFR the names and residence addresses of the elected person or persons on a specified form. The provision also directs the OFR to adopt rules to create the form.

⁴⁸ Section 655.005(1)(i), F.S.

Section 9 repeals s. 657.028(6), F.S., which requires notice to OFR of changes in management similar to those created in Section 8 of this bill.

Section 10 amends s. 658.12, F.S., to create a definition for “target market” to mean the group of clients or potential clients from whom a bank or proposed bank expects to draw deposits and to whom a bank focuses or intends to focus its marketing efforts. The term also means the group of clients or potential clients from whom a trust company, a trust department of a bank or association, a proposed trust company, or a proposed trust department of a bank or an association expects to draw its fiduciary accounts and to whom it focuses or intends to focus its marketing efforts.

Section 11 amends s. 658.20, F.S., to incorporate the definition of target market created in Section 10 and effectively expand the scope of the OFR’s investigation (regarding an application for authority to organize a bank or trust company) to include the need for bank and trust facilities in a target market as well as in the primary service area, and the ability of a target market to support the proposed bank or trust company.

Section 12 amends s. 658.21, F.S., to revise a requirement that, for the OFR to approve an application for authority to organize a banking corporation or trust company, the proposed president or chief executive officer must have at least 1 year of direct experience as an executive officer, director, or regulator of a financial institution within the last 5 years. The revision eliminates the requirement that the 1 year of experience be within the last 5 years.

Section 13 creates s. 658.28, F.S., to create a requirement that persons acquiring a controlling interest in a state bank or state trust company through probate or trust notify the office within 90 days after acquiring such interest. The bill also stipulates that this interest does not give rise to a presumption of control unless such persons votes the shares or the office has issued a certificate of approval in response to an application approval of change control pursuant to subsection (1) of the section.

Section 14 amends s. 658.2953, F.S., to create a definition of “de novo branch” to mean a branch of a financial institution which is originally established by the financial institution as a branch and does not become a branch of such financial institution as a result of specified transactions. This clarifies the applicability of s. 658.2953(11), F.S., which regulates de novo interstate branching, but currently does not define the term.

Section 15 amends s. 662.1225, F.S., to allow a family trust company or licensed family trust company to maintain the deposit account, required under the section, with any bank that is both insured by the Federal Deposit Insurance Corporation and located in the United States, or with a credit union insured by the National Credit Union Administration and located in the United States. Under current law, such companies were limited to only state-chartered or national financial institution that has a principal or branch office in Florida.

Section 16 amends s. 662.128, F.S., to require family trust companies, licensed family trust companies, or foreign licensed family trust companies to file an annual renewal application no later than 45 days after the anniversary of the filing of either the initial application or the prior year’s renewal application. The previous requirement under s. 662.128, F.S., has also been

retained in the section, specifying that such entities must file their renewal 45 days after the end of each calendar year. As presently written, this may require entities, other than those whose anniversary dates fall within the first 45 days of the year, to file two renewals each year.

Section 17 amends s. 633.07, F.S., to allow international bank agencies and international branches to maintain the required deposit amount under the section with one or more banks insured by the Federal Deposit Insurance Corporation and located within the United States. Under current law, the deposit had to be maintained at a bank in Florida.

Section 18 amends s. 663.532, F.S., to require qualified limited service affiliates (QLSA) to suspend the activities the QLSA is otherwise permitted to engage in, under s. 663.408, F.S., if the QLSA or the OFR becomes aware that the jurisdiction of an international trust entity served by the QLSA is included on the Financial Action Task Force (FATF) list of High-Risk Jurisdictions subject to a Call for Action (black list) or list of Jurisdictions Under Increased Monitoring (grey list). Such a suspension of activities must continue until the jurisdiction in question is removed from the FATF black list or grey list.

As of the most recent October 2021 update, the following countries are on the FATF grey list: Albania, Barbados, Burkina Faso, Cambodia, Cayman Islands, Haiti, Jamaica, Jordan, Mali, Malta, Morocco, Myanmar, Nicaragua, Pakistan, Panama, Philippines, Senegal, South Sudan, Syria, Turkey, Uganda, Yemen, and Zimbabwe. Presently, North Korea and Iran are on the FATF black list.

Section 19 amends s. 736.0802, F.S., to update a cross-reference to implement changes made to s. 658.12, F.S., in the bill.

Section 20 provides an effective date of July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 5 of SB 1680 could lead to the OFR taking on additional examination costs in the event that a federal agency suspends or cancels a financial institution examination and the OFR ends up conducting the examination in that agency's stead.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.80, 475.01, 518.117, 655.045, 655.414, 655.50, 657.021, 657.028, 658.12, 658.20, 658.21, 658.28, 658.2953, 662.1225, 662.128, 663.07, 663.532, and 736.0802.

This bill creates section 501.2076 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Gruters

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1 A bill to be entitled
 2 An act relating to financial institutions; amending s.
 3 120.80, F.S.; providing that the failure of foreign
 4 nationals to appear through video conference at
 5 certain hearings is grounds for denial of certain
 6 applications; amending s. 475.01, F.S.; conforming a
 7 cross-reference; creating s. 501.2076, F.S.; providing
 8 that the imposition of fees or charges upon consumers
 9 for online audit verifications of financial
 10 institution accounts is a violation of the Florida
 11 Deceptive and Unfair Trade Practices Act; amending s.
 12 518.117, F.S.; conforming a cross-reference; amending
 13 s. 655.045, F.S.; revising the circumstances pursuant
 14 to which the Office of Financial Regulation is
 15 required to conduct certain examinations; authorizing
 16 the office to delay examinations of state financial
 17 institutions under certain circumstances; specifying
 18 that examination requirements are deemed met under
 19 certain circumstances; requiring copies of certain
 20 examination reports to be furnished to state financial
 21 institutions; requiring certain directors to review
 22 and acknowledge receipt of such reports; amending s.
 23 655.414, F.S.; revising the entities that may assume
 24 liabilities and assets, and the liabilities and assets
 25 that may be assumed, according to certain procedures,
 26 conditions, and limitations; specifying the basis for
 27 calculating percentages of assets or liabilities;
 28 revising the assets a mutual financial institution may
 29 sell, subject to certain conditions; amending s.

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30 655.50, F.S.; revising the definition of the term
 31 "financial institution"; amending s. 657.021, F.S.;
 32 requiring credit unions to submit specified
 33 information to the office after certain meetings;
 34 repealing s. 657.028(6), F.S., relating to credit
 35 union board member, committee member, and officer
 36 election and appointment record reporting
 37 requirements; amending s. 658.12, F.S.; defining the
 38 term "target market"; amending s. 658.20, F.S.;
 39 requiring the office, upon receiving applications for
 40 authority to organize a bank or trust company, to
 41 investigate the need for new bank facilities in a
 42 primary service area or for a target market and the
 43 ability of such service area or target market to
 44 support new and existing bank facilities; amending s.
 45 658.21, F.S.; revising financial institution
 46 application approval requirements to include
 47 consideration of target market conditions; deleting a
 48 requirement that certain proposed financial
 49 institution presidents or chief executive officers
 50 have certain experience within a specified timeframe;
 51 amending s. 658.28, F.S.; requiring a person or group
 52 to notify the office within a specified timeframe upon
 53 acquiring a controlling interest in a bank or trust
 54 company in this state; amending s. 658.2953, F.S.;
 55 defining the term "de novo branch"; amending s.
 56 662.1225, F.S.; revising the type of institution with
 57 which certain family trust companies are required to
 58 maintain a deposit account; amending s. 662.128, F.S.;

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59 revising the timeframe for filing renewal applications
 60 for certain family trust companies; amending s.
 61 663.07, F.S.; revising the banks with which
 62 international bank agencies or branches shall maintain
 63 certain deposits; amending s. 663.532, F.S.; revising
 64 references to lists of jurisdictions used for
 65 qualifying qualified limited service affiliates;
 66 requiring limited service affiliates to suspend
 67 certain permissible activities under certain
 68 circumstances; specifying that such suspensions remain
 69 in effect until certain conditions are met; amending
 70 s. 736.0802, F.S.; conforming a cross-reference;
 71 reenacting s. 658.165(1), F.S., relating to banker's
 72 banks, for the purpose of incorporating amendments
 73 made by the act; providing an effective date.

74
 75 Be It Enacted by the Legislature of the State of Florida:

76
 77 Section 1. Paragraph (a) of subsection (3) of section
 78 120.80, Florida Statutes, is amended to read:

79 120.80 Exceptions and special requirements; agencies.—

80 (3) OFFICE OF FINANCIAL REGULATION.—

81 (a) Notwithstanding s. 120.60(1), in proceedings for the
 82 issuance, denial, renewal, or amendment of a license or approval
 83 of a merger pursuant to title XXXVIII:

84 1.a. The Office of Financial Regulation of the Financial
 85 Services Commission shall have published in the Florida
 86 Administrative Register notice of the application within 21 days
 87 after receipt.

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88 b. Within 21 days after publication of notice, any person
 89 may request a hearing. Failure to request a hearing within 21
 90 days after notice constitutes a waiver of any right to a
 91 hearing. The Office of Financial Regulation or an applicant may
 92 request a hearing at any time prior to the issuance of a final
 93 order. Hearings shall be conducted pursuant to ss. 120.569 and
 94 120.57, except that the Financial Services Commission shall by
 95 rule provide for participation by the general public.

96 2. Should a hearing be requested as provided by sub-
 97 subparagraph 1.b., the applicant or licensee shall publish at
 98 its own cost a notice of the hearing in a newspaper of general
 99 circulation in the area affected by the application. The
 100 Financial Services Commission may by rule specify the format and
 101 size of the notice.

102 3. Notwithstanding s. 120.60(1), and except as provided in
 103 subparagraph 4., an application for license for a new bank, new
 104 trust company, new credit union, new savings and loan
 105 association, or new licensed family trust company must be
 106 approved or denied within 180 days after receipt of the original
 107 application or receipt of the timely requested additional
 108 information or correction of errors or omissions. An application
 109 for such a license or for acquisition of such control which is
 110 not approved or denied within the 180-day period or within 30
 111 days after conclusion of a public hearing on the application,
 112 whichever is later, shall be deemed approved subject to the
 113 satisfactory completion of conditions required by statute as a
 114 prerequisite to license and approval of insurance of accounts
 115 for a new bank, a new savings and loan association, a new credit
 116 union, or a new licensed family trust company by the appropriate

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117 insurer.

118 4. In the case of an application for license to establish a
 119 new bank, trust company, or capital stock savings association in
 120 which a foreign national proposes to own or control 10 percent
 121 or more of any class of voting securities, and in the case of an
 122 application by a foreign national for approval to acquire
 123 control of a bank, trust company, or capital stock savings
 124 association, the Office of Financial Regulation shall request
 125 that a public hearing be conducted pursuant to ss. 120.569 and
 126 120.57. Notice of such hearing shall be published by the
 127 applicant as provided in subparagraph 2. The failure of such
 128 foreign national to appear personally at or to participate
 129 through video conference in the hearing shall be grounds for
 130 denial of the application. Notwithstanding s. 120.60(1) and
 131 subparagraph 3., every application involving a foreign national
 132 shall be approved or denied within 1 year after receipt of the
 133 original application or any timely requested additional
 134 information or the correction of any errors or omissions, or
 135 within 30 days after the conclusion of the public hearing on the
 136 application, whichever is later.

137 Section 2. Subsection (4) of section 475.01, Florida
 138 Statutes, is amended to read:

139 475.01 Definitions.—

140 (4) A broker acting as a trustee of a trust created under
 141 chapter 689 is subject to the provisions of this chapter unless
 142 the trustee is a bank, state or federal association, or trust
 143 company possessing trust powers as defined in s. 658.12(24) ~~or~~
 144 ~~658.12(23)~~.

145 Section 3. Section 501.2076, Florida Statutes, is created

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146 to read:

147 501.2076 Violations involving consumer financial
 148 institution account fees.—The imposition of a fee or other
 149 charge by a third party agent or entity directly or indirectly
 150 upon a consumer for an online audit verification of an account
 151 maintained by a financial institution as defined in s.
 152 655.005(1)(i) or of the associated balance of such account is a
 153 violation of this part.

154 Section 4. Section 518.117, Florida Statutes, is amended to
 155 read:

156 518.117 Permissible investments of fiduciary funds.—A
 157 fiduciary that is authorized by lawful authority to engage in
 158 trust business as defined in s. 658.12(21) ~~or 658.12(20)~~ may
 159 invest fiduciary funds in accordance with s. 660.417 so long as
 160 the investment otherwise complies with this chapter.

161 Section 5. Paragraph (a) of subsection (1) and subsection
 162 (4) of section 655.045, Florida Statutes, are amended, and
 163 paragraph (f) is added to subsection (1) of that section, to
 164 read:

165 655.045 Examinations, reports, and internal audits;
 166 penalty.—

167 (1) The office shall conduct an examination of the
 168 condition of each state financial institution at least every 18
 169 months. The office may conduct more frequent examinations based
 170 upon the risk profile of the financial institution, prior
 171 examination results, or significant changes in the institution
 172 or its operations. The office may use continuous, phase, or
 173 other flexible scheduling examination methods for very large or
 174 complex state financial institutions and financial institutions

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175 owned or controlled by a multi-financial institution holding
176 company. The office shall consider examination guidelines from
177 federal regulatory agencies in order to facilitate, coordinate,
178 and standardize examination processes.

179 (a) The office may accept an examination of a state
180 financial institution made by an appropriate federal regulatory
181 agency or may conduct a joint or concurrent examination of the
182 institution with the federal agency. However, if the office
183 accepts an examination report in accordance with this paragraph,
184 the office shall conduct at least once during each 36-month
185 period beginning July 1, ~~2023~~ 2014, a subsequent the office
186 ~~shall conduct an~~ examination of each state financial institution
187 in a manner that allows the preparation of a complete
188 examination report not subject to the right of a federal or
189 other non-Florida entity to limit access to the information
190 contained therein. The office may furnish a copy of all
191 examinations or reviews made of financial institutions or their
192 affiliates to the state or federal agencies participating in the
193 examination, investigation, or review, or as otherwise
194 authorized under s. 655.057.

195 (f) In coordinating an examination required under this
196 section, if a federal agency suspends or cancels a previously
197 scheduled examination of a state financial institution, the
198 office has an additional 90 days to meet the examination
199 requirement of this section. In such case, the requirement is
200 deemed met by the federal agency conducting the examination or
201 upon the office conducting the examination instead.

202 (4) A copy of the report of each examination must be
203 furnished to the state financial institution ~~entity~~ examined and

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204 presented to the board of directors at its next regular or
205 special meeting. Each director shall review the report and
206 acknowledge receipt of the report and such review by signing and
207 dating the prescribed signature page of the report and returning
208 a copy of the signed page to the office.

209 Section 6. Section 655.414, Florida Statutes, is amended to
210 read:

211 655.414 Acquisition of assets; assumption of liabilities.—
212 With prior approval of the office, and upon such conditions as
213 the commission prescribes by rule, a financial institution
214 ~~entity~~ may acquire 50 percent or more ~~all or substantially all~~
215 of the assets of, liabilities of, or a combination of assets and
216 ~~or assume all or any part of the liabilities of,~~ any other
217 financial institution in accordance with the procedures and
218 subject to the following conditions and limitations:

219 (1) CALCULATION OF ASSET OR LIABILITY PERCENTAGES.—
220 Percentages of assets or liabilities must be calculated based on
221 the most recent quarterly reporting date.

222 (2) ADOPTION OF A PLAN.—The board of directors of the
223 acquiring or assuming financial entity and the board of
224 directors of the transferring financial institution must adopt,
225 by a majority vote, a plan for such acquisition, assumption, or
226 sale on terms that are mutually agreed upon. The plan must
227 include:

228 (a) The names and types of financial institutions involved.
229 (b) A statement setting forth the material terms of the
230 proposed acquisition, assumption, or sale, including the plan
231 for disposition of all assets and liabilities not subject to the
232 plan.

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233 (c) A provision for liquidation, if applicable, of the
 234 transferring financial institution upon execution of the plan,
 235 or a provision setting forth the business plan for the continued
 236 operation of each financial institution after the execution of
 237 the plan.

238 (d) A statement that the entire transaction is subject to
 239 written approval of the office and approval of the members or
 240 stockholders of the transferring financial institution.

241 (e) If a stock financial institution is the transferring
 242 financial institution and the proposed sale is not for cash, a
 243 clear and concise statement that dissenting stockholders of the
 244 institution are entitled to the rights set forth in s. 658.44(4)
 245 and (5).

246 (f) The proposed effective date of the acquisition,
 247 assumption, or sale and such other information and provisions as
 248 necessary to execute the transaction or as required by the
 249 office.

250 (3)~~(2)~~ APPROVAL OF OFFICE.—Following approval by the board
 251 of directors of each participating financial institution, the
 252 plan, together with certified copies of the authorizing
 253 resolutions adopted by the boards and a completed application
 254 with a nonrefundable filing fee, must be forwarded to the office
 255 for approval or disapproval. The office shall approve the plan
 256 of acquisition, assumption, or sale if it appears that:

257 (a) The resulting financial entity or entities would have
 258 an adequate capital structure in relation to their activities
 259 and their deposit liabilities;

260 (b) The plan is fair to all parties; and

261 (c) The plan is not contrary to the public interest.

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262
 263 If the office disapproves the plan, it shall state its
 264 objections and give the parties an opportunity to amend the plan
 265 to overcome such objections.

266 (4)~~(3)~~ VOTE OF MEMBERS OR STOCKHOLDERS.—If the office
 267 approves the plan, it may be submitted to the members or
 268 stockholders of the transferring financial institution at an
 269 annual meeting or at a special meeting called to consider such
 270 action. Upon a majority vote of the total number of votes
 271 eligible to be cast or, in the case of a credit union, a
 272 majority vote of the members present at the meeting, the plan is
 273 adopted.

274 (5)~~(4)~~ ADOPTED PLAN; CERTIFICATE; ABANDONMENT.—

275 (a) If the plan is adopted by the members or stockholders
 276 of the transferring financial institution, the president or vice
 277 president and the cashier, manager, or corporate secretary of
 278 such institution shall submit the adopted plan to the office,
 279 together with a certified copy of the resolution of the members
 280 or stockholders approving it.

281 (b) Upon receipt of the certified copies and evidence that
 282 the participating financial institutions have complied with all
 283 applicable state and federal law and rules, the office shall
 284 certify, in writing, to the participants that the plan has been
 285 approved.

286 (c) Notwithstanding approval of the members or stockholders
 287 or certification by the office, the board of directors of the
 288 transferring financial institution may abandon such a
 289 transaction without further action or approval by the members or
 290 stockholders, subject to the rights of third parties under any

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291 contracts relating thereto.

292 ~~(6)(5)~~ FEDERALLY CHARTERED OR OUT-OF-STATE INSTITUTION AS A
 293 PARTICIPANT.—If one of the participants in a transaction under
 294 this section is a federally chartered financial institution or
 295 an out-of-state financial institution, all participants must
 296 also comply with requirements imposed by federal and other state
 297 law for the acquisition, assumption, or sale and provide
 298 evidence of such compliance to the office as a condition
 299 precedent to the issuance of a certificate authorizing the
 300 transaction; however, if the purchasing or assuming financial
 301 institution is a federal or out-of-state state-chartered
 302 financial institution and the transferring state financial
 303 entity will be liquidated, approval of the office is not
 304 required.

305 ~~(7)(6)~~ STOCK INSTITUTION ACQUIRING MUTUAL INSTITUTION.—A
 306 mutual financial institution may not sell 50 percent or more ~~all~~
 307 ~~or substantially all~~ of its assets to a stock financial
 308 institution until it has first converted into a capital stock
 309 financial institution in accordance with s. 665.033(1) and (2).
 310 For this purpose, references in s. 665.033(1) and (2) to
 311 associations also refer to credit unions but, in the case of a
 312 credit union, the provision concerning proxy statements does not
 313 apply.

314 Section 7. Paragraph (c) of subsection (3) of section
 315 655.50, Florida Statutes, is amended to read:

316 655.50 Florida Control of Money Laundering and Terrorist
 317 Financing in Financial Institutions Act.—

318 (3) As used in this section, the term:

319 (c) "Financial institution" has the same meaning as in s.

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320 655.005(1)(i), excluding an international representative office,
 321 an international administrative office, or a qualified limited
 322 service affiliate means a financial institution, as defined in
 323 ~~31 U.S.C. s. 5312, as amended, including a credit card bank,~~
 324 ~~located in this state.~~

325 Section 8. Present subsections (2) through (8) of section
 326 657.021, Florida Statutes, are redesignated as subsections (3)
 327 through (9), respectively, and a new subsection (2) is added to
 328 that section, to read:

329 657.021 Board of directors; executive committee
 330 responsibilities; oaths; reports to the office.—

331 (2) Within the 30 days following the annual meeting or any
 332 other meeting at which any director, officer, member of the
 333 supervisory or audit committee, member of the credit committee,
 334 or credit manager is elected or appointed, the credit union
 335 shall submit to the office the names and residence addresses of
 336 the elected or appointed person or persons on a form adopted by
 337 the commission and provided by the office.

338 Section 9. Subsection (6) of section 657.028 is repealed.

339 Section 10. Present subsections (20) through (24) of
 340 section 658.12, Florida Statutes, are redesignated as
 341 subsections (21) through (25), respectively, and a new
 342 subsection (20) is added to that section, to read:

343 658.12 Definitions.—Subject to other definitions contained
 344 in the financial institutions codes and unless the context
 345 otherwise requires:

346 (20) "Target market" means the group of clients or
 347 potential clients from whom:

348 (a) A bank or proposed bank expects to draw deposits and to

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349 whom the bank or proposed bank focuses or intends to focus its
350 marketing efforts; or

351 (b) A trust company, a trust department of a bank or
352 association, a proposed trust company, or a proposed trust
353 department of a bank or an association expects to draw its
354 fiduciary accounts and to whom the trust company, the trust
355 department of a bank or association, the proposed trust company,
356 or the proposed trust department of a bank or association
357 focuses or intends to focus its marketing efforts.

358 Section 11. Paragraphs (b) and (c) of subsection (1) of
359 section 658.20, Florida Statutes, are amended to read:

360 658.20 Investigation by office.—

361 (1) Upon the filing of an application, the office shall
362 make an investigation of:

363 (b) The need for bank or trust facilities or additional
364 bank or trust facilities, as the case may be, in the primary
365 service area where the proposed bank or trust company is to be
366 located or for the target market that the bank or trust company
367 intends to engage with in business.

368 (c) The ability of the primary service area or target
369 market to support the proposed bank or trust company and all
370 other existing bank or trust facilities that serve the same
371 primary service area or target market in the primary service
372 area.

373 Section 12. Subsections (1) and (4) of section 658.21,
374 Florida Statutes, are amended to read:

375 658.21 Approval of application; findings required.—The
376 office shall approve the application if it finds that:

377 (1) Local and target market conditions indicate reasonable

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378 promise of successful operation for the proposed state bank or
379 trust company. In determining whether an applicant meets the
380 requirements of this subsection, the office shall consider all
381 materially relevant factors, including:

382 (a) The purpose, objectives, and business philosophy of the
383 proposed state bank or trust company.

384 (b) The projected financial performance of the proposed
385 bank or trust company.

386 (c) The feasibility of the proposed bank or trust company,
387 as stated in the business plan, particularly with respect to
388 asset and liability growth and management.

389 (4) The proposed officers have sufficient financial
390 institution experience, ability, standing, and reputation and
391 the proposed directors have sufficient business experience,
392 ability, standing, and reputation to indicate reasonable promise
393 of successful operation, and none of the proposed officers or
394 directors has been convicted of, or pled guilty or nolo
395 contendere to, any violation of s. 655.50, relating to the
396 control of money laundering and terrorist financing; chapter
397 896, relating to offenses related to financial institutions; or
398 similar state or federal law. At least two of the proposed
399 directors who are not also proposed officers must have had at
400 least 1 year of direct experience as an executive officer,
401 regulator, or director of a financial institution within the 5
402 years before the date of the application. However, if the
403 applicant demonstrates that at least one of the proposed
404 directors has very substantial experience as an executive
405 officer, director, or regulator of a financial institution more
406 than 5 years before the date of the application, the office may

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407 modify the requirement and allow the applicant to have only one
 408 director who has direct financial institution experience within
 409 the last 5 years. The proposed president or chief executive
 410 officer must have had at least 1 year of direct experience as an
 411 executive officer, director, or regulator of a financial
 412 institution ~~within the last 5 years.~~

413 Section 13. Present subsections (2), (3), and (4) of
 414 section 658.28, Florida Statutes, are redesignated as
 415 subsections (3), (4), and (5), respectively, and a new
 416 subsection (2) is added to that section, to read:

417 658.28 Acquisition of control of a bank or trust company.—
 418 (2) If a person or a group of persons, directly or
 419 indirectly, acquires a controlling interest in a state bank or
 420 state trust company, as contemplated by this section, through
 421 probate or trust, the person or group of persons shall notify
 422 the office within 90 days after acquiring such an interest. Such
 423 an interest does not give rise to a presumption of control until
 424 the person or group of persons votes the shares or the office
 425 has issued a certificate of approval in response to an
 426 application pursuant to subsection (1).

427 Section 14. Present paragraphs (a), (b), and (c) of
 428 subsection (11) of section 658.2953, Florida Statutes, are
 429 redesignated as paragraphs (b), (c), and (d), respectively, and
 430 a new paragraph (a) is added to that subsection, to read:

431 658.2953 Interstate branching.—
 432 (11) DE NOVO INTERSTATE BRANCHING ~~BY STATE BANKS.~~
 433 (a) As used in this subsection, the term “de novo branch”
 434 means a branch of a bank which is originally established by the
 435 bank as a branch and does not become a branch of such bank as a

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436 result of:
 437 1. The bank’s acquisition of another bank or of a branch of
 438 another bank; or
 439 2. The conversion, merger, or consolidation of any bank or
 440 branch.

441 Section 15. Paragraph (d) of subsection (1) of section
 442 662.1225, Florida Statutes, is amended to read:

443 662.1225 Requirements for a family trust company, licensed
 444 family trust company, or foreign licensed family trust company.—
 445 (1) A family trust company or a licensed family trust
 446 company shall maintain:
 447 (d) A deposit account with:
 448 1. A bank located in the United States and insured by the
 449 Federal Deposit Insurance Corporation; or
 450 2. A credit union located in the United States and insured
 451 by the National Credit Union Administration ~~with a state-~~
 452 ~~chartered or national financial institution that has a principal~~
 453 ~~or branch office in this state.~~

454 Section 16. Subsection (1) of section 662.128, Florida
 455 Statutes, is amended to read:
 456 662.128 Annual renewal.—
 457 (1) ~~Within 45 days after the end of each calendar year,~~ A
 458 family trust company, licensed family trust company, or foreign
 459 licensed family trust company shall file an ~~its~~ annual renewal
 460 application with the office on an annual basis no later than 45
 461 days after the anniversary of the filing of either the initial
 462 application or the prior year’s renewal application.

463 Section 17. Subsection (1) of section 663.07, Florida
 464 Statutes, is amended to read:

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465 663.07 Asset maintenance or capital equivalency.—
 466 (1) Each international bank agency and international branch
 467 shall:
 468 (a) Maintain with one or more banks insured by the Federal
 469 Deposit Insurance Corporation and located within the United
 470 States in this state, in such amounts as the office specifies,
 471 evidence of dollar deposits or investment securities of the type
 472 that may be held by a state bank for its own account pursuant to
 473 s. 658.67. The aggregate amount of dollar deposits and
 474 investment securities for an international bank agency or
 475 international branch shall, at a minimum, equal the greater of:
 476 1. Four million dollars; or
 477 2. Seven percent of the total liabilities of the
 478 international bank agency or international branch excluding
 479 accrued expenses and amounts due and other liabilities to
 480 affiliated branches, offices, agencies, or entities; or
 481 (b) Maintain other appropriate reserves, taking into
 482 consideration the nature of the business being conducted by the
 483 international bank agency or international branch.
 484
 485 The commission shall prescribe, by rule, the deposit,
 486 safekeeping, pledge, withdrawal, recordkeeping, and other
 487 arrangements for funds and securities maintained under this
 488 subsection. The deposits and securities used to satisfy the
 489 capital equivalency requirements of this subsection shall be
 490 held, to the extent feasible, in one or more state or national
 491 banks located in this state or in a federal reserve bank.
 492 Section 18. Present subsections (4), (5), and (6) of
 493 section 663.532, Florida Statutes, are redesignated as

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494 subsections (5), (6), and (7), respectively, a new subsection
 495 (4) is added to that section, and paragraphs (i) and (j) of
 496 subsection (1) of that section are amended, to read:
 497 663.532 Qualification.—
 498 (1) To qualify as a qualified limited service affiliate
 499 under this part, a proposed qualified limited service affiliate
 500 must file a written notice with the office, in the manner and on
 501 a form prescribed by the commission. Such written notice must
 502 include:
 503 (i) A declaration under penalty of perjury signed by the
 504 executive officer, manager, or managing member of the proposed
 505 qualified limited service affiliate that, to the best of his or
 506 her knowledge:
 507 1. No employee, representative, or agent provides, or will
 508 provide, banking services; promotes or sells, or will promote or
 509 sell, investments; or accepts, or will accept, custody of
 510 assets.
 511 2. No employee, representative, or agent acts, or will act,
 512 as a fiduciary in this state, which includes, but is not limited
 513 to, accepting the fiduciary appointment, executing the fiduciary
 514 documents that create the fiduciary relationship, or making
 515 discretionary decisions regarding the investment or distribution
 516 of fiduciary accounts.
 517 3. The jurisdiction of the international trust entity or
 518 its offices, subsidiaries, or any affiliates that are directly
 519 involved in or facilitate the financial services functions,
 520 banking, or fiduciary activities of the international trust
 521 entity is not listed on the Financial Action Task Force's list
 522 of High-Risk Jurisdictions subject to a Call for Action or list

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523 ~~of Jurisdictions under Increased Monitoring Force Public~~
 524 ~~Statement or on its list of jurisdictions with deficiencies in~~
 525 ~~anti money laundering or counterterrorism.~~

526 (j) For each international trust entity that the proposed
 527 qualified limited service affiliate will provide services for in
 528 this state, the following:

- 529 1. The name of the international trust entity;
- 530 2. A list of the current officers and directors of the
 531 international trust entity;
- 532 3. Any country where the international trust entity is
 533 organized or authorized to do business;
- 534 4. The name of the home-country regulator;
- 535 5. Proof that the international trust entity has been
 536 authorized by charter, license, or similar authorization by its
 537 home-country regulator to engage in trust business;
- 538 6. Proof that the international trust entity lawfully
 539 exists and is in good standing under the laws of the
 540 jurisdiction where it is chartered, licensed, or organized;
- 541 7. A statement that the international trust entity is not
 542 in bankruptcy, conservatorship, receivership, liquidation, or in
 543 a similar status under the laws of any country;
- 544 8. Proof that the international trust entity is not
 545 operating under the direct control of the government or the
 546 regulatory or supervisory authority of the jurisdiction of its
 547 incorporation, through government intervention or any other
 548 extraordinary actions, and confirmation that it has not been in
 549 such a status or under such control at any time within the prior
 550 3 years;
- 551 9. Proof and confirmation that the proposed qualified

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552 limited service affiliate is affiliated with the international
 553 trust entities provided in the notice; and

554 10. Proof that the jurisdictions where the international
 555 trust entity or its offices, subsidiaries, or any affiliates
 556 that are directly involved in or that facilitate the financial
 557 services functions, banking, or fiduciary activities of the
 558 international trust entity are not listed on the Financial
 559 Action Task Force's list of High-Risk Jurisdictions subject to a
 560 Call for Action or list of Jurisdictions under Increased
 561 Monitoring Force Public Statement or on its list of
 562 jurisdictions with deficiencies in anti money laundering or
 563 counterterrorism.

564
 565 The proposed qualified limited service affiliate may provide
 566 additional information in the form of exhibits when attempting
 567 to satisfy any of the qualification requirements. All
 568 information that the proposed qualified limited service
 569 affiliate desires to present to support the written notice must
 570 be submitted with the notice.

571 (4) The qualified limited service affiliate shall suspend
 572 the permissible activities provided in s. 663.531 relating to a
 573 specific jurisdiction if the qualified limited service affiliate
 574 becomes aware that the jurisdiction of an international trust
 575 entity served by the qualified limited service affiliate is
 576 included on the Financial Action Task Force's list of High-Risk
 577 Jurisdictions subject to a Call for Action or list of
 578 Jurisdictions under Increased Monitoring. Suspensions under this
 579 subsection must remain in effect until the jurisdiction is
 580 removed from the Financial Action Task Force's list of High Risk

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581 Jurisdictions subject to a Call for Action or list of
582 Jurisdictions under Increased Monitoring.

583 Section 19. Paragraph (a) of subsection (5) of section
584 736.0802, Florida Statutes, is amended to read:

585 736.0802 Duty of loyalty.—

586 (5) (a) An investment by a trustee authorized by lawful
587 authority to engage in trust business, as defined in s.
588 658.12(21) ~~s. 658.12(20)~~, in investment instruments, as defined
589 in s. 660.25(6), that are owned or controlled by the trustee or
590 its affiliate, or from which the trustee or its affiliate
591 receives compensation for providing services in a capacity other
592 than as trustee, is not presumed to be affected by a conflict
593 between personal and fiduciary interests provided the investment
594 otherwise complies with chapters 518 and 660 and the trustee
595 complies with the requirements of this subsection.

596 Section 20. For the purpose of incorporating the amendment
597 made by this act to section 658.20, Florida Statutes, in a
598 references thereto, subsection (1) of section 658.165, Florida
599 Statutes, is reenacted to read:

600 658.165 Banker's banks; formation; applicability of
601 financial institutions codes; exceptions.—

602 (1) If authorized by the office, a corporation may be
603 formed under the laws of this state for the purpose of becoming
604 a banker's bank. An application for authority to organize a
605 banker's bank is subject to ss. 658.19, 658.20, and 658.21,
606 except that s. 658.20(1)(b) and (c) and the minimum stock
607 ownership requirements for the organizing directors provided in
608 s. 658.21(2) do not apply.

609 Section 21. This act shall take effect July 1, 2022.

1/18/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

SB 1680

Bill Number or Topic

Banking and Insurance

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee

Amendment Barcode (if applicable)

Name Commissioner Russ Weigel Phone _____

Address 101 E. Gaines St Email Russell.Weigel@flofr.gov

Street

Tallahassee FL 32399

City

State

Zip

Speaking: For Against Information **OR** Waive Speaking: In Support Against

PLEASE CHECK ONE OF THE FOLLOWING:

I am appearing without compensation or sponsorship.

I am a registered lobbyist, representing:

I am not a lobbyist, but received something of value for my appearance (travel, meals, lodging, etc.), sponsored by:

Office of Financial Regulation

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

From: [Galea, Kathy](#)
To: [Canty, Amaura](#)
Subject: Missed vote
Date: Tuesday, January 18, 2022 4:41:20 PM
Attachments: [image001.png](#)

Please record Sen. Boyd as in the affirmative on the following bills while he was presenting elsewhere.

SB 1292 w/delete all amendment
SB 1680
SB 1402
SB 1430 and amendment 179644
SB 1274
SB 1536

I know this doesn't change the vote count.

Thanks.
Kathy

Kathy Galea
Chief Legislative Assistant
Senator Jim Boyd
Florida Senate
(941)742-6445
(850)487-5021



CourtSmart Tag Report

Room: KB 412
Case No.: -
Caption: Senate Banking and Insurance Committee

Type:
Judge:

Started: 1/18/2022 3:31:04 PM
Ends: 1/18/2022 4:08:17 PM
Length: 00:37:14

3:31:03 PM Meeting called to order, roll call
3:31:26 PM Quorum present
3:31:37 PM Senator Rouson is excused from today's meeting
3:31:51 PM Chair Boyd makes opening comments
3:32:20 PM Tab 1 - SB 1026, Living Organ Donors in Insurance Policies
3:32:27 PM Senator Cruz to explain the bill
3:33:21 PM Barcode 611868 Delete-All Amendment by Senator Cruz
3:34:52 PM Ron Watson, Florida Renal Coalition, waives in support of the amendment
3:35:36 PM Amendment Barcode 611868 is adopted
3:35:57 PM Tasha Carter, Insurance Consumer Adv., Office of Insurance, waives in support
3:36:14 PM E. Ivonne Fernandez, AARP, waives in support
3:36:17 PM Bob Reynolds, Fresenius Medical Care North American, waives in support
3:36:25 PM Ron Watson, Florida Renal Coalition, waives in support
3:36:40 PM Senator Cruz closes on SB 1026
3:37:05 PM Roll call on CS/SB 1026
3:37:12 PM CS/SB 1026 is reported favorably
3:37:41 PM Chair Boyd passes the chair over to Vice Chair Broxson
3:38:19 PM Tab 3 - SB 1292 Fraud Prevention
3:38:29 PM Senator Gruters to explain the bill
3:39:10 PM Barcode 745764 Delete-All-Amendment by Senator Gruters
3:39:51 PM Reggie Garcia, Florida Justice Assoc., waives in support of the amendment
3:40:21 PM Amendment Barcode 745764 is adopted
3:40:31 PM Tasha Carter, Insurance Consumer Adv., Office of Insurance, waives in support
3:40:42 PM E. Ivonne Fernandez, AARP, waives in support
3:40:45 PM Austin Stowers, CFO and State Fire Marshal Jimmy Patronis, waives in support
3:40:47 PM Paul Handerhan, FAPIA, in support of the bill
3:41:01 PM Senator Gruters closes on the bill
3:41:09 PM Roll call CS/SB 1292
3:41:17 PM CS/SB 1292 is reported favorably
3:41:45 PM Tab 7 - SB 1680 Financial Institutions
3:41:48 PM Senator Gruters to explain the bill
3:43:02 PM Senator Rodrigues for a question
3:43:18 PM Senator Gruters responds
3:44:15 PM Follow-up question by Senator Rodrigues
3:44:22 PM Senator Gruters responds
3:44:45 PM Follow-up question by Senator Rodrigues
3:44:49 PM Senator Gruters responds
3:45:00 PM Commissioner Russ Weigel, Office of Financial Regulation, waives in support
3:45:15 PM Senator Gruters closes on SB 1680
3:45:24 PM Roll call on SB 1680
3:45:29 PM SB 1680 is reported favorably
3:45:58 PM Tab 4 - SB 1402 Domestic Surplus Lines Insurance
3:45:59 PM Senator Burgess to explain the bill
3:47:06 PM Question by Senator Taddeo
3:47:19 PM Response by Senator Burgess
3:48:04 PM Follow-up by Senator Taddeo
3:48:07 PM Response by Senator Burgess
3:48:54 PM Follow-up by Senator Taddeo
3:49:03 PM Response by Senator Burgess
3:50:22 PM Question by Senator Broxson
3:50:30 PM Response by Senator Burgess
3:51:15 PM George Feijoo, FCCI, speaking in support of the bill

3:54:57 PM Paul Handerhan, FAIR, waives in support
3:55:04 PM Senator Stewart in debate
3:55:12 PM Senator Burgess waives close
3:55:29 PM Roll call on SB 1402
3:55:34 PM SB 1402 is reported favorably
3:55:58 PM Tab 5 - SB 1430 Insolvent Insurers
3:56:07 PM Senator Burgess to explain the bill
3:57:29 PM 179644 late-filed amendment by Senator Brandes introduced and explained by Senator Brandes
3:58:03 PM Paul Handerhan in support of the amendment
3:58:18 PM Senator Burgess comments on amendment
3:58:26 PM Senator Brandes closes on the amendment
3:58:39 PM Amendment Barcode 179644 is adopted
3:58:50 PM 157610 late-filed amendment by Senator Brandes introduced and explained by Senator Brandes
4:00:48 PM Senator Brandes withdraws Amendment Barcode 157610
4:02:14 PM Robert Reyes, Florida Workers Compensation Guaranty Assoc., waives in support
4:02:15 PM Tim Meenan, Florida Insurance Guaranty Assoc., waives in support
4:02:16 PM Paul Handerhan, FAIR, waives in support
4:02:25 PM Senator Burgess closes on the bill
4:02:35 PM Roll call on CS/SB 1430
4:02:51 PM CS/SB 1430 is reported favorably
4:03:16 PM Tab 2 - SB 1274 Ratification of Rules of the Department of Financial Services
4:03:26 PM Senator Broxson explains the bill
4:04:19 PM Austin Stowers, CFO and State Fire Marshal Jimmy Patronis, waives in support
4:04:35 PM Senator Broxson waives close
4:04:41 PM Roll call on SB 1274
4:04:47 PM SB 1274 is reported favorably
4:05:22 PM Tab 6 - SB 1536 Money Services Businesses
4:05:25 PM Senator Burgess presents for Senator Boyd
4:06:19 PM Amendment Barcode 571054
4:06:29 PM Amendment 571054 is favorable
4:07:13 PM Commissioner Russ Weigel, Office of Financial Regulation, waives in support
4:07:24 PM Senator Burgess waives close
4:07:31 PM Roll call on CS/SB 1536
4:07:43 PM CS/SB 1536 is reported favorably
4:07:56 PM Senator Stewart moves to adjourn