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|---------------|--|---|-----|-------------|-------------------------|----------------|
| Tab 1 | SB 150 by Burgess (CO-INTRODUCERS) Rouson; (Similar to H 01525) Motor Vehicle Insurance | | | | | |
| Tab 2 | SB 664 by Bradley (CO-INTRODUCERS) Berman, Book, Stewart; (Identical to H 00425) Posttraumatic Stress Disorder Workers' Compensation for Law Enforcement, Correctional, and Correctional Probation Officers | | | | | |
| 976104 | A | S | RCS | BI, Bradley | Delete L.156 - 349: | 02/03 03:28 PM |
| Tab 3 | SB 730 by Harrell (CO-INTRODUCERS) Polsky; (Similar to H 00459) Step-therapy Protocols | | | | | |
| Tab 4 | SB 1066 by Burgess (CO-INTRODUCERS) Hooper; (Identical to H 00689) Workers' Compensation Benefits for First Responders | | | | | |
| 815504 | A | S | RCS | BI, Burgess | btw L.26 - 27: | 02/03 03:28 PM |
| Tab 5 | CS/SB 1140 by RI, Perry; (Similar to CS/CS/H 00669) Alarm Systems | | | | | |
| 126314 | A | S | RCS | BI, Perry | Delete L.65: | 02/02 05:50 PM |
| Tab 6 | SB 1190 by Boyd; (Similar to CS/H 00785) Two-way Radio Communication Enhancement Systems | | | | | |
| Tab 7 | SB 1246 by Gruters; (Similar to CS/H 00925) Benchmark Replacements for London Interbank Offered Rate | | | | | |
| 472536 | D | S | WD | BI, Gruters | Delete everything after | 02/01 06:44 PM |
| Tab 8 | SB 1272 by Bradley; (Similar to CS/H 00345) Liens and Bonds | | | | | |
| 953032 | D | S | RCS | BI, Bradley | Delete everything after | 02/03 03:28 PM |
| Tab 9 | SB 1476 by Wright; (Similar to H 00357) Prescription Drug Coverage | | | | | |
| Tab 10 | SB 1728 by Boyd; (Compare to H 01307) Property Insurance | | | | | |
| 486560 | A | S | RCS | BI, Boyd | Delete L.483 - 549: | 02/03 08:12 AM |
| 214450 | A | S | RCS | BI, Boyd | Delete L.846 - 1227. | 02/03 08:12 AM |

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Wednesday, February 2, 2022
TIME: 8:30—10:30 a.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 150 Burgess (Similar H 1525) | Motor Vehicle Insurance; Repealing provisions which comprise the Florida Motor Vehicle No-Fault Law; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; revising minimum coverage requirements for proof of financial responsibility for specified motor vehicles; revising requirements for motor vehicle liability insurance policies relating to coverage, and exclusion from coverage, for certain drivers and vehicles; revising coverages that may provide for a reduction in motor vehicle insurance policy premium charges under certain circumstances, etc. BI 02/02/2022 Favorable JU RC | Favorable Yeas 10 Nays 1 |
| 2 | SB 664 Bradley (Identical H 425) | Posttraumatic Stress Disorder Workers' Compensation for Law Enforcement, Correctional, and Correctional Probation Officers; Defining the term "first responder" for the purposes of including part-time and auxiliary law enforcement officers for workers' compensation benefits for posttraumatic stress disorder and for educational training related to mental health; providing that, under certain circumstances, posttraumatic stress disorder suffered by correctional officers and part-time correctional officers and by correctional probation officers and part-time correctional probation officers, respectively, is an occupational disease compensable by workers' compensation benefits; specifying the evidentiary standard for demonstrating such disorder, etc. BI 02/02/2022 Fav/CS AEG AP | Fav/CS Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, February 2, 2022, 8:30—10:30 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|--|-----------------------------|
| 3 | SB 730 Harrell (Similar H 459) | Step-therapy Protocols; Revising the circumstances under which step-therapy protocols may not be required; requiring health insurers to publish on their websites and provide to their insureds specified information; requiring health maintenance organizations to publish on their websites and provide to their subscribers specified information; providing requirements for procedures for requests and appeals of denials of protocol exemptions, etc. BI 02/02/2022 Favorable HP RC | Favorable Yeas 11 Nays 0 |
| 4 | SB 1066 Burgess (Identical H 689) | Workers' Compensation Benefits for First Responders; Providing that the time for specified notice in certain cases of compensable posttraumatic stress disorder is measured from the time of the qualifying event or the diagnosis of the disorder, rather than the manifestation of the disorder, whichever is later, etc. BI 02/02/2022 Fav/CS CA RC | Fav/CS Yeas 11 Nays 0 |
| 5 | CS/SB 1140 Regulated Industries / Perry (Similar CS/CS/H 669) | Alarm Systems; Authorizing individuals with certain fire alarm certifications to complete a reduced number of training and continuing education hours for the prevention of false alarms; revising the definition of the term "low-voltage alarm system project"; prohibiting a local enforcement agency from requiring plans and specifications as a condition for obtaining a permit for a fire alarm system project; requiring a local enforcement agency to issue certain permits in person or electronically; requiring a local enforcement agency to perform at least one inspection for a fire alarm system project, etc. RI 01/18/2022 Fav/CS BI 02/02/2022 Fav/CS RC | Fav/CS Yeas 11 Nays 0 |
| 6 | SB 1190 Boyd (Similar CS/H 785) | Two-way Radio Communication Enhancement Systems; Authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; specifying that such systems or equivalent systems are not required in certain apartment buildings, etc. CA 01/18/2022 Favorable BI 02/02/2022 Favorable RC | Favorable Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, February 2, 2022, 8:30—10:30 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|---|--|-----------------------------|
| 7 | SB 1246 Gruters (Similar CS/H 925, Compare H 639) | Benchmark Replacements for London Interbank Offered Rate; Requiring that recommended benchmark replacements selected or recommended by specified persons be benchmark replacements on the United States dollar London Interbank Offered Rate (LIBOR) replacement date for certain contracts, securities, and instruments; authorizing specified persons to select benchmark replacements under certain circumstances; requiring that benchmark replacement conforming changes become an integral part of contracts, securities, and instruments under certain circumstances; providing that a person is not liable for damages and is not subject to claims and requests for equitable relief under certain circumstances, etc. BI 02/02/2022 Favorable CM RC | Favorable Yeas 11 Nays 0 |
| 8 | SB 1272 Bradley (Similar CS/H 345, Compare H 1171) | Liens and Bonds; Revising when a notice of claim against a payment bond and a notice of nonpayment must be served; requiring that a copy of a notice of nonpayment be served on the surety; providing for the computation of time when certain time periods fall on specified days or during a declared state of emergency; defining the term "copy of the notice of commencement"; requiring service of documents relating to construction bonds to be made in a specified manner, etc. BI 02/02/2022 Fav/CS JU RC | Fav/CS Yeas 11 Nays 0 |
| 9 | SB 1476 Wright (Similar H 357, Compare S 742) | Prescription Drug Coverage; Authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations, etc. BI 02/02/2022 Favorable AEG AP | Favorable Yeas 11 Nays 0 |

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Wednesday, February 2, 2022, 8:30—10:30 a.m.

| TAB | BILL NO. and INTRODUCER | BILL DESCRIPTION and SENATE COMMITTEE ACTIONS | COMMITTEE ACTION |
|-----|--|---|-------------------------|
| 10 | SB 1728 Boyd (Compare H 1307, CS/S 186) | Property Insurance; Deleting obsolete provisions related to eligibility thresholds for personal lines residential coverage with the Citizens Property Insurance Corporation; providing for a required limited annual rate increase for specified policies; authorizing information from underwriting files and confidential claims files to be released under certain circumstances by the corporation to specified entities that consider writing or underwriting risks insured by the corporation; deleting an obsolete provision related to implementing the clearinghouse program by a specified date; providing that certain provisions relating to homeowners' policies do not prohibit insurers from providing limited coverage on personal lines residential property insurance policies by including roof surface type reimbursement schedules, etc. | Fav/CS Yeas 9 Nays 2 |
| | | BI 02/02/2022 Fav/CS AEG AP | |

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 150

INTRODUCER: Senators Burgess and Rouson

SUBJECT: Motor Vehicle Insurance

DATE: February 2, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|------------------|
| 1. | <u>Knudson</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | _____ | _____ | <u>JU</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 150 repeals the Florida Motor Vehicle No-Fault Law (No-Fault Law), which requires every owner and registrant of a motor vehicle in this state to maintain Personal Injury Protection (PIP) coverage. Beginning July 1, 2023, the bill enacts financial responsibility requirements for liability for motor vehicle ownership or operation, as follows:

- For bodily injury (BI) or death of one person in any one crash, \$25,000, and, subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.
- The existing \$10,000 financial responsibility requirement for property damage (PD) is retained.

The bill increases required coverage amounts for garage liability and commercial motor vehicle insurance. It increases the cash deposit amount required for a certificate of self-insurance establishing financial responsibility for owners and operators of motor vehicles that are not for-hire vehicles.

The bill requires insurers to offer medical payments coverage (MedPay) with limits of \$5,000 or \$10,000 to cover medical expenses of the insured. Insurers may also offer other policy limits that exceed \$5,000. Insurers must offer a zero deductible option for MedPay, and may also offer deductibles of up to \$500. Insurers must reserve \$5,000 of MedPay benefits for 30 days to pay physicians or dentists who provide emergency services and care or who provide hospital inpatient care.

The repeal of the No-Fault Law eliminates the limitations on recovering pain and suffering damages from PIP insureds, which currently require bodily injury that causes death or significant and permanent injury. Under the bill, the legal liability of an uninsured motorist insurer includes damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life.

The bill also requires that each insurance policy issued for the purpose of meeting financial responsibility requirements must include a \$5,000 death benefit.

The bill creates a new framework to govern all claims against motor vehicle insurers for bad faith failure to settle a third-party claim. The bill sets forth best practice claim handling standards that a motor vehicle insurer is subject to upon the earlier of receiving actual notice of an incident or loss that could give rise to a covered liability claim and remains subject to the best practices standards until the claim is resolved. The insurer has a duty to its insured to handle claims in good faith by complying with the best practices standards. Bad faith failure to settle occurs when an insurer fails to meet that duty of good faith, which is a proximate cause of the insurer not settling a third-party claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured's interests. If the insurer meets the best practices standards, the bill provides safe harbors for the purpose of allowing the insurer a reasonable opportunity to investigate and evaluate the claim. This is done by establishing time periods during which an insurer does not commit bad faith by failing to tender policy limits. The safe harbors are available to an insurer that meets the best practices standards and provide that:

- When one claim arises out of a single occurrence, and an insurer initiates settlement negotiations by tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice of the loss, the failure to tender the policy limits sooner does not constitute bad faith.
- When multiple claims arise out of a single occurrence, the combined value of all claims exceeds the total of all applicable policy limits, and an insurer initiates settlement negotiations by globally tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice of the loss, the failure to tender policy limits sooner does not constitute bad faith.
- An insurer is not under any circumstances liable for the failure to accept a settlement offer within 45 days after receiving actual notice of the loss if:
 - The settlement offer provides the insurer fewer than 15 days for acceptance; or
 - The settlement offer provides the insurer fewer than 30 days for acceptance where the offer contains conditions for acceptance other than the insurer's disclosure of its policy limits.

The bill provides that for any award of noneconomic damages, a defendant is entitled to a \$10,000 setoff if a person suffers injury while operating a motor vehicle which was not in compliance with the financial responsibility law for more than 30 days immediately preceding the crash. The setoff on noneconomic damages does not apply if the person who is liable for the injury was driving under the influence; acted intentionally, recklessness, or with gross negligence; fled from the scene of the crash; or was acting in furtherance of a felony offense or in immediate flight from a felony offense. This setoff does not apply to wrongful death claims.

The bill provides that the claimant may file an action to enforce the section and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer if an insurer fails to timely comply with the requirements of s. 627.4137, F.S., which requires liability insurers to provide, within 30 days after receiving a written request from a claimant, a sworn statement setting forth the name of the insurer, name of the insured, limits of liability coverage, a statement of any

policy or coverage defense the insurer currently believes is reasonably available to it, and a copy of the insurance policy.

The effective date of the bill is July 1, 2023.

II. Present Situation:

Motor Vehicle Insurance

The first recorded motor vehicle accident occurred in Ohio City, Ohio, in 1891.¹ Only 6 years later, the first automobile liability insurance policy would be issued by Travelers Insurance Company in Dayton, Ohio, protecting the driver if his vehicle killed or injured someone or damaged their property.² These coverages today are provided through bodily injury liability and property damage liability insurance. In 1925, Connecticut passed the first financial responsibility law requiring owners of automobiles to demonstrate the ability to financially respond when they are at fault for damages caused to other persons and property. As the automobile became a ubiquitous part of American life, more states passed financial responsibility laws. Today, every state has a financial responsibility law regarding owning or operating a motor vehicle.

All states except New Hampshire require the purchase of property damage coverage, which pays for any damage the insured causes to the property of others.³ Every state, except Florida and New Hampshire, requires bodily injury liability coverage (BI), which covers an insured that is at fault in an accident for damages related to the bodily injuries of others negligently caused by the insured.⁴ Bodily injury liability coverage does not provide coverage for an insured's own injuries. The most common minimum mandatory limit of bodily injury coverage – mandated by 34 states – is \$25,000 in coverage for injuries to any one person and \$50,000 in coverage for injuries to multiple persons, subject to the \$25,000 limit for one person. This is often referred to as limits of \$25,000/\$50,000. Of the 48 states that require BI coverage, the lowest mandatory limit is \$15,000/\$30,000. The highest required limit is \$50,000/\$100,000. The following table details the financial responsibility insurance coverage requirements by state:

¹ https://ohiohistorycentral.org/w/World%27s_First_Automobile_Accident

² https://ohiohistorycentral.org/w/World's_First_Automobile_Insurance_Policy?rec=2597.

³ National Association of Insurance Commissioners, Overview – Auto Insurance https://content.naic.org/article/consumer_insight_does_your_vehicle_have_right_protection_best_practices_buying_auto_insurance.htm (last accessed January 26, 2021).

⁴ *See id.*

| FINANCIAL RESPONSIBILITY REQUIREMENTS BY STATE | | | |
|--|---|----|--|
| ST | Minimum Limits (thousands) | ST | Minimum Limits (thousands) |
| AL | BI 25/50 PD 25 | MT | BI 25/50 PD 20 |
| AK | BI 50/100 PD 25 | NE | BI 25/50 PD 25 UM 25/50 |
| AZ | BI 25/50 PD 15 | NV | BI 25/50 PD 20 |
| AR | BI 25/50 PD 25 | NH | Financial Responsibility Only ⁵ |
| CA | BI 15/30 PD 5 | NJ | BI ⁶ 15/30 PD 5 PIP ⁷ 15 |
| CO | BI 25/50 PD15 | NM | BI 25/50 PD 10 |
| CT | BI 25/50 PD 25 UM 25/50 | NY | BI ⁸ 25/50 PD 10 PIP 50 |
| DE | BI 25/50 PD 10 PIP 15/30 | NC | BI 30/60 PD 25 UM 30/60/25 |
| FL | PIP 10 PD 10 | ND | BI 25/50 PD 25 UM 25/50 PIP 30 |
| GA | BI 25/50 PD 25 | OH | BI 25/50 PD 25 |
| HI | BI 20/40 PD 10 PIP 10 | OK | BI 25/50 PD 25 |
| ID | BI 25/50 PD 15 | OR | BI 25/50 PD 20 UM 25/50 PIP 15 |
| IL | BI 25/50 PD 20 UM 25/50 | PA | BI 15/30 PD 5 Med 5 |
| IN | BI 25/50 PD 25 | RI | BI 25/50 PD 25 |
| IA | BI 20/40 PD 15 | SC | BI 25/50 PD 25 UM 25/50/25 |
| KS | BI 25/50 PD 25 PIP ⁹ | SD | BI 25/50 PD 25 UM 25/50 |
| KY | BI 25/50 PD 25 | TN | BI 25/50 PD 15 |
| LA | BI 15/30 PD 25 | TX | BI 30/60 PD 25 |
| ME | BI 50/100 PD 25 Med 2 UM 50/100 | UT | BI 25/65 PD 15 PIP 3 |
| MD | BI 30/60 PD 15 UM 30/60/15 | VT | BI 25/50 PD 10 UM 50/100/10 |
| MA | BI 20/40 PD 5 UM 20/40 PIP 8 | VA | BI 25/50 PD 20 UM 25/50/20 |
| MI | BI 20/40 PD 10 PIP ¹⁰ PPI 1000 | WA | BI 25/50 PD 10 |
| MN | BI 30/60 PD 10 PIP 40 UM 25/50 | WV | BI 25/50 PD 25 UM 25/50/25 |
| MS | BI 25/50 PD 25 | WI | BI 25/50 PD 10 UM 25/50 |
| MO | BI 25/50 PD 20 UM 25/50 | WY | BI 25/50 PD 20 |

⁵ New Hampshire does not require the purchase of insurance to meet the state's financial responsibility law, but drivers that purchase insurance must do so at minimum limits of \$25,000/\$50,000 for BI, \$25,000 for PD, and \$1,000 for medical payments coverage.

⁶ New Jersey allows drivers to purchase a "basic policy" that only includes \$5,000 of PD, \$15,000 of PIP, and an optional \$10,000 for BI.

⁷ The New Jersey PIP benefit provides \$250,000 in benefits for specified severe injuries.

https://www.state.nj.us/dobi/division_consumers/insurance/basicpolicy.shtml (last accessed Jan. 31, 2022).

⁸ New York requires that BI limits be at least \$50,000/\$100,000 for death. <https://dmv.ny.gov/insurance/insurance-requirements> (last accessed January 31, 2022).

⁹ Kansas PIP coverage must provide \$4,500 per person for medical expenses, \$900 per month for 1 year for disability or loss of income, \$25 per day for in-home services, \$2,000 for funeral expenses, \$4,500 for rehabilitation expenses, survivor benefits for loss of income up to \$900 per month for 1 year.

¹⁰ Michigan changed its mandatory PIP medical coverage effective July 1, 2020. Previously, Michigan required PIP coverage with no maximum limit. Now, Michigan requires the purchase of PIP coverage with a coverage limit of at least \$250,000. However, Medicaid enrollees may purchase only \$50,000 in PIP coverage if other household members have an auto insurance policy or health insurance covering accidents. A Medicare enrollee (parts A and B) may opt-out of PIP if their household members have an auto insurance policy or health insurance covering auto accidents.

https://www.michigan.gov/documents/autoinsurance/MI_New_Auto_Ins_Law_678454_7.pdf (last accessed Jan. 31, 2022).

Florida's Financial Responsibility Law

Florida's financial responsibility law exists to ensure that the privilege of owning or operating a motor vehicle on the public streets and highways is exercised with due consideration for others and their property, to promote safety, and to provide financial security requirements for the owners or operators of motor vehicles who are responsible to recompense others for injury to person or property caused by a motor vehicle.¹¹ The financial responsibility law requires drivers of motor vehicles with 4 or more wheels to purchase both personal injury protection (PIP) and property damage liability (PD) insurance.¹² Florida law does not require insurance coverage for motorcycles; however, if a motorcyclist is involved in an accident, that person's license and registration are subject to suspension if insurance was not purchased.

A driver in compliance with the requirement to carry PIP coverage is not required to maintain bodily injury liability coverage, except that Florida law requires proof of ability to pay monetary damages for bodily injury and property damage liability arising out of a motor vehicle accident or serious traffic violation.¹³ The owner and operator of a motor vehicle need not demonstrate financial responsibility, i.e., obtain BI and PD coverages, until *after the accident*.¹⁴ At that time, a driver's financial responsibility is proved by the furnishing of an active motor vehicle liability policy. The minimum amounts of liability coverages required are \$10,000 in the event of bodily injury to, or death of, one person, \$20,000 in the event of injury to, or death of, two or more persons, and \$10,000 in the event of damage to property of others, or \$30,000 combined BI/PD policy.¹⁵ The driver's license and registration of the driver who fails to comply with the security requirement to maintain PIP and PD insurance coverage is subject to suspension.¹⁶ A driver's license and registration may be reinstated by obtaining a liability policy and by paying a fee to the Department of Highway Safety and Motor Vehicles.¹⁷

Personal injury protection (PIP) insurance compensates insureds injured in accidents regardless of fault.¹⁸ Policyholders are indemnified by their own insurer. The intent of no-fault insurance is to provide prompt medical treatment without regard to fault.¹⁹ This coverage also provides policyholders with immunity from liability for economic damages up to the policy limits and limits tort suits for non-economic damages (pain and suffering) below a specified injury threshold.²⁰ In contrast, under a tort liability system, the negligent party is responsible for damages caused and an accident victim can sue the at-fault driver to recover economic and non-economic damages. The concept of PIP insurance was developed during the 1960's in response to concerns that began to be voiced regarding some of the perceived shortcomings of the tort system, in particular its ability to handle automobile accident claims in an accurate and

¹¹ Section 324.011, F.S.

¹² See ss. 324.022, F.S. and 627.733, F.S.

¹³ See ch. 324, F.S.

¹⁴ Section 324.011, F.S.

¹⁵ Section 324.022, F.S.

¹⁶ Section 324.0221(2), F.S.

¹⁷ Section 324.0221(3), F.S.

¹⁸ Section 627.733, F.S.

¹⁹ See s. 627.731, F.S.

²⁰ Section 627.737, F.S.

expeditious fashion.²¹ The proposed solution was the “no-fault” system in which each driver insures him or herself for bodily injuries caused by an auto accident, and to the extent of that first-party coverage, tort claims based on fault would be abandoned. Florida is one of 12 no-fault states that requires PIP coverage as part of its financial responsibility law, but the only one of those states that does not also require BI coverage.²²

In Florida, personal injury protection must provide a minimum benefit of \$10,000 for bodily injury to any one person who sustains an emergency medical condition, which is reduced to a \$2,500 limit for medical benefits if a treating medical provider does not determine an emergency medical condition existed.²³ PIP coverage provides reimbursement for 80 percent of reasonable medical expenses,²⁴ 60 percent of loss of income,²⁵ and 100 percent of replacement services,²⁶ for bodily injury sustained in a motor vehicle accident, without regard to fault. A \$5,000 death benefit is also provided.²⁷ The property damage liability coverage must provide a \$10,000 minimum benefit.

PIP Medical Benefits

The 2012 Legislature revised the provision of PIP medical benefits under the No-Fault Law, effective January 1, 2013.²⁸ To receive PIP medical benefits, insureds must receive initial services and care within 14 days after the motor vehicle accident.²⁹ Initial services and care are only reimbursable if lawfully provided, supervised, ordered or prescribed by a licensed physician, licensed osteopathic physician, licensed chiropractic physician, licensed dentist, or if rendered in a hospital or in a facility that owns or is owned by a hospital, or if provided by a licensed emergency transportation and treatment provider.³⁰ Follow-up services and care require a referral from such providers and must be consistent with the underlying medical diagnosis rendered when the individual received initial services and care.³¹

PIP medical benefits have two different coverage limits, based upon the severity of the medical condition of the individual. An insured may receive up to \$10,000 in medical benefits for services and care if a physician, osteopathic physician, dentist, physician’s assistant or advanced registered nurse practitioner has determined that the injured person had an emergency medical condition.³² An emergency medical condition is defined as a medical condition manifesting itself by acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to patient health, serious impairment to

²¹ Florida Senate Banking and Insurance Committee, Florida’s Motor Vehicle No-Fault Law, pg. 6, Report No. 2006-102 (Nov. 2005).

²² Insurance Information Institute, Background on: No-Fault Auto Insurance. <https://www.iii.org/article/background-on-no-fault-auto-insurance> (last accessed January 31, 2022).

²³ Section 627.736(1), F.S.

²⁴ Section 627.736(1)(a), F.S.

²⁵ Section 627.736(1)(b), F.S.

²⁶ *Id.*

²⁷ Section 627.736(1)(c), F.S.

²⁸ Chapter 2012-197, L.O.F. (CS/CS/HB 119).

²⁹ Section 627.736(1)(a), F.S.

³⁰ Section 627.736(1)(a)1., F.S.

³¹ Section 627.736(1)(a)2., F.S.

³² Section 627.736(1)(a)3., F.S.

bodily functions, or serious dysfunction of a body organ or part.³³ If a provider who rendered treatment or services does not determine that the insured had an emergency medical condition, the PIP medical benefit limit is \$2,500.³⁴ Massage and acupuncture are not reimbursable, regardless of the type of provider rendering such services.³⁵

The \$5,000 PIP death benefit is provided in addition to medical and disability benefits, effective January 1, 2013. Previously, the death benefit was the lesser of the unused PIP benefits, up to a limit of \$5,000.

Tort-Based Motor Vehicle Insurance Jurisdictions

In a tort-based liability system, auto injury claimants seek payment from the at-fault driver for both economic and non-economic damages, regardless of the dollar amount or severity of the injuries. A tort-based system represents a more traditional legal philosophy of holding persons responsible for injuries caused by their negligent operation of a vehicle. In theory, this encourages safer operation of automobiles and is generally viewed by the public as consistent with the concept of personal responsibility.

Bad Faith

Common Law and Statutory Bad Faith

Bad faith law was designed to protect insureds who have paid their premiums and who have fulfilled their contractual obligations by cooperating fully with their insurer in the resolution of claims. Bad faith jurisprudence holds insurers accountable for failing to fulfill their obligations.³⁶ There are two distinct but very similar types of bad faith causes of action that may be initiated against an insurer: first-party and third-party.

Florida courts have recognized common law third-party bad faith causes of action since 1938.³⁷ A third-party bad faith cause of action arises when an insurer fails in good faith to settle a third party's claim against the insured within policy limits and exposes the insured to liability in excess of his or her insurance coverage.³⁸ Third-party bad faith causes of actions arose in response to the argument that there was a practice in the insurance industry of rejecting without sufficient investigation or consideration claims presented by third parties against an insured, thereby exposing the insured individual to judgments exceeding the coverage limits of the policy while the insurer remained protected by a policy limit.³⁹ With no actionable remedy, insureds in this state and elsewhere were left personally responsible for the excess judgment amount.⁴⁰ Florida courts recognized common law third-party bad faith causes of action in part because the

³³ Section 627.732(16), F.S.

³⁴ Section 627.736(1)(a)4., F.S.

³⁵ Section 627.736(1)(a)5., F.S.

³⁶ *Harvey v. GEICO General Insurance Company*, 251 So.3d 1, 6, (Fla. 2018)(quoting *Berges v. Infinity Insurance Company*, 896 So.2d 665 at 682).

³⁷ *Auto Mut. Indem. Co. v. Shaw*, 184, So. 852 (Fla. 1938).

³⁸ *Opperman v. Nationwide Mutual Fire Insurance Company*, 515 So.2d 263, 265 (Fla. 5th DCA 1987).

³⁹ *Allstate Indem. Co. v. Ruiz*, 899 So.2d 1121, 1125 (Fla. 2005).

⁴⁰ *Id.*

insurers had the power and authority to litigate or settle any claim, and thus owed the insured a corresponding duty of good faith and fair dealing in handling these third-party claims.⁴¹

In contrast to common law third-party bad faith causes of action, Florida courts do not recognize a common law first-party bad faith cause of action by the insured against its own insurer.⁴² If an insurer acts in bad faith in settling a claim filed by its insured, the only common law remedy available to the insured is a breach of contract action against its own insurer with recoverable damages limited to those contemplated by the parties to the policy.⁴³

The 1982 Legislature's enactment of s. 624.155, F.S., created a statutory first-party bad faith cause of action,⁴⁴ codified Florida Supreme Court precedent authorizing a common-law third-party bad faith cause of action,⁴⁵ and eliminated the distinction between statutory first- and third-party bad faith causes of action.⁴⁶

Section 624.155, F.S., provides that any party may bring a bad faith action against an insurer, and defines bad faith on the part of the insurer as:

- Not attempting in good faith to settle claims when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured with due regard for her or his interests;
- Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made; or
- Except as to liability coverages, failing to promptly settle claims, when the obligation to settle the claim has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage.⁴⁷

Civil Remedy Notice

As a condition precedent to bringing a bad faith action under s. 624.155, F.S., the insured must have provided the insurer and the Department of Financial Services at least 60 days written notice of the alleged violation.⁴⁸ The notice must specify the following information:

- The statutory provision, including the specific language of the statute, which the authorized insurer allegedly violated;
- The facts and circumstance giving rise to the violation;
- The name of any individual involved in the violation;
- A reference to specific policy language that is relevant to the violation, if any. If the person bringing the civil action is a third-party claimant, she or he shall not be required to reference

⁴¹ *Id.*

⁴² *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So.2d 55, 58-59 (Fla. 1995).

⁴³ *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, 753 So.2d 1278, 1281 (Fla. 2000).

⁴⁴ Chapter 82-243, s. 9, L.O.F.

⁴⁵ *Macola v. Government Employees Ins. Co.*, 953 So.2d 451, 456 (Fla. 2006). *See also State Farm Fire & Cas. Co. v. Zebrowski*, 706 So.2d 275, 277 (Fla. 1997).

⁴⁶ *Id.*

⁴⁷ Section 624.155(1)(b)(1)-(3), F.S.

⁴⁸ Section 624.155(3), F.S.

the specific policy language if the authorized insurer has not provided a copy of the policy to the third party claimant pursuant to written request; and

- A statement that the notice is given in order to perfect the right to pursue the civil remedy authorized under s. 624.155, F.S.⁴⁹

The 60-day window contemplated under s. 624.155, F.S., provides insurers with a final opportunity to comply with their claim-handling obligations when a good-faith decision by the insurer would indicate that contractual benefits are owed.⁵⁰ If the insurer in turn fails to respond to a civil remedy notice within the 60-day window, there is presumption of bad faith sufficient to shift the burden to the insurer to show why it did not respond.⁵¹

In *Talat Enterprises, Inc. v. Aetna Cas. and Sur. Co.*, the Florida Supreme Court addressed the question of whether an insurer that paid all contractual damages within the 60-day window, but none of the extra-contractual damages, satisfied the requirement for payment of damages under s. 624.155(3)(c), F.S., thereby precluding the claimant's bad faith action. The Florida Supreme Court answered in the affirmative, explaining:

Section 624.155 does not impose on an insurer the obligation to pay whatever the insured demands. The 60-day window is designed to be a cure period that will encourage payment of the underlying claim, and avoid unnecessary bad faith litigation. Surely an insurer need not immediately pay 100 percent of the damages claimed to flow from bad faith conduct in order to avoid the chance that the insured will succeed on a bad faith cause of action. If the insurer may avoid a bad faith action only by paying in advance every penny of the damages that it faces if it loses at trial, the insurer would have no reason to pay.⁵²

Legal Standard of Proof

Each bad faith case is determined on its own facts and ordinarily the question of failure to act in good faith with due regard for the interests of the insured is for the jury.⁵³ In Florida, the question of whether an insurer has acted in bad faith in handling claims against the insured is determined under a "totality of the circumstances" standard.⁵⁴ In *Harvey v. Geico General Insurance Company*, the Florida Supreme Court explained that the critical inquiry in a bad faith case is whether "the insurer diligently, and with the same haste and precision as if it were in the insured's shoes, worked on the insured's behalf to avoid an excess judgment."⁵⁵ The claimant bringing the bad faith action has the burden of proving the insurer acted in bad faith by a preponderance of the evidence.⁵⁶

⁴⁹ Section 624.155(3)(b)(1)-(5), F.S.

⁵⁰ See *Talat Enterprises, Inc.*, 753 So.2d at 1284.

⁵¹ *Fridman v. Safeco Ins. Co. of Illinois*, 185 So.3d 1214, 1220, (Fla. 2016); *Imhof v. Nationwide Mut. Ins. Co.*, 643 So.2d 617, 619 (Fla 1994).

⁵² See *Talat Enterprises, Inc.*, 753 So.2d at 1282. (quoting *Talat Enterprises, Inc. v. Aetna Cas. & Sur. Co.*, 952 F.Supp. 773, 778 (M.D.Fla.1996)).

⁵³ *Boston Old Colony Insurance Company v. Gutierrez*, 386 So.2d 783, 785 (Fla. 1980).

⁵⁴ *Berges v. Infinity Insurance Company*, 896 So.2d 665, 680 (Fla. 2005).

⁵⁵ See *Harvey*, 259 So.3d at 7.

⁵⁶ *Cadle v. GEICO General Insurance Company*, 838 F.3d 1113, 1119 (11th Cir. 2016).

The Florida Supreme Court in *Boston Old Colony Ins. v. Gutierrez* explained why insurers have a duty of good faith to their insured:

An insurer, in handling the defense of claims against its insured, has a duty to use the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business. For when the insured has surrendered to the insurer all control over the handling of the claim, including all decisions with regard to litigation and settlement, then the insurer must assume a duty to exercise such control and make such decisions in good faith and with due regard for the interests of the insured.⁵⁷ (citations omitted)

The court further explained what constitutes good faith claims handling:

This good faith duty obligates the insurer to advise the insured of settlement opportunities, to advise as to the probable outcome of the litigation, to warn of the possibility of an excess judgment, and to advise the insured of any steps he might take to avoid same. The insurer must investigate the facts, give fair consideration to a settlement offer that is not unreasonable under the facts, and settle, if possible, where a reasonably prudent person, faced with the prospect of paying the total recovery, would do so. (citations omitted)

III. Effect of Proposed Changes:

Repeal of the Florida Motor Vehicle No-Fault Law

Section 1 repeals ss. 627.730-627.7405, F.S., which constitute the Florida Motor Vehicle No-Fault Law.

The most significant provisions repealed are s. 627.733, F.S., which contains the requirement to maintain PIP coverage, s. 627.736, F.S., which sets forth the benefits that PIP coverage must provide, and the tort exemption in s. 627.737, F.S., which prohibits tort actions to recover pain and suffering damages from PIP insureds unless death or significant and permanent injury causes such damages, and coverage for disability and death benefits under PIP.

Section 2 repeals s. 627.7407, F.S., which provided for how the Florida Motor Vehicle No-Fault Law was to be applied after being reinstated by ch. 2007-324, Laws of Florida.

Mandatory Bodily Injury Liability Coverage Requirements

Chapter 324, F.S., requires the owners and operators of motor vehicles to demonstrate the ability to respond to damages for liability because of crashes arising out of the use of a motor vehicle.⁵⁸ This requirement is usually met through the purchase of motor vehicle insurance.

⁵⁷ *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980).

⁵⁸ Owners and operators of motor vehicles may satisfy financial responsibility requirements by alternate means, such as depositing security with the Department of Highway Safety and Motor Vehicles pursuant to s. 324.161, F.S., or qualifying as a self-insurer pursuant to s. 324.171, F.S.

Sections 13 and 14 amend ss. 324.021 and 324.022, F.S., respectively, to require beginning July 1, 2023, that every owner or operator of a motor vehicle that is registered in this state maintains the ability to respond to damages for liability that results from accidents arising out of the ownership, maintenance, or use of a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle as follows:

- For BI or death of one person in any one crash, \$25,000.
- Subject to that limit for one person, \$50,000 for BI or death of two or more people in any one crash.

The bill retains current law that requires drivers to maintain the ability to respond to damages of \$10,000 for damage to, or the destruction of, other's property in a crash.

An owner or operator may meet the financial responsibility requirement by obtaining motor vehicle insurance that provides BI and PD coverage in at least the minimum amounts required to meet responsibility, or through insurance that provides BI and PD with a combined single coverage limit that equals the BI requirement for more than one person plus the PD requirement. Beginning July 1, 2023, the minimum combined single limit will be \$60,000. An owner or operator may also meet financial responsibility requirements through alternate methods authorized under s. 324.031, F.S., such as furnishing a certificate of self-insurance under s. 324.161, F.S., or s. 324.171, F.S.

Other vehicle types are excluded from the definition of a motor vehicle in s. 324.031(2)(a), F.S., and instead are subject to financial responsibility requirements of different sections of statute:

- Commercial motor vehicles are subject to s. 324.031, F.S., and s. 627.7415, F.S.
- For-hire passenger transportation vehicles are subject to s. 324.032, F.S.
- School buses are subject to s. 316.615, F.S.
- Nonpublic sector buses are subject to s. 324.031, F.S., and s. 627.742, F.S.

Motorcycles are not required to meet the foregoing requirements established by the bill, as the bill retains current law in s. 324.022, F.S., which defines motor vehicles for purposes of that section as self-propelled vehicles with four or more wheels. However, as under current law, if a motorcycle is involved in a crash and caused bodily injury to another, the license of the operator and registration of the motorcycle is subject to suspension under s. 324.051, F.S., if the operator or owner did not have a motor vehicle liability policy in effect at the time of the crash.

Required Provisions in Motor Vehicle Liability Policies

Section 23 amends s. 324.151, F.S., which requires motor vehicle liability insurance policies that serve as proof of financial responsibility under s. 324.031(a), F.S. The bill requires policies issued to the owner of a motor vehicle that is required to be registered in this state to insure all named insureds, except for a named driver excluded pursuant to new s. 727.747, F.S., discussed below; and to also insure:

- Any resident relative⁵⁹ of a named insured, and

⁵⁹ Defined in this section to mean "a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily lives elsewhere."

- Any operator using the vehicle with the permission of the owner of the vehicle insured by the policy from liability resulting from the use of the motor vehicle referenced in the policy.

The bill authorizes an insurer to include provisions in its policy excluding coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle,⁶⁰ does not qualify as a temporary substitute vehicle,⁶¹ and was owned by the insured or furnished for an insured's regular use for more than 30 consecutive days before an event giving rise to a claim.

A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must insure the named insureds against liability for damages arising out of the use of any motor vehicle not owned by the named insureds.

All motor vehicle liability policies providing coverage for accidents occurring within the United States or Canada must provide liability coverage having the minimum limits of \$25,000 for BI or death of one person in any one crash, \$50,000 for BI or death of two or more people in any one crash, and \$10,000 for PD.

Section 47 amends s. 627.7275, F.S., to require all motor vehicle insurance policies delivered or issued in Florida for a motor vehicle registered or principally garaged in this state to include the minimum limits of BI liability coverage and PD liability coverage as required by s. 324.022, F.S., and the death benefit coverage required under s. 627.72761, F.S.

Motor vehicle insurance under policies made available to applicants seeking reinstatement of the applicant's driving privileges after such privileges were revoked or suspended for driving under the influence must provide coverage of at least the minimum limits of BI and PD liability coverage under s. 324.021(7), F.S.,⁶² or s. 324.023, F.S.⁶³ These sections require drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Meeting Financial Responsibility through a Certificate of Self-Insurance

Section 18 amends s. 324.031, F.S., which allows owners and operators of motor vehicles that are not for-hire vehicles to prove financial responsibility by providing evidence of holding a motor vehicle liability policy covering the motor vehicle being operated. Two alternatives are also available under the statute. Such persons may prove financial responsibility by furnishing a certificate of self-insurance that shows a deposit of cash with a financial institution, or furnishing a certificate of self-insurance issued by the DHSMV based on demonstrating sufficient net unencumbered worth.

⁶⁰ Defined in this section to mean "a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident."

⁶¹ Defined in this section to mean "any motor vehicle, as defined in s. 320.01(1), F.S., which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction."

⁶² \$25,000/\$50,000 for BI or death and \$10,000 for PD.

⁶³ \$100,000/\$300,000 for BI or death and \$50,000 for PD.

Under the bill, a person furnishing a certificate of self-insurance showing a deposit of cash must, beginning July 1, 2023, furnish a certificate of deposit equal to the number of vehicles owned times \$60,000, to a maximum of \$240,000. Current law requires a deposit equal to the number of vehicles times \$30,000, to a maximum of \$120,000. All persons using this method must maintain insurance coverage having limits of at least \$125,000/\$250,000/\$50,000 BI/PD or a \$300,000 BI/PD combined single limit. Under current law, this coverage must be maintained as an excess coverage in excess of \$10,000/\$20,000/\$10,000 BI/PD or \$30,000 combined single limits.

Under **Section 24** of the bill amending s. 324.161, F.S., the proof of a certificate of deposit must be provided annually, and must be from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.

The second alternative method is obtaining a certificate of self-insurance issued by the DHSMV. **Section 25** amends s. 324.171, F.S., effective July 1, 2023, to provide that a certificate of self-insurance from the DHSMV issued pursuant to this section may be obtained by a private individual with private passenger vehicles by demonstrating sufficient net unencumbered worth of at least \$100,000. Current law requires a net unencumbered worth of at least \$40,000. A person, other than a natural person, may obtain a certificate of self-insurance from the DHSMV by possessing a net unencumbered worth of at least \$100,000 for the first motor vehicle and \$50,000 for each additional vehicle. Current law requires a net unencumbered worth of \$40,000 for the first motor vehicle and \$20,000 for each additional motor vehicle. The bill retains current law that authorizes the DHSMV to promulgate by rule an alternative net worth requirement for persons other than natural persons.

Garage Liability Insurance Requirement

Section 8 amends s. 320.27, F.S., which requires the licensure of motor vehicle dealers. The bill defines “garage liability insurance” to mean, beginning July 1, 2023, combined single-limit liability coverage, including PD and BI liability coverage, of at least \$60,000.

Current law only requires at least \$25,000 in such coverage and requires \$10,000 of PIP coverage.

Section 9 amends s. 320.771, F.S., and applies the garage liability insurance requirement of s. 320.27, F.S., to recreational vehicle dealers.

Financial Responsibility Requirement for For-Hire Vehicles

Section 18 amends s. 324.032, F.S., which provides the financial responsibility requirements for for-hire passenger vehicles. The bill retains current law requiring the owner or lessee to meet the financial responsibility requirement and retains the minimum limits of coverage, which are \$125,000/\$250,000 of BI and \$50,000 of PD. The bill amends current law by specifying the coverage must be purchased by an insurer that is a member of the Florida Insurance Guaranty Association.

Commercial Motor Vehicle Coverage Requirements

Section 52 amends s. 627.7415, F.S., to increase the minimum levels of combined BI liability and PD liability coverage that commercial motor vehicles must have.

Beginning July 1, 2023, a commercial motor vehicle that weighs 26,000 pounds or more but less than 35,000 pounds must have coverage of no less than \$60,000. Current law requires \$50,000 of coverage.

A commercial motor vehicle that weighs 35,000 pounds or more but less than 44,000 pounds must have coverage of no less than \$120,000 per occurrence beginning January 1, 2022. Current law requires \$100,000 of coverage.

The bill retains current law that a commercial motor vehicle weighing 44,000 pounds or more must have coverage of no less than \$300,000 per occurrence.

Medical Payments Coverage Benefits

Section 45 creates s. 627.7265, F.S., which requires insurers to offer medical payments coverage having limits of \$5,000 and \$10,000 before issuing a motor vehicle liability insurance policy used to meet the financial responsibility requirements of s. 324.031, F.S. Medical payments coverage must be offered with no deductible, but insurers may also offer such coverage with a deductible of up to \$500. Insurers may also offer medical payments coverage with any policy limit greater than \$5,000.

Medical payments coverage must provide coverage of at least \$5,000 for medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. Medical payments coverage protects the named insured, resident relatives, all passengers and operators of the insured vehicle, and all persons struck by the motor vehicle while not occupying a self-propelled motor vehicle.

Upon receiving notice of an accident potentially covered by medical payments coverage benefits, the insurer must reserve \$5,000 for payment to licensed physicians and licensed dentists who provide emergency services and care or who provide hospital indigent care. The reserve amount may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice may be used by the insurer to pay other claims.

An insurer providing medical payments coverage benefits may not:

- Seek a lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached; or
- Bring a cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when benefits are paid by reason of fraud by such person.

The bill authorizes an insurer providing medical payments coverage to include provisions in its policy allowing for subrogation⁶⁴ for payment of medical payments coverage benefits if the payments resulted from the wrongful act or omission of another who is not also insured under the

⁶⁴ Subrogation is the principle establishing that when an insurance company pays an insured's claim of loss caused by a third party's negligence, the insurance company stands in the place of the insured with respect to the insured's right to sue the negligent third party for damages.

policy paying the benefits. However, the bill makes this subrogation right inferior to the rights of the injured insured and available only after all of the insured's damages are recovered and the insured is made whole.⁶⁵

Under the bill, if an insured obtains a recovery from a third party of the full amount of the damages the insured has sustained, and delivers a release or satisfaction that impairs an insurer's subrogation right, the insured is liable to the insurer for repayment of the medical payments benefits, less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs. The insured is also required to hold that net recovery in trust to be delivered to the medical payments insurer. The bill prohibits an insurer from including any provision in its policy allowing for subrogation for any death benefit paid.

Clinic Licensure and Reimbursement under Medical Payments Coverage

Section 27 amends s. 400.9905, F.S., to provide that an entity is deemed a "clinic" and must be licensed in order to receive medical payments coverage reimbursement under s. 627.7265, F.S., unless the entity is:

- Wholly owned by a licensed physician, a licensed dentist, or a licensed chiropractic physician; or by the physician, dentist, or chiropractic physician and the spouse, parent, child, or sibling of the physician, dentist, or chiropractic physician;
- A licensed hospital or ambulatory surgical center;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a licensed hospital or hospitals;
- A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;
- A clinic certified under federal law to provide outpatient physical therapy and speech pathology services; or
- Owned by a publicly traded corporation which has \$250 million or more in total annual sales of health care services provided by licensed health care practitioners, if one or more of the persons responsible for operations of the entity are licensed health care practitioners in this state and are responsible for supervising the business and the entity's compliance with state law.

The above language is currently in s. 627.736(5)(h), F.S., and requires clinic licensure to receive reimbursement under PIP. The bill moves the requirement to this section, requires clinic licensure to receive reimbursement under medical payments coverage, and retains the exemptions from the definition of clinic detailed above.

⁶⁵ This appears to be a codification of the "made whole" doctrine acknowledged by the Florida Supreme Court in *Insurance Co. of North America v. Lexow*, 602 So.2d 528 (Fla. 1992). See also *Magsipock v. Larsen*, 639 So.2d 1038 (Fla. App. 1994). Generally, the principle is that an insurer does not have a common law right to subrogation, or reimbursement, against a third party causing the damages sustained by the insured unless the insured has been compensated for all of the insured's damages and been "made whole." However, the made whole doctrine may be overridden by contractual agreement under current case law. See *Florida Farm Bureau Ins. Co. v. Martin*, 377 So.2d 827 (Fla. 1979) and *Blue Cross & Blue Shield of Fla. v. Matthews*, 498 So.2d 421, 422 (Fla 1986).

This section of the bill also revises the definition of a “clinic” contained in s. 400.9905, F.S., of the Health Care Clinic Act, to replace references to PIP coverage and the Florida Motor Vehicle No-Fault Law with references to medical payments coverage.

Death Benefit Coverage

Section 48 creates s. 627.72761, F.S., to require that each insurance policy complying with the financial responsibility requirements of s. 324.022, F.S., (requiring \$25,000/\$50,000 in BI coverage and \$10,000 in PD coverage) must provide a death benefit of \$5,000 for each deceased person. The benefit applies to the death of the named insured, resident relatives, passengers in the motor vehicle, and others struck by the vehicle while not occupying a self-propelled motor vehicle. The bill specifies the persons to whom the insurer may pay such benefits. The benefit is unavailable if the deceased died as a result of causing injury or death to himself or herself, or death occurred while committing a felony.

Uninsured and Underinsured Motor Vehicle Insurance Coverage

Section 46 amends s. 627.727, F.S., which governs uninsured motor vehicle insurance coverage. Uninsured motorist coverage provides the policyholder with benefits if the at-fault driver does not have sufficient bodily injury coverage to make the insured whole for damages related injuries caused by the at-fault driver. Under the bill, the legal liability of an insurer providing uninsured motorist coverage *includes* damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of past and future capacity for the enjoyment of life. Under current law, an uninsured motorist insurer is not liable for such damages unless the injury or disease is sufficiently severe under s. 627.737(2)(a)-(d), F.S., of the No-Fault Law.

Under the No-Fault Law, a person cannot recover “pain and suffering” damages in tort from the at-fault driver’s bodily injury coverage unless the person’s injuries exceed a certain severity threshold,⁶⁶ in s. 627.737(2), F.S., commonly referred to as the “verbal threshold.” Personal injury protection is considered a no-fault coverage because the injured person trades a limitation on the ability to recover pain and suffering damages for the ability to get PIP benefits even if the injured person is at fault in the accident. The bill repeals the “verbal threshold” provisions contained in the No-Fault Law in s. 627.737, F.S., thus necessitating a revision to s. 627.727(7), F.S.

Bad Faith Actions - Civil Remedy in Section 624.155, F.S.

Section 34 amends subsections (1) and (8) of s. 624.155, F.S. Section 624.155, F.S., authorizes any person to bring a civil action against an insurer when damaged by an insurer through specified bad faith acts or statutory violations. The bill specifies that the cause of action under s. 624.155, F.S., for an insurer’s bad faith failure to settle a claim is not available with regard to an action for bad faith failure to settle a third-party claim. Section 624.156, F.S., is created in Section 35 of the bill and applies to all bad faith failure to settle a third-party claim actions related to a motor vehicle insurance policy. The bill also clarifies the prohibition in subsection

⁶⁶ The injury or disease must consist in whole or in part of significant and permanent loss of an important bodily function; permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement; significant and permanent scarring or disfigurement; or death. See s. 627.737(2), F.S.

(8) against a person obtaining judgments under multiple bad faith remedies, whether under statute or common law.

Actions Against a Motor Vehicle Insurer for Bad Faith Failure to Settle a Third-Party Claim

Section 35 creates s. 624.156, F.S., the provisions of which apply to all third-party actions for bad faith failure to settle against motor vehicle insurers.

Scope - Subsection (1) specifies that s. 624.156, F.S., applies in all actions against any insurer for bad faith failure to settle a third-party claim that arise out of a motor vehicle accident.

Accordingly, it revises the common law cause of action for third-party bad faith failure to settle and does not allow bringing such actions outside the provisions of this section. Nor may a third-party action for bad faith failure to settle be brought under s. 624.155, F.S., pursuant to the bill's revision to s. 624.155(1), F.S.

Defining the Duty of Good Faith – Subsection (2) provides that in handling claims, an insurer has a duty to its insured to handle claims in good faith by complying with the best practice standards of subsection (4). The bill specifies that an insurer's negligence does not constitute bad faith, but is relevant to whether an insurer acted in bad faith. This is essentially the duty of good faith that the Florida Supreme Court established in a 1938 decision,⁶⁷ and since then has consistency maintained.⁶⁸

Defining Bad Faith Failure to Settle – Subsection (3) defines “bad faith failure to settle” as an insurer's failure to meet its duty of good faith, as described in subsection (2), which is a proximate cause of the insurer not settling a third-party claim when, under all the circumstances, it could and should have done so, had it acted fairly and honestly toward its insured and with due regard for the insured's interests.

Best Practice Standards – Subsection (4) sets forth best practice claim handling standards that a motor vehicle insurer is subject to upon the earlier of receiving actual notice of an incident or loss that could give rise to a covered liability claim and remains subject to the best practices standards until the claim is resolved. The bill specifies that notice of the incident or loss not made in accordance with the insurance policy, through the insurer's website, or to the CFO as agent of the insurer, is not effective if it prejudices the insurer. The party bringing the action has the burden to show the insurer had actual notice. After receipt of the notice, an insurer:

- Must assign a licensed and appointed insurance adjuster to investigate the claim and diligently attempt to resolve questions concerning the existence or extent of the insured's coverage.
- Based on available information, must evaluate every claim fairly, honestly, and with due regard for the insured's interests, consider the extent of the claimant's recoverable damages, and consider the information in a reasonable and prudent manner.

⁶⁷ *Auto Mut. Indem. Co. v. Shaw*, 184 So. 852 (Fla. 1938).

⁶⁸ See *Boston Old Colony Ins. v. Gutierrez*, 386 So.2d 783 (Fla. 1980), *Berges v. Infinity Ins. Co.*, 896 So.2d 665 at 672-673 (Fla. 2004), and *Harvey v. GEICO General Ins. Co.*, 259 So.3d 1, at 6-7 (Fla 2018).

- Must request from an insured or claimant additional relevant information the insurer deems necessary to evaluate whether to settle a claim.
- Must conduct all oral and written communications with the insured with the utmost honesty and with complete candor.
- Must make reasonable efforts to explain to persons not represented by counsel matters requiring expertise beyond the level normally expected of a layperson with no training in insurance or claims handling.
- Must retain all written communications and note and retain all verbal communications in a reasonable manner for a period of not less than 5 years after the later of:
 - The entry of a judgment against the insured in excess of policy limits becomes final; or
 - The conclusion of the extracontractual claim, if any, including any related appeals.
- Must provide the insured, upon request, with all communications related to the insurer's handling of the claim which are not privileged as to the insured.
- Must provide, at the insurer's expense, reasonable accommodations necessary to communicate effectively with an insured covered under the Americans with Disabilities Act.
- In handling third-party claims, must communicate to the insured:
 - The identity of any other person or entity the insurer has reason to believe may be liable;
 - The insurer's evaluation of the claim;
 - The likelihood and possible extent of an excess judgment;
 - Steps the insured can take to avoid exposure to an excess judgment, including the right to secure personal counsel at the insured's expense;
 - The insured's duty to cooperate with the insurer, including any specific requests required because of a settlement opportunity or by the insurer for the insured's cooperation under subsection (5), the purpose of the required cooperation, and the consequences of refusing to cooperate; and
 - Any demands for settlement under subsection (6) or settlement offers.
- If, after the expiration of the safe harbor periods in subsection (8), the facts available to the insurer indicate that the insured's liability is likely to exceed the policy limits, must initiate settlement negotiations by tendering its policy limits to the claimant in exchange for a general release of the insured.
- Must give fair consideration to a settlement offer that is not unreasonable under the facts available to the insurer and settle, if possible, when a reasonably prudent person, faced with the prospect of paying the total probable exposure of the insured, would do so. The insurer shall provide reasonable assistance to the insured to comply with the insured's obligations to cooperate and shall act reasonably to attempt to satisfy any conditions of a claimant's settlement offer. If it is not possible to settle a liability claim within the available policy limits, the insurer must act reasonably to attempt to minimize the excess exposure to the insured.
- When multiple claims arise out of a single occurrence, the combined value of all claims exceeds the total of all applicable policy limits, and the claimants are unwilling to globally settle within the policy limits, thereafter, must attempt to minimize the magnitude of possible excess judgments against the insured. The insurer is entitled to great discretion to decide how much to offer each respective claimant in its attempt to protect the insured. The insurer may, in its effort to minimize the excess liability of the insured, use its discretion to offer the full available policy limits to one or more claimants to the exclusion of other claimants and may leave the insured exposed to some liability after all the policy limits are paid. An insurer does

not act in bad faith simply because it is unable to settle all claims in a multiple claimant case. It is a defense to a bad faith action if the insurer establishes that it used its discretion for the benefit of its insureds and complied with the other best practices standards of this subsection.

- When a loss creates the potential for a third-party claim against more than one insured, must attempt to settle the claim on behalf of all insureds against whom a claim may be presented. If it is not possible to settle on behalf of all insureds, the insurer may, in consultation with the insureds, enter into reasonable settlements of claims against certain insureds to the exclusion of other insureds.
- Must respond to any request for insurance information in compliance with s. 626.9372 or s. 627.4137, as applicable.
- Where it appears the insured's probable exposure is greater than policy limits, must take reasonable measures to preserve for a reasonable period of time evidence that is needed for the defense of the liability claim.
- Must comply with s. 627.426, F.S., (providing claims administration standards), if applicable.
- May not commit or perform with such frequency as to indicate a general business practice any of the following:
 - Failing to adopt and implement standards for the proper investigation of claims.
 - Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue.
 - Failing to acknowledge and act promptly upon communications with respect to claims.
 - Deny claims without conducting reasonable investigations based upon available information.

Insured's Duty to Cooperate – Subsection (5) provides that insureds have a duty to cooperate with their insurer in the defense of the claim and in making settlements. Accordingly, the insured must take any reasonable action requested by the injured claimant or provided in the policy which is necessary to assist the insurer in settling a covered claim, including:

- Executing affidavits regarding the facts within the insured's knowledge regarding the covered loss; and
- Providing documents, including a requested financial disclosure.

The bill requires the insured to provide a financial disclosure on a form adopted by the DFS or provided by the claimant when such disclosure is requested by the claimant and the disclosure is reasonably necessary to settle a covered claim in excess of all applicable policy limits. The disclosure must contain a summary of:

- The insured's assets at the time of the loss;
- The insured's liabilities;
- For a corporate entity, specified information on its balance sheet;
- A list all insurance policies that may provide coverage for the claim, stating the name of the insurer and the policy number of each policy; and
- For natural persons, a statement of whether the insured was acting in the course and scope of employment at the time of the incident or loss giving rise to the claim and, if so, providing the name and contact information for the insured's employer.

The insurer must notify the insured of the insured's duty to cooperate under this subsection no later than 14 days following actual notice of an incident or a loss that could give rise to a covered liability claim. The burden is on the insurer to provide it provided such notice, otherwise a presumption arises that the insured met its duty to cooperate under the subsection.

An insurer may terminate the defense as to any insured who unreasonably fails to meet its duties to cooperate under this subsection if all of the following occurred:

- The insurer exercised diligence and met its duty to communicate to the insured the insured's duty to cooperate with the insurer, including any specific requests required, the purpose of the required cooperation, and the consequences of refusing to cooperate;
- The insurer provided reasonable assistance to the insured to meet obligations under this subsection;
- The insurer gave the insured written notice of any failure to cooperate and a reasonable opportunity to cure such failure;
- The insured's failure to cooperate caused the insurer to be unable to settle the claim; and
- The insurer unconditionally tenders available coverage policy limits to the claimant or claimant's attorney.

Claimant Communications – Subsection (6) prohibits the trier of fact from attributing the insurer's failure to settle a covered third-party claim to a claimant's lack of communication if the claimant provides specified information about the loss; the legal and factual basis of the claim; a reasonably detailed description of any injuries, medical treatment, relevant pre-accident medical conditions, and the type and amount of known damages and reasonably anticipated future damages; and presents a written settlement demand. The bill specifies that this subsection does not reduce the insurer's duty of good faith, nor does it create a duty of the claimant to the insured or insurer.

Conditions Precedent – Subsection (7) establishes two conditions precedent to bringing an action against an insurer for bad faith failure to settle a third party claim:

- The third-party claimant must have obtained a final judgment in excess of the policy, unless the insurer expressly waives this requirement or wrongfully breached its duty to defend the insured; and
- The insurer or an agent of the insurer received actual notice of the loss under subsection (4).

Safe Harbors – Subsection (8) provides safe harbors for the purpose of allowing the insurer a reasonable opportunity to investigate and evaluate the claim. This is done by establishing time periods during which an insurer does not commit bad faith by failing to tender policy limits. The safe harbors are available to an insurer that meets the best practices standards of subsection (4) and provide that:

- When one claim arises out of a single occurrence, and an insurer initiates settlement negotiations by tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice of the loss, the failure to tender the policy limits sooner does not constitute bad faith.
- When multiple claims arise out of a single occurrence, the combined value of all claims exceeds the total of all applicable policy limits, and an insurer initiates settlement

- negotiations by globally tendering the applicable policy limits in exchange for a general release of the insured within 45 days after receiving actual notice of the loss, the failure to tender policy limits sooner does not constitute bad faith.
- An insurer is not under any circumstances liable for the failure to accept a settlement offer within 45 days after receiving actual notice of the loss if:
 - The settlement offer provides the insurer fewer than 15 days for acceptance; or
 - The settlement offer provides the insurer fewer than 30 days for acceptance where the offer contains conditions for acceptance other than the insurer's disclosure of its policy limits.

The bill specifies that the safe harbors do not require that an insurer automatically tender policy limits within 45 days in every case.

Burden of Proof – Subsection (9) establishes the burden of proof for bringing an action for bad faith failure to settle, an insurer establishing a defense based on the insured's lack of cooperation, and establishing that the insurer qualifies for one of the safe harbors in the statute. Specifically, the subsection provides that in any action for bad faith failure to settle, the party bringing the action must prove every element of the claim by the greater weight of the evidence, taking into account the totality of the circumstances. An insurer that relies upon paragraph (5)(d), regarding the insured's duty to cooperate, as a defense to a claim must prove all elements of that paragraph by the greater weight of the evidence. An insurer that relies upon a safe harbor provision of subsection (8) must prove the elements of the safe harbor by the greater weight of the evidence.

Damages – Subsection (10) specifies the damages that are available in an action for bad faith failure to settle. If the party bringing the action meets its burden of proof, the insurer is liable for the amount of the excess judgment, together with court costs and, if the party bringing the bad faith claim is the insured or an assignee of the insured, the reasonable attorney fees incurred by the party bringing the bad faith claim. Punitive damages may not be awarded.

Agents – Subsection (11) specifies that this section is not intended to expand or diminish any cause of action currently available against insurance agents who sell motor vehicle liability insurance policies in this state.

Disclosure of Information Related to Liability Insurance Coverage

Section 43 amends s. 627.4137, F.S., to provide that if an insurer fails to timely comply with the requirements of the section, the claimant may file an action to enforce the section and is entitled to an award of reasonable attorney fees and costs to be paid by the insurer. Section 627.4137, F.S., requires liability insurers to provide, within 30 days after receiving a written request from a claimant, a sworn statement setting forth the name of the insurer, name of the insured, limits of liability coverage, a statement of any policy or coverage defense the insurer currently believes is reasonably available to it, and a copy of the insurance policy. Current law also requires an insured or an insured's insurance agent to disclose to the claimant and all affected insurers, upon written request of the claimant or claimant's attorney, the name and coverage of each known insurer.

Setoff on Damages as a Result of a Motor Vehicle Crash While Uninsured

Section 62 creates s. 768.852, F.S., to provide that for any award of noneconomic damages, a defendant is entitled to a \$10,000 setoff if a person suffers injury while operating a motor vehicle which was not in compliance with the financial responsibility law for more than 30 days immediately preceding the crash.

The setoff on noneconomic damages does not apply if the person who is liable for the injury was driving under the influence; acted intentionally, recklessness, or with gross negligence; fled from the scene of the crash; or was acting in furtherance of a felony offense or in immediate flight from a felony offense.

This section does not apply to wrongful death claims.

Rate Filings

Section 39 amends s. 627.0651, F.S., providing that initial rate filings for motor vehicle liability policies submitted to the OIR on or after July 1, 2023, must reflect the financial responsibility requirements of the amended s. 324.022, F.S., and may be approved only through the file and use process for making rates for motor vehicle insurance set out in that section of law.

Named Driver Exclusion

Section 53 amends s. 627.747, F.S., authorizing a private passenger motor vehicle policy to exclude an identified individual from bodily injury coverage if an identified individual is specifically excluded by name on the policy declarations page or by endorsement, and a policyholder consents to such exclusion in writing. Currently, the OIR requires insurers to provide exceptions to named driver exclusions up to statutorily required minimum limits for PIP coverage, property damage liability coverage, BI liability coverage (if the policy is used to meet financial responsibility requirements), and UM coverage in certain circumstances.⁶⁹

An individual excluded by name in an insurance policy would not be covered for bodily injuries or death caused by such individual while operating a motor vehicle that is insured under the policy, unless the excluded driver has purchased a separate policy that provides motor vehicle insurance coverage.

Application of Bill

Applicability and Construction of Bill and Notice to Policyholders of New Motor Vehicle Insurance Requirements

Section 49 creates s. 627.7278, F.S., applying financial responsibility requirements and optional medical payments coverage created by the bill as follows:

- Effective July 1, 2023:
 - All motor vehicle insurance policies issued or renewed may not include PIP.

⁶⁹ See Office of Insurance Regulation, *Senate Bill 518 Agency Analysis*, pg. 2 (Oct. 30, 2017) (on file with the Senate Committee on Banking and Insurance.)

- All persons subject to s. 324.022, s. 324.032, s. 627.7415, or s. 627.742, F.S., must maintain at least minimum security requirements, which is the security that enables a person to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts required by s. 324.022, F.S.
- Any new or renewal motor vehicle insurance policy delivered or issued in this state must provide coverage that complies with minimum security requirements and provides the death benefit set forth in s. 627.72761, F.S.
- An existing motor vehicle insurance policy that provides PIP and property damage liability coverage, but does not meet the minimum security requirements (\$25,000/\$50,000 BI), is deemed to meet minimum security requirements until the policy is renewed, non-renewed or cancelled on or after July 1, 2023, and the provisions of the No-Fault law and other related statutes remain in full force and effect for motor vehicle accidents covered under a policy issued under the No-Fault law before that date, until the policy is renewed, nonrenewed, or canceled on or after July 1, 2023.
- Insurers must allow each insured who has a policy providing PIP that is effective before July 1, 2023, and whose policy does not meet minimum security requirements, to eliminate PIP coverage and obtain coverage providing minimum security requirements and the death benefit under s. 627.72761, F.S., effective on or after July 1, 2023. The insurer is also required to offer each insured the optional medical payments coverage required by the bill. Insurers may not impose additional fees solely to change coverage, but may charge an additional premium that is actuarially indicated. The insurer must refund reductions in premium.
- By April 1, 2023, each motor vehicle insurer shall provide notice that:
 - The Florida Motor Vehicle No-Fault Law is repealed effective July 1, 2023, and that PIP coverage is no longer required or available for purchase.
 - Effective July 1, 2023, a person subject to the financial security requirements of s. 324.022, F.S., must:
 - Maintain minimum security requirements for BI and PD liability in the amount of \$25,000 for BI or death of one person in any one crash and, subject to such limits, \$50,000 for BI or death of two or more persons in any one crash; and \$10,000 for PD in any one crash, regardless of income or status as a student; and
 - Purchase a death benefit under s. 627.72761 providing coverage in the amount of \$5,000 per covered deceased individual.
 - BI liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.
 - Effective July 1, 2023, each holder of a motor vehicle liability insurance policy purchased as proof of financial responsibility must be offered the optional medical payments coverage benefits at limits of \$5,000 and \$10,000 without a deductible, may be offered such coverage at limits greater than \$5,000, and may be offered coverage with a deductible of up to \$500. Medical payments coverage pays covered medical expenses, up to the limits, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle.

- A policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits to a policyholder entitled to recover bodily injury damages resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.
- A policy effective before July 1, 2023, is deemed to meet minimum security requirements until it is renewed, non-renewed, or canceled on or after July 1, 2023.
- A policyholder may change coverages to eliminate PIP protection and obtain coverage providing minimum security requirements and the required death benefit.
- If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

This section is effective upon the act becoming a law.

Application of Suspensions for Failure to Maintain Security

Section 16 creates s. 324.0222, F.S., requiring all driver license and motor vehicle registration suspensions for failure to maintain security as required by law in effect before July 1, 2023, to remain in full force and effect after July 1, 2023. A driver may reinstate a suspended driver's license or registration as provided under s. 324.0221, F.S.

Technical and Conforming Changes

Section 3 amends s. 316.2122, F.S., regarding the operation of low-speed autonomous delivery vehicles, to provide a conforming change to a cross-reference.

Section 4 amends s. 316.646, F.S., which requires drivers to maintain and be able to display proof of security demonstrating compliance with financial responsibility requirements. The bill makes conforming changes necessitated by the bill's amendment or repeal of other sections of law and inserts a cross-reference to the revised s. 324.021(7), F.S., which contains the minimum insurance requirements for purposes of proof of financial responsibility beginning July 1, 2023.

Section 5 amends s. 318.18(2), F.S., regarding nonmoving traffic violations, to remove a reference to PIP and conform cross references.

Section 6 amends s. 320.02, F.S., which contains the requirements to register a motor vehicle. The bill amends the section to require proof of motor vehicle insurance that meets the minimum limits of BI and PD liability, remove references to PIP, and make other conforming changes.

Section 7 amends s. 320.0609, F.S., to eliminate a reference to PIP in a provision specifying that transferring a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration.

Section 10 amends s. 322.251, F.S., regarding notice of cancellation, suspension, or revocation of a driver's license to repeal references to the No-Fault Law.

Section 11 amends s. 322.34, F.S., regarding driving on a suspended, revoked, canceled, or disqualified driver's license, to delete a reference to the No-Fault Law.

Section 12 amends s. 324.011, F.S., which provides the purpose of ch. 324, F.S., to specify that under the chapter all owners or operators of a motor vehicle required to be registered in this state must establish, maintain and show proof of financial responsibility. Currently, financial responsibility requirements only apply after an operator is involved in a crash or convicted of certain traffic offenses.

Section 15 amends s. 324.0221, F.S., which requires insurers to report motor vehicle insurance cancellations to the DHSMV, to remove references to PIP and replace the reference to PD coverage with a reference to liability coverage, and conform cross references.

Section 17 corrects cross references in s. 324.023, F.S., which requires drivers who plead guilty or nolo contendere to a charge of driving under the influence to meet additional liability insurance requirements.

Section 20 amends s. 324.051, F.S., regarding crash reports, to refer to motor vehicle liability policies rather than automobile liability policies.

Section 21 amends s. 324.071, F.S., to provide stylistic changes to provisions governing the reinstatement of a suspended license.

Section 22 amends s. 324.091, F.S., which requires owners and operators involved in a crash or conviction case to furnish evidence of liability insurance, by deleting references to an automobile liability policy while retaining references to a motor vehicle liability policy.

Section 26 amends s. 324.251, F.S., to revise the short title of ch. 324, F.S., to the “Financial Responsibility Law of 2022” and state it will be effective at 12:01 a.m., on July 1, 2023. Currently the chapter is the “Financial Responsibility Law of 1955.”

Sections 28 and 29 amend s. 400.991, F.S., and s. 400.9935, F.S., respectively, of the Health Care Clinic Act to remove references to PIP and the No-Fault Law and insert references to medical payments coverage.

Section 30 revises the definition of a “third party benefit” in s. 409.901, F.S., for purposes of Medicaid to refer to medical payments coverage rather than PIP coverage.

Section 31 amends s. 409.910(11), F.S., to specify that the Agency for Health Care Administration may recoup the total amount of medical assistance provided by Medicaid from motor vehicle insurance coverage benefits provided to a Medicaid beneficiary. Current law refers to PIP.

Section 32 amends s. 456.057, F.S., regarding patient records, to correct a cross-reference.

Section 33 amends s. 456.072, F.S., to allow the Department of Health to discipline licensees for submitting claims for medical payments coverage reimbursement when treatment is not rendered or when treatment is intentionally upcoded. The department currently has such disciplinary authority with regard to false billing under PIP coverage. The bill relocates from the repealed

s. 627.732, F.S., the existing definition of “upcoded,” and replaces references to PIP with references to medical payments coverage.

Section 36 amends s. 626.9541(1)(i) and (o), F.S., regarding unfair insurance trade practices related to motor vehicle insurance. The bill deletes the unfair trade practice in paragraph (i) for failing to pay claims within statutory time periods required under the No-Fault Law to conform to the repeal of those time frames by the bill. The section makes a technical amendment to paragraph (o) to reference BI liability coverage, PD liability coverage, and medical payments coverage, rather than PIP, in the prohibitions against the unfair insurance trade practice of increasing premium or cancelling a motor vehicle insurance policy solely because the insured was involved in a motor vehicle accident without having information the insured was substantially at fault.

Section 37 amends s. 626.989, F.S., to revise the “fraudulent insurance acts” detailed in the section to refer to medical payments coverage, rather than the No-Fault Law.

Section 38 amends s. 627.06501, F.S., regarding insurance discounts for completing a driver improvement course, to delete a reference to PIP and insert a reference to medical payments coverage.

Sections 40 and 41 amend s. 627.0652, F.S., and s. 627.0653, F.S., respectively, relating to insurance discounts for motor vehicle coverage, by replacing references to PIP with references to medical payments coverage.

Section 42 amends s. 627.4132, F.S., regarding the general prohibition against stacking of motor vehicle coverages, to refer to BI and PD instead of PIP or other coverage.

Section 44 amends s. 627.7263, F.S., which generally makes the rental and leasing driver’s insurance primary, to delete references to PIP and insert references to medical payments coverage.

Section 50 amends s. 627.728, F.S., which governs cancellations of motor vehicle insurance policies, to delete a reference to PIP in the definition of “policy.”

Section 51 amends s. 627.7295, F.S., to revise definitions relating to motor vehicle insurance contracts by deleting references to PIP and inserting references to BI liability coverage, death benefit coverage, and make other conforming and editorial changes.

Section 54 amends s. 627.748, F.S., relating to insurance requirements for transportation network companies, to remove references to PIP required under the repealed No-Fault law and inserts cross-references to the revised financial responsibility requirements applied to for-hire passenger transportation vehicles in Section 17 of the bill.

Section 55 amends s. 627.7483, F.S., relating to peer-to-peer car sharing, to remove a reference to PIP and correct cross references.

Section 56 amends s. 627.749, F.S., relating to insurance requirements for autonomous vehicles, to delete a reference to PIP in those insurance requirements and add a reference to death benefit coverage.

Section 57 amends s. 627.8405, F.S., regarding prohibited acts of premium finance companies, to replace a reference to a PIP/PD only policy with a reference to a policy that only provides BI/PD.

Section 58 amends s. 627.915, F.S., which requires private passenger automobile insurers to report information annually to the office, to remove references to PIP and add a reference to death benefit coverage.

Section 59 amends s. 628.909, F.S., which applies certain provisions of the Insurance Code to captive insurance companies, to delete references to the No-Fault Law.

Section 60 amends s. 705.184, F.S., which governs derelict or abandoned motor vehicles on the premises of public-use airports, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 61 amends s. 713.78, F.S., regarding liens for recovering, towing, or storing vehicles and vessels, to delete references to s. 627.736, F.S., which is repealed by the bill.

Section 63 amends s. 817.234, F.S., regarding false and fraudulent insurance claims, to delete references to PIP and replace them with references to medical payments coverage.

Appropriation

Section 64 appropriates for the 2022-2023 fiscal year \$83,651 in nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing the act.

Effective Date

Section 63 provides that except as otherwise expressly provided in the act and this section, which take effect upon this act becoming a law, the act is effective July 1, 2023.

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:

Bodily injury coverage is not a required coverage under Florida law unless a person is involved in certain accidents causing bodily injury, convicted of certain offenses, or is otherwise required to maintain BI liability coverage in statute. Failure to maintain BI coverage, when required, can result in the suspension of a license or registration. The reinstatement fee under s. 324.071, F.S., for such suspension under current law is \$15. CS/CS/SB 54 retains this reinstatement fee for a license suspension based upon a crash report under s. 324.051(2), F.S.; a registration suspension under s. 324.072, F.S., based on a license suspension pursuant to s. 322.26, F.S., or s. 322.27, F.S.; suspension of the operating privileges of a nonresident driver under s. 324.081, F.S.; or suspension of license and registration under s. 324.121, F.S., for failure to satisfy a judgment.

The bill retains the current reinstatement fees under s. 324.0221, F.S., for a suspended license or registration for failure to maintain required insurance based on a report by an insurer. The reinstatement fee for such suspensions under s. 324.0221, F.S., is \$150 for a first reinstatement, while second and subsequent reinstatements within 3 years of the first reinstatement require fees of \$250 and \$500, respectively.

B. Private Sector Impact:

The fiscal impact to policyholders, health insurers, health care providers, and injured claimants is indeterminate. The Office of Insurance Regulation has commissioned Pinnacle Actuarial Services to perform two studies of the impact of repealing PIP and mandating BI, the first in 2016 and the second in 2021. Though the two studies each analyzed the effects of repealing PIP and mandating BI at limits of \$25,000/\$50,000, each provided different estimates of the impact of repealing PIP and mandating BI.

The 2016 report, *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, provided, among other information, actuarial estimates of the savings expected from repealing the No-Fault Law.⁷⁰ The report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of \$25,000/\$50,000, that a

⁷⁰ Office of Insurance Regulation, *Review of Personal Injury Protection Legislation*, (Sept. 13, 2016), Appendix 3, p. 1. Available at <http://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf> (last accessed January 31, 2022).

5.6 percent savings would be realized in the statewide average premium charge.⁷¹ The estimated average premium when including an optional \$5,000 medical payments coverage benefit was projected to increase by 0.3 percent.⁷²

The 2016 PIP Study estimated that health insurers would cover approximately \$469.7 million of current PIP loss if No-Fault were repealed.⁷³ Health care providers would cover approximately \$32.8 million of current PIP losses.⁷⁴ Injured claimants would cover approximately \$82.9 million of current PIP losses.⁷⁵ In an addendum to the study, Pinnacle evaluated the effect on premiums of enacting legislation⁷⁶ that provides that a motor vehicle insurer is not liable for a bad faith failure to settle when it offers to pay the claimant the lesser of the amount demanded or policy limits with 45 days of receiving written notice of the loss. Pinnacle estimated such a provision would reduce BI premiums by 0.9 percent.⁷⁷

The 2021 report, *Florida Office of Insurance Regulation: The Impact of Repealing Personal Injury Protection Coverage in Florida*⁷⁸, provided an actuarial analysis of SB 54 (2021), which proposed repealing PIP, mandating bodily injury coverage of at least \$25,000/\$50,000, required an offer of medical payments coverage that the insured could opt-out of, and provided insurers safe harbors from bad faith actions. The 2021 report concludes, based only on repeal of the No-Fault Law with financial responsibility limits of \$25,000/\$50,000, that the statewide average premium⁷⁹ would increase by 1.5 percent.⁸⁰ Adding \$5,000 in medical payments coverage yielded an estimated 8.6 percent premium increase in the statewide average premium.⁸¹ The 2021 report projects that the average statewide premium for insureds that purchase the minimum statutory coverage under the No-Fault Law of \$10,000 of PIP and \$10,000 of PD, would increase 48.3 percent if mandatory PIP were replaced by mandatory BI at limits of \$25,000/\$50,000.⁸² It should be noted that these projections were based on SB 54 (2021), which automatically included medical payments coverage unless the policyholder declines the coverage, an “opt-out” system. SB 150 instead requires the insurer to offer medical payments coverage but does not include it unless the policyholder affirmatively purchases the coverage, an “opt-in” system. Making medical payments coverage opt-in, rather than opt-out will result in fewer policyholders purchasing the coverage, thus reducing the average premium that is paid for motor vehicle insurance.

⁷¹ That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.

⁷² See Office of Insurance Regulation fn. 70.

⁷³ See Office of Insurance Regulation fn. 70 at pg. 68.

⁷⁴ See *id.*

⁷⁵ See *id.*

⁷⁶ Senate Bill 1088 (2015).

⁷⁷ Office of Insurance Regulation, *Review of Personal Injury Protection Legislation – Addendum: Impact of Florida Third-Party Bad Faith Reform*, pg. 6 (Sept. 27, 2016). Available at <https://www.floir.com/siteDocuments/FloridaBadFaithAddendumFinal.pdf> (last accessed January 31, 2022).

⁷⁸ Office of Insurance Regulation, *The Impact of Repealing Personal Injury Protection Coverage in Florida*, (June 14, 2021). Available at <https://www.floir.com/siteDocuments/FloridaOIRPIPRepealImpactFinalReport06142021.pdf> (last accessed January 31, 2022).

⁷⁹ That is the average premium savings for a driver purchasing BI, UM, PD, Comprehensive, and Collision coverages.

⁸⁰ See Office of Insurance Regulation fn. 78 at pg. 43.

⁸¹ See *id.*

⁸² See Office of Insurance Regulation, fn. 78 at pg. 111.

The 2021 PIP Study estimated that health insurers would cover approximately \$304 million of current PIP loss if No-Fault were repealed.⁸³ Health care providers would cover approximately \$13 million of current PIP losses.⁸⁴ Injured claimants would cover approximately \$45.5 million of current PIP losses.⁸⁵ Unlike the 2016 report, the 2021 report does not estimate savings related to providing insurers a safe harbor from bad faith actions.

C. Government Sector Impact:

The bill appropriates \$83,651 in FY 2022-23 nonrecurring funds from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to implement the act.

The Florida Office of Insurance Regulation has not provided an estimate of the fiscal impact of this bill. However, a fiscal impact provided in 2021 for SB 150 (2021) estimated that implementation of this bill would have required salaries and benefits at a recurring cost of \$228,602 annually, commencing in FY 2021-22. They also estimated a need for nonrecurring computer programming costs of \$20,000 in FY 2021-22.

The fiscal impact to state and local governments is otherwise indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.2122, 316.646, 318.18, 320.02, 320.0609, 320.27, 320.771, 322.251, 322.34, 324.011, 324.021, 324.022, 324.0221, 324.0222, 324.023, 324.031, 324.032, 324.051, 324.071, 324.091, 324.151, 324.161, 324.171, 324.251, 400.9905, 400.991, 400.9935, 409.901, 409.910, 456.057, 456.072, 624.155, 624.156, 626.9541, 626.989, 627.06501, 627.0651, 627.0652, 627.0653, 627.4132, 627.4137, 627.7263, 627.7265, 627.727, 627.7275, 627.72761, 627.7278, 627.728, 627.7295, 627.7415, 627.747, 627.748, 627.7483, 627.749, 627.8405, 627.915, 628.909, 705.184, 713.78, 768.852, and 817.234

This bill creates the following sections of the Florida Statutes: 324.0222, 624.156, 627.7265, 627.72761, 627.7278, and 768.852

⁸³ See Office of Insurance Regulation fn. 78 at pg. 33.

⁸⁴ See *id.*

⁸⁵ See *id.*

This bill repeals the following sections of the Florida Statutes: 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, 627.7405, and 627.7407

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 Burgess

20-00877B-22

2022150__

1 A bill to be entitled
 2 An act relating to motor vehicle insurance; repealing
 3 ss. 627.730, 627.731, 627.7311, 627.732, 627.733,
 4 627.734, 627.736, 627.737, 627.739, 627.7401,
 5 627.7403, and 627.7405, F.S., which comprise the
 6 Florida Motor Vehicle No-Fault Law; repealing s.
 7 627.7407, F.S., relating to application of the Florida
 8 Motor Vehicle No-Fault Law; amending s. 316.2122,
 9 F.S.; conforming a cross-reference; amending s.
 10 316.646, F.S.; revising a requirement for proof of
 11 security on a motor vehicle and the applicability of
 12 the requirement; amending s. 318.18, F.S.; conforming
 13 a provision to changes made by the act; amending s.
 14 320.02, F.S.; revising the motor vehicle insurance
 15 coverages that an applicant must show to register
 16 certain vehicles with the Department of Highway Safety
 17 and Motor Vehicles; conforming a provision to changes
 18 made by the act; revising construction; amending s.
 19 320.0609, F.S.; conforming a provision to changes made
 20 by the act; amending s. 320.27, F.S.; defining the
 21 term "garage liability insurance"; revising garage
 22 liability insurance requirements for motor vehicle
 23 dealer license applicants; conforming a provision to
 24 changes made by the act; amending s. 320.771, F.S.;
 25 revising garage liability insurance requirements for
 26 recreational vehicle dealer license applicants;
 27 amending ss. 322.251 and 322.34, F.S.; conforming
 28 provisions to changes made by the act; amending s.
 29 324.011, F.S.; revising legislative intent; amending

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30 s. 324.021, F.S.; revising and providing definitions;
 31 revising minimum coverage requirements for proof of
 32 financial responsibility for specified motor vehicles;
 33 conforming provisions to changes made by the act;
 34 amending s. 324.022, F.S.; revising minimum liability
 35 coverage requirements for motor vehicle owners or
 36 operators; revising authorized methods for meeting
 37 such requirements; deleting a provision relating to an
 38 insurer's duty to defend certain claims; revising the
 39 vehicles that are excluded from the definition of the
 40 term "motor vehicle"; providing security requirements
 41 for certain excluded vehicles; conforming provisions
 42 to changes made by the act; amending s. 324.0221,
 43 F.S.; revising coverages that subject a policy to
 44 certain insurer reporting and notice requirements;
 45 conforming provisions to changes made by the act;
 46 creating s. 324.0222, F.S.; providing that driver
 47 license or motor vehicle registration suspensions for
 48 failure to maintain required security which are in
 49 effect before a specified date remain in full force
 50 and effect; providing that such suspended licenses or
 51 registrations may be reinstated as provided in a
 52 specified section; amending s. 324.023, F.S.;
 53 conforming cross-references; amending s. 324.031,
 54 F.S.; specifying a method of proving financial
 55 responsibility by owners or operators of motor
 56 vehicles other than for-hire passenger transportation
 57 vehicles; revising the amount of a certificate of
 58 deposit required to elect a certain method of proof of

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59 financial responsibility; revising liability coverage
 60 requirements for a person electing to use such method;
 61 amending s. 324.032, F.S.; revising financial
 62 responsibility requirements for owners or lessees of
 63 for-hire passenger transportation vehicles; amending
 64 s. 324.051, F.S.; making technical changes; specifying
 65 that motor vehicles include motorcycles for purposes
 66 of the section; amending ss. 324.071 and 324.091,
 67 F.S.; making technical changes; amending s. 324.151,
 68 F.S.; revising requirements for motor vehicle
 69 liability insurance policies relating to coverage, and
 70 exclusion from coverage, for certain drivers and
 71 vehicles; conforming provisions to changes made by the
 72 act; making technical changes; defining terms;
 73 amending s. 324.161, F.S.; revising requirements for a
 74 certificate of deposit that is required if a person
 75 elects a certain method of proving financial
 76 responsibility; amending s. 324.171, F.S.; revising
 77 the minimum net worth requirements to qualify certain
 78 persons as self-insurers; conforming provisions to
 79 changes made by the act; amending s. 324.251, F.S.;
 80 revising the short title and an effective date;
 81 amending s. 400.9905, F.S.; revising the definition of
 82 the term "clinic"; amending ss. 400.991 and 400.9935,
 83 F.S.; conforming provisions to changes made by the
 84 act; amending s. 409.901, F.S.; revising the
 85 definition of the term "third-party benefit"; amending
 86 s. 409.910, F.S.; revising the definition of the term
 87 "medical coverage"; amending s. 456.057, F.S.;

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88 conforming a provision to changes made by the act;
 89 amending s. 456.072, F.S.; revising specified grounds
 90 for discipline for certain health professions;
 91 defining the term "upcode"; amending s. 624.155, F.S.;
 92 providing an exception to the circumstances under
 93 which a person who is damaged may bring a civil action
 94 against an insurer; adding a cause of action against
 95 insurers in certain circumstances; providing that a
 96 person is not entitled to judgments under multiple bad
 97 faith remedies; creating s. 624.156, F.S.; providing
 98 that the section applies to bad faith failure to
 99 settle third-party claim actions against any insurer
 100 for a loss arising out of the ownership, maintenance,
 101 or use of a motor vehicle under specified
 102 circumstances; providing construction; providing that
 103 insurers have a duty of good faith; providing
 104 construction; defining the term "bad faith failure to
 105 settle"; requiring insurers to meet best practices
 106 standards; providing circumstances under which a
 107 notice is not effective; providing that the burden is
 108 on the party bringing the bad faith claim; specifying
 109 best practices standards for insurers upon receiving
 110 actual notice of certain incidents or losses;
 111 specifying certain requirements for insurer
 112 communications to an insured; requiring an insurer to
 113 initiate settlement negotiations under certain
 114 circumstances; specifying requirements for the insurer
 115 when multiple claims arise out of a single occurrence
 116 under certain conditions; providing construction;

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117 requiring an insurer to attempt to settle a claim on
 118 behalf of certain insureds under certain
 119 circumstances; providing for a defense to bad faith
 120 actions; providing that insureds have a duty to
 121 cooperate; requiring an insured to take certain
 122 reasonable actions necessary to settle covered claims;
 123 providing requirements for disclosures by insureds;
 124 requiring insurers to provide certain notice to
 125 insureds within a specified timeframe; providing that
 126 insurers may terminate certain defenses under certain
 127 circumstances; providing construction; providing that
 128 a trier of fact may not attribute an insurer's failure
 129 to settle certain claims to specified causes under
 130 certain circumstances; providing construction;
 131 specifying conditions precedent for claimants filing
 132 bad faith failure to settle third-party claim actions;
 133 providing that an insurer is entitled to a reasonable
 134 opportunity to investigate and evaluate claims under
 135 certain circumstances; providing construction;
 136 providing that insurers may not be held liable for the
 137 failure to accept a settlement offer within a certain
 138 timeframe if certain conditions are met; providing
 139 that an insurer is not required to automatically
 140 tender policy limits within a certain timeframe in
 141 every case; requiring the party bringing a bad faith
 142 failure to settle action to prove every element by the
 143 greater weight of the evidence; specifying burdens of
 144 proof for insurers relying on specified defenses;
 145 limiting damages under certain circumstances;

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146 providing construction; amending s. 626.9541, F.S.;
 147 conforming a provision to changes made by the act;
 148 revising certain prohibited acts related to specified
 149 insurance coverage payment requirements; amending s.
 150 626.989, F.S.; revising the definition of the term
 151 "fraudulent insurance act"; amending s. 627.06501,
 152 F.S.; revising coverages that may provide for a
 153 reduction in motor vehicle insurance policy premium
 154 charges under certain circumstances; amending s.
 155 627.0651, F.S.; specifying requirements for rate
 156 filings for motor vehicle liability policies that
 157 implement requirements in effect on a specified date;
 158 requiring such filings to be approved through a
 159 certain process; amending s. 627.0652, F.S.; revising
 160 coverages that must provide a premium charge reduction
 161 under certain circumstances; amending s. 627.0653,
 162 F.S.; revising coverages that are subject to premium
 163 discounts for specified motor vehicle equipment;
 164 amending s. 627.4132, F.S.; revising coverages that
 165 are subject to a stacking prohibition; amending s.
 166 627.4137, F.S.; requiring that insurers disclose
 167 certain information at the request of a claimant's
 168 attorney; authorizing a claimant to file an action
 169 under certain circumstances; providing for the award
 170 of reasonable attorney fees and costs under certain
 171 circumstances; amending s. 627.7263, F.S.; revising
 172 coverages that are deemed primary, except under
 173 certain circumstances, for the lessor of a motor
 174 vehicle for lease or rent; revising a notice that is

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175 required if the lessee's coverage is to be primary;
 176 creating s. 627.7265, F.S.; specifying persons whom
 177 medical payments coverage must protect; specifying the
 178 minimum medical expense limits; specifying coverage
 179 options that an insurer is required and authorized to
 180 offer; providing construction relating to limits on
 181 certain other coverages; requiring insurers, upon
 182 receiving certain notice of an accident, to hold a
 183 specified reserve for certain purposes for a certain
 184 timeframe; providing that the reserve requirement does
 185 not require insurers to establish a claim reserve for
 186 accounting purposes; prohibiting an insurer providing
 187 medical payments coverage benefits from seeking a lien
 188 on a certain recovery and bringing a certain cause of
 189 action; authorizing insurers to include policy
 190 provisions allowing for subrogation, under certain
 191 circumstances, for medical payments benefits paid;
 192 providing construction; specifying a requirement for
 193 an insured for repayment of medical payments benefits
 194 under certain circumstances; prohibiting insurers from
 195 including policy provisions allowing for subrogation
 196 for death benefits paid; amending s. 627.727, F.S.;
 197 conforming provisions to changes made by the act;
 198 revising the legal liability of an uninsured motorist
 199 coverage insurer; amending s. 627.7275, F.S.; revising
 200 required coverages for a motor vehicle insurance
 201 policy; conforming provisions to changes made by the
 202 act; creating s. 627.72761, F.S.; requiring motor
 203 vehicle insurance policies to provide death benefits;

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204 specifying requirements for such benefits; specifying
 205 persons to whom such benefits may and may not be paid;
 206 creating s. 627.7278, F.S.; defining the term "minimum
 207 security requirements"; providing a prohibition,
 208 requirements, applicability, and construction relating
 209 to motor vehicle insurance policies as of a certain
 210 date; requiring insurers to allow certain insureds to
 211 make certain coverage changes, subject to certain
 212 conditions; requiring an insurer to provide, by a
 213 specified date, a specified notice to policyholders
 214 relating to requirements under the act; amending s.
 215 627.728, F.S.; conforming a provision to changes made
 216 by the act; amending s. 627.7295, F.S.; revising the
 217 definitions of the terms "policy" and "binder";
 218 revising the coverages of a motor vehicle insurance
 219 policy for which a licensed general lines agent may
 220 charge a specified fee; conforming provisions to
 221 changes made by the act; amending s. 627.7415, F.S.;
 222 revising additional liability insurance requirements
 223 for commercial motor vehicles; amending s. 627.747,
 224 F.S.; conforming provisions to changes made by the
 225 act; amending s. 627.748, F.S.; revising insurance
 226 requirements for transportation network company
 227 drivers; conforming provisions to changes made by the
 228 act; conforming cross-references; amending s.
 229 627.7483, F.S.; conforming provisions to changes made
 230 by the act; conforming cross-references; amending s.
 231 627.749, F.S.; conforming a provision to changes made
 232 by the act; amending s. 627.8405, F.S.; revising

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233 coverages in a policy sold in combination with an
 234 accidental death and dismemberment policy which a
 235 premium finance company may not finance; revising
 236 rulemaking authority of the Financial Services
 237 Commission; amending ss. 627.915, 628.909, 705.184,
 238 and 713.78, F.S.; conforming provisions to changes
 239 made by the act; creating s. 768.852, F.S.; providing
 240 for a setoff on certain damages that may be recovered
 241 by a person operating certain motor vehicles who is
 242 not in compliance with financial responsibility laws;
 243 providing exceptions; amending s. 817.234, F.S.;
 244 revising coverages that are the basis of specified
 245 prohibited false and fraudulent insurance claims;
 246 conforming provisions to changes made by the act;
 247 deleting provisions relating to prohibited changes in
 248 certain mental or physical reports; providing an
 249 appropriation; providing effective dates.

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

252
 253 Section 1. Sections 627.730, 627.731, 627.7311, 627.732,
 254 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403,
 255 and 627.7405, Florida Statutes, are repealed.

256 Section 2. Section 627.7407, Florida Statutes, is repealed.

257 Section 3. Paragraph (e) of subsection (2) of section
 258 316.2122, Florida Statutes, is amended to read:

259 316.2122 Operation of a low-speed vehicle, mini truck, or
 260 low-speed autonomous delivery vehicle on certain roadways.—

261 (2) The operation of a low-speed autonomous delivery

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262 vehicle on any road is authorized with the following
 263 restrictions:

264 (e) A low-speed autonomous delivery vehicle must be covered
 265 by a policy of automobile insurance which provides the coverage
 266 required by s. 627.749(2)(a)1. ~~and, 2., and 3.~~ The coverage
 267 requirements of this paragraph may be satisfied by automobile
 268 insurance maintained by the owner of a low-speed autonomous
 269 delivery vehicle, the owner of the teleoperation system, the
 270 remote human operator, or a combination thereof.

271 Section 4. Subsection (1) of section 316.646, Florida
 272 Statutes, is amended to read:

273 316.646 Security required; proof of security and display
 274 thereof.—

275 (1) Any person required by s. 324.022 to maintain liability
 276 security for property damage, liability security, required by s.
 277 ~~324.023 to maintain liability security for~~ bodily injury, or
 278 ~~death, or required by s. 627.733 to maintain personal injury~~
 279 ~~protection security on a motor vehicle~~ shall have in his or her
 280 immediate possession at all times while operating a ~~such~~ motor
 281 vehicle proper proof of maintenance of the ~~required~~ security
 282 required under s. 324.021(7).

283 (a) Such proof ~~must shall~~ be in a uniform paper or
 284 electronic format, as prescribed by the department, a valid
 285 insurance policy, an insurance policy binder, a certificate of
 286 insurance, or such other proof as may be prescribed by the
 287 department.

288 (b)1. The act of presenting to a law enforcement officer an
 289 electronic device displaying proof of insurance in an electronic
 290 format does not constitute consent for the officer to access any

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291 information on the device other than the displayed proof of
292 insurance.

293 2. The person who presents the device to the officer
294 assumes the liability for any resulting damage to the device.

295 Section 5. Paragraph (b) of subsection (2) of section
296 318.18, Florida Statutes, is amended to read:

297 318.18 Amount of penalties.—The penalties required for a
298 noncriminal disposition pursuant to s. 318.14 or a criminal
299 offense listed in s. 318.17 are as follows:

300 (2) Thirty dollars for all nonmoving traffic violations
301 and:

302 (b) For all violations of ss. 320.0605, 320.07(1), 322.065,
303 and 322.15(1). A ~~Any~~ person who is cited for a violation of s.
304 320.07(1) shall be charged a delinquent fee pursuant to s.
305 320.07(4).

306 1. If a person who is cited for a violation of s. 320.0605
307 or s. 320.07 can show proof of having a valid registration at
308 the time of arrest, the clerk of the court may dismiss the case
309 and may assess a dismissal fee of up to \$10, from which the
310 clerk shall remit \$2.50 to the Department of Revenue for deposit
311 into the General Revenue Fund. A person who finds it impossible
312 or impractical to obtain a valid registration certificate must
313 submit an affidavit detailing the reasons for the impossibility
314 or impracticality. The reasons may include, but are not limited
315 to, the fact that the vehicle was sold, stolen, or destroyed;
316 that the state in which the vehicle is registered does not issue
317 a certificate of registration; or that the vehicle is owned by
318 another person.

319 2. If a person who is cited for a violation of s. 322.03,

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320 s. 322.065, or s. 322.15 can show a driver license issued to him
321 or her and valid at the time of arrest, the clerk of the court
322 may dismiss the case and may assess a dismissal fee of up to
323 \$10, from which the clerk shall remit \$2.50 to the Department of
324 Revenue for deposit into the General Revenue Fund.

325 3. If a person who is cited for a violation of s. 316.646
326 can show proof of security as required by s. 324.021(7) ~~or~~
327 ~~627.733~~, issued to the person and valid at the time of arrest,
328 the clerk of the court may dismiss the case and may assess a
329 dismissal fee of up to \$10, from which the clerk shall remit
330 \$2.50 to the Department of Revenue for deposit into the General
331 Revenue Fund. A person who finds it impossible or impractical to
332 obtain proof of security must submit an affidavit detailing the
333 reasons for the impracticality. The reasons may include, but are
334 not limited to, the fact that the vehicle has since been sold,
335 stolen, or destroyed; ~~that the owner or registrant of the~~
336 ~~vehicle is not required by s. 627.733 to maintain personal~~
337 ~~injury protection insurance~~; or that the vehicle is owned by
338 another person.

339 Section 6. Paragraphs (a) and (d) of subsection (5) of
340 section 320.02, Florida Statutes, are amended to read:

341 320.02 Registration required; application for registration;
342 forms.—

343 (5) (a) Proof that bodily injury liability coverage and
344 property damage liability coverage ~~personal injury protection~~
345 ~~benefits~~ have been purchased if required under s. 324.022, s.
346 324.032, or s. 627.742 ~~or 627.733~~, ~~that property damage~~
347 ~~liability coverage has been purchased as required under s.~~
348 ~~324.022~~, that bodily injury liability ~~or death~~ coverage has been

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349 purchased if required under s. 324.023, and that combined bodily
 350 liability insurance and property damage liability insurance have
 351 been purchased if required under s. 627.7415 ~~must shall~~ be
 352 provided in the manner prescribed by law by the applicant at the
 353 time of application for registration of any motor vehicle that
 354 is subject to such requirements. The issuing agent ~~may not shall~~
 355 ~~refuse to~~ issue registration if such proof of purchase is not
 356 provided. Insurers shall furnish uniform proof-of-purchase cards
 357 in a paper or electronic format in a form prescribed by the
 358 department and include the name of the insured's insurance
 359 company, the coverage identification number, and the make, year,
 360 and vehicle identification number of the vehicle insured. The
 361 card must contain a statement notifying the applicant of the
 362 penalty specified under s. 316.646(4). The card or insurance
 363 policy, insurance policy binder, or certificate of insurance or
 364 a photocopy of any of these; an affidavit containing the name of
 365 the insured's insurance company, the insured's policy number,
 366 and the make and year of the vehicle insured; or such other
 367 proof as may be prescribed by the department constitutes shall
 368 ~~constitute~~ sufficient proof of purchase. If an affidavit is
 369 provided as proof, it must be in substantially the following
 370 form:

371

372 Under penalty of perjury, I ...(Name of insured)... do hereby
 373 certify that I have ...(bodily injury liability and ~~Personal~~
 374 ~~Injury Protection~~, property damage liability, ~~and, if required,~~
 375 ~~Bodily Injury Liability~~)... insurance currently in effect with
 376 ...(Name of insurance company)... under ...(policy number)...
 377 covering ...(make, year, and vehicle identification number of

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378 vehicle).... ...(Signature of Insured)...

379

380 Such affidavit must include the following warning:

381

382 WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE
 383 REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA
 384 LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS
 385 SUBJECT TO PROSECUTION.

386

387 If an application is made through a licensed motor vehicle
 388 dealer as required under s. 319.23, the original or a photocopy
 389 ~~photostatic copy~~ of such card, insurance policy, insurance
 390 policy binder, or certificate of insurance or the original
 391 affidavit from the insured ~~must shall~~ be forwarded by the dealer
 392 to the tax collector of the county or the Department of Highway
 393 Safety and Motor Vehicles for processing. By executing the
 394 ~~aforsaid~~ affidavit, a ~~no~~ licensed motor vehicle dealer is not
 395 ~~will be~~ liable in damages for any inadequacy, insufficiency, or
 396 falsification of any statement contained therein. ~~A card must~~
 397 ~~also indicate the existence of any bodily injury liability~~
 398 ~~insurance voluntarily purchased.~~

399 (d) The verifying of ~~proof of personal injury protection~~
 400 ~~insurance, proof of property damage liability insurance, proof~~
 401 ~~of combined bodily liability insurance and property damage~~
 402 ~~liability insurance, or~~ proof of financial responsibility
 403 ~~insurance~~ and the issuance or failure to issue the motor vehicle
 404 registration under ~~the provisions of~~ this chapter may not be
 405 construed in any court as a warranty of the reliability or
 406 accuracy of the evidence of such proof or as meaning that the

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407 provisions of any insurance policy furnished as proof of
 408 financial responsibility comply with state law. Neither the
 409 department nor any tax collector is liable in damages for any
 410 inadequacy, insufficiency, falsification, or unauthorized
 411 modification of any item of ~~the proof of personal injury~~
 412 ~~protection insurance, proof of property damage liability~~
 413 ~~insurance, proof of combined bodily liability insurance and~~
 414 ~~property damage liability insurance, or~~ proof of financial
 415 responsibility before insurance prior to, during, or subsequent
 416 to the verification of the proof. The issuance of a motor
 417 vehicle registration does not constitute prima facie evidence or
 418 a presumption of insurance coverage.

419 Section 7. Paragraph (b) of subsection (1) of section
 420 320.0609, Florida Statutes, is amended to read:

421 320.0609 Transfer and exchange of registration license
 422 plates; transfer fee.—

423 (1)

424 (b) The transfer of a license plate from a vehicle disposed
 425 of to a newly acquired vehicle does not constitute a new
 426 registration. The application for transfer must shall be
 427 accepted without requiring proof of ~~personal injury protection~~
 428 ~~or~~ liability insurance.

429 Section 8. Subsection (3) of section 320.27, Florida
 430 Statutes, is amended, and paragraph (g) is added to subsection
 431 (1) of that section, to read:

432 320.27 Motor vehicle dealers.—

433 (1) DEFINITIONS.—The following words, terms, and phrases
 434 when used in this section have the meanings respectively
 435 ascribed to them in this subsection, except where the context

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436 clearly indicates a different meaning:

437 (g) "Garage liability insurance" means, beginning July 1,
 438 2023, combined single-limit liability coverage, including
 439 property damage and bodily injury liability coverage, in the
 440 amount of at least \$60,000.

441 (3) APPLICATION AND FEE.—~~The application for the license~~
 442 application must shall be in such form as may be prescribed by
 443 the department and is shall be subject to such rules ~~with~~
 444 ~~respect thereto~~ as may be so prescribed by the department it.
 445 Such application must shall be verified by oath or affirmation
 446 and must shall contain a full statement of the name and birth
 447 date of the person or persons applying for the license therefor;
 448 the name of the firm or copartnership, with the names and places
 449 of residence of all members ~~thereof~~, if such applicant is a firm
 450 or copartnership; the names and places of residence of the
 451 principal officers, if the applicant is a body corporate or
 452 other artificial body; the name of the state under whose laws
 453 the corporation is organized; the present and former place or
 454 places of residence of the applicant; and the prior business in
 455 which the applicant has been engaged and its the location
 456 thereof. The Such application must shall describe the exact
 457 location of the place of business and must shall state whether
 458 the place of business is owned by the applicant and when
 459 acquired, or, if leased, a true copy of the lease must shall be
 460 attached to the application. The applicant shall certify that
 461 the location provides an adequately equipped office and is not a
 462 residence; that the location affords sufficient unoccupied space
 463 upon and within which adequately to store all motor vehicles
 464 offered and displayed for sale; and that the location is a

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465 suitable place where the applicant can in good faith carry on
 466 such business and keep and maintain books, records, and files
 467 necessary to conduct such business, which ~~must shall~~ be
 468 available at all reasonable hours to inspection by the
 469 department or any of its inspectors or other employees. The
 470 applicant shall certify that the business of a motor vehicle
 471 dealer is the principal business ~~that will which shall~~ be
 472 conducted at that location. The application ~~must shall~~ contain a
 473 statement that the applicant is either franchised by a
 474 manufacturer of motor vehicles, in which case the name of each
 475 motor vehicle that the applicant is franchised to sell ~~must~~
 476 ~~shall~~ be included, or an independent (nonfranchised) motor
 477 vehicle dealer. The application ~~must shall~~ contain other
 478 relevant information as may be required by the department. The
 479 applicant shall furnish, including evidence, in a form approved
 480 by the department, that the applicant is insured under a garage
 481 liability insurance policy or a general liability insurance
 482 policy coupled with a business automobile policy having the
 483 coverages and limits of the garage liability insurance coverage
 484 in accordance with paragraph (1) (g), which shall include, at a
 485 minimum, \$25,000 combined single-limit liability coverage
 486 including bodily injury and property damage protection and
 487 \$10,000 personal injury protection. However, a salvage motor
 488 vehicle dealer as defined in subparagraph (1)(c)5. is exempt
 489 from the requirements for garage liability insurance ~~and~~
 490 ~~personal injury protection insurance~~ on those vehicles that
 491 cannot be legally operated on roads, highways, or streets in
 492 this state. Franchise dealers must submit a garage liability
 493 insurance policy, and all other dealers must submit a garage

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494 liability insurance policy or a general liability insurance
 495 policy coupled with a business automobile policy. Such policy
 496 ~~must shall~~ be for the license period, and evidence of a new or
 497 continued policy ~~must shall~~ be delivered to the department at
 498 the beginning of each license period. A licensee shall deliver
 499 to the department, in the manner prescribed by the department,
 500 within 10 calendar days after any renewal or continuation of or
 501 change in such policy or within 10 calendar days after any
 502 issuance of a new policy, a copy of the renewed, continued,
 503 changed, or new policy. Upon making an initial application, the
 504 applicant shall pay to the department a fee of \$300 in addition
 505 to any other fees required by law. Applicants may choose to
 506 extend the licensure period for 1 additional year for a total of
 507 2 years. An initial applicant shall pay to the department a fee
 508 of \$300 for the first year and \$75 for the second year, in
 509 addition to any other fees required by law. An applicant for
 510 renewal shall pay to the department \$75 for a 1-year renewal or
 511 \$150 for a 2-year renewal, in addition to any other fees
 512 required by law. Upon making an application for a change of
 513 location, the applicant ~~person~~ shall pay a fee of \$50 in
 514 addition to any other fees now required by law. The department
 515 shall, in the case of every application for initial licensure,
 516 verify whether certain facts set forth in the application are
 517 true. Each applicant, general partner in the case of a
 518 partnership, or corporate officer and director in the case of a
 519 corporate applicant ~~shall, must~~ file a set of fingerprints with
 520 the department for the purpose of determining any prior criminal
 521 record or any outstanding warrants. The department shall submit
 522 the fingerprints to the Department of Law Enforcement for state

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523 processing and forwarding to the Federal Bureau of Investigation
 524 for federal processing. The actual cost of state and federal
 525 processing ~~must shall~~ be borne by the applicant and is in
 526 addition to the fee for licensure. The department may issue a
 527 license to an applicant pending the results of the fingerprint
 528 investigation, which license is fully revocable if the
 529 department subsequently determines that any facts set forth in
 530 the application are not true or correctly represented.

531 Section 9. Paragraph (j) of subsection (3) of section
 532 320.771, Florida Statutes, is amended to read:

533 320.771 License required of recreational vehicle dealers.—

534 (3) APPLICATION.—The application for such license shall be
 535 in the form prescribed by the department and subject to such
 536 rules as may be prescribed by it. The application shall be
 537 verified by oath or affirmation and shall contain:

538 (j) A statement that the applicant is insured under a
 539 garage liability insurance policy in accordance with s.
 540 320.27(1)(g), which shall include, at a minimum, \$25,000
 541 ~~combined single limit liability coverage, including bodily~~
 542 ~~injury and property damage protection, and \$10,000 personal~~
 543 ~~injury protection,~~ if the applicant is to be licensed as a
 544 dealer in, or intends to sell, recreational vehicles. However, a
 545 garage liability policy is not required for the licensure of a
 546 mobile home dealer who sells only park trailers.

547
 548 The department shall, if it deems necessary, cause an
 549 investigation to be made to ascertain if the facts set forth in
 550 the application are true and shall not issue a license to the
 551 applicant until it is satisfied that the facts set forth in the

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552 application are true.

553 Section 10. Subsections (1) and (2) of section 322.251,
 554 Florida Statutes, are amended to read:

555 322.251 Notice of cancellation, suspension, revocation, or
 556 disqualification of license.—

557 (1) All orders of cancellation, suspension, revocation, or
 558 disqualification issued under ~~the provisions of~~ this chapter,
 559 chapter 318, or chapter 324 ~~must, or ss. 627.732-627.734 shall~~
 560 be given either by personal delivery ~~thereof~~ to the licensee
 561 whose license is being canceled, suspended, revoked, or
 562 disqualified or by deposit in the United States mail in an
 563 envelope, first class, postage prepaid, addressed to the
 564 licensee at his or her last known mailing address furnished to
 565 the department. Such mailing by the department constitutes
 566 notification, and any failure by the person to receive the
 567 mailed order will not affect or stay the effective date or term
 568 of the cancellation, suspension, revocation, or disqualification
 569 of the licensee's driving privilege.

570 (2) The giving of notice and an order of cancellation,
 571 suspension, revocation, or disqualification by mail is complete
 572 upon expiration of 20 days after deposit in the United States
 573 mail for all notices except those issued under chapter 324 ~~or~~
 574 ~~ss. 627.732-627.734,~~ which are complete 15 days after deposit in
 575 the United States mail. Proof of the giving of notice and an
 576 order of cancellation, suspension, revocation, or
 577 disqualification in either manner ~~must shall~~ be made by entry in
 578 the records of the department that such notice was given. The
 579 entry is admissible in the courts of this state and constitutes
 580 sufficient proof that such notice was given.

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581 Section 11. Paragraph (a) of subsection (8) of section
582 322.34, Florida Statutes, is amended to read:
583 322.34 Driving while license suspended, revoked, canceled,
584 or disqualified.—

585 (8) (a) Upon the arrest of a person for the offense of
586 driving while the person's driver license or driving privilege
587 is suspended or revoked, the arresting officer shall determine:

588 1. Whether the person's driver license is suspended or
589 revoked, or the person is under suspension or revocation
590 equivalent status.

591 2. Whether the person's driver license has remained
592 suspended or revoked, or the person has been under suspension or
593 revocation equivalent status, since a conviction for the offense
594 of driving with a suspended or revoked license.

595 3. Whether the suspension, revocation, or suspension or
596 revocation equivalent status was made under s. 316.646 ~~or s.
597 627.733~~, relating to failure to maintain required security, or
598 under s. 322.264, relating to habitual traffic offenders.

599 4. Whether the driver is the registered owner or co-owner
600 of the vehicle.

601 Section 12. Section 324.011, Florida Statutes, is amended
602 to read:

603 324.011 Legislative intent; purpose of chapter.—

604 (1) It is the intent of the Legislature that this chapter:

605 (a) Ensure that the privilege of owning or operating a
606 motor vehicle in this state is exercised to recognize the
607 existing privilege to own or operate a motor vehicle on the
608 public streets and highways of this state when such vehicles are
609 used with due consideration for the safety of others and their

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610 property, ~~and to~~

611 (b) Promote safety. ~~and~~

612 (c) Provide financial security requirements for such owners
613 and ~~or~~ operators whose responsibility it is to recompense others
614 for injury to person or property caused by the operation of a
615 motor vehicle.

616 (2) The purpose of this chapter is to require that every
617 owner or operator of a motor vehicle required to be registered
618 in this state establish, maintain, ~~Therefore, it is required~~
619 herein that the operator of a motor vehicle involved in a crash
620 or convicted of certain traffic offenses meeting the operative
621 provisions of s. 324.051(2) shall respond for such damages and
622 show proof of financial ability to respond for damages arising
623 out of the ownership, maintenance, or use of a motor vehicle ~~in~~
624 future accidents as a requisite to owning or operating a motor
625 vehicle in this state ~~his or her future exercise of such~~
626 privileges.

627 Section 13. Subsections (1) and (7) and paragraph (c) of
628 subsection (9) of section 324.021, Florida Statutes, are
629 amended, and subsection (12) is added to that section, to read:

630 324.021 Definitions; minimum insurance required.—The
631 following words and phrases when used in this chapter shall, for
632 the purpose of this chapter, have the meanings respectively
633 ascribed to them in this section, except in those instances
634 where the context clearly indicates a different meaning:

635 (1) MOTOR VEHICLE.—Every self-propelled vehicle that is
636 designed and required to be licensed for use upon a highway,
637 including trailers and semitrailers designed for use with such
638 vehicles, except traction engines, road rollers, farm tractors,

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639 power shovels, and well drillers, and every vehicle that is
 640 propelled by electric power obtained from overhead wires but not
 641 operated upon rails, but not including any personal delivery
 642 device or mobile carrier as defined in s. 316.003, bicycle,
 643 electric bicycle, or moped. ~~However, the term "motor vehicle"~~
 644 ~~does not include a motor vehicle as defined in s. 627.732(3)~~
 645 ~~when the owner of such vehicle has complied with the~~
 646 ~~requirements of ss. 627.730-627.7405, inclusive, unless the~~
 647 ~~provisions of s. 324.051 apply; and, in such case, the~~
 648 ~~applicable proof of insurance provisions of s. 320.02 apply.~~

649 (7) PROOF OF FINANCIAL RESPONSIBILITY.—Beginning July 1,
 650 2023, that proof of ability to respond in damages for liability
 651 on account of crashes arising out of the ownership, maintenance,
 652 or use of a motor vehicle:

653 (a) With respect to a motor vehicle other than a commercial
 654 motor vehicle, nonpublic sector bus, or for-hire passenger
 655 transportation vehicle, in the amounts specified in s.
 656 324.022(1). in the amount of \$10,000 because of bodily injury
 657 to, or death of, one person in any one crash;

658 ~~(b) Subject to such limits for one person, in the amount of~~
 659 ~~\$20,000 because of bodily injury to, or death of, two or more~~
 660 ~~persons in any one crash;~~

661 ~~(c) In the amount of \$10,000 because of injury to, or~~
 662 ~~destruction of, property of others in any one crash; and~~

663 ~~(b)(d)~~ With respect to commercial motor vehicles and
 664 nonpublic sector buses, in the amounts specified in s. 627.7415
 665 ss. 627.7415 and 627.742, respectively.

666 (c) With respect to nonpublic sector buses, in the amounts
 667 specified in s. 627.742.

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668 (d) With respect to for-hire passenger transportation
 669 vehicles, in the amounts specified in s. 324.032.

670 (9) OWNER; OWNER/LESSOR.—

671 (c) Application.—

672 1. The limits on liability in subparagraphs (b)2. and 3. do
 673 not apply to an owner of motor vehicles that are used for
 674 commercial activity in the owner's ordinary course of business,
 675 other than a rental company that rents or leases motor vehicles.
 676 For purposes of this paragraph, the term "rental company"
 677 includes only an entity that is engaged in the business of
 678 renting or leasing motor vehicles to the general public and that
 679 rents or leases a majority of its motor vehicles to persons with
 680 no direct or indirect affiliation with the rental company. The
 681 term "rental company" also includes:

682 a. A related rental or leasing company that is a subsidiary
 683 of the same parent company as that of the renting or leasing
 684 company that rented or leased the vehicle.

685 b. The holder of a motor vehicle title or an equity
 686 interest in a motor vehicle title if the title or equity
 687 interest is held pursuant to or to facilitate an asset-backed
 688 securitization of a fleet of motor vehicles used solely in the
 689 business of renting or leasing motor vehicles to the general
 690 public and under the dominion and control of a rental company,
 691 as described in this subparagraph, in the operation of such
 692 rental company's business.

693 2. Furthermore, with respect to commercial motor vehicles
 694 as defined in s. 207.002 or s. 320.01(25) ~~s. 627.732~~, the limits
 695 on liability in subparagraphs (b)2. and 3. do not apply if, at
 696 the time of the incident, the commercial motor vehicle is being

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697 used in the transportation of materials found to be hazardous
 698 for the purposes of the Hazardous Materials Transportation
 699 Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et
 700 seq., and that is required pursuant to such act to carry
 701 placards warning others of the hazardous cargo, unless at the
 702 time of lease or rental either:

703 a. The lessee indicates in writing that the vehicle will
 704 not be used to transport materials found to be hazardous for the
 705 purposes of the Hazardous Materials Transportation Authorization
 706 Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

707 b. The lessee or other operator of the commercial motor
 708 vehicle has in effect insurance with limits of at least \$5
 709 million ~~€5,000,000~~ combined property damage and bodily injury
 710 liability.

711 3.a. A motor vehicle dealer, or a motor vehicle dealer's
 712 leasing or rental affiliate, that provides a temporary
 713 replacement vehicle at no charge or at a reasonable daily charge
 714 to a service customer whose vehicle is being held for repair,
 715 service, or adjustment by the motor vehicle dealer is immune
 716 from any cause of action and is not liable, vicariously or
 717 directly, under general law solely by reason of being the owner
 718 of the temporary replacement vehicle for harm to persons or
 719 property that arises out of the use, or operation, of the
 720 temporary replacement vehicle by any person during the period
 721 the temporary replacement vehicle has been entrusted to the
 722 motor vehicle dealer's service customer if there is no
 723 negligence or criminal wrongdoing on the part of the motor
 724 vehicle owner, or its leasing or rental affiliate.

725 b. For purposes of this section, and notwithstanding any

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726 other ~~provision of general~~ law, a motor vehicle dealer, or a
 727 motor vehicle dealer's leasing or rental affiliate, that gives
 728 possession, control, or use of a temporary replacement vehicle
 729 to a motor vehicle dealer's service customer may not be adjudged
 730 liable in a civil proceeding absent negligence or criminal
 731 wrongdoing on the part of the motor vehicle dealer, or the motor
 732 vehicle dealer's leasing or rental affiliate, if the motor
 733 vehicle dealer or the motor vehicle dealer's leasing or rental
 734 affiliate executes a written rental or use agreement and obtains
 735 from the person receiving the temporary replacement vehicle a
 736 copy of the person's driver license and insurance information
 737 reflecting at least the minimum motor vehicle insurance coverage
 738 required in the state. Any subsequent determination that the
 739 driver license or insurance information provided to the motor
 740 vehicle dealer, or the motor vehicle dealer's leasing or rental
 741 affiliate, was in any way false, fraudulent, misleading,
 742 nonexistent, canceled, not in effect, or invalid does not alter
 743 or diminish the protections provided by this section, unless the
 744 motor vehicle dealer, or the motor vehicle dealer's leasing or
 745 rental affiliate, had actual knowledge thereof at the time
 746 possession of the temporary replacement vehicle was provided.

747 c. For purposes of this subparagraph, the term "service
 748 customer" does not include an agent or a principal of a motor
 749 vehicle dealer or a motor vehicle dealer's leasing or rental
 750 affiliate, and does not include an employee of a motor vehicle
 751 dealer or a motor vehicle dealer's leasing or rental affiliate
 752 unless the employee was provided a temporary replacement
 753 vehicle:

754 (I) While the employee's personal vehicle was being held

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755 for repair, service, or adjustment by the motor vehicle dealer;
 756 (II) In the same manner as other customers who are provided
 757 a temporary replacement vehicle while the customer's vehicle is
 758 being held for repair, service, or adjustment; and

759 (III) The employee was not acting within the course and
 760 scope of his or her employment.

761 (12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every for-
 762 hire vehicle as defined in s. 320.01(15) which is offered or
 763 used to provide transportation for persons, including taxicabs,
 764 limousines, and jitneys.

765 Section 14. Section 324.022, Florida Statutes, is amended
 766 to read:

767 324.022 Financial responsibility requirements for property
 768 damage.—

769 (1) (a) Beginning July 1, 2023, every owner or operator of a
 770 motor vehicle required to be registered in this state shall
 771 establish and continuously maintain the ability to respond in
 772 damages for liability on account of accidents arising out of the
 773 use of the motor vehicle in the amount of:

774 1. Twenty-five thousand dollars for bodily injury to, or
 775 the death of, one person in any one crash and, subject to such
 776 limits for one person, in the amount of \$50,000 for bodily
 777 injury to, or the death of, two or more persons in any one
 778 crash; and

779 2. Ten thousand dollars for ~~\$10,000 because of~~ damage to,
 780 or destruction of, property of others in any one crash.

781 (b) The requirements of paragraph (a) ~~this section~~ may be
 782 met by one of the methods established in s. 324.031; by self-
 783 insuring as authorized by s. 768.28(16); or by maintaining a

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784 motor vehicle liability insurance policy that ~~an insurance~~
 785 policy providing coverage for property damage liability in the
 786 amount of at least \$10,000 because of damage to, or destruction
 787 of, property of others in any one accident arising out of the
 788 use of the motor vehicle. The requirements of this section may
 789 also be met by having a policy which provides combined property
 790 damage liability and bodily injury liability coverage for any
 791 one crash arising out of the ownership, maintenance, or use of a
 792 motor vehicle and that conforms to the requirements of s.
 793 324.151 in the amount of at least \$60,000 for every owner or
 794 operator subject to the financial responsibility required in
 795 paragraph (a) ~~\$30,000 for combined property damage liability and~~
 796 bodily injury liability for any one crash arising out of the use
 797 of the motor vehicle. The policy, with respect to coverage for
 798 property damage liability, must meet the applicable requirements
 799 of s. 324.151, subject to the usual policy exclusions that have
 800 been approved in policy forms by the Office of Insurance
 801 Regulation. No insurer shall have any duty to defend uncovered
 802 claims irrespective of their joinder with covered claims.

803 (2) As used in this section, the term:

804 (a) "Motor vehicle" means any self-propelled vehicle that
 805 has four or more wheels and that is of a type designed and
 806 required to be licensed for use on the highways of this state,
 807 and any trailer or semitrailer designed for use with such
 808 vehicle. The term does not include the following:

809 1. A mobile home as defined in s. 320.01(2)(a).

810 2. A motor vehicle that is used in mass transit and
 811 designed to transport more than five passengers, exclusive of
 812 the operator of the motor vehicle, and that is owned by a

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 813 municipality, transit authority, or political subdivision of the
 814 state.

815 3. A school bus as defined in s. 1006.25, which must
 816 maintain security as required under s. 316.615.

817 4. A commercial motor vehicle as defined in s. 207.002 or
 818 s. 320.01(25), which must maintain security as required under
 819 ss. 324.031 and 627.7415.

820 5. A nonpublic sector bus, which must maintain security as
 821 required under ss. 324.031 and 627.742.

822 ~~6.4. A vehicle providing for-hire passenger transportation~~
 823 ~~vehicle, which must that is subject to the provisions of s.~~
 824 ~~324.031. A taxicab shall maintain security as required under s.~~
 825 ~~324.032 s. 324.032(1).~~

826 7.5. A personal delivery device as defined in s. 316.003.

827 (b) "Owner" means the person who holds legal title to a
 828 motor vehicle or the debtor or lessee who has the right to
 829 possession of a motor vehicle that is the subject of a security
 830 agreement or lease with an option to purchase.

831 (3) Each nonresident owner or registrant of a motor vehicle
 832 that, whether operated or not, has been physically present
 833 within this state for more than 90 days during the preceding 365
 834 days shall maintain security as required by subsection (1). The
 835 security must be that is in effect continuously throughout the
 836 period the motor vehicle remains within this state.

837 (4) ~~An~~ The owner or registrant of a motor vehicle who is
 838 ~~exempt from the requirements of this section if she or he is a~~
 839 member of the United States Armed Forces and is called to or on
 840 active duty outside the United States in an emergency situation
 841 is exempt from this section while he or she. ~~The exemption~~

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 842 ~~provided by this subsection applies only as long as the member~~
 843 ~~of the Armed Forces is on such active duty. This exemption~~
 844 ~~outside the United States and applies only while the vehicle~~
 845 ~~covered by the security is not operated by any person. Upon~~
 846 receipt of a written request by the insured to whom the
 847 exemption provided in this subsection applies, the insurer shall
 848 cancel the coverages and return any unearned premium or suspend
 849 the security required by this section. Notwithstanding s.
 850 ~~324.0221(2) s. 324.0221(3),~~ the department may not suspend the
 851 registration or operator's license of ~~an~~ any owner or registrant
 852 of a motor vehicle during the time she or he qualifies for the
 853 ~~an~~ exemption under this subsection. An ~~Any~~ owner or registrant
 854 of a motor vehicle who qualifies for the ~~an~~ exemption under this
 855 subsection shall immediately notify the department before ~~prior~~
 856 ~~to~~ and at the end of the expiration of the exemption.

857 Section 15. Subsections (1) and (2) of section 324.0221,
 858 Florida Statutes, are amended to read:

859 324.0221 Reports by insurers to the department; suspension
 860 of driver license and vehicle registrations; reinstatement.-

861 (1) (a) Each insurer that has issued a policy providing
 862 ~~personal injury protection coverage or property damage~~ liability
 863 coverage shall report the cancellation or nonrenewal thereof to
 864 the department within 10 days after the processing date or
 865 effective date of each cancellation or nonrenewal. Upon the
 866 issuance of a policy providing ~~personal injury protection~~
 867 ~~coverage or property damage~~ liability coverage to a named
 868 insured not previously insured by the insurer during that
 869 calendar year, the insurer shall report the issuance of the new
 870 policy to the department within 10 days. The report must ~~shall~~

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871 be in the form ~~and format~~ and contain any information required
 872 by the department and must be provided in a format that is
 873 compatible with the data processing capabilities of the
 874 department. Failure by an insurer to file proper reports with
 875 the department as required by this subsection constitutes a
 876 violation of the Florida Insurance Code. These records ~~may shall~~
 877 be used by the department only for enforcement and regulatory
 878 purposes, including the generation by the department of data
 879 regarding compliance by owners of motor vehicles with the
 880 requirements for financial responsibility coverage.

881 (b) With respect to an insurance policy providing ~~personal~~
 882 ~~injury protection coverage or property damage~~ liability
 883 coverage, each insurer shall notify the named insured, or the
 884 first-named insured in the case of a commercial fleet policy, in
 885 writing that any cancellation or nonrenewal of the policy will
 886 be reported by the insurer to the department. The notice must
 887 also inform the named insured that failure to maintain bodily
 888 injury liability ~~personal injury protection~~ coverage and
 889 property damage liability coverage on a motor vehicle when
 890 required by law may result in the loss of registration and
 891 driving privileges in this state and inform the named insured of
 892 the amount of the reinstatement fees required by this section.
 893 This notice is for informational purposes only, and an insurer
 894 is not civilly liable for failing to provide this notice.

895 (2) The department shall suspend, after due notice and an
 896 opportunity to be heard, the registration and driver license of
 897 any owner or registrant of a motor vehicle ~~for with respect to~~
 898 which security is required under s. 324.022, s. 324.023, s.
 899 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~

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900 upon:

901 (a) The department's records showing that the owner or
 902 registrant of such motor vehicle ~~does die~~ not have ~~the in full~~
 903 ~~force and effect when~~ required security in full force and effect
 904 ~~that complies with the requirements of ss. 324.022 and 627.733;~~
 905 or

906 (b) Notification by the insurer to the department, in a
 907 form approved by the department, of cancellation or termination
 908 of the required security.

909 Section 16. Section 324.0222, Florida Statutes, is created
 910 to read:

911 324.0222 Application of driver license and registration
 912 suspensions for failure to maintain security; reinstatement.—All
 913 suspensions of driver licenses or motor vehicle registrations
 914 for failure to maintain required security as required by law in
 915 effect before July 1, 2023, remain in full force and effect
 916 after July 1, 2023. A driver may reinstate a suspended driver
 917 license or registration as provided under s. 324.0221.

918 Section 17. Section 324.023, Florida Statutes, is amended
 919 to read:

920 324.023 Financial responsibility for bodily injury or
 921 death.—In addition to any other financial responsibility
 922 required by law, every owner or operator of a motor vehicle that
 923 is required to be registered in this state, or that is located
 924 within this state, and who, regardless of adjudication of guilt,
 925 has been found guilty of or entered a plea of guilty or nolo
 926 contendere to a charge of driving under the influence under s.
 927 316.193 after October 1, 2007, shall, by one of the methods
 928 established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2),~~

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929 establish and maintain the ability to respond in damages for
 930 liability on account of accidents arising out of the use of a
 931 motor vehicle in the amount of \$100,000 because of bodily injury
 932 to, or death of, one person in any one crash and, subject to
 933 such limits for one person, in the amount of \$300,000 because of
 934 bodily injury to, or death of, two or more persons in any one
 935 crash and in the amount of \$50,000 because of property damage in
 936 any one crash. If the owner or operator chooses to establish and
 937 maintain such ability by furnishing a certificate of deposit
 938 pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of
 939 deposit must be at least \$350,000. Such higher limits must be
 940 carried for a minimum period of 3 years. If the owner or
 941 operator has not been convicted of driving under the influence
 942 or a felony traffic offense for a period of 3 years from the
 943 date of reinstatement of driving privileges for a violation of
 944 s. 316.193, the owner or operator is ~~shall be~~ exempt from this
 945 section.

946 Section 18. Section 324.031, Florida Statutes, is amended
 947 to read:

948 324.031 Manner of proving financial responsibility.-

949 (1) The owner or operator of a taxicab, limousine, jitney,
 950 ~~or any other for-hire passenger transportation vehicle may prove~~
 951 ~~financial responsibility by providing satisfactory evidence of~~
 952 ~~holding a motor vehicle liability policy as defined in s.~~
 953 ~~324.021(8) or s. 324.151, which policy is issued by an insurance~~
 954 ~~carrier which is a member of the Florida Insurance Guaranty~~
 955 ~~Association.~~ The operator or owner of a motor vehicle other than
 956 a for-hire passenger transportation vehicle any other vehicle
 957 may prove his or her financial responsibility by:

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958 (a) ~~(1)~~ Furnishing satisfactory evidence of holding a motor
 959 vehicle liability policy as defined in ss. 324.021(8) and
 960 324.151 which provides liability coverage for the motor vehicle
 961 being operated;

962 (b) ~~(2)~~ Furnishing a certificate of self-insurance showing a
 963 deposit of cash in accordance with s. 324.161; or

964 (c) ~~(3)~~ Furnishing a certificate of self-insurance issued by
 965 the department in accordance with s. 324.171.

966 (2) Beginning July 1, 2023, any person, ~~including any firm,~~
 967 ~~partnership, association, corporation, or other person, other~~
 968 ~~than a natural person,~~ electing to use the method of proof
 969 specified in paragraph (1)(b) ~~subsection (2)~~ shall do both of
 970 the following:

971 (a) Furnish a certificate of deposit equal to the number of
 972 vehicles owned times \$60,000 ~~\$30,000~~, up to a maximum of
 973 \$240,000. ~~\$120,000;~~

974 (b) ~~In addition, any such person, other than a natural~~
 975 ~~person, shall~~ Maintain insurance providing coverage that meets
 976 the requirements of s. 324.151 and has in excess of limits of:

977 1. At least \$125,000 for bodily injury to, or the death of,
 978 one person in any one crash and, subject to such limits for one
 979 person, in the amount of \$250,000 for bodily injury to, or the
 980 death of, two or more persons in any one crash; and \$50,000 for
 981 damage to, or destruction of, property of others in any one
 982 crash; or

983 2. At least \$300,000 for combined bodily injury liability
 984 and property damage liability for any one crash
 985 ~~\$10,000/20,000/10,000 or \$30,000 combined single limits, and~~
 986 ~~such excess insurance shall provide minimum limits of~~

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987 ~~\$125,000/250,000/50,000 or \$300,000 combined single limits.~~
 988 ~~These increased limits shall not affect the requirements for~~
 989 ~~proving financial responsibility under s. 324.032(1).~~

990 Section 19. Section 324.032, Florida Statutes, is amended
 991 to read:

992 324.032 ~~Manner of proving~~ Financial responsibility ~~for~~
 993 ~~for-hire passenger transportation vehicles. Notwithstanding the~~
 994 ~~provisions of s. 324.031.~~

995 (1) An owner or a lessee of a for-hire passenger
 996 transportation vehicle that is required to be registered in this
 997 state shall establish and continuously maintain the ability to
 998 respond in damages for liability on account of accidents arising
 999 out of the ownership, maintenance, or use of the for-hire
 1000 passenger transportation vehicle, in the amount of:

1001 (a) One hundred twenty-five thousand dollars for bodily
 1002 injury to, or the death of, one person in any one crash and,
 1003 subject to such limits for one person, in the amount of \$250,000
 1004 for bodily injury to, or the death of, two or more persons in
 1005 any one crash; and A person who is either the owner or a lessee
 1006 required to maintain insurance under s. 627.732(1)(b) and who
 1007 operates one or more taxicabs, limousines, jitneys, or any other
 1008 for hire passenger transportation vehicles may prove financial
 1009 responsibility by furnishing satisfactory evidence of holding a
 1010 motor vehicle liability policy, but with minimum limits of
 1011 \$125,000/250,000/50,000.

1012 (b) Fifty thousand dollars for damage to, or destruction
 1013 of, property of others in any one crash A person who is either
 1014 the owner or a lessee required to maintain insurance under s.
 1015 324.021(9)(b) and who operates limousines, jitneys, or any other

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1016 ~~for-hire passenger vehicles, other than taxicabs, may prove~~
 1017 ~~financial responsibility by furnishing satisfactory evidence of~~
 1018 ~~holding a motor vehicle liability policy as defined in s.~~
 1019 ~~324.031.~~

1020 (2) Except as provided in subsection (3), the requirements
 1021 of this section must be met by the owner or lessee providing
 1022 satisfactory evidence of holding a motor vehicle liability
 1023 policy conforming to the requirements of s. 324.151 which is
 1024 issued by an insurance carrier that is a member of the Florida
 1025 Insurance Guaranty Association.

1026 ~~(3)(2) An owner or a lessee who is required to maintain~~
 1027 ~~insurance under s. 324.021(9)(b) and who operates at least 300~~
 1028 ~~taxicabs, limousines, jitneys, or any other for-hire passenger~~
 1029 ~~transportation vehicles may provide financial responsibility by~~
 1030 ~~complying with the provisions of s. 324.171, which must ~~each~~~~
 1031 ~~compliance to be demonstrated by maintaining at its principal~~
 1032 ~~place of business an audited financial statement, prepared in~~
 1033 ~~accordance with generally accepted accounting principles, and~~
 1034 ~~providing to the department a certification issued by a~~
 1035 ~~certified public accountant that the applicant's net worth is at~~
 1036 ~~least equal to the requirements of s. 324.171 as determined by~~
 1037 ~~the Office of Insurance Regulation of the Financial Services~~
 1038 ~~Commission, including claims liabilities in an amount certified~~
 1039 ~~as adequate by a Fellow of the Casualty Actuarial Society.~~

1040

1041 Upon request by the department, the applicant ~~shall~~ must provide
 1042 the department at the applicant's principal place of business in
 1043 this state access to the applicant's underlying financial
 1044 information and financial statements that provide the basis of

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1045 the certified public accountant's certification. The applicant
 1046 shall reimburse the requesting department for all reasonable
 1047 costs incurred by it in reviewing the supporting information.
 1048 The maximum amount of self-insurance permissible under this
 1049 subsection is \$300,000 and must be stated on a per-occurrence
 1050 basis, and the applicant shall maintain adequate excess
 1051 insurance issued by an authorized or eligible insurer licensed
 1052 or approved by the Office of Insurance Regulation. All risks
 1053 self-insured ~~shall~~ remain with the owner or lessee providing it,
 1054 and the risks are not transferable to any other person, unless a
 1055 policy complying with subsections (1) and (2) ~~subsection (1)~~ is
 1056 obtained.

1057 Section 20. Subsection (2) of section 324.051, Florida
 1058 Statutes, is amended, and subsection (4) is added to that
 1059 section, to read:

1060 324.051 Reports of crashes; suspensions of licenses and
 1061 registrations.—

1062 (2) (a) Thirty days after receipt of notice of any accident
 1063 described in paragraph (1) (a) involving a motor vehicle within
 1064 this state, the department shall suspend, after due notice and
 1065 opportunity to be heard, the license of each operator and all
 1066 registrations of the owner of the vehicles operated by such
 1067 operator whether or not involved in such crash and, in the case
 1068 of a nonresident owner or operator, shall suspend such
 1069 nonresident's operating privilege in this state, unless such
 1070 operator or owner shall, prior to the expiration of such 30
 1071 days, be found by the department to be exempt from the operation
 1072 of this chapter, based upon evidence satisfactory to the
 1073 department that:

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1074 1. The motor vehicle was legally parked at the time of such
 1075 crash.

1076 2. The motor vehicle was owned by the United States
 1077 Government, this state, or any political subdivision of this
 1078 state or any municipality therein.

1079 3. Such operator or owner has secured a duly acknowledged
 1080 written agreement providing for release from liability by all
 1081 parties injured as the result of said crash and has complied
 1082 with one of the provisions of s. 324.031.

1083 4. Such operator or owner has deposited with the department
 1084 security to conform with s. 324.061 when applicable and has
 1085 complied with one of the provisions of s. 324.031.

1086 5. One year has elapsed since such owner or operator was
 1087 suspended pursuant to subsection (3), the owner or operator has
 1088 complied with one of the provisions of s. 324.031, and no bill
 1089 of complaint of which the department has notice has been filed
 1090 in a court of competent jurisdiction.

1091 (b) This subsection does ~~shall~~ not apply:

1092 1. To such operator or owner if such operator or owner had
 1093 in effect at the time of such crash or traffic conviction a
 1094 motor vehicle ~~an automobile~~ liability policy with respect to all
 1095 of the registered motor vehicles owned by such operator or
 1096 owner.

1097 2. To such operator, if not the owner of such motor
 1098 vehicle, if there was in effect at the time of such crash or
 1099 traffic conviction a motor vehicle ~~an automobile~~ liability
 1100 policy or bond with respect to his or her operation of motor
 1101 vehicles not owned by him or her.

1102 3. To such operator or owner if the liability of such

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1103 operator or owner for damages resulting from such crash is, in
1104 the judgment of the department, covered by any other form of
1105 liability insurance or bond.

1106 4. To any person who has obtained from the department a
1107 certificate of self-insurance, in accordance with s. 324.171, or
1108 to any person operating a motor vehicle for such self-insurer.
1109

1110 No such policy or bond shall be effective under this subsection
1111 unless it contains limits of not less than those specified in s.
1112 324.021(7).

1113 (4) As used in this section, the term "motor vehicle"
1114 includes a motorcycle as defined in s. 320.01(26).

1115 Section 21. Section 324.071, Florida Statutes, is amended
1116 to read:

1117 324.071 Reinstatement; renewal of license; reinstatement
1118 fee.—Any operator or owner whose license or registration has
1119 been suspended pursuant to s. 324.051(2), s. 324.072, s.
1120 324.081, or s. 324.121 may effect its reinstatement upon
1121 compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or
1122 s. 324.081(2) and (3), as the case may be, and with one of the
1123 provisions of s. 324.031 and upon payment to the department of a
1124 nonrefundable reinstatement fee of \$15. Only one such fee may
1125 ~~shall~~ be paid by any one person regardless irrespective of the
1126 number of licenses and registrations to be then reinstated or
1127 issued to such person. ~~All~~ Such fees must shall be deposited to
1128 a department trust fund. ~~If~~ ~~When~~ the reinstatement of any
1129 license or registration is effected by compliance with s.
1130 324.051(2)(a)3. or 4., the department may shall not renew the
1131 license or registration within a ~~period of~~ 3 years after from

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1132 such reinstatement, nor may shall any other license or
1133 registration be issued in the name of such person, unless the
1134 operator continues is continuing to comply with ~~one of the~~
1135 ~~provisions of~~ s. 324.031.

1136 Section 22. Subsection (1) of section 324.091, Florida
1137 Statutes, is amended to read:

1138 324.091 Notice to department; notice to insurer.—

1139 (1) Each owner and operator involved in a crash or
1140 conviction case within the purview of this chapter shall furnish
1141 evidence of ~~automobile liability insurance or~~ motor vehicle
1142 liability insurance within 14 days after the date of the mailing
1143 of notice of crash by the department in the form and manner as
1144 it may designate. Upon receipt of evidence that a an automobile
1145 ~~liability policy or~~ motor vehicle liability policy was in effect
1146 at the time of the crash or conviction case, the department
1147 shall forward to the insurer such information for verification
1148 in a method as determined by the department. The insurer shall
1149 respond to the department within 20 days after the notice as to
1150 whether ~~or not~~ such information is valid. If the department
1151 determines that a an automobile liability policy or motor
1152 vehicle liability policy was not in effect and did not provide
1153 coverage for both the owner and the operator, it must shall take
1154 action as it is authorized to do under this chapter.

1155 Section 23. Section 324.151, Florida Statutes, is amended
1156 to read:

1157 324.151 Motor vehicle liability policies; required
1158 provisions.—

1159 (1) A motor vehicle liability policy that serves as to be
1160 proof of financial responsibility under s. 324.031(1)(a) must s-

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1161 ~~324.031(1) shall~~ be issued to owners or operators of motor
 1162 vehicles under the following provisions:

1163 (a) A motor vehicle ~~An owner's~~ liability insurance policy
 1164 issued to an owner of a motor vehicle required to be registered
 1165 in this state must designate by explicit description or by
 1166 appropriate reference all motor vehicles ~~for with respect to~~
 1167 which coverage is thereby granted. ~~The policy,~~ must insure the
 1168 person or persons ~~owner~~ named therein, and, ~~unless except for a~~
 1169 ~~named driver~~ excluded under s. 627.747, ~~must insure any resident~~
 1170 ~~relative of a named insured other person as operator using such~~
 1171 ~~motor vehicle or motor vehicles with the express or implied~~
 1172 ~~permission of such owner against loss from the liability imposed~~
 1173 ~~by law for damage arising out of the ownership, maintenance, or~~
 1174 ~~use of any such motor vehicle or motor vehicles within the~~
 1175 ~~United States or the Dominion of Canada, subject to limits,~~
 1176 ~~exclusive of interest and costs with respect to each such motor~~
 1177 ~~vehicle as is provided for under s. 324.021(7). The policy must~~
 1178 also insure any person operating an insured motor vehicle with
 1179 the express or implied permission of a named insured against
 1180 loss from the liability imposed by law for damage arising out of
 1181 the use of any vehicle, unless that person was excluded under s.
 1182 627.747. However, the insurer may include provisions in its
 1183 policy excluding liability coverage for a motor vehicle not
 1184 designated as an insured vehicle on the policy if such motor
 1185 vehicle does not qualify as a newly acquired vehicle or as a
 1186 temporary substitute vehicle and was owned by the insured or was
 1187 furnished for an insured's regular use for more than 30
 1188 consecutive days before the event giving rise to the claim.
 1189 Insurers may make available, with respect to property damage

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1190 liability coverage, a deductible amount not to exceed \$500. In
 1191 the event of a property damage loss covered by a policy
 1192 containing a property damage deductible provision, the insurer
 1193 shall pay to the third-party claimant the amount of any property
 1194 damage liability settlement or judgment, subject to policy
 1195 limits, as if no deductible existed.

1196 (b) A motor vehicle liability insurance policy issued to a
 1197 person who does not own a ~~An operator's~~ motor vehicle must
 1198 ~~liability policy of insurance shall~~ insure the person or persons
 1199 named therein against loss from the liability imposed ~~upon him~~
 1200 ~~or her~~ by law for damages arising out of the use ~~by the person~~
 1201 of any motor vehicle not owned by him or her, ~~with the same~~
 1202 ~~territorial limits and subject to the same limits of liability~~
 1203 ~~as referred to above with respect to an owner's policy of~~
 1204 ~~liability insurance.~~

1205 (c) All such motor vehicle liability policies must provide
 1206 liability coverage with limits, exclusive of interest and costs,
 1207 as specified under s. 324.021(7) for accidents occurring within
 1208 the United States and Canada. The policies must ~~shall~~ state the
 1209 name and address of the named insured, the coverage afforded by
 1210 the policy, the premium charged therefor, the policy period, and
 1211 the limits of liability, and ~~must shall~~ contain an agreement or
 1212 be endorsed that insurance is provided in accordance with the
 1213 coverage defined in this chapter ~~as respects bodily injury and~~
 1214 ~~death or property damage or both~~ and is subject to all
 1215 ~~provisions of~~ this chapter. ~~The said~~ policies must shall also
 1216 contain a provision that the satisfaction by an insured of a
 1217 judgment for such injury or damage ~~may shall~~ not be a condition
 1218 precedent to the right or duty of the insurance carrier to make

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1219 payment on account of such injury or damage, and ~~must shall~~ also
 1220 contain a provision that bankruptcy or insolvency of the insured
 1221 or of the insured's estate ~~does shall~~ not relieve the insurance
 1222 carrier of any of its obligations under ~~the said~~ policy.

1223 (2) ~~The provisions of~~ This section ~~is shall~~ not be
 1224 applicable to any ~~motor vehicle automobile~~ liability policy
 1225 unless and until it is furnished as proof of financial
 1226 responsibility for the future pursuant to s. 324.031, and then
 1227 applies only from and after the date ~~the said~~ policy is so
 1228 furnished.

1229 (3) As used in this section, the term:

1230 (a) "Newly acquired vehicle" means a vehicle owned by a
 1231 named insured or resident relative of the named insured which
 1232 was acquired no more than 30 days before an accident.

1233 (b) "Resident relative" means a person related to a named
 1234 insured by any degree by blood, marriage, or adoption, including
 1235 a ward or foster child, who makes his or her home in the same
 1236 family unit or residence as the named insured, regardless of
 1237 whether he or she temporarily lives elsewhere.

1238 (c) "Temporary substitute vehicle" means any motor vehicle
 1239 that is not owned by the named insured and that is temporarily
 1240 used with the permission of the owner as a substitute for the
 1241 owned motor vehicle designated on the policy when the owned
 1242 vehicle is withdrawn from normal use because of breakdown,
 1243 repair, servicing, loss, or destruction.

1244 Section 24. Section 324.161, Florida Statutes, is amended
 1245 to read:

1246 324.161 Proof of financial responsibility; deposit.-~~If a~~
 1247 person elects to prove his or her financial responsibility under

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1248 the method of proof specified in s. 324.031(1)(b), he or she
 1249 annually must obtain and submit to the department proof of a
 1250 certificate of deposit in the amount required under s.
 1251 324.031(2) from a financial institution insured by the Federal
 1252 Deposit Insurance Corporation or the National Credit Union
 1253 Administration ~~Annually, before any certificate of insurance may~~
 1254 ~~be issued to a person, including any firm, partnership,~~
 1255 ~~association, corporation, or other person, other than a natural~~
 1256 ~~person, proof of a certificate of deposit of \$30,000 issued and~~
 1257 ~~held by a financial institution must be submitted to the~~
 1258 ~~department.~~ A power of attorney will be issued to and held by
 1259 the department and may be executed upon a judgment issued
 1260 against such person making the deposit, for damages ~~for because~~
 1261 ~~of~~ bodily injury to or death of any person or for damages for
 1262 ~~because of~~ injury to or destruction of property resulting from
 1263 the use or operation of any motor vehicle occurring after such
 1264 deposit was made. Money so deposited ~~is shall~~ not ~~be~~ subject to
 1265 attachment or execution unless such attachment or execution
 1266 arises shall arise out of a lawsuit suit for such damages ~~as~~
 1267 aforesaid.

1268 Section 25. Subsections (1) and (2) of section 324.171,
 1269 Florida Statutes, are amended to read:

1270 324.171 Self-insurer.-

1271 (1) ~~A~~ Any person may qualify as a self-insurer by obtaining
 1272 a certificate of self-insurance from the department, ~~which may,~~
 1273 ~~in its discretion and~~ Upon application of such a person, the
 1274 department may issue a said certificate of self-insurance to an
 1275 applicant who satisfies ~~when such person has satisfied~~ the
 1276 requirements of this section. Effective July 1, 2023 ~~to qualify~~

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1277 ~~as a self-insurer under this section:~~

1278 (a) A private individual with private passenger vehicles
1279 shall possess a net unencumbered worth of at least \$100,000
1280 ~~\$40,000~~.

1281 (b) A person, including any firm, partnership, association,
1282 corporation, or other person, other than a natural person,
1283 shall:

1284 1. Possess a net unencumbered worth of at least \$100,000
1285 ~~\$40,000~~ for the first motor vehicle and \$50,000 ~~\$20,000~~ for each
1286 additional motor vehicle; or

1287 2. Maintain sufficient net worth, in an amount determined
1288 by the department, to be financially responsible for potential
1289 losses. The department annually shall determine the minimum net
1290 worth sufficient to satisfy this subparagraph ~~as determined~~
1291 ~~annually by the department,~~ pursuant to rules adopted
1292 ~~promulgated~~ by the department, with the assistance of the Office
1293 of Insurance Regulation of the Financial Services Commission, ~~to~~
1294 ~~be financially responsible for potential losses.~~ The rules must
1295 consider any ~~shall take into consideration~~ excess insurance
1296 carried by the applicant. The department's determination must
1297 ~~shall~~ be based upon reasonable actuarial principles considering
1298 the frequency, severity, and loss development of claims incurred
1299 by casualty insurers writing coverage on the type of motor
1300 vehicles for which a certificate of self-insurance is desired.

1301 (c) The owner of a commercial motor vehicle, as defined in
1302 s. 207.002 or s. 320.01(25) ~~s. 320.01~~, may qualify as a self-
1303 insurer subject to the standards provided ~~for~~ in subparagraph

1304 (b)2.

1305 (2) The self-insurance certificate must ~~shall~~ provide

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1306 limits of liability insurance in the amounts specified under s.
1307 324.021(7) ~~or s. 627.7415 and shall provide personal injury~~
1308 ~~protection coverage under s. 627.733(3)(b).~~

1309 Section 26. Section 324.251, Florida Statutes, is amended
1310 to read:

1311 324.251 Short title.—This chapter may be cited as the
1312 "Financial Responsibility Law of 2022 ~~1955~~" and is ~~shall become~~
1313 effective at 12:01 a.m., July 1, 2023 ~~October 1, 1955~~.

1314 Section 27. Subsection (4) of section 400.9905, Florida
1315 Statutes, is amended to read:

1316 400.9905 Definitions.—

1317 (4) (a) "Clinic" means an entity where health care services
1318 are provided to individuals and which tenders charges for
1319 reimbursement for such services, including a mobile clinic and a
1320 portable equipment provider. As used in this part, the term does
1321 not include and the licensure requirements of this part do not
1322 apply to:

1323 1. (a) Entities licensed or registered by the state under
1324 chapter 395; entities licensed or registered by the state and
1325 providing only health care services within the scope of services
1326 authorized under their respective licenses under ss. 383.30-
1327 383.332, chapter 390, chapter 394, chapter 397, this chapter
1328 except part X, chapter 429, chapter 463, chapter 465, chapter
1329 466, chapter 478, chapter 484, or chapter 651; end-stage renal
1330 disease providers authorized under 42 C.F.R. part 494; providers
1331 certified and providing only health care services within the
1332 scope of services authorized under their respective
1333 certifications under 42 C.F.R. part 485, subpart B, subpart H,
1334 or subpart J; providers certified and providing only health care

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1335 services within the scope of services authorized under their
 1336 respective certifications under 42 C.F.R. part 486, subpart C;
 1337 providers certified and providing only health care services
 1338 within the scope of services authorized under their respective
 1339 certifications under 42 C.F.R. part 491, subpart A; providers
 1340 certified by the Centers for Medicare and Medicaid Services
 1341 under the federal Clinical Laboratory Improvement Amendments and
 1342 the federal rules adopted thereunder; or any entity that
 1343 provides neonatal or pediatric hospital-based health care
 1344 services or other health care services by licensed practitioners
 1345 solely within a hospital licensed under chapter 395.

1346 2. (b) Entities that own, directly or indirectly, entities
 1347 licensed or registered by the state pursuant to chapter 395;
 1348 entities that own, directly or indirectly, entities licensed or
 1349 registered by the state and providing only health care services
 1350 within the scope of services authorized pursuant to their
 1351 respective licenses under ss. 383.30-383.332, chapter 390,
 1352 chapter 394, chapter 397, this chapter except part X, chapter
 1353 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter
 1354 484, or chapter 651; end-stage renal disease providers
 1355 authorized under 42 C.F.R. part 494; providers certified and
 1356 providing only health care services within the scope of services
 1357 authorized under their respective certifications under 42 C.F.R.
 1358 part 485, subpart B, subpart H, or subpart J; providers
 1359 certified and providing only health care services within the
 1360 scope of services authorized under their respective
 1361 certifications under 42 C.F.R. part 486, subpart C; providers
 1362 certified and providing only health care services within the
 1363 scope of services authorized under their respective

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1364 certifications under 42 C.F.R. part 491, subpart A; providers
 1365 certified by the Centers for Medicare and Medicaid Services
 1366 under the federal Clinical Laboratory Improvement Amendments and
 1367 the federal rules adopted thereunder; or any entity that
 1368 provides neonatal or pediatric hospital-based health care
 1369 services by licensed practitioners solely within a hospital
 1370 licensed under chapter 395.

1371 3. (e) Entities that are owned, directly or indirectly, by
 1372 an entity licensed or registered by the state pursuant to
 1373 chapter 395; entities that are owned, directly or indirectly, by
 1374 an entity licensed or registered by the state and providing only
 1375 health care services within the scope of services authorized
 1376 pursuant to their respective licenses under ss. 383.30-383.332,
 1377 chapter 390, chapter 394, chapter 397, this chapter except part
 1378 X, chapter 429, chapter 463, chapter 465, chapter 466, chapter
 1379 478, chapter 484, or chapter 651; end-stage renal disease
 1380 providers authorized under 42 C.F.R. part 494; providers
 1381 certified and providing only health care services within the
 1382 scope of services authorized under their respective
 1383 certifications under 42 C.F.R. part 485, subpart B, subpart H,
 1384 or subpart J; providers certified and providing only health care
 1385 services within the scope of services authorized under their
 1386 respective certifications under 42 C.F.R. part 486, subpart C;
 1387 providers certified and providing only health care services
 1388 within the scope of services authorized under their respective
 1389 certifications under 42 C.F.R. part 491, subpart A; providers
 1390 certified by the Centers for Medicare and Medicaid Services
 1391 under the federal Clinical Laboratory Improvement Amendments and
 1392 the federal rules adopted thereunder; or any entity that

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1393 provides neonatal or pediatric hospital-based health care
 1394 services by licensed practitioners solely within a hospital
 1395 under chapter 395.

1396 4.~~(4)~~ Entities that are under common ownership, directly or
 1397 indirectly, with an entity licensed or registered by the state
 1398 pursuant to chapter 395; entities that are under common
 1399 ownership, directly or indirectly, with an entity licensed or
 1400 registered by the state and providing only health care services
 1401 within the scope of services authorized pursuant to their
 1402 respective licenses under ss. 383.30-383.332, chapter 390,
 1403 chapter 394, chapter 397, this chapter except part X, chapter
 1404 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter
 1405 484, or chapter 651; end-stage renal disease providers
 1406 authorized under 42 C.F.R. part 494; providers certified and
 1407 providing only health care services within the scope of services
 1408 authorized under their respective certifications under 42 C.F.R.
 1409 part 485, subpart B, subpart H, or subpart J; providers
 1410 certified and providing only health care services within the
 1411 scope of services authorized under their respective
 1412 certifications under 42 C.F.R. part 486, subpart C; providers
 1413 certified and providing only health care services within the
 1414 scope of services authorized under their respective
 1415 certifications under 42 C.F.R. part 491, subpart A; providers
 1416 certified by the Centers for Medicare and Medicaid Services
 1417 under the federal Clinical Laboratory Improvement Amendments and
 1418 the federal rules adopted thereunder; or any entity that
 1419 provides neonatal or pediatric hospital-based health care
 1420 services by licensed practitioners solely within a hospital
 1421 licensed under chapter 395.

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1422 5.~~(e)~~ An entity that is exempt from federal taxation under
 1423 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan
 1424 under 26 U.S.C. s. 409 that has a board of trustees at least
 1425 two-thirds of which are Florida-licensed health care
 1426 practitioners and provides only physical therapy services under
 1427 physician orders, any community college or university clinic,
 1428 and any entity owned or operated by the federal or state
 1429 government, including agencies, subdivisions, or municipalities
 1430 thereof.

1431 6.~~(f)~~ A sole proprietorship, group practice, partnership,
 1432 or corporation that provides health care services by physicians
 1433 covered by s. 627.419, that is directly supervised by one or
 1434 more of such physicians, and that is wholly owned by one or more
 1435 of those physicians or by a physician and the spouse, parent,
 1436 child, or sibling of that physician.

1437 7.~~(g)~~ A sole proprietorship, group practice, partnership,
 1438 or corporation that provides health care services by licensed
 1439 health care practitioners under chapter 457, chapter 458,
 1440 chapter 459, chapter 460, chapter 461, chapter 462, chapter 463,
 1441 chapter 466, chapter 467, chapter 480, chapter 484, chapter 486,
 1442 chapter 490, chapter 491, or part I, part III, part X, part
 1443 XIII, or part XIV of chapter 468, or s. 464.012, and that is
 1444 wholly owned by one or more licensed health care practitioners,
 1445 or the licensed health care practitioners set forth in this
 1446 ~~subparagraph~~ paragraph and the spouse, parent, child, or sibling
 1447 of a licensed health care practitioner if one of the owners who
 1448 is a licensed health care practitioner is supervising the
 1449 business activities and is legally responsible for the entity's
 1450 compliance with all federal and state laws. However, a health

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1451 care practitioner may not supervise services beyond the scope of
 1452 the practitioner's license, except that, for the purposes of
 1453 this part, a clinic owned by a licensee in s. 456.053(3)(b)
 1454 which provides only services authorized pursuant to s.
 1455 456.053(3)(b) may be supervised by a licensee specified in s.
 1456 456.053(3)(b).

1457 ~~8.(h)~~ Clinical facilities affiliated with an accredited
 1458 medical school at which training is provided for medical
 1459 students, residents, or fellows.

1460 ~~9.(i)~~ Entities that provide only oncology or radiation
 1461 therapy services by physicians licensed under chapter 458 or
 1462 chapter 459 or entities that provide oncology or radiation
 1463 therapy services by physicians licensed under chapter 458 or
 1464 chapter 459 which are owned by a corporation whose shares are
 1465 publicly traded on a recognized stock exchange.

1466 ~~10.(j)~~ Clinical facilities affiliated with a college of
 1467 chiropractic accredited by the Council on Chiropractic Education
 1468 at which training is provided for chiropractic students.

1469 ~~11.(k)~~ Entities that provide licensed practitioners to
 1470 staff emergency departments or to deliver anesthesia services in
 1471 facilities licensed under chapter 395 and that derive at least
 1472 90 percent of their gross annual revenues from the provision of
 1473 such services. Entities claiming an exemption from licensure
 1474 under this ~~subparagraph paragraph~~ must provide documentation
 1475 demonstrating compliance.

1476 ~~12.(l)~~ Orthotic, prosthetic, pediatric cardiology, or
 1477 perinatology clinical facilities or anesthesia clinical
 1478 facilities that are not otherwise exempt under subparagraph 1.
 1479 or subparagraph 11. paragraph (a) or paragraph (k) and that are

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1480 a publicly traded corporation or are wholly owned, directly or
 1481 indirectly, by a publicly traded corporation. As used in this
 1482 ~~subparagraph paragraph~~, a publicly traded corporation is a
 1483 corporation that issues securities traded on an exchange
 1484 registered with the United States Securities and Exchange
 1485 Commission as a national securities exchange.

1486 ~~13.(m)~~ Entities that are owned by a corporation that has
 1487 \$250 million or more in total annual sales of health care
 1488 services provided by licensed health care practitioners where
 1489 one or more of the persons responsible for the operations of the
 1490 entity is a health care practitioner who is licensed in this
 1491 state and who is responsible for supervising the business
 1492 activities of the entity and is responsible for the entity's
 1493 compliance with state law for purposes of this part.

1494 ~~14.(n)~~ Entities that employ 50 or more licensed health care
 1495 practitioners licensed under chapter 458 or chapter 459 where
 1496 the billing for medical services is under a single tax
 1497 identification number. The application for exemption under this
 1498 subsection must include ~~shall contain information that includes:~~
 1499 the name, residence, and business address and telephone phone
 1500 number of the entity that owns the practice; a complete list of
 1501 the names and contact information of all the officers and
 1502 directors of the corporation; the name, residence address,
 1503 business address, and medical license number of each licensed
 1504 Florida health care practitioner employed by the entity; the
 1505 corporate tax identification number of the entity seeking an
 1506 exemption; a listing of health care services to be provided by
 1507 the entity at the health care clinics owned or operated by the
 1508 entity; and a certified statement prepared by an independent

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1509 certified public accountant which states that the entity and the
 1510 health care clinics owned or operated by the entity have not
 1511 received payment for health care services under medical payments
 1512 ~~personal injury protection insurance~~ coverage for the preceding
 1513 year. If the agency determines that an entity ~~that which~~ is
 1514 exempt under this subsection has received payments for medical
 1515 services under medical payments ~~personal injury protection~~
 1516 ~~insurance~~ coverage, the agency may deny or revoke the exemption
 1517 from licensure under this subsection.

1518 ~~15. (e)~~ Entities that are, directly or indirectly, under the
 1519 common ownership of or that are subject to common control by a
 1520 mutual insurance holding company, as defined in s. 628.703, with
 1521 an entity issued a certificate of authority under chapter 624 or
 1522 chapter 641 which has \$1 billion or more in total annual sales
 1523 in this state.

1524 ~~16. (e)~~ Entities that are owned by an entity that is a
 1525 behavioral health care service provider in at least five other
 1526 states; that, together with its affiliates, have \$90 million or
 1527 more in total annual revenues associated with the provision of
 1528 behavioral health care services; and wherein one or more of the
 1529 persons responsible for the operations of the entity is a health
 1530 care practitioner who is licensed in this state, who is
 1531 responsible for supervising the business activities of the
 1532 entity, and who is responsible for the entity's compliance with
 1533 state law for purposes of this part.

1534 ~~17. (e)~~ Medicaid providers.

1535 ~~(b)~~ Notwithstanding paragraph (a) this subsection, an
 1536 entity ~~is shall be~~ deemed a clinic and must be licensed under
 1537 this part in order to receive medical payments coverage

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1538 reimbursement under s. 627.7265 unless the entity is:

1539 1. Wholly owned by a physician licensed under chapter 458
 1540 or chapter 459 or by the physician and the spouse, parent,
 1541 child, or sibling of the physician;

1542 2. Wholly owned by a dentist licensed under chapter 466 or
 1543 by the dentist and the spouse, parent, child, or sibling of the
 1544 dentist;

1545 3. Wholly owned by a chiropractic physician licensed under
 1546 chapter 460 or by the chiropractic physician and the spouse,
 1547 parent, child, or sibling of the chiropractic physician;

1548 4. A hospital or ambulatory surgical center licensed under
 1549 chapter 395;

1550 5. An entity that wholly owns or is wholly owned, directly
 1551 or indirectly, by a hospital or hospitals licensed under chapter
 1552 395;

1553 6. A clinical facility affiliated with an accredited
 1554 medical school at which training is provided for medical
 1555 students, residents, or fellows;

1556 7. Certified under 42 C.F.R. part 485, subpart H; or

1557 8. Owned by a publicly traded corporation, either directly
 1558 or indirectly through its subsidiaries, which has \$250 million
 1559 or more in total annual sales of health care services provided
 1560 by licensed health care practitioners, if one or more of the
 1561 persons responsible for the operations of the entity are health
 1562 care practitioners who are licensed in this state and who are
 1563 responsible for supervising the business activities of the
 1564 entity and the entity's compliance with state law for purposes
 1565 of this subsection ~~the Florida Motor Vehicle No Fault Law, ss.~~
 1566 ~~627.730-627.7405, unless exempted under s. 627.736(5)(h).~~

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1567 Section 28. Subsection (5) of section 400.991, Florida
 1568 Statutes, is amended to read:
 1569 400.991 License requirements; background screenings;
 1570 prohibitions.—
 1571 (5) All agency forms for licensure application or exemption
 1572 from licensure under this part must contain the following
 1573 statement:

1574
 1575 INSURANCE FRAUD NOTICE.—A person commits a fraudulent
 1576 insurance act, as defined in s. 626.989, Florida
 1577 Statutes, if the person ~~who~~ knowingly submits a false,
 1578 misleading, or fraudulent application or other
 1579 document when applying for licensure as a health care
 1580 clinic, seeking an exemption from licensure as a
 1581 health care clinic, or demonstrating compliance with
 1582 part X of chapter 400, Florida Statutes, with the
 1583 intent to use the license, exemption from licensure,
 1584 or demonstration of compliance to provide services or
 1585 seek reimbursement under a motor vehicle liability
 1586 insurance policy's medical payments coverage ~~the~~
 1587 ~~Florida Motor Vehicle No-Fault Law, commits a~~
 1588 ~~fraudulent insurance act, as defined in s. 626.989,~~
 1589 ~~Florida Statutes.~~ A person who presents a claim for
 1590 benefits under medical payments coverage ~~personal~~
 1591 ~~injury protection benefits~~ knowing that the payee
 1592 knowingly submitted such health care clinic
 1593 application or document commits insurance fraud, as
 1594 defined in s. 817.234, Florida Statutes.
 1595 Section 29. Paragraph (g) of subsection (1) of section

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1596 400.9935, Florida Statutes, is amended to read:
 1597 400.9935 Clinic responsibilities.—
 1598 (1) Each clinic shall appoint a medical director or clinic
 1599 director who shall agree in writing to accept legal
 1600 responsibility for the following activities on behalf of the
 1601 clinic. The medical director or the clinic director shall:
 1602 (g) Conduct systematic reviews of clinic billings to ensure
 1603 that the billings are not fraudulent or unlawful. Upon discovery
 1604 of an unlawful charge, the medical director or clinic director
 1605 shall take immediate corrective action. If the clinic performs
 1606 only the technical component of magnetic resonance imaging,
 1607 static radiographs, computed tomography, or positron emission
 1608 tomography, and provides the professional interpretation of such
 1609 services, in a fixed facility that is accredited by a national
 1610 accrediting organization that is approved by the Centers for
 1611 Medicare and Medicaid Services for magnetic resonance imaging
 1612 and advanced diagnostic imaging services and if, in the
 1613 preceding quarter, the percentage of scans performed by that
 1614 clinic which was billed to motor vehicle ~~all personal injury~~
 1615 ~~protection~~ insurance carriers under medical payments coverage
 1616 was less than 15 percent, the chief financial officer of the
 1617 clinic may, in a written acknowledgment provided to the agency,
 1618 assume the responsibility for the conduct of the systematic
 1619 reviews of clinic billings to ensure that the billings are not
 1620 fraudulent or unlawful.
 1621 Section 30. Subsection (28) of section 409.901, Florida
 1622 Statutes, is amended to read:
 1623 409.901 Definitions; ss. 409.901-409.920.—As used in ss.
 1624 409.901-409.920, except as otherwise specifically provided, the

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1625 term:

1626 (28) "Third-party benefit" means any benefit that is or may
 1627 be available at any time through contract, court award,
 1628 judgment, settlement, agreement, or any arrangement between a
 1629 third party and any person or entity, including, without
 1630 limitation, a Medicaid recipient, a provider, another third
 1631 party, an insurer, or the agency, for any Medicaid-covered
 1632 injury, illness, goods, or services, including costs of medical
 1633 services related thereto, for bodily personal injury or for
 1634 death of the recipient, but specifically excluding ~~policies of~~
 1635 life insurance policies on the recipient, unless available under
 1636 terms of the policy to pay medical expenses before ~~prior to~~
 1637 death. The term includes, without limitation, collateral, as
 1638 defined in this section;; health insurance;; any benefit under a
 1639 health maintenance organization, a preferred provider
 1640 arrangement, a prepaid health clinic, liability insurance,
 1641 uninsured motorist insurance, or medical payments coverage; ~~or~~
 1642 ~~personal injury protection coverage;~~ medical benefits under
 1643 workers' compensation;; and any obligation under law or equity
 1644 to provide medical support.

1645 Section 31. Paragraph (f) of subsection (11) of section
 1646 409.910, Florida Statutes, is amended to read:

1647 409.910 Responsibility for payments on behalf of Medicaid-
 1648 eligible persons when other parties are liable.-

1649 (11) The agency may, as a matter of right, in order to
 1650 enforce its rights under this section, institute, intervene in,
 1651 or join any legal or administrative proceeding in its own name
 1652 in one or more of the following capacities: individually, as
 1653 subrogee of the recipient, as assignee of the recipient, or as

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1654 lienholder of the collateral.

1655 (f) Notwithstanding any provision in this section to the
 1656 contrary, in the event of an action in tort against a third
 1657 party in which the recipient or his or her legal representative
 1658 is a party which results in a judgment, award, or settlement
 1659 from a third party, the amount recovered shall be distributed as
 1660 follows:

1661 1. After attorney ~~attorney's~~ fees and taxable costs as
 1662 defined by the Florida Rules of Civil Procedure, one-half of the
 1663 remaining recovery shall be paid to the agency up to the total
 1664 amount of medical assistance provided by Medicaid.

1665 2. The remaining amount of the recovery shall be paid to
 1666 the recipient.

1667 3. For purposes of calculating the agency's recovery of
 1668 medical assistance benefits paid, the fee for services of an
 1669 attorney retained by the recipient or his or her legal
 1670 representative shall be calculated at 25 percent of the
 1671 judgment, award, or settlement.

1672 4. Notwithstanding any other provision of this section to
 1673 the contrary, the agency shall be entitled to all medical
 1674 coverage benefits up to the total amount of medical assistance
 1675 provided by Medicaid. For purposes of this paragraph, the term
 1676 "medical coverage" means any benefits under health insurance, a
 1677 health maintenance organization, a preferred provider
 1678 arrangement, or a prepaid health clinic, and the portion of
 1679 benefits designated for medical payments under ~~coverage for~~
 1680 workers' compensation coverage, motor vehicle insurance
 1681 coverage, personal injury protection, and casualty coverage.

1682 Section 32. Paragraph (k) of subsection (2) of section

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1683 456.057, Florida Statutes, is amended to read:

1684 456.057 Ownership and control of patient records; report or
1685 copies of records to be furnished; disclosure of information.-

1686 (2) As used in this section, the terms "records owner,"
1687 "health care practitioner," and "health care practitioner's
1688 employer" do not include any of the following persons or
1689 entities; furthermore, the following persons or entities are not
1690 authorized to acquire or own medical records, but are authorized
1691 under the confidentiality and disclosure requirements of this
1692 section to maintain those documents required by the part or
1693 chapter under which they are licensed or regulated:

1694 ~~(k) Persons or entities practicing under s. 627.736(7).~~

1695 Section 33. Paragraphs (ee) and (ff) of subsection (1) of
1696 section 456.072, Florida Statutes, are amended to read:

1697 456.072 Grounds for discipline; penalties; enforcement.-

1698 (1) The following acts shall constitute grounds for which
1699 the disciplinary actions specified in subsection (2) may be
1700 taken:

1701 (ee) With respect to making a medical payments coverage
1702 personal injury protection claim under s. 627.7265 as required
1703 by s. 627.736, intentionally submitting a claim, statement, or
1704 bill that has been upcoded. As used in this paragraph, the term
1705 "upcode" means to submit a billing code that would result in a
1706 greater payment amount than would be paid using a billing code
1707 that accurately describes the services performed. The term does
1708 not include an otherwise lawful bill by a magnetic resonance
1709 imaging facility which globally combines both technical and
1710 professional components, if the amount of the global bill is not
1711 more than the components if billed separately; however, payment

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1712 of such a bill constitutes payment in full for all components of
1713 such service "upcoded" as defined in s. 627.732.

1714 (ff) With respect to making a medical payments coverage
1715 personal injury protection claim under s. 627.7265 as required
1716 by s. 627.736, intentionally submitting a claim, statement, or
1717 bill for payment of services that were not rendered.

1718 Section 34. Paragraph (b) of subsection (1) and subsection
1719 (8) of section 624.155, Florida Statutes, are amended to read:
1720 624.155 Civil remedy.-

1721 (1) Any person may bring a civil action against an insurer
1722 when such person is damaged:

1723 (b) By the commission of any of the following acts by the
1724 insurer:

1725 1. Except for a civil action for bad faith failure to
1726 settle a third-party claim subject to s. 624.156, not attempting
1727 in good faith to settle claims when, under all the
1728 circumstances, it could and should have done so, had it acted
1729 fairly and honestly toward its insured and with due regard for
1730 her or his interests;

1731 2. Making claims payments to insureds or beneficiaries not
1732 accompanied by a statement setting forth the coverage under
1733 which payments are being made; ~~or~~

1734 3. Except as to liability coverages, failing to promptly
1735 settle claims, when the obligation to settle a claim has become
1736 reasonably clear, under one portion of the insurance policy
1737 coverage in order to influence settlements under other portions
1738 of the insurance policy coverage; or

1739 4. When handling a first-party claim under a motor vehicle
1740 insurance policy, not attempting in good faith to settle such

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 1741 claim pursuant to subparagraph 1. when such failure is caused by
 1742 a failure to communicate to an insured:
 1743 a. The name, telephone number, e-mail address, and mailing
 1744 address of the person adjusting the claim;
 1745 b. Any issues that may impair the insured's coverage;
 1746 c. Information that might resolve the coverage issue in a
 1747 prompt manner;
 1748 d. Any basis for the insurer's rejection or nonacceptance
 1749 of any settlement demand or offer; or
 1750 e. Any needed extensions to respond to a time-limited
 1751 settlement offer.

1752
 1753 Notwithstanding the provisions of the above to the contrary, a
 1754 person pursuing a remedy under this section need not prove that
 1755 such act was committed or performed with such frequency as to
 1756 indicate a general business practice.

1757 (8) The civil remedy specified in this section does not
 1758 preempt any other remedy or cause of action provided for
 1759 pursuant to any other statute or pursuant to the common law of
 1760 this state. A Any person is may obtain a judgment under either
 1761 the common-law remedy of bad faith or this statutory remedy, but
 1762 shall not be entitled to a judgment under multiple bad faith
 1763 both remedies. This section shall not be construed to create a
 1764 common-law cause of action. The damages recoverable pursuant to
 1765 this section shall include those damages which are a reasonably
 1766 foreseeable result of a specified violation of this section by
 1767 the authorized insurer and may include an award or judgment in
 1768 an amount that exceeds the policy limits.

1769 Section 35. Section 624.156, Florida Statutes, is created

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 1770 to read:
 1771 624.156 Actions against motor vehicle insurers for bad
 1772 faith failure to settle third-party claims.-
 1773 (1) SCOPE.-This section applies in all actions against any
 1774 insurer for bad faith failure to settle a third-party claim for
 1775 a loss arising out of the ownership, maintenance, or use of a
 1776 motor vehicle operated or principally garaged in this state at
 1777 the time of an incident or a loss, regardless of whether the
 1778 insurer is authorized to do business in this state or issued a
 1779 policy in this state. This section governs in any conflict with
 1780 common law or any other statute.
 1781 (2) DUTY OF GOOD FAITH.-In handling claims, an insurer has
 1782 a duty to its insured to handle claims in good faith by
 1783 complying with the best practices standards of subsection (4).
 1784 An insurer's negligence does not constitute bad faith. However,
 1785 negligence is relevant to whether an insurer acted in bad faith.
 1786 (3) BAD FAITH FAILURE TO SETTLE.-The term "bad faith
 1787 failure to settle" means an insurer's failure to meet its duty
 1788 of good faith, as described in subsection (2), which is a
 1789 proximate cause of the insurer not settling a third-party claim
 1790 when, under all the circumstances, the insurer could and should
 1791 have done so, had it acted fairly and honestly toward its
 1792 insured and with due regard for the insured's interests.
 1793 (4) BEST PRACTICES STANDARDS.-An insurer must meet the best
 1794 practices standards of this subsection. The insurer's duty
 1795 begins upon receiving actual notice of an incident or a loss
 1796 that could give rise to a covered liability claim and continues
 1797 until the claim is resolved. Notice may be communicated to the
 1798 insurer or an agent of the insurer by any means. However, if

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1799 actual notice is communicated by means other than through any
 1800 manner permitted by the policy or other documents provided to
 1801 the insured by the insurer, through the insurer's website, or
 1802 through the e-mail address designated by the insurer under s.
 1803 624.422, the notice will not be effective under this subsection
 1804 if that variation causes actual prejudice to the insurer's
 1805 ability to settle the claim. The burden is on the party bringing
 1806 the bad faith claim to prove that the insurer had actual notice
 1807 of the incident or loss giving rise to the claim that resulted
 1808 in an excess judgment and when such notice was received. After
 1809 receipt of actual notice, an insurer:

1810 (a) Must assign a duly licensed and appointed insurance
 1811 adjuster to investigate the extent of the insured's probable
 1812 exposure and diligently attempt to resolve any questions
 1813 concerning the existence or extent of the insured's coverage.

1814 (b) Based on available information, must ethically evaluate
 1815 every claim fairly, honestly, and with due regard for the
 1816 interests of the insured; consider the extent of the claimant's
 1817 recoverable damages; and consider the information in a
 1818 reasonable and prudent manner.

1819 (c) Must request from the insured or claimant additional
 1820 relevant information the insurer reasonably deems necessary to
 1821 evaluate whether to settle a claim.

1822 (d) Must conduct all oral and written communications with
 1823 the insured with the utmost honesty and complete candor.

1824 (e) Must make reasonable efforts to explain to persons not
 1825 represented by counsel matters requiring expertise beyond the
 1826 level normally expected of a layperson with no training in
 1827 insurance or claims-handling issues.

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1828 (f) Must retain all written communications and note and
 1829 retain a summary of all verbal communications in a reasonable
 1830 manner for a period of not less than 5 years after the later of:

1831 1. The entry of a judgment against the insured in excess of
 1832 policy limits becomes final; or

1833 2. The conclusion of the extracontractual claim, if any,
 1834 including any related appeals.

1835 (g) Must provide the insured, upon request, with all
 1836 communications related to the insurer's handling of the claim
 1837 which are not privileged as to the insured.

1838 (h) Must provide, at the insurer's expense, reasonable
 1839 accommodations necessary to communicate effectively with an
 1840 insured covered under the Americans with Disabilities Act.

1841 (i) In handling third-party claims, must communicate to an
 1842 insured all of the following:

1843 1. The identity of any other person or entity the insurer
 1844 has reason to believe may be liable.

1845 2. The insurer's evaluation of the claim.

1846 3. The likelihood and possible extent of an excess
 1847 judgment.

1848 4. Steps the insured can take to avoid exposure to an
 1849 excess judgment, including the right to secure personal counsel
 1850 at the insured's expense.

1851 5. The insured's duty to cooperate with the insurer,
 1852 including any specific requests required because of a settlement
 1853 opportunity or by the insurer for the insured's cooperation
 1854 under subsection (5), the purpose of the required cooperation,
 1855 and the consequences of refusing to cooperate.

1856 6. Any settlement demands or offers.

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1857 (j) If, after the expiration of the safe harbor periods in
 1858 subsection (8), the facts available to the insurer indicate that
 1859 the insured's liability is likely to exceed the policy limits,
 1860 must initiate settlement negotiations by tendering its policy
 1861 limits to the claimant in exchange for a general release of the
 1862 insured.

1863 (k)1. Must give fair consideration to a settlement offer
 1864 that is not unreasonable under the facts available to the
 1865 insurer and settle, if possible, when a reasonably prudent
 1866 person, faced with the prospect of paying the total probable
 1867 exposure of the insured, would do so. The insurer shall provide
 1868 reasonable assistance to the insured to comply with the
 1869 insured's obligations to cooperate and shall act reasonably to
 1870 attempt to satisfy any conditions of a claimant's settlement
 1871 offer. If it is not possible to settle a liability claim within
 1872 the available policy limits, the insurer must act reasonably to
 1873 attempt to minimize the excess exposure to the insured.

1874 2. When multiple claims arise out of a single occurrence,
 1875 the combined value of all claims exceeds the total of all
 1876 applicable policy limits, and the claimants are unwilling to
 1877 globally settle within the policy limits, thereafter, must
 1878 attempt to minimize the magnitude of possible excess judgments
 1879 against the insured. The insurer is entitled to great discretion
 1880 to decide how much to offer each respective claimant in its
 1881 attempt to protect the insured. The insurer may, in its effort
 1882 to minimize the excess liability of the insured, use its
 1883 discretion to offer the full available policy limits to one or
 1884 more claimants to the exclusion of other claimants and may leave
 1885 the insured exposed to some liability after all the policy

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1886 limits are paid. An insurer does not act in bad faith simply
 1887 because it is unable to settle all claims in a multiple claimant
 1888 case. It is a defense to a bad faith action if the insurer
 1889 establishes that it used its discretion for the benefit of its
 1890 insureds and complied with the other best practices standards of
 1891 this subsection.

1892 (l) When a loss creates the potential for a third-party
 1893 claim against more than one insured, must attempt to settle the
 1894 claim on behalf of all insureds against whom a claim may be
 1895 presented. If it is not possible to settle on behalf of all
 1896 insureds, the insurer may, in consultation with the insureds,
 1897 enter into reasonable settlements of claims against certain
 1898 insureds to the exclusion of other insureds.

1899 (m) Must respond to any request for insurance information
 1900 in compliance with s. 626.9372 or s. 627.4137, as applicable.

1901 (n) Where it appears the insured's probable exposure is
 1902 greater than policy limits, must take reasonable measures to
 1903 preserve for a reasonable period of time evidence that is needed
 1904 for the defense of the liability claim.

1905 (o) Must comply with s. 627.426, if applicable.

1906 (p) May not commit or perform with such frequency as to
 1907 indicate a general business practice any of the following:

1908 1. Failing to adopt and implement standards for the proper
 1909 investigation of claims.

1910 2. Misrepresenting pertinent facts or insurance policy
 1911 provisions relating to coverages at issue.

1912 3. Failing to acknowledge and act promptly upon
 1913 communications with respect to claims.

1914 4. Denying claims without conducting reasonable

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1915 investigations based upon available information.
 1916 (5) INSURED'S DUTY TO COOPERATE.-
 1917 (a) Insureds have a duty to cooperate with their insurer in
 1918 the defense of the claim and in making settlements. Accordingly,
 1919 the insured must take any reasonable action requested by the
 1920 injured claimant or provided in the policy which is necessary to
 1921 assist the insurer in settling a covered claim, including:
 1922 1. Executing affidavits regarding the facts within the
 1923 insured's knowledge regarding the covered loss; and
 1924 2. Providing documents, including those requested pursuant
 1925 to paragraph (b).
 1926 (b) When it is reasonably necessary to settle a covered
 1927 claim valued in excess of all applicable policy limits, upon the
 1928 request of the injured claimant, an insured must disclose on a
 1929 form adopted by the department or provided by the claimant a
 1930 summary of the following:
 1931 1. The insured's assets at the time of the loss, including:
 1932 a. Cash, stocks, bonds, and nonretirement-based mutual
 1933 funds;
 1934 b. Nonhomestead real property;
 1935 c. All registered vehicles;
 1936 d. All bank accounts;
 1937 e. An estimated net accounting of all other assets; and
 1938 f. Any additional information included by the department.
 1939 2. The insured's liabilities, including:
 1940 a. Mortgage debt;
 1941 b. Credit card debt;
 1942 c. Child support and alimony payments;
 1943 d. Other liabilities; and

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1944 e. Any additional information included by the department.
 1945 3. For a corporate entity, information on its balance
 1946 sheet, including the corporate entity's:
 1947 a. Cash, property, equipment, and inventory;
 1948 b. Liabilities, including obligations, rent, money owed to
 1949 vendors, payroll, and taxes;
 1950 c. Other information relevant to understanding the entity's
 1951 capital and net worth; and
 1952 d. Any additional information included by the department.
 1953 4. A list of all insurance policies that may provide
 1954 coverage for the claim, stating the name of the insurer and
 1955 policy number of each policy.
 1956 5. For natural persons, a statement of whether the insured
 1957 was acting in the course and scope of employment at the time of
 1958 the incident or loss giving rise to the claim and, if so,
 1959 providing the name and contact information for the insured's
 1960 employer.
 1961 (c) No later than 14 days following actual notice of an
 1962 incident or a loss that could give rise to a covered liability
 1963 claim, the insurer must notify the insured of the insured's
 1964 duties under this subsection. The burden is on the insurer to
 1965 prove that it provided notice to the insured of the insured's
 1966 duty to cooperate; otherwise, a presumption arises that the
 1967 insured met its duty to cooperate under this subsection.
 1968 (d) An insurer may terminate the defense as to any insured
 1969 who unreasonably fails to meet its duties under this subsection
 1970 when:
 1971 1. The insurer exercised diligence and met its duties under
 1972 subparagraph (4)(i)5.;

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1973 2. The insurer provided reasonable assistance to the
 1974 insured to comply with the obligations of this subsection;
 1975 3. The insurer gave the insured written notice of any
 1976 failure to cooperate and a reasonable opportunity for the
 1977 insured to cure the lack of cooperation, consistent with any
 1978 deadlines imposed by settlement negotiations;
 1979 4. The insured's failure to cooperate causes the insurer to
 1980 be unable to settle the claim; and
 1981 5. The insurer unconditionally tenders its available
 1982 coverage policy limits directly to the claimant or the
 1983 claimant's attorney.
 1984 (e) When an insured's defense is terminated in compliance
 1985 with this subsection, the insurer is not liable for any damages
 1986 caused by a failure to settle or defend the liability claim
 1987 against that insured.
 1988 (6) CLAIMANT COMMUNICATIONS.—The trier of fact may not
 1989 attribute the insurer's failure to settle a covered third-party
 1990 claim to a claimant's lack of communication with the insurer
 1991 when the claimant truthfully complies with all applicable
 1992 standards of this subsection by:
 1993 (a) Contemporaneously with or before making a claim with
 1994 the insurer, communicating in writing to the insurer:
 1995 1. The date and location of loss;
 1996 2. The name, address, and date of birth of the claimant;
 1997 and
 1998 3. A physical address, an e-mail address, and a facsimile
 1999 number for further communications, including, but not limited
 2000 to, responses to any settlement demand.
 2001 (b) Presenting the following in writing:

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2002 1. The legal and factual basis of the claim; and
 2003 2. A reasonably detailed description of the claimant's:
 2004 a. Known injuries caused or aggravated by the incident or
 2005 loss on which the claim is based;
 2006 b. Medical treatment causally related to the incident or
 2007 loss on which the claim is based;
 2008 c. Relevant pre-accident medical conditions, if known; and
 2009 d. Type and amount of known damages incurred and, if any,
 2010 the damages the claimant reasonably anticipates incurring in the
 2011 future.
 2012 (c) Providing any settlement demand in writing and stating
 2013 within such demand:
 2014 1. The name of each insured to whom the demand for
 2015 settlement is directed;
 2016 2. The amount of the demand for settlement; and
 2017 3. Any conditions the claimant is placing on acceptance of
 2018 the demand for settlement.
 2019
 2020 This subsection does not reduce an insurer's duty of good faith,
 2021 which is owed solely to its insured. The claimant owes no duty
 2022 to the insured or the insurer, and the duties of the claimant's
 2023 attorney are owed solely to the claimant. The claimant and the
 2024 claimant's attorney do not have a duty to comply with this
 2025 subsection.
 2026 (7) CONDITIONS PRECEDENT.—It is a condition precedent to
 2027 filing an action against an insurer for bad faith failure to
 2028 settle a third-party claim that:
 2029 (a) A third-party claimant obtained a final judgment in
 2030 excess of the policy limits against the insured or the insured's

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2031 estate, bankruptcy trustee, or successor in interest, unless the
 2032 insurer expressly waived the requirement of a final excess
 2033 judgment or wrongfully breached its duty to defend the insured;
 2034 and

2035 (b) The insurer or an agent of the insurer received actual
 2036 notice effective under subsection (4).

2037 (8) SAFE HARBORS.—

2038 (a) After an insurer receives actual notice of an incident
 2039 or a loss that could give rise to a covered liability claim, the
 2040 insurer is entitled to a reasonable opportunity to investigate
 2041 and evaluate the claim. The amount of time required for the
 2042 insurer's investigation and evaluation will vary depending on
 2043 the circumstances of the claim. The safe harbors provided in
 2044 this subsection are available to an insurer that complies with
 2045 the best practices standards of subsection (4).

2046 (b) When one claim arises out of a single occurrence, and
 2047 an insurer initiates settlement negotiations by tendering the
 2048 applicable policy limits in exchange for a general release of
 2049 the insured within 45 days after receiving actual notice of the
 2050 loss, the failure to tender the policy limits sooner does not
 2051 constitute bad faith.

2052 (c) When multiple claims arise out of a single occurrence,
 2053 the combined value of all claims exceeds the total of all
 2054 applicable policy limits, and an insurer initiates settlement
 2055 negotiations by globally tendering the applicable policy limits
 2056 in exchange for a general release of the insured within 45 days
 2057 after receiving actual notice of the loss, the failure to tender
 2058 policy limits sooner does not constitute bad faith.

2059 (d) An insurer is not under any circumstances liable for

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2060 the failure to accept a settlement offer within 45 days after
 2061 receiving actual notice of the loss if:

2062 1. The settlement offer provides the insurer fewer than 15
 2063 days for acceptance; or

2064 2. The settlement offer provides the insurer fewer than 30
 2065 days for acceptance where the offer contains conditions for
 2066 acceptance other than the insurer's disclosure of its policy
 2067 limits.

2068 (e) This subsection does not require that an insurer
 2069 automatically tender policy limits within 45 days in every case.

2070 (9) BURDEN OF PROOF.—In any action for bad faith failure to
 2071 settle:

2072 (a) The party bringing the bad faith claim must prove every
 2073 element of the claim by the greater weight of the evidence,
 2074 taking into account the totality of the circumstances.

2075 (b) An insurer that relies upon paragraph (5)(d) as a
 2076 defense to a claim for bad faith failure to settle must prove
 2077 the elements of that paragraph by the greater weight of the
 2078 evidence.

2079 (c) An insurer that relies upon a safe harbor provision of
 2080 subsection (8) must prove the elements of the safe harbor by the
 2081 greater weight of the evidence.

2082 (10) DAMAGES.—If the trier of fact finds that the party
 2083 bringing the bad faith claim has met its burden of proof, the
 2084 insurer is liable for the amount of any excess judgment,
 2085 together with court costs and, if the party bringing the bad
 2086 faith claim is the insured or an assignee of the insured, the
 2087 reasonable attorney fees incurred by the party bringing the bad
 2088 faith claim. Punitive damages may not be awarded.

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2089 (11) AGENTS.—This section is not intended to expand or
 2090 diminish any cause of action currently available against
 2091 insurance agents who sell motor vehicle liability insurance
 2092 policies in this state.

2093 Section 36. Paragraphs (i) and (o) of subsection (1) of
 2094 section 626.9541, Florida Statutes, are amended to read:

2095 626.9541 Unfair methods of competition and unfair or
 2096 deceptive acts or practices defined.—

2097 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
 2098 ACTS.—The following are defined as unfair methods of competition
 2099 and unfair or deceptive acts or practices:

2100 (i) *Unfair claim settlement practices.*—

2101 1. Attempting to settle claims on the basis of an
 2102 application, when serving as a binder or intended to become a
 2103 part of the policy, or any other material document which was
 2104 altered without notice to, or knowledge or consent of, the
 2105 insured;

2106 2. Making a material misrepresentation made to an insured
 2107 or any other person having an interest in the proceeds payable
 2108 under such contract or policy, for the purpose and with the
 2109 intent of effecting settlement of such claims, loss, or damage
 2110 under such contract or policy on less favorable terms than those
 2111 provided in, and contemplated by, such contract or policy; ~~or~~

2112 3. Committing or performing with such frequency as to
 2113 indicate a general business practice any of the following:

2114 a. Failing to adopt and implement standards for the proper
 2115 investigation of claims;

2116 b. Misrepresenting pertinent facts or insurance policy
 2117 provisions relating to coverages at issue;

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2118 c. Failing to acknowledge and act promptly upon
 2119 communications with respect to claims;

2120 d. Denying claims without conducting reasonable
 2121 investigations based upon available information;

2122 e. Failing to affirm or deny full or partial coverage of
 2123 claims, and, as to partial coverage, the dollar amount or extent
 2124 of coverage, or failing to provide a written statement that the
 2125 claim is being investigated, upon the written request of the
 2126 insured within 30 days after proof-of-loss statements have been
 2127 completed;

2128 f. Failing to promptly provide a reasonable explanation in
 2129 writing to the insured of the basis in the insurance policy, in
 2130 relation to the facts or applicable law, for denial of a claim
 2131 or for the offer of a compromise settlement;

2132 g. Failing to promptly notify the insured of any additional
 2133 information necessary for the processing of a claim; or

2134 h. Failing to clearly explain the nature of the requested
 2135 information and the reasons why such information is necessary;
 2136 ~~or-~~

2137 ~~i. Failing to pay personal injury protection insurance~~
 2138 ~~claims within the time periods required by s. 627.736(4)(b). The~~
 2139 ~~office may order the insurer to pay restitution to a~~
 2140 ~~policyholder, medical provider, or other claimant, including~~
 2141 ~~interest at a rate consistent with the amount set forth in s.~~
 2142 ~~55.03(1), for the time period within which an insurer fails to~~
 2143 ~~pay claims as required by law. Restitution is in addition to any~~
 2144 ~~other penalties allowed by law, including, but not limited to,~~
 2145 ~~the suspension of the insurer's certificate of authority.~~

2146 4. Failing to pay undisputed amounts of partial or full

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2147 benefits owed under first-party property insurance policies
 2148 within 90 days after an insurer receives notice of a residential
 2149 property insurance claim, determines the amounts of partial or
 2150 full benefits, and agrees to coverage, unless payment of the
 2151 undisputed benefits is prevented by an act of God, prevented by
 2152 the impossibility of performance, or due to actions by the
 2153 insured or claimant that constitute fraud, lack of cooperation,
 2154 or intentional misrepresentation regarding the claim for which
 2155 benefits are owed.

2156 (o) *Illegal dealings in premiums; excess or reduced charges*
 2157 *for insurance.-*

2158 1. Knowingly collecting any sum as a premium or charge for
 2159 insurance, which is not then provided, or is not in due course
 2160 to be provided, subject to acceptance of the risk by the
 2161 insurer, by an insurance policy issued by an insurer as
 2162 permitted by this code.

2163 2. Knowingly collecting as a premium or charge for
 2164 insurance any sum in excess of or less than the premium or
 2165 charge applicable to such insurance, in accordance with the
 2166 applicable classifications and rates as filed with and approved
 2167 by the office, and as specified in the policy; or, in cases when
 2168 classifications, premiums, or rates are not required by this
 2169 code to be so filed and approved, premiums and charges collected
 2170 from a Florida resident in excess of or less than those
 2171 specified in the policy and as fixed by the insurer.
 2172 Notwithstanding any other provision of law, this provision shall
 2173 not be deemed to prohibit the charging and collection, by
 2174 surplus lines agents licensed under part VIII of this chapter,
 2175 of the amount of applicable state and federal taxes, or fees as

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2176 authorized by s. 626.916(4), in addition to the premium required
 2177 by the insurer or the charging and collection, by licensed
 2178 agents, of the exact amount of any discount or other such fee
 2179 charged by a credit card facility in connection with the use of
 2180 a credit card, as authorized by subparagraph (q)3., in addition
 2181 to the premium required by the insurer. This subparagraph shall
 2182 not be construed to prohibit collection of a premium for a
 2183 universal life or a variable or indeterminate value insurance
 2184 policy made in accordance with the terms of the contract.

2185 3.a. Imposing or requesting an additional premium for death
 2186 benefit coverage, bodily injury liability coverage, property
 2187 damage liability coverage ~~a policy of motor vehicle liability,~~
 2188 ~~personal injury protection,~~ medical payments coverage ~~payment,~~
 2189 or collision coverage in a motor vehicle liability insurance
 2190 policy insurance or any combination thereof or refusing to renew
 2191 the policy solely because the insured was involved in a motor
 2192 vehicle accident unless the insurer's file contains information
 2193 from which the insurer in good faith determines that the insured
 2194 was substantially at fault in the accident.

2195 b. An insurer which imposes and collects such a surcharge
 2196 or which refuses to renew such policy shall, in conjunction with
 2197 the notice of premium due or notice of nonrenewal, notify the
 2198 named insured that he or she is entitled to reimbursement of
 2199 such amount or renewal of the policy under the conditions listed
 2200 below and will subsequently reimburse him or her or renew the
 2201 policy, if the named insured demonstrates that the operator
 2202 involved in the accident was:

2203 (I) Lawfully parked;

2204 (II) Reimbursed by, or on behalf of, a person responsible

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2205 for the accident or has a judgment against such person;
 2206 (III) Struck in the rear by another vehicle headed in the
 2207 same direction and was not convicted of a moving traffic
 2208 violation in connection with the accident;
 2209 (IV) Hit by a "hit-and-run" driver, if the accident was
 2210 reported to the proper authorities within 24 hours after
 2211 discovering the accident;
 2212 (V) Not convicted of a moving traffic violation in
 2213 connection with the accident, but the operator of the other
 2214 automobile involved in such accident was convicted of a moving
 2215 traffic violation;
 2216 (VI) Finally adjudicated not to be liable by a court of
 2217 competent jurisdiction;
 2218 (VII) In receipt of a traffic citation which was dismissed
 2219 or nolle prossed; or
 2220 (VIII) Not at fault as evidenced by a written statement
 2221 from the insured establishing facts demonstrating lack of fault
 2222 which are not rebutted by information in the insurer's file from
 2223 which the insurer in good faith determines that the insured was
 2224 substantially at fault.
 2225 c. In addition to the other provisions of this
 2226 subparagraph, an insurer may not fail to renew a policy if the
 2227 insured has had only one accident in which he or she was at
 2228 fault within the current 3-year period. However, an insurer may
 2229 nonrenew a policy for reasons other than accidents in accordance
 2230 with s. 627.728. This subparagraph does not prohibit nonrenewal
 2231 of a policy under which the insured has had three or more
 2232 accidents, regardless of fault, during the most recent 3-year
 2233 period.

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2234 4. Imposing or requesting an additional premium for, or
 2235 refusing to renew, a policy for motor vehicle insurance solely
 2236 because the insured committed a noncriminal traffic infraction
 2237 as described in s. 318.14 unless the infraction is:
 2238 a. A second infraction committed within an 18-month period,
 2239 or a third or subsequent infraction committed within a 36-month
 2240 period.
 2241 b. A violation of s. 316.183, when such violation is a
 2242 result of exceeding the lawful speed limit by more than 15 miles
 2243 per hour.
 2244 5. Upon the request of the insured, the insurer and
 2245 licensed agent shall supply to the insured the complete proof of
 2246 fault or other criteria which justifies the additional charge or
 2247 cancellation.
 2248 6. No insurer shall impose or request an additional premium
 2249 for motor vehicle insurance, cancel or refuse to issue a policy,
 2250 or refuse to renew a policy because the insured or the applicant
 2251 is a handicapped or physically disabled person, so long as such
 2252 handicap or physical disability does not substantially impair
 2253 such person's mechanically assisted driving ability.
 2254 7. No insurer may cancel or otherwise terminate any
 2255 insurance contract or coverage, or require execution of a
 2256 consent to rate endorsement, during the stated policy term for
 2257 the purpose of offering to issue, or issuing, a similar or
 2258 identical contract or coverage to the same insured with the same
 2259 exposure at a higher premium rate or continuing an existing
 2260 contract or coverage with the same exposure at an increased
 2261 premium.
 2262 8. No insurer may issue a nonrenewal notice on any

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2263 insurance contract or coverage, or require execution of a
 2264 consent to rate endorsement, for the purpose of offering to
 2265 issue, or issuing, a similar or identical contract or coverage
 2266 to the same insured at a higher premium rate or continuing an
 2267 existing contract or coverage at an increased premium without
 2268 meeting any applicable notice requirements.

2269 9. No insurer shall, with respect to premiums charged for
 2270 motor vehicle insurance, unfairly discriminate solely on the
 2271 basis of age, sex, marital status, or scholastic achievement.

2272 10. Imposing or requesting an additional premium for motor
 2273 vehicle comprehensive or uninsured motorist coverage solely
 2274 because the insured was involved in a motor vehicle accident or
 2275 was convicted of a moving traffic violation.

2276 11. No insurer shall cancel or issue a nonrenewal notice on
 2277 any insurance policy or contract without complying with any
 2278 applicable cancellation or nonrenewal provision required under
 2279 the Florida Insurance Code.

2280 12. No insurer shall impose or request an additional
 2281 premium, cancel a policy, or issue a nonrenewal notice on any
 2282 insurance policy or contract because of any traffic infraction
 2283 when adjudication has been withheld and no points have been
 2284 assessed pursuant to s. 318.14(9) and (10). However, this
 2285 subparagraph does not apply to traffic infractions involving
 2286 accidents in which the insurer has incurred a loss due to the
 2287 fault of the insured.

2288 Section 37. Paragraph (a) of subsection (1) of section
 2289 626.989, Florida Statutes, is amended to read:
 2290 626.989 Investigation by department or Division of
 2291 Investigative and Forensic Services; compliance; immunity;

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2292 confidential information; reports to division; division
 2293 investigator's power of arrest.-

2294 (1) For the purposes of this section:
 2295 (a) A person commits a "fraudulent insurance act" if the
 2296 person:
 2297 1. Knowingly and with intent to defraud presents, causes to
 2298 be presented, or prepares with knowledge or belief that it will
 2299 be presented, to or by an insurer, self-insurer, self-insurance
 2300 fund, servicing corporation, purported insurer, broker, or any
 2301 agent thereof, any written statement as part of, or in support
 2302 of, an application for the issuance of, or the rating of, any
 2303 insurance policy, or a claim for payment or other benefit
 2304 pursuant to any insurance policy, which the person knows to
 2305 contain materially false information concerning any fact
 2306 material thereto or if the person conceals, for the purpose of
 2307 misleading another, information concerning any fact material
 2308 thereto.

2309 2. Knowingly submits:
 2310 a. A false, misleading, or fraudulent application or other
 2311 document when applying for licensure as a health care clinic,
 2312 seeking an exemption from licensure as a health care clinic, or
 2313 demonstrating compliance with part X of chapter 400 with an
 2314 intent to use the license, exemption from licensure, or
 2315 demonstration of compliance to provide services or seek
 2316 reimbursement under a motor vehicle liability insurance policy's
 2317 medical payments coverage ~~the Florida Motor Vehicle No-Fault~~
 2318 ~~Law.~~

2319 b. A claim for payment or other benefit under a motor
 2320 vehicle liability insurance policy's medical payments coverage,

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2321 ~~pursuant to a personal injury protection insurance policy under~~
 2322 ~~the Florida Motor Vehicle No Fault Law~~ if the person knows that
 2323 the payee knowingly submitted a false, misleading, or fraudulent
 2324 application or other document when applying for licensure as a
 2325 health care clinic, seeking an exemption from licensure as a
 2326 health care clinic, or demonstrating compliance with part X of
 2327 chapter 400.

2328 Section 38. Subsection (1) of section 627.06501, Florida
 2329 Statutes, is amended to read:

2330 627.06501 Insurance discounts for certain persons
 2331 completing driver improvement course.-

2332 (1) Any rate, rating schedule, or rating manual for the
 2333 liability, medical payments, death benefit ~~personal injury~~
 2334 ~~protection~~, and collision coverages of a motor vehicle insurance
 2335 policy filed with the office may provide for an appropriate
 2336 reduction in premium charges as to such coverages if ~~when~~ the
 2337 principal operator on the covered vehicle has successfully
 2338 completed a driver improvement course approved and certified by
 2339 the Department of Highway Safety and Motor Vehicles which is
 2340 effective in reducing crash or violation rates, or both, as
 2341 determined pursuant to s. 318.1451(5). Any discount, not to
 2342 exceed 10 percent, used by an insurer is presumed to be
 2343 appropriate unless credible data demonstrates otherwise.

2344 Section 39. Subsection (15) is added to section 627.0651,
 2345 Florida Statutes, to read:

2346 627.0651 Making and use of rates for motor vehicle
 2347 insurance.-

2348 (15) Rate filings for motor vehicle liability policies that
 2349 implement the financial responsibility requirements of s.

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2350 324.022 in effect July 1, 2023, except for commercial motor
 2351 vehicle insurance policies exempt under paragraph (14)(a), must
 2352 reflect such financial responsibility requirements and may be
 2353 approved only through the file and use process under paragraph
 2354 (1)(a).

2355 Section 40. Subsection (1) of section 627.0652, Florida
 2356 Statutes, is amended to read:

2357 627.0652 Insurance discounts for certain persons completing
 2358 safety course.-

2359 (1) Any rates, rating schedules, or rating manuals for the
 2360 liability, medical payments, death benefit ~~personal injury~~
 2361 ~~protection~~, and collision coverages of a motor vehicle insurance
 2362 policy filed with the office must ~~shall~~ provide for an
 2363 appropriate reduction in premium charges as to such coverages if
 2364 ~~when~~ the principal operator on the covered vehicle is an insured
 2365 55 years of age or older who has successfully completed a motor
 2366 vehicle accident prevention course approved by the Department of
 2367 Highway Safety and Motor Vehicles. Any discount used by an
 2368 insurer is presumed to be appropriate unless credible data
 2369 demonstrates otherwise.

2370 Section 41. Subsections (1), (3), and (6) of section
 2371 627.0653, Florida Statutes, are amended to read:

2372 627.0653 Insurance discounts for specified motor vehicle
 2373 equipment.-

2374 (1) Any rates, rating schedules, or rating manuals for the
 2375 liability, medical payments, death benefit ~~personal injury~~
 2376 ~~protection~~, and collision coverages of a motor vehicle insurance
 2377 policy filed with the office must ~~shall~~ provide a premium
 2378 discount if the insured vehicle is equipped with factory-

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2379 installed, four-wheel antilock brakes.

2380 (3) Any rates, rating schedules, or rating manuals for
 2381 ~~personal injury protection coverage and~~ medical payments
 2382 coverage, ~~if offered,~~ of a motor vehicle insurance policy filed
 2383 with the office ~~must shall~~ provide a premium discount if the
 2384 insured vehicle is equipped with one or more air bags ~~that which~~
 2385 are factory installed.

2386 (6) The Office of Insurance Regulation may approve a
 2387 premium discount to any rates, rating schedules, or rating
 2388 manuals for the liability, medical payments, death benefit
 2389 ~~personal injury protection,~~ and collision coverages of a motor
 2390 vehicle insurance policy filed with the office if the insured
 2391 vehicle is equipped with an automated driving system or
 2392 electronic vehicle collision avoidance technology that is
 2393 factory installed or a retrofitted system and that complies with
 2394 National Highway Traffic Safety Administration standards.

2395 Section 42. Section 627.4132, Florida Statutes, is amended
 2396 to read:

2397 627.4132 Stacking of coverages prohibited.—If an insured or
 2398 named insured is protected by any type of motor vehicle
 2399 insurance policy for bodily injury and property damage
 2400 liability, ~~personal injury protection, or other coverage,~~ the
 2401 policy ~~must shall~~ provide that the insured or named insured is
 2402 protected only to the extent of the coverage she or he has on
 2403 the vehicle involved in the accident. However, if none of the
 2404 insured's or named insured's vehicles are ~~is~~ involved in the
 2405 accident, coverage is available only to the extent of coverage
 2406 on any one of the vehicles with applicable coverage. Coverage on
 2407 any other vehicles may shall not be added to or stacked upon

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2408 that coverage. This section does not ~~apply~~:

2409 (1) Apply to uninsured motorist coverage ~~that which~~ is
 2410 separately governed by s. 627.727.

2411 (2) ~~To~~ Reduce the coverage available by reason of insurance
 2412 policies insuring different named insureds.

2413 Section 43. Subsection (1) of section 627.4137, Florida
 2414 Statutes, is amended to read:

2415 627.4137 Disclosure of certain information required.—

2416 (1) Each insurer which does or may provide liability
 2417 insurance coverage to pay all or a portion of any claim which
 2418 might be made shall provide, within 30 days after ~~of~~ the written
 2419 request of the claimant or the claimant's attorney, a statement,
 2420 under oath, of a corporate officer or the insurer's claims
 2421 manager or superintendent setting forth the following
 2422 information with regard to each known policy of insurance,
 2423 including excess or umbrella insurance:

2424 (a) The name of the insurer.

2425 (b) The name of each insured.

2426 (c) The limits of the liability coverage.

2427 (d) A statement of any policy or coverage defense which
 2428 such insurer reasonably believes is available to such insurer at
 2429 the time of filing such statement.

2430 (e) A copy of the policy.

2431
 2432 In addition, the insured, or her or his insurance agent, upon
 2433 written request of the claimant or the claimant's attorney,
 2434 shall disclose the name and coverage of each known insurer to
 2435 the claimant and shall forward such request for information as
 2436 required by this subsection to all affected insurers. The

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2437 insurer shall then supply the information required in this
 2438 subsection to the claimant within 30 days after ~~of~~ receipt of
 2439 such request. If an insurer fails to timely comply with this
 2440 section, the claimant may file an action in a court of competent
 2441 jurisdiction to enforce this section. If the court determines
 2442 that the insurer violated this section, the claimant is entitled
 2443 to an award of reasonable attorney fees and costs to be paid by
 2444 the insurer.

2445 Section 44. Section 627.7263, Florida Statutes, is amended
 2446 to read:

2447 627.7263 Rental and leasing driver's insurance to be
 2448 primary; exception.—

2449 (1) The valid and collectible liability insurance, death
 2450 benefit coverage, and medical payments coverage ~~or personal~~
 2451 ~~injury protection insurance providing coverage~~ for the lessor of
 2452 a motor vehicle for rent or lease are ~~is~~ primary unless
 2453 otherwise stated in at least 10-point type on the face of the
 2454 rental or lease agreement. Such insurance is primary for the
 2455 limits of liability ~~and personal injury protection~~ coverage as
 2456 required under s. 324.021(7), the death benefit coverage limit
 2457 required under s. 627.72761, and the medical payments coverage
 2458 limit required under s. 627.7265 ~~by ss. 324.021(7) and 627.736.~~

2459 (2) If the lessee's coverage is to be primary, the rental
 2460 or lease agreement must contain the following language, in at
 2461 least 10-point type:

2462
 2463 "The valid and collectible liability insurance, death
 2464 benefit coverage, and medical payments coverage
 2465 ~~personal injury protection insurance~~ of an any

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2466 authorized rental or leasing driver are ~~is~~ primary for
 2467 the limits of liability ~~and personal injury protection~~
 2468 coverage required under s. 324.021(7), Florida
 2469 Statutes, the limit of the death benefit coverage
 2470 required under s. 627.72761, Florida Statutes, and the
 2471 medical payments coverage limit required under s.
 2472 627.7265 ~~by ss. 324.021(7) and 627.736,~~ Florida
 2473 Statutes."

2474 Section 45. Section 627.7265, Florida Statutes, is created
 2475 to read:

2476 627.7265 Motor vehicle insurance; medical payments
 2477 coverage.—

2478 (1) Medical payments coverage must protect the named
 2479 insured, resident relatives, persons operating the insured motor
 2480 vehicle, passengers in the insured motor vehicle, and persons
 2481 who are struck by the insured motor vehicle and suffer bodily
 2482 injury while not an occupant of a self-propelled motor vehicle
 2483 at a limit of at least \$5,000 for medical expenses incurred due
 2484 to bodily injury, sickness, or disease arising out of the
 2485 ownership, maintenance, or use of a motor vehicle.

2486 (a) Before issuing a motor vehicle liability insurance
 2487 policy that is furnished as proof of financial responsibility
 2488 under s. 324.031, the insurer must offer medical payments
 2489 coverage at limits of \$5,000 and \$10,000. The insurer may also
 2490 offer medical payments coverage at any limit greater than
 2491 \$5,000.

2492 (b) The insurer must offer medical payments coverage with
 2493 no deductible. The insurer may also offer medical payments
 2494 coverage with a deductible not to exceed \$500.

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2495 (c) This section may not be construed to limit any other
 2496 coverage made available by an insurer.

2497 (2) Upon receiving notice of an accident that is
 2498 potentially covered by medical payments coverage benefits, the
 2499 insurer must reserve \$5,000 of medical payments coverage
 2500 benefits for payment to physicians licensed under chapter 458 or
 2501 chapter 459 or dentists licensed under chapter 466 who provide
 2502 emergency services and care, as defined in s. 395.002(9), or who
 2503 provide hospital inpatient care. The amount required to be held
 2504 in reserve may be used only to pay claims from such physicians
 2505 or dentists until 30 days after the date the insurer receives
 2506 notice of the accident. After the 30-day period, any amount of
 2507 the reserve for which the insurer has not received notice of
 2508 such claims may be used by the insurer to pay other claims. This
 2509 subsection does not require an insurer to establish a claim
 2510 reserve for insurance accounting purposes.

2511 (3) An insurer providing medical payments coverage benefits
 2512 may not:

2513 (a) Seek a lien on any recovery in tort by judgment,
 2514 settlement, or otherwise for medical payments coverage benefits,
 2515 regardless of whether suit has been filed or settlement has been
 2516 reached without suit; or

2517 (b) Bring a cause of action against a person to whom or for
 2518 whom medical payments coverage benefits were paid, except when
 2519 medical payments coverage benefits were paid by reason of fraud
 2520 committed by that person.

2521 (4) An insurer providing medical payments coverage may
 2522 include provisions in its policy allowing for subrogation for
 2523 medical payments coverage benefits paid if the expenses giving

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2524 rise to the payments were caused by the wrongful act or omission
 2525 of another who is not also an insured under the policy paying
 2526 the medical payments coverage benefits. However, this
 2527 subrogation right is inferior to the rights of the injured
 2528 insured and is available only after all the insured's damages
 2529 are recovered and the insured is made whole. An insured who
 2530 obtains a recovery from a third party of the full amount of the
 2531 damages sustained and delivers a release or satisfaction that
 2532 impairs a medical payments insurer's subrogation right is liable
 2533 to the insurer for repayment of medical payments coverage
 2534 benefits less any expenses of acquiring the recovery, including
 2535 a prorated share of attorney fees and costs, and shall hold that
 2536 net recovery in trust to be delivered to the medical payments
 2537 insurer. The insurer may not include any provision in its policy
 2538 allowing for subrogation for any death benefit paid.

2539 Section 46. Subsections (1) and (7) of section 627.727,
 2540 Florida Statutes, are amended to read:

2541 627.727 Motor vehicle insurance; uninsured and underinsured
 2542 vehicle coverage; insolvent insurer protection.—

2543 (1) ~~A~~ No motor vehicle liability insurance policy that
 2544 ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be
 2545 delivered or issued for delivery in this state with respect to
 2546 any specifically insured or identified motor vehicle registered
 2547 or principally garaged in this state, unless uninsured motor
 2548 vehicle coverage is provided therein or supplemental thereto for
 2549 the protection of persons insured thereunder who are legally
 2550 entitled to recover damages from owners or operators of
 2551 uninsured motor vehicles because of bodily injury, sickness, or
 2552 disease, including death, resulting therefrom. However, the

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2553 coverage required under this section is not applicable if ~~when~~,

2554 or to the extent that, an insured named in the policy makes a

2555 written rejection of the coverage on behalf of all insureds

2556 under the policy. If ~~When~~ a motor vehicle is leased for ~~a period~~

2557 ~~of~~ 1 year or longer and the lessor of such vehicle, by the terms

2558 of the lease contract, provides liability coverage on the leased

2559 vehicle, the lessee of such vehicle has ~~shall have~~ the sole

2560 privilege to reject uninsured motorist coverage or to select

2561 lower limits than the bodily injury liability limits, regardless

2562 of whether the lessor is qualified as a self-insurer pursuant to

2563 s. 324.171. Unless an insured, or a lessee having the privilege

2564 of rejecting uninsured motorist coverage, requests such coverage

2565 or requests higher uninsured motorist limits in writing, the

2566 coverage or such higher uninsured motorist limits need not be

2567 provided in or supplemental to any other policy that ~~which~~

2568 renews, extends, changes, supersedes, or replaces an existing

2569 policy with the same bodily injury liability limits when an

2570 insured or lessee had rejected the coverage. When an insured or

2571 lessee has initially selected limits of uninsured motorist

2572 coverage lower than her or his bodily injury liability limits,

2573 higher limits of uninsured motorist coverage need not be

2574 provided in or supplemental to any other policy that ~~which~~

2575 renews, extends, changes, supersedes, or replaces an existing

2576 policy with the same bodily injury liability limits unless an

2577 insured requests higher uninsured motorist coverage in writing.

2578 The rejection or selection of lower limits must ~~shall~~ be made on

2579 a form approved by the office. The form must ~~shall~~ fully advise

2580 the applicant of the nature of the coverage and must ~~shall~~ state

2581 that the coverage is equal to bodily injury liability limits

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2582 unless lower limits are requested or the coverage is rejected.

2583 The heading of the form must ~~shall~~ be in 12-point bold type and

2584 must ~~shall~~ state: "You are electing not to purchase certain

2585 valuable coverage that ~~which~~ protects you and your family or you

2586 are purchasing uninsured motorist limits less than your bodily

2587 injury liability limits when you sign this form. Please read

2588 carefully." If this form is signed by a named insured, it will

2589 be conclusively presumed that there was an informed, knowing

2590 rejection of coverage or election of lower limits on behalf of

2591 all insureds. The insurer shall notify the named insured at

2592 least annually of her or his options as to the coverage required

2593 by this section. Such notice must ~~shall~~ be part of, and attached

2594 to, the notice of premium, must ~~shall~~ provide for a means to

2595 allow the insured to request such coverage, and must ~~shall~~ be

2596 given in a manner approved by the office. Receipt of this notice

2597 does not constitute an affirmative waiver of the insured's right

2598 to uninsured motorist coverage if ~~where~~ the insured has not

2599 signed a selection or rejection form. The coverage described

2600 under this section must ~~shall~~ be over and above, but may ~~shall~~

2601 not duplicate, the benefits available to an insured under any

2602 workers' compensation law, ~~personal injury protection benefits,~~

2603 disability benefits law, or similar law; under any automobile

2604 medical ~~payments expense~~ coverage; under any motor vehicle

2605 liability insurance coverage; or from the owner or operator of

2606 the uninsured motor vehicle or any other person or organization

2607 jointly or severally liable together with such owner or operator

2608 for the accident,⁺ and such coverage must ~~shall~~ cover the

2609 difference, if any, between the sum of such benefits and the

2610 damages sustained, up to the maximum amount of such coverage

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2611 provided under this section. The amount of coverage available
 2612 under this section ~~may shall~~ not be reduced by a setoff against
 2613 any coverage, including liability insurance. Such coverage does
 2614 ~~shall~~ not inure directly or indirectly to the benefit of any
 2615 workers' compensation or disability benefits carrier or any
 2616 person or organization qualifying as a self-insurer under any
 2617 workers' compensation or disability benefits law or similar law.

2618 (7) The legal liability of an uninsured motorist coverage
 2619 insurer includes ~~does not include~~ damages in tort for pain,
 2620 suffering, disability, physical impairment, disfigurement,
 2621 mental anguish, ~~and~~ inconvenience, and the loss of capacity for
 2622 the enjoyment of life experienced in the past and to be
 2623 experienced in the future unless the injury or disease is
 2624 described in one or more of paragraphs (a) (d) of s. 627.737(2).

2625 Section 47. Section 627.7275, Florida Statutes, is amended
 2626 to read:

2627 627.7275 Required coverages in motor vehicle insurance
 2628 policies; availability to certain applicants ~~liability.~~

2629 (1) A motor vehicle insurance policy ~~providing personal~~
 2630 ~~injury protection as set forth in s. 627.726~~ may not be
 2631 delivered or issued for delivery in this state for a with
 2632 ~~respect to any~~ specifically insured or identified motor vehicle
 2633 registered or principally garaged in this state must provide
 2634 bodily injury liability coverage and unless the policy also
 2635 ~~provides coverage for~~ property damage liability coverage as
 2636 required under ss. 324.022 and 324.151 and the death benefit
 2637 coverage as required under s. 627.72761 by s. 324.022.

2638 (2) (a) Insurers writing motor vehicle insurance in this
 2639 state shall make available, subject to the insurers' usual

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2640 underwriting restrictions:

2641 1. Coverage under policies as described in subsection (1)
 2642 to an applicant for private passenger motor vehicle insurance
 2643 coverage who is seeking the coverage in order to reinstate the
 2644 applicant's driving privileges in this state if the driving
 2645 privileges were revoked or suspended pursuant to s. 316.646 or
 2646 s. 324.0221 due to the failure of the applicant to maintain
 2647 required security.

2648 2. Coverage under policies as described in subsection (1),
 2649 which includes bodily injury ~~also provides~~ liability coverage
 2650 and property damage liability coverage for bodily injury, death,
 2651 ~~and property damage arising out of the ownership, maintenance,~~
 2652 ~~or use of the motor vehicle~~ in an amount not less than the
 2653 minimum limits required under described in s. 324.021(7) or s.
 2654 324.023 and which conforms to the requirements of s. 324.151, to
 2655 an applicant for private passenger motor vehicle insurance
 2656 coverage who is seeking the coverage in order to reinstate the
 2657 applicant's driving privileges in this state after such
 2658 privileges were revoked or suspended under s. 316.193 or s.
 2659 322.26(2) for driving under the influence.

2660 (b) The policies described in paragraph (a) must shall be
 2661 issued for at least 6 months and, as to the minimum coverages
 2662 required under this section, may not be canceled by the insured
 2663 for any reason or by the insurer after 60 days, during which
 2664 period the insurer is completing the underwriting of the policy.
 2665 After the insurer has completed underwriting the policy, the
 2666 insurer shall notify the Department of Highway Safety and Motor
 2667 Vehicles that the policy is in full force and effect and is not
 2668 cancelable for the remainder of the policy period. A premium

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2669 ~~must shall~~ be collected and the coverage is in effect for the
 2670 60-day period during which the insurer is completing the
 2671 underwriting of the policy, whether or not the person's driver
 2672 license, motor vehicle tag, and motor vehicle registration are
 2673 in effect. Once the noncancelable provisions of the policy
 2674 become effective, the bodily injury liability and property
 2675 damage liability coverages ~~for bodily injury, property damage,~~
 2676 ~~and personal injury protection~~ may not be reduced below the
 2677 minimum limits required under s. 324.021 or s. 324.023 during
 2678 the policy period.

2679 (c) This subsection controls to the extent of any conflict
 2680 with any other section.

2681 (d) An insurer issuing a policy subject to this section may
 2682 cancel the policy if, during the policy term, the named insured,
 2683 or any other operator who resides in the same household or
 2684 customarily operates an automobile insured under the policy, has
 2685 his or her driver license suspended or revoked.

2686 (e) This subsection does not require an insurer to offer a
 2687 policy of insurance to an applicant if such offer would be
 2688 inconsistent with the insurer's underwriting guidelines and
 2689 procedures.

2690 Section 48. Section 627.72761, Florida Statutes, is created
 2691 to read:

2692 627.72761 Required motor vehicle death benefit coverage.—An
 2693 insurance policy complying with the financial responsibility
 2694 requirements of s. 324.022 must provide a death benefit of
 2695 \$5,000 for each deceased person upon the death of the named
 2696 insured, relatives residing in the same household, persons
 2697 operating the insured motor vehicle, passengers in the motor

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2698 vehicle, and other persons struck by the motor vehicle and
 2699 suffering bodily injury while not an occupant of a self-
 2700 propelled motor vehicle when such death arises out of the
 2701 ownership, maintenance, or use of a motor vehicle. The insurer
 2702 may pay death benefits to the executor or administrator of the
 2703 deceased person; to any of the deceased person's relatives by
 2704 blood, legal adoption, or marriage; or to any person appearing
 2705 to the insurer to be equitably entitled to such benefits. The
 2706 benefit may not be paid if the deceased person died as a result
 2707 of causing injury or death to himself or herself intentionally
 2708 or because of injuries or death incurred while committing a
 2709 felony.

2710 Section 49. Effective upon this act becoming a law, section
 2711 627.7278, Florida Statutes, is created to read:

2712 627.7278 Applicability and construction; notice to
 2713 policyholders.—

2714 (1) As used in this section, the term "minimum security
 2715 requirements" means security that enables a person to respond in
 2716 damages for liability on account of crashes arising out of the
 2717 ownership, maintenance, or use of a motor vehicle, in the
 2718 amounts required by s. 324.022.

2719 (2) Effective July 1, 2023:

2720 (a) Motor vehicle insurance policies issued or renewed on
 2721 or after July 1, 2023, may not include personal injury
 2722 protection.

2723 (b) All persons subject to s. 324.022, s. 324.032, s.
 2724 627.7415, or s. 627.742 must maintain at least minimum security
 2725 requirements.

2726 (c) Any new or renewal motor vehicle insurance policy

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2727 delivered or issued for delivery in this state must provide
 2728 coverage that complies with minimum security requirements and
 2729 provides the death benefit set forth in s. 627.72761.
 2730 (d) An existing motor vehicle insurance policy issued
 2731 before July 1, 2023, which provides personal injury protection
 2732 and property damage liability coverage that meets the
 2733 requirements of s. 324.022 on June 30, 2023, but that does not
 2734 meet minimum security requirements on or after July 1, 2023, is
 2735 deemed to meet minimum security requirements until such policy
 2736 is renewed, nonrenewed, or canceled on or after July 1, 2023.
 2737 Sections 400.9905, 400.991, 456.057, 456.072, 626.9541(1)(i),
 2738 627.7263, 627.727, 627.730-627.7405, 627.748, and 817.234,
 2739 Florida Statutes 2020, remain in full force and effect for motor
 2740 vehicle accidents covered under a policy issued under the
 2741 Florida Motor Vehicle No-Fault Law before July 1, 2023, until
 2742 the policy is renewed, nonrenewed, or canceled on or after July
 2743 1, 2023.
 2744 (3) Each insurer shall allow each insured who has a new or
 2745 renewal policy providing personal injury protection which
 2746 becomes effective before July 1, 2023, and whose policy does not
 2747 meet minimum security requirements on or after July 1, 2023, to
 2748 change coverages so as to eliminate personal injury protection
 2749 and obtain coverage providing minimum security requirements and
 2750 the death benefit set forth in s. 627.72761, which shall be
 2751 effective on or after July 1, 2023. The insurer is not required
 2752 to provide coverage complying with minimum security requirements
 2753 and the death benefit set forth in s. 627.72761 in such policies
 2754 if the insured does not pay the required premium, if any, by
 2755 July 1, 2023, or such later date as the insurer may allow. The

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2756 insurer shall also offer each insured medical payments coverage
 2757 under s. 627.7265. Any reduction in the premium must be refunded
 2758 by the insurer. The insurer may not impose on the insured an
 2759 additional fee or charge that applies solely to a change in
 2760 coverage; however, the insurer may charge an additional required
 2761 premium that is actuarially indicated.
 2762 (4) By April 1, 2023, each motor vehicle insurer shall
 2763 provide notice of this section to each motor vehicle
 2764 policyholder who is subject to this section. The notice is
 2765 subject to approval by the office and must clearly inform the
 2766 policyholder that:
 2767 (a) The Florida Motor Vehicle No-Fault Law is repealed
 2768 effective July 1, 2023, and that on or after that date, the
 2769 insured is no longer required to maintain personal injury
 2770 protection insurance coverage, that personal injury protection
 2771 coverage is no longer available for purchase in this state, and
 2772 that all new or renewal policies issued on or after that date
 2773 will not contain that coverage.
 2774 (b) Effective July 1, 2023, a person subject to the
 2775 financial responsibility requirements of s. 324.022 must:
 2776 1. Maintain minimum security requirements that enable the
 2777 person to respond to damages for liability on account of
 2778 accidents arising out of the use of a motor vehicle in the
 2779 following amounts:
 2780 a. Twenty-five thousand dollars for bodily injury to, or
 2781 the death of, one person in any one crash and, subject to such
 2782 limits for one person, in the amount of \$50,000 for bodily
 2783 injury to, or the death of, two or more persons in any one
 2784 crash; and

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2785 b. Ten thousand dollars for damage to, or destruction of,
 2786 the property of others in any one crash.

2787 2. Purchase a death benefit under s. 627.72761 providing
 2788 coverage in the amount of \$5,000 per deceased individual upon
 2789 the death of the named insured, relatives residing in the same
 2790 household, persons operating the insured motor vehicle,
 2791 passengers in the motor vehicle, and other persons struck by the
 2792 motor vehicle and suffering bodily injury while not an occupant
 2793 of a self-propelled motor vehicle, when such death arises out of
 2794 the ownership, maintenance, or use of a motor vehicle.

2795 (c) Bodily injury liability coverage protects the insured,
 2796 up to the coverage limits, against loss if the insured is
 2797 legally responsible for the death of or bodily injury to others
 2798 in a motor vehicle accident.

2799 (d) Effective July 1, 2023, each policyholder of motor
 2800 vehicle liability insurance purchased as proof of financial
 2801 responsibility must be offered medical payments coverage
 2802 benefits that comply with s. 627.7265. The insurer must offer
 2803 medical payments coverage at limits of \$5,000 and \$10,000
 2804 without a deductible. The insurer may also offer medical
 2805 payments coverage at other limits greater than \$5,000 and may
 2806 offer coverage with a deductible of up to \$500. Medical payments
 2807 coverage pays covered medical expenses incurred due to bodily
 2808 injury, sickness, or disease arising out of the ownership,
 2809 maintenance, or use of the motor vehicle, up to the limits of
 2810 such coverage, for injuries sustained in a motor vehicle crash
 2811 by the named insured, resident relatives, any persons operating
 2812 the insured motor vehicle, passengers in the insured motor
 2813 vehicle, and persons who are struck by the insured motor vehicle

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2814 and suffer bodily injury while not an occupant of a self-
 2815 propelled motor vehicle as provided in s. 627.7265.

2816 (e) The policyholder may obtain uninsured and underinsured
 2817 motorist coverage that provides benefits, up to the limits of
 2818 such coverage, to a policyholder or other insured entitled to
 2819 recover damages for bodily injury, sickness, disease, or death
 2820 resulting from a motor vehicle accident with an uninsured or
 2821 underinsured owner or operator of a motor vehicle.

2822 (f) If the policyholder's new or renewal motor vehicle
 2823 insurance policy is effective before July 1, 2023, and contains
 2824 personal injury protection and property damage liability
 2825 coverage as required by state law before July 1, 2023, but does
 2826 not meet minimum security requirements on or after July 1, 2023,
 2827 the policy is deemed to meet minimum security requirements and
 2828 need not provide the death benefit set forth in s. 627.72761
 2829 until it is renewed, nonrenewed, or canceled on or after July 1,
 2830 2023.

2831 (g) A policyholder whose new or renewal policy becomes
 2832 effective before July 1, 2023, but does not meet minimum
 2833 security requirements on or after July 1, 2023, may change
 2834 coverages under the policy so as to eliminate personal injury
 2835 protection and to obtain coverage providing minimum security
 2836 requirements, including bodily injury liability coverage and the
 2837 death benefit set forth in s. 627.72761, which are effective on
 2838 or after July 1, 2023.

2839 (h) If the policyholder has any questions, he or she should
 2840 contact the person named at the telephone number provided in the
 2841 notice.

2842 Section 50. Paragraph (a) of subsection (1) of section

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2843 627.728, Florida Statutes, is amended to read:

2844 627.728 Cancellations; nonrenewals.-

2845 (1) As used in this section, the term:

2846 (a) "Policy" means the bodily injury and property damage
2847 liability, ~~personal injury protection~~, medical payments, death
2848 benefit, comprehensive, collision, and uninsured motorist
2849 coverage portions of a policy of motor vehicle insurance
2850 delivered or issued for delivery in this state:

2851 1. Insuring a natural person as named insured or one or
2852 more related individuals who are residents ~~resident~~ of the same
2853 household; and

2854 2. Insuring only a motor vehicle of the private passenger
2855 type or station wagon type which is not used as a public or
2856 livery conveyance for passengers or rented to others; or
2857 insuring any other four-wheel motor vehicle having a load
2858 capacity of 1,500 pounds or less which is not used in the
2859 occupation, profession, or business of the insured other than
2860 farming; other than any policy issued under an automobile
2861 insurance assigned risk plan or covering garage, automobile
2862 sales agency, repair shop, service station, or public parking
2863 place operation hazards.

2864
2865 The term "policy" does not include a binder as defined in s.
2866 627.420 unless the duration of the binder period exceeds 60
2867 days.

2868 Section 51. Subsection (1), paragraph (a) of subsection
2869 (5), and subsections (6) and (7) of section 627.7295, Florida
2870 Statutes, are amended to read:

2871 627.7295 Motor vehicle insurance contracts.-

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2872 (1) As used in this section, the term:

2873 (a) "Policy" means a motor vehicle insurance policy that
2874 provides death benefit coverage under s. 627.72761, bodily
2875 injury liability ~~personal injury protection~~ coverage, and
2876 property damage liability coverage, ~~or both~~.

2877 (b) "Binder" means a binder that provides motor vehicle
2878 death benefit coverage under s. 627.72761, bodily injury
2879 liability coverage, ~~personal injury protection~~ and property
2880 damage liability coverage.

2881 (5) (a) A licensed general lines agent may charge a per-
2882 policy fee of up to ~~not to exceed~~ \$10 to cover the
2883 administrative costs of the agent associated with selling the
2884 motor vehicle insurance policy if the policy provides covers
2885 only the death benefit coverage under s. 627.72761, bodily
2886 injury liability coverage, ~~personal injury protection coverage~~
2887 ~~as provided by s. 627.736~~ and property damage liability coverage
2888 under ~~as provided by~~ s. 627.7275 and if no other insurance is
2889 sold or issued in conjunction with or collateral to the policy.
2890 The fee is not ~~considered~~ part of the premium.

2891 (6) If a motor vehicle owner's driver license, license
2892 plate, and registration have previously been suspended pursuant
2893 to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy
2894 only as provided in s. 627.7275.

2895 (7) A policy of private passenger motor vehicle insurance
2896 or a binder for such a policy may be initially issued in this
2897 state only if, before the effective date of such binder or
2898 policy, the insurer or agent has collected from the insured an
2899 amount equal to at least 1 month's premium. An insurer, agent,
2900 or premium finance company may not, directly or indirectly, take

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any action that results ~~resulting~~ in the insured paying ~~having~~ paid from the insured's own funds an amount less than the 1 month's premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent.

(a) This subsection does not apply:

1. If an insured or member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. ~~This subsection does not apply~~

2. To an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. ~~This subsection does not apply~~

3. If all policy payments are paid pursuant to a payroll deduction plan, an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit card agreement with the insurer.

(b) This subsection and subsection (4) do not apply if:

1. All policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, the death benefit coverage under s. 627.72761, bodily injury liability coverage, and personal injury protection pursuant to ss. 627.730-627.7405, motor vehicle property damage liability coverage under pursuant to s. 627.7275; or ~~and bodily injury liability in at least the amount of \$10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of \$20,000 because~~

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~~of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if~~

2. An insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 52. Section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability insurance coverage.—Beginning July 1, 2023, commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state must ~~shall~~ be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(1) ~~Sixty~~ Fifty thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.

(2) One hundred twenty thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.

(3) Three hundred thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of

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2959 financial responsibility as set forth in such regulations.
 2960
 2961 A violation of this section is a noncriminal traffic infraction,
 2962 punishable as a nonmoving violation as provided in chapter 318.
 2963 Section 53. Paragraphs (a) and (c) of subsection (1) and
 2964 subsection (3) of section 627.747, Florida Statutes, are amended
 2965 to read:
 2966 627.747 Named driver exclusion.—
 2967 (1) A private passenger motor vehicle policy may exclude
 2968 the following coverages for all claims or suits resulting from
 2969 the operation of a motor vehicle by an identified individual who
 2970 is not a named insured, provided the identified individual is
 2971 named on the declarations page or by endorsement and the named
 2972 insured consents in writing to such exclusion:
 2973 ~~(a) Notwithstanding the Florida Motor Vehicle No-Fault Law,~~
 2974 ~~the personal injury protection coverage specifically applicable~~
 2975 ~~to the identified individual's injuries, lost wages, and death~~
 2976 ~~benefits.~~
 2977 ~~(b)(e) Bodily injury liability coverage, if required by law~~
 2978 ~~and purchased by the named insured.~~
 2979 (3) A driver excluded pursuant to this section must+
 2980 ~~(a)~~ establish, maintain, and show proof of financial
 2981 ability to respond for damages arising out of the ownership,
 2982 maintenance, or use of a motor vehicle as required by chapter
 2983 324, ~~and~~
 2984 ~~(b) Maintain security as required by s. 627.733.~~
 2985 Section 54. Paragraphs (b), (c), and (g) of subsection (7),
 2986 paragraphs (a) and (b) of subsection (8), and paragraph (b) of
 2987 subsection (16) of section 627.748, Florida Statutes, are

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2988 amended to read:
 2989 627.748 Transportation network companies.—
 2990 (7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE
 2991 REQUIREMENTS.—
 2992 (b) The following automobile insurance requirements apply
 2993 while a participating TNC driver is logged on to the digital
 2994 network but is not engaged in a prearranged ride:
 2995 1. Automobile insurance that provides:
 2996 a. A primary automobile liability coverage of at least
 2997 \$50,000 for death and bodily injury per person, \$100,000 for
 2998 death and bodily injury per incident, and \$25,000 for property
 2999 damage; and
 3000 b. ~~Personal injury protection benefits that meet the~~
 3001 ~~minimum coverage amounts required under ss. 627.730 627.7405;~~
 3002 ~~and~~
 3003 e. Uninsured and underinsured vehicle coverage as required
 3004 by s. 627.727.
 3005 2. The coverage requirements of this paragraph may be
 3006 satisfied by any of the following:
 3007 a. Automobile insurance maintained by the TNC driver or the
 3008 TNC vehicle owner;
 3009 b. Automobile insurance maintained by the TNC; or
 3010 c. A combination of sub-subparagraphs a. and b.
 3011 (c) The following automobile insurance requirements apply
 3012 while a TNC driver is engaged in a prearranged ride:
 3013 1. Automobile insurance that provides:
 3014 a. A primary automobile liability coverage of at least \$1
 3015 million for death, bodily injury, and property damage; and
 3016 b. ~~Personal injury protection benefits that meet the~~

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3017 ~~minimum coverage amounts required of a limousine under ss.~~
 3018 ~~627.730 627.7405, and~~
 3019 ~~e.~~ Uninsured and underinsured vehicle coverage as required
 3020 by s. 627.727.
 3021 2. The coverage requirements of this paragraph may be
 3022 satisfied by any of the following:
 3023 a. Automobile insurance maintained by the TNC driver or the
 3024 TNC vehicle owner;
 3025 b. Automobile insurance maintained by the TNC; or
 3026 c. A combination of sub-subparagraphs a. and b.
 3027 (g) Insurance satisfying the requirements under this
 3028 subsection is deemed to satisfy the financial responsibility
 3029 requirement for a motor vehicle under chapter 324 ~~and the~~
 3030 ~~security required under s. 627.733~~ for any period when the TNC
 3031 driver is logged onto the digital network or engaged in a
 3032 prearranged ride.
 3033 (8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE;
 3034 EXCLUSIONS.—
 3035 (a) Before a TNC driver is allowed to accept a request for
 3036 a prearranged ride on the digital network, the TNC must disclose
 3037 in writing to the TNC driver:
 3038 1. The insurance coverage, including the types of coverage
 3039 and the limits for each coverage, which the TNC provides while
 3040 the TNC driver uses a TNC vehicle in connection with the TNC's
 3041 digital network.
 3042 2. That the TNC driver's own automobile insurance policy
 3043 might not provide any coverage while the TNC driver is logged on
 3044 to the digital network or is engaged in a prearranged ride,
 3045 depending on the terms of the TNC driver's own automobile

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3046 insurance policy.
 3047 3. That the provision of rides for compensation which are
 3048 not prearranged rides subjects the driver to the coverage
 3049 requirements imposed under s. 324.032(1) and (2) and that
 3050 failure to meet such coverage requirements subjects the TNC
 3051 driver to penalties provided in s. 324.221, up to and including
 3052 a misdemeanor of the second degree.
 3053 (b)1. An insurer that provides an automobile liability
 3054 insurance policy under this part may exclude any and all
 3055 coverage afforded under the policy issued to an owner or
 3056 operator of a TNC vehicle while driving that vehicle for any
 3057 loss or injury that occurs while a TNC driver is logged on to a
 3058 digital network or while a TNC driver provides a prearranged
 3059 ride. Exclusions imposed under this subsection are limited to
 3060 coverage while a TNC driver is logged on to a digital network or
 3061 while a TNC driver provides a prearranged ride. This right to
 3062 exclude all coverage may apply to any coverage included in an
 3063 automobile insurance policy, including, but not limited to:
 3064 a. Liability coverage for bodily injury and property
 3065 damage;
 3066 b. Uninsured and underinsured motorist coverage;
 3067 c. Medical payments coverage;
 3068 d. Comprehensive physical damage coverage;
 3069 e. Collision physical damage coverage; and
 3070 f. Death benefit coverage under s. 627.72761 ~~Personal~~
 3071 ~~injury protection.~~
 3072 2. The exclusions described in subparagraph 1. apply
 3073 notwithstanding any requirement under chapter 324. These
 3074 exclusions do not affect or diminish coverage otherwise

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 3075 available for permissive drivers or resident relatives under the
 3076 personal automobile insurance policy of the TNC driver or owner
 3077 of the TNC vehicle who are not occupying the TNC vehicle at the
 3078 time of loss. This section does not require that a personal
 3079 automobile insurance policy provide coverage while the TNC
 3080 driver is logged on to a digital network, while the TNC driver
 3081 is engaged in a prearranged ride, or while the TNC driver
 3082 otherwise uses a vehicle to transport riders for compensation.

3083 3. This section must not be construed to require an insurer
 3084 to use any particular policy language or reference to this
 3085 section in order to exclude any and all coverage for any loss or
 3086 injury that occurs while a TNC driver is logged on to a digital
 3087 network or while a TNC driver provides a prearranged ride.

3088 4. This section does not preclude an insurer from providing
 3089 primary or excess coverage for the TNC driver's vehicle by
 3090 contract or endorsement.

3091 (16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

3092 (b) An entity may elect, upon written notification to the
 3093 department, to be regulated as a luxury ground TNC. A luxury
 3094 ground TNC must:

3095 1. Comply with all of the requirements of this section
 3096 applicable to a TNC, including subsection (17), which do not
 3097 conflict with subparagraph 2. or which do not prohibit the
 3098 company from connecting riders to drivers who operate for-hire
 3099 vehicles as defined in s. 320.01(15), including limousines and
 3100 luxury sedans and excluding taxicabs.

3101 2. Maintain insurance coverage as required by subsection
 3102 (7). However, if a prospective luxury ground TNC satisfies
 3103 minimum financial responsibility through compliance with s.

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 3104 324.032(3) ~~e. 324.032(2)~~ by using self-insurance when it gives
 3105 the department written notification of its election to be
 3106 regulated as a luxury ground TNC, the luxury ground TNC may use
 3107 self-insurance to meet the insurance requirements of subsection
 3108 (7), so long as such self-insurance complies with s. 324.032(3)
 3109 ~~e. 324.032(2)~~ and provides the limits of liability required by
 3110 subsection (7).

3111 Section 55. Subsection (2) and paragraphs (a) and (c) of
 3112 subsection (3) of section 627.7483, Florida Statutes, are
 3113 amended to read:

3114 627.7483 Peer-to-peer car sharing; insurance requirements.—

3115 (2) INSURANCE COVERAGE REQUIREMENTS.—

3116 (a)1. A peer-to-peer car-sharing program shall ensure that,
 3117 during each car-sharing period, the shared vehicle owner and the
 3118 shared vehicle driver are insured under a motor vehicle
 3119 insurance policy that provides all of the following:

3120 a. Property damage liability coverage and bodily injury
 3121 liability coverage that meet or exceed ~~meets~~ the minimum
 3122 coverage amounts required under s. 324.022.

3123 b. ~~Bodily injury liability coverage limits as described in~~
 3124 ~~s. 324.021(7)(a) and (b).~~

3125 c. ~~Personal injury protection benefits that meet the~~
 3126 ~~minimum coverage amounts required under s. 627.736.~~

3127 d. ~~Uninsured and underinsured vehicle coverage as required~~
 3128 under s. 627.727.

3129 2. The peer-to-peer car-sharing program shall also ensure
 3130 that the motor vehicle insurance policy under subparagraph 1.:

3131 a. Recognizes that the shared vehicle insured under the
 3132 policy is made available and used through a peer-to-peer car-

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3133 sharing program; or

3134 b. Does not exclude the use of a shared vehicle by a shared
3135 vehicle driver.

3136 (b)1. The insurance described under paragraph (a) may be
3137 satisfied by a motor vehicle insurance policy maintained by:

3138 a. A shared vehicle owner;

3139 b. A shared vehicle driver;

3140 c. A peer-to-peer car-sharing program; or

3141 d. A combination of a shared vehicle owner, a shared
3142 vehicle driver, and a peer-to-peer car-sharing program.

3143 2. The insurance policy maintained in subparagraph 1. which
3144 satisfies the insurance requirements under paragraph (a) is
3145 primary during each car-sharing period. If a claim occurs during
3146 the car-sharing period in another state with minimum financial
3147 responsibility limits higher than those limits required under
3148 chapter 324, the coverage maintained under paragraph (a)
3149 satisfies the difference in minimum coverage amounts up to the
3150 applicable policy limits.

3151 3.a. If the insurance maintained by a shared vehicle owner
3152 or shared vehicle driver in accordance with subparagraph 1. has
3153 lapsed or does not provide the coverage required under paragraph
3154 (a), the insurance maintained by the peer-to-peer car-sharing
3155 program must provide the coverage required under paragraph (a),
3156 beginning with the first dollar of a claim, and must defend such
3157 claim, except under circumstances as set forth in subparagraph
3158 (3)(a)2.

3159 b. Coverage under a motor vehicle insurance policy
3160 maintained by the peer-to-peer car-sharing program must not be
3161 dependent on another motor vehicle insurer first denying a

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3162 claim, and another motor vehicle insurance policy is not
3163 required to first deny a claim.

3164 c. Notwithstanding any other law, statute, rule, or
3165 regulation to the contrary, a peer-to-peer car-sharing program
3166 has an insurable interest in a shared vehicle during the car-
3167 sharing period. This sub-subparagraph does not create liability
3168 for a peer-to-peer car-sharing program for maintaining the
3169 coverage required under paragraph (a) and under this paragraph,
3170 if applicable.

3171 d. A peer-to-peer car-sharing program may own and maintain
3172 as the named insured one or more policies of motor vehicle
3173 insurance which provide coverage for:

3174 (I) Liabilities assumed by the peer-to-peer car-sharing
3175 program under a peer-to-peer car-sharing program agreement;

3176 (II) Liability of the shared vehicle owner;

3177 (III) Liability of the shared vehicle driver;

3178 (IV) Damage or loss to the shared motor vehicle; or

3179 (V) Damage, loss, or injury to persons or property to
3180 satisfy the ~~personal injury protection and~~ uninsured and
3181 underinsured motorist coverage requirements of this section.

3182 e. Insurance required under paragraph (a), when maintained
3183 by a peer-to-peer car-sharing program, may be provided by an
3184 insurer authorized to do business in this state which is a
3185 member of the Florida Insurance Guaranty Association or an
3186 eligible surplus lines insurer that has a superior, excellent,
3187 exceptional, or equivalent financial strength rating by a rating
3188 agency acceptable to the office. A peer-to-peer car-sharing
3189 program is not transacting in insurance when it maintains the
3190 insurance required under this section.

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3191 (3) LIABILITIES AND INSURANCE EXCLUSIONS.—
 3192 (a) *Liability*.—
 3193 1. A peer-to-peer car-sharing program shall assume
 3194 liability, except as provided in subparagraph 2., of a shared
 3195 vehicle owner for bodily injury or property damage to third
 3196 parties or uninsured and underinsured motorist ~~or personal~~
 3197 ~~injury protection~~ losses during the car-sharing period in an
 3198 amount stated in the peer-to-peer car-sharing program agreement,
 3199 which amount may not be less than those set forth in ss. 324.022
 3200 ~~and ss. 324.021(7)(a) and (b), 324.022, 627.727, and 627.736,~~
 3201 respectively.
 3202 2. The assumption of liability under subparagraph 1. does
 3203 not apply if a shared vehicle owner:
 3204 a. Makes an intentional or fraudulent material
 3205 misrepresentation or omission to the peer-to-peer car-sharing
 3206 program before the car-sharing period in which the loss occurs;
 3207 or
 3208 b. Acts in concert with a shared vehicle driver who fails
 3209 to return the shared vehicle pursuant to the terms of the peer-
 3210 to-peer car-sharing program agreement.
 3211 3. The insurer, insurers, or peer-to-peer car-sharing
 3212 program providing coverage under paragraph (2)(a) shall assume
 3213 primary liability for a claim when:
 3214 a. A dispute exists over who was in control of the shared
 3215 motor vehicle at the time of the loss, and the peer-to-peer car-
 3216 sharing program does not have available, did not retain, or
 3217 fails to provide the information required under subsection (5);
 3218 or
 3219 b. A dispute exists over whether the shared vehicle was

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3220 returned to the alternatively agreed-upon location as required
 3221 under subparagraph (1)(d)2.
 3222 (c) *Exclusions in motor vehicle insurance policies*.—An
 3223 authorized insurer that writes motor vehicle liability insurance
 3224 in this state may exclude any coverage and the duty to defend or
 3225 indemnify for any claim under a shared vehicle owner's motor
 3226 vehicle insurance policy, including, but not limited to:
 3227 1. Liability coverage for bodily injury and property
 3228 damage;
 3229 2. ~~Personal injury protection coverage;~~
 3230 ~~3.~~ Uninsured and underinsured motorist coverage;
 3231 3.4. Medical payments coverage;
 3232 4.5. Comprehensive physical damage coverage; and
 3233 5.6. Collision physical damage coverage.
 3234
 3235 This paragraph does not invalidate or limit any exclusion
 3236 contained in a motor vehicle insurance policy, including any
 3237 insurance policy in use or approved for use which excludes
 3238 coverage for motor vehicles made available for rent, sharing, or
 3239 hire or for any business use. This paragraph does not
 3240 invalidate, limit, or restrict an insurer's ability under
 3241 existing law to underwrite, cancel, or nonrenew any insurance
 3242 policy.
 3243 Section 56. Paragraph (a) of subsection (2) of section
 3244 627.749, Florida Statutes, is amended to read:
 3245 627.749 Autonomous vehicles; insurance requirements.—
 3246 (2) INSURANCE REQUIREMENTS.—
 3247 (a) A fully autonomous vehicle with the automated driving
 3248 system engaged while logged on to an on-demand autonomous

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3249 vehicle network or engaged in a prearranged ride must be covered
3250 by a policy of automobile insurance which provides:

3251 1. Primary liability coverage of at least \$1 million for
3252 death, bodily injury, and property damage.

3253 2. ~~Personal injury protection benefits that meet the~~
3254 ~~minimum coverage amounts required under ss. 627.730-627.7405.~~

3255 ~~3.~~ Uninsured and underinsured vehicle coverage as required
3256 by s. 627.727.

3257 Section 57. Section 627.8405, Florida Statutes, is amended
3258 to read:

3259 627.8405 Prohibited acts; financing companies.—~~A~~ ~~No~~ premium
3260 finance company ~~shall~~, in a premium finance agreement or other
3261 agreement, may not finance the cost of or otherwise provide for
3262 the collection or remittance of dues, assessments, fees, or
3263 other periodic payments of money for the cost of:

3264 (1) A membership in an automobile club. The term
3265 "automobile club" means a legal entity that ~~which~~, in
3266 consideration of dues, assessments, or periodic payments of
3267 money, promises its members or subscribers to assist them in
3268 matters relating to the ownership, operation, use, or
3269 maintenance of a motor vehicle; however, the term ~~this~~
3270 ~~definition of "automobile club"~~ does not include persons,
3271 associations, or corporations ~~which are~~ organized and operated
3272 solely for the purpose of conducting, sponsoring, or sanctioning
3273 motor vehicle races, exhibitions, or contests upon racetracks,
3274 or upon racecourses established and marked as such for the
3275 duration of such particular events. As used in this subsection,
3276 ~~the term words~~ "motor vehicle" has ~~used herein have~~ the same
3277 meaning as ~~defined~~ in chapter 320.

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3278 (2) An accidental death and dismemberment policy sold in
3279 combination with a policy providing only death benefit coverage
3280 under s. 627.72761, bodily injury liability coverage, personal
3281 ~~injury protection~~ and property damage liability coverage only
3282 ~~policy.~~

3283 (3) Any product not regulated under ~~the provisions of~~ this
3284 insurance code.

3285 This section also applies to premium financing by any insurance
3286 agent or insurance company under part XVI. The commission shall
3287 adopt rules to assure disclosure, at the time of sale, of
3288 coverages financed ~~with personal injury protection~~ and shall
3289 prescribe the form of such disclosure.

3291 Section 58. Subsection (1) of section 627.915, Florida
3292 Statutes, is amended to read:

3293 627.915 Insurer experience reporting.—

3294 (1) Each insurer transacting private passenger automobile
3295 insurance in this state shall report certain information
3296 annually to the office. The information will be due on or before
3297 July 1 of each year. The information must ~~shall~~ be divided into
3298 the following categories: bodily injury liability; property
3299 damage liability; uninsured motorist; death benefit coverage
3300 under s. 627.72761 ~~personal injury protection benefits~~; medical
3301 payments; and comprehensive and collision. The information given
3302 must ~~shall~~ be on direct insurance writings in the state alone
3303 and ~~shall~~ represent total limits data. The information set forth
3304 in paragraphs (a)-(f) is applicable to voluntary private
3305 passenger and Joint Underwriting Association private passenger
3306 writings and must ~~shall~~ be reported for each of the latest 3

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3307 calendar-accident years, with an evaluation date of March 31 of
 3308 the current year. The information set forth in paragraphs (g)-
 3309 (j) is applicable to voluntary private passenger writings and
 3310 ~~must shall~~ be reported on a calendar-accident year basis
 3311 ultimately seven times at seven different stages of development.
 3312 (a) Premiums earned for the latest 3 calendar-accident
 3313 years.
 3314 (b) Loss development factors and the historic development
 3315 of those factors.
 3316 (c) Policyholder dividends incurred.
 3317 (d) Expenses for other acquisition and general expense.
 3318 (e) Expenses for agents' commissions and taxes, licenses,
 3319 and fees.
 3320 (f) Profit and contingency factors as utilized in the
 3321 insurer's automobile rate filings for the applicable years.
 3322 (g) Losses paid.
 3323 (h) Losses unpaid.
 3324 (i) Loss adjustment expenses paid.
 3325 (j) Loss adjustment expenses unpaid.
 3326 Section 59. Subsections (2) and (3) of section 628.909,
 3327 Florida Statutes, are amended to read:
 3328 628.909 Applicability of other laws.—
 3329 (2) The following provisions of the Florida Insurance Code
 3330 apply to captive insurance companies that ~~who~~ are not industrial
 3331 insured captive insurance companies to the extent that such
 3332 provisions are not inconsistent with this part:
 3333 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
 3334 624.40851, 624.4095, 624.411, 624.425, and 624.426.
 3335 (b) Chapter 625, part II.

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3336 (c) Chapter 626, part IX.
 3337 (d) ~~Sections 627.730 627.7405, when no fault coverage is~~
 3338 ~~provided.~~
 3339 ~~(e)~~ Chapter 628.
 3340 (3) The following provisions of the Florida Insurance Code
 3341 ~~shall~~ apply to industrial insured captive insurance companies to
 3342 the extent that such provisions are not inconsistent with this
 3343 part:
 3344 (a) Chapter 624, except for ss. 624.407, 624.408, 624.4085,
 3345 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).
 3346 (b) Chapter 625, part II, if the industrial insured captive
 3347 insurance company is incorporated in this state.
 3348 (c) Chapter 626, part IX.
 3349 (d) ~~Sections 627.730 627.7405 when no fault coverage is~~
 3350 ~~provided.~~
 3351 ~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and
 3352 628.6018.
 3353 Section 60. Subsections (2), (6), and (7) of section
 3354 705.184, Florida Statutes, are amended to read:
 3355 705.184 Derelict or abandoned motor vehicles on the
 3356 premises of public-use airports.—
 3357 (2) The airport director or the director's designee shall
 3358 contact the Department of Highway Safety and Motor Vehicles to
 3359 notify that department that the airport has possession of the
 3360 abandoned or derelict motor vehicle and to determine the name
 3361 and address of the owner of the motor vehicle, the insurance
 3362 company insuring the motor vehicle, ~~notwithstanding the~~
 3363 ~~provisions of s. 627.736,~~ and any person who has filed a lien on
 3364 the motor vehicle. Within 7 business days after receipt of the

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3365 information, the director or the director's designee shall send
 3366 notice by certified mail, return receipt requested, to the owner
 3367 of the motor vehicle, the insurance company insuring the motor
 3368 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all
 3369 persons of record claiming a lien against the motor vehicle. The
 3370 notice ~~must shall~~ state the fact of possession of the motor
 3371 vehicle, that charges for reasonable towing, storage, and
 3372 parking fees, if any, have accrued and the amount thereof, that
 3373 a lien as provided in subsection (6) will be claimed, that the
 3374 lien is subject to enforcement pursuant to law, that the owner
 3375 or lienholder, if any, has the right to a hearing as set forth
 3376 in subsection (4), and that any motor vehicle which, at the end
 3377 of 30 calendar days after receipt of the notice, has not been
 3378 removed from the airport upon payment in full of all accrued
 3379 charges for reasonable towing, storage, and parking fees, if
 3380 any, may be disposed of as provided in s. 705.182(2) (a), (b),
 3381 (d), or (e), including, but not limited to, the motor vehicle
 3382 being sold free of all prior liens after 35 calendar days after
 3383 the time the motor vehicle is stored if any prior liens on the
 3384 motor vehicle are more than 5 years of age or after 50 calendar
 3385 days after the time the motor vehicle is stored if any prior
 3386 liens on the motor vehicle are 5 years of age or less.

3387 (6) The airport pursuant to this section or, if used, a
 3388 licensed independent wrecker company pursuant to s. 713.78 shall
 3389 have a lien on an abandoned or derelict motor vehicle for all
 3390 reasonable towing, storage, and accrued parking fees, if any,
 3391 except that no storage fee ~~may shall~~ be charged if the motor
 3392 vehicle is stored less than 6 hours. As a prerequisite to
 3393 perfecting a lien under this section, the airport director or

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3394 the director's designee must serve a notice in accordance with
 3395 subsection (2) on the owner of the motor vehicle, the insurance
 3396 company insuring the motor vehicle, ~~notwithstanding the~~
 3397 ~~provisions of s. 627.736,~~ and all persons of record claiming a
 3398 lien against the motor vehicle. If attempts to notify the owner,
 3399 the insurance company insuring the motor vehicle,
 3400 ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are
 3401 not successful, the requirement of notice by mail shall be
 3402 considered met. Serving of the notice does not dispense with
 3403 recording the claim of lien.

3404 (7) (a) For the purpose of perfecting its lien under this
 3405 section, the airport shall record a claim of lien which states
 3406 shall state:

- 3407 1. The name and address of the airport.
- 3408 2. The name of the owner of the motor vehicle, the
 3409 insurance company insuring the motor vehicle, ~~notwithstanding~~
 3410 ~~the provisions of s. 627.736,~~ and all persons of record claiming
 3411 a lien against the motor vehicle.
- 3412 3. The costs incurred from reasonable towing, storage, and
 3413 parking fees, if any.
- 3414 4. A description of the motor vehicle sufficient for
 3415 identification.

3416 (b) The claim of lien ~~must shall~~ be signed and sworn to or
 3417 affirmed by the airport director or the director's designee.

3418 (c) The claim of lien ~~is shall be~~ sufficient if it is in
 3419 substantially the following form:

3420
 3421 CLAIM OF LIEN
 3422 State of

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 3423 County of
 3424 Before me, the undersigned notary public, personally appeared
 3425, who was duly sworn and says that he/she is the
 3426 of, whose address is.....; and that the
 3427 following described motor vehicle:
 3428 ...(Description of motor vehicle)...
 3429 owned by, whose address is, has accrued
 3430 \$..... in fees for a reasonable tow, for storage, and for
 3431 parking, if applicable; that the lienor served its notice to the
 3432 owner, the insurance company insuring the motor vehicle
 3433 ~~notwithstanding the provisions of s. 627.736, Florida Statutes,~~
 3434 and all persons of record claiming a lien against the motor
 3435 vehicle on, ...(year)..., by.....
 3436 ...(Signature)...
 3437 Sworn to (or affirmed) and subscribed before me this day of
 3438, ...(year)..., by ...(name of person making statement)...
 3439 ...(Signature of Notary Public)... ...(Print, Type, or Stamp
 3440 Commissioned name of Notary Public)...
 3441 Personally Known...OR Produced...as identification.
 3442
 3443 However, the negligent inclusion or omission of any information
 3444 in this claim of lien which does not prejudice the owner does
 3445 not constitute a default that operates to defeat an otherwise
 3446 valid lien.
 3447 (d) The claim of lien ~~must shall~~ be served on the owner of
 3448 the motor vehicle, the insurance company insuring the motor
 3449 vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all
 3450 persons of record claiming a lien against the motor vehicle. If
 3451 attempts to notify the owner, the insurance company insuring the

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 3452 motor vehicle ~~notwithstanding the provisions of s. 627.736,~~ or
 3453 lienholders are not successful, the requirement of notice by
 3454 mail ~~is shall~~ be considered met. The claim of lien must shall be
 3455 so served before recordation.
 3456 (e) The claim of lien ~~must shall~~ be recorded with the clerk
 3457 of court in the county where the airport is located. The
 3458 recording of the claim of lien shall be constructive notice to
 3459 all persons of the contents and effect of such claim. The lien
 3460 attaches shall attach at the time of recordation and takes shall
 3461 ~~take~~ priority as of that time.
 3462 Section 61. Paragraphs (a), (b), and (c) of subsection (4)
 3463 of section 713.78, Florida Statutes, are amended to read:
 3464 713.78 Liens for recovering, towing, or storing vehicles
 3465 and vessels.-
 3466 (4) (a) A person regularly engaged in the business of
 3467 recovering, towing, or storing vehicles or vessels who comes
 3468 into possession of a vehicle or vessel pursuant to subsection
 3469 (2), and who claims a lien for recovery, towing, or storage
 3470 services, shall give notice, by certified mail, to the
 3471 registered owner, the insurance company insuring the vehicle
 3472 ~~notwithstanding s. 627.736,~~ and all persons claiming a lien
 3473 thereon, as disclosed by the records in the Department of
 3474 Highway Safety and Motor Vehicles or as disclosed by the records
 3475 of any corresponding agency in any other state in which the
 3476 vehicle is identified through a records check of the National
 3477 Motor Vehicle Title Information System or an equivalent
 3478 commercially available system as being titled or registered.
 3479 (b) Whenever a law enforcement agency authorizes the
 3480 removal of a vehicle or vessel or whenever a towing service,

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3481 garage, repair shop, or automotive service, storage, or parking
 3482 place notifies the law enforcement agency of possession of a
 3483 vehicle or vessel pursuant to s. 715.07(2)(a)2., the law
 3484 enforcement agency of the jurisdiction where the vehicle or
 3485 vessel is stored shall contact the Department of Highway Safety
 3486 and Motor Vehicles, or the appropriate agency of the state of
 3487 registration, if known, within 24 hours through the medium of
 3488 electronic communications, giving the full description of the
 3489 vehicle or vessel. Upon receipt of the full description of the
 3490 vehicle or vessel, the department shall search its files to
 3491 determine the owner's name, the insurance company insuring the
 3492 vehicle or vessel, and whether any person has filed a lien upon
 3493 the vehicle or vessel as provided in s. 319.27(2) and (3) and
 3494 notify the applicable law enforcement agency within 72 hours.
 3495 The person in charge of the towing service, garage, repair shop,
 3496 or automotive service, storage, or parking place shall obtain
 3497 such information from the applicable law enforcement agency
 3498 within 5 days after the date of storage and shall give notice
 3499 pursuant to paragraph (a). The department may release the
 3500 insurance company information to the requestor ~~notwithstanding~~
 3501 ~~s. 627.736.~~

3502 (c) The notice of lien must be sent by certified mail to
 3503 the registered owner, the insurance company insuring the vehicle
 3504 ~~notwithstanding s. 627.736~~, and all other persons claiming a
 3505 lien thereon within 7 business days, excluding Saturday and
 3506 Sunday, after the date of storage of the vehicle or vessel.
 3507 However, in no event shall the notice of lien be sent less than
 3508 30 days before the sale of the vehicle or vessel. The notice
 3509 must state:

Page 121 of 127

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

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3510 1. If the claim of lien is for a vehicle, the last 8 digits
 3511 of the vehicle identification number of the vehicle subject to
 3512 the lien, or, if the claim of lien is for a vessel, the hull
 3513 identification number of the vessel subject to the lien, clearly
 3514 printed in the delivery address box and on the outside of the
 3515 envelope sent to the registered owner and all other persons
 3516 claiming an interest therein or lien thereon.

3517 2. The name, physical address, and telephone number of the
 3518 lienor, and the entity name, as registered with the Division of
 3519 Corporations, of the business where the towing and storage
 3520 occurred, which must also appear on the outside of the envelope
 3521 sent to the registered owner and all other persons claiming an
 3522 interest in or lien on the vehicle or vessel.

3523 3. The fact of possession of the vehicle or vessel.

3524 4. The name of the person or entity that authorized the
 3525 lienor to take possession of the vehicle or vessel.

3526 5. That a lien as provided in subsection (2) is claimed.

3527 6. That charges have accrued and include an itemized
 3528 statement of the amount thereof.

3529 7. That the lien is subject to enforcement under law and
 3530 that the owner or lienholder, if any, has the right to a hearing
 3531 as set forth in subsection (5).

3532 8. That any vehicle or vessel that remains unclaimed, or
 3533 for which the charges for recovery, towing, or storage services
 3534 remain unpaid, may be sold free of all prior liens 35 days after
 3535 the vehicle or vessel is stored by the lienor if the vehicle or
 3536 vessel is more than 3 years of age or 50 days after the vehicle
 3537 or vessel is stored by the lienor if the vehicle or vessel is 3
 3538 years of age or less.

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3539 9. The address at which the vehicle or vessel is physically
3540 located.

3541 Section 62. Section 768.852, Florida Statutes, is created
3542 to read:

3543 768.852 Setoff on damages as a result of a motor vehicle
3544 crash while uninsured.-

3545 (1) Except as provided in subsection (2), for any award of
3546 noneconomic damages, a defendant is entitled to a setoff equal
3547 to \$10,000 if a person suffers injury while operating a motor
3548 vehicle as defined in s. 324.022(2) which lacked the coverage
3549 required by s. 324.022(1) and the person was not in compliance
3550 with s. 324.022(1) for more than 30 days immediately preceding
3551 the crash.

3552 (2) The setoff on noneconomic damages in subsection (1)
3553 does not apply if the person who is liable for the injury:

3554 (a) Was driving while under the influence of an alcoholic
3555 beverage, an inhalant, or a controlled substance;

3556 (b) Acted intentionally, recklessly, or with gross
3557 negligence;

3558 (c) Fled from the scene of the crash; or

3559 (d) Was acting in furtherance of an offense or in immediate
3560 flight from an offense that constituted a felony at the time of
3561 the crash.

3562 (3) This section does not apply to any wrongful death
3563 claim.

3564 Section 63. Paragraph (a) of subsection (1), paragraph (c)
3565 of subsection (7), paragraphs (a), (b), and (c) of subsection
3566 (8), and subsections (9) and (10) of section 817.234, Florida
3567 Statutes, are amended to read:

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3568 817.234 False and fraudulent insurance claims.-

3569 (1) (a) A person commits insurance fraud punishable as
3570 provided in subsection (11) if that person, with the intent to
3571 injure, defraud, or deceive any insurer:

3572 1. Presents or causes to be presented any written or oral
3573 statement as part of, or in support of, a claim for payment or
3574 other benefit pursuant to an insurance policy or a health
3575 maintenance organization subscriber or provider contract,
3576 knowing that such statement contains ~~any~~ false, incomplete, or
3577 misleading information concerning any fact or thing material to
3578 such claim;

3579 2. Prepares or makes any written or oral statement that is
3580 intended to be presented to an ~~any~~ insurer in connection with,
3581 or in support of, any claim for payment or other benefit
3582 pursuant to an insurance policy or a health maintenance
3583 organization subscriber or provider contract, knowing that such
3584 statement contains ~~any~~ false, incomplete, or misleading
3585 information concerning any fact or thing material to such claim;

3586 3.a. Knowingly presents, causes to be presented, or
3587 prepares or makes with knowledge or belief that it will be
3588 presented to an ~~any~~ insurer, purported insurer, servicing
3589 corporation, insurance broker, or insurance agent, or any
3590 employee or agent thereof, ~~any~~ false, incomplete, or misleading
3591 information or a written or oral statement as part of, or in
3592 support of, an application for the issuance of, or the rating
3593 of, any insurance policy, or a health maintenance organization
3594 subscriber or provider contract; or

3595 b. Knowingly conceals information concerning any fact
3596 material to such application; or

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3597 4. Knowingly presents, causes to be presented, or prepares
 3598 or makes with knowledge or belief that it will be presented to
 3599 any insurer a claim for payment or other benefit under medical
 3600 payments coverage in a motor vehicle a personal injury
 3601 ~~protection~~ insurance policy if the person knows that the payee
 3602 knowingly submitted a false, misleading, or fraudulent
 3603 application or other document when applying for licensure as a
 3604 health care clinic, seeking an exemption from licensure as a
 3605 health care clinic, or demonstrating compliance with part X of
 3606 chapter 400.

(7)

3608 ~~(c) An insurer, or any person acting at the direction of or~~
 3609 ~~on behalf of an insurer, may not change an opinion in a mental~~
 3610 ~~or physical report prepared under s. 627.736(7) or direct the~~
 3611 ~~physician preparing the report to change such opinion; however,~~
 3612 ~~this provision does not preclude the insurer from calling to the~~
 3613 ~~attention of the physician errors of fact in the report based~~
 3614 ~~upon information in the claim file. Any person who violates this~~
 3615 ~~paragraph commits a felony of the third degree, punishable as~~
 3616 ~~provided in s. 775.082, s. 775.083, or s. 775.084.~~

3617 (8) (a) It is unlawful for any person intending to defraud
 3618 any other person to solicit or cause to be solicited any
 3619 business from a person involved in a motor vehicle accident for
 3620 the purpose of making, adjusting, or settling motor vehicle tort
 3621 claims or claims for benefits under medical payments coverage in
 3622 a motor vehicle insurance policy personal injury protection
 3623 ~~benefits required by s. 627.736.~~ Any person who violates ~~the~~
 3624 ~~provisions of~~ this paragraph commits a felony of the second
 3625 degree, punishable as provided in s. 775.082, s. 775.083, or s.

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3626 775.084. A person who is convicted of a violation of this
 3627 subsection shall be sentenced to a minimum term of imprisonment
 3628 of 2 years.

3629 (b) A person may not solicit or cause to be solicited any
 3630 business from a person involved in a motor vehicle accident by
 3631 any means of communication other than advertising directed to
 3632 the public for the purpose of making motor vehicle tort claims
 3633 or claims for benefits under medical payments coverage in a
 3634 motor vehicle insurance policy personal injury protection
 3635 ~~benefits required by s. 627.736,~~ within 60 days after the
 3636 occurrence of the motor vehicle accident. Any person who
 3637 violates this paragraph commits a felony of the third degree,
 3638 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3639 (c) A lawyer, health care practitioner as defined in s.
 3640 456.001, or owner or medical director of a clinic required to be
 3641 licensed pursuant to s. 400.9905 may not, at any time after 60
 3642 days have elapsed from the occurrence of a motor vehicle
 3643 accident, solicit or cause to be solicited any business from a
 3644 person involved in a motor vehicle accident by means of in
 3645 person or telephone contact at the person's residence, for the
 3646 purpose of making motor vehicle tort claims or claims for
 3647 benefits under medical payments coverage in a motor vehicle
 3648 insurance policy personal injury protection benefits required by
 3649 ~~s. 627.736.~~ Any person who violates this paragraph commits a
 3650 felony of the third degree, punishable as provided in s.
 3651 775.082, s. 775.083, or s. 775.084.

3652 (9) A person may not organize, plan, or knowingly
 3653 participate in an intentional motor vehicle crash or a scheme to
 3654 create documentation of a motor vehicle crash that did not occur

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3655 for the purpose of making motor vehicle tort claims or claims
3656 for benefits under medical payments coverage in a motor vehicle
3657 insurance policy ~~personal injury protection benefits as required~~
3658 ~~by s. 627.736~~. Any person who violates this subsection commits a
3659 felony of the second degree, punishable as provided in s.
3660 775.082, s. 775.083, or s. 775.084. A person who is convicted of
3661 a violation of this subsection shall be sentenced to a minimum
3662 term of imprisonment of 2 years.

3663 (10) A licensed health care practitioner who is found
3664 guilty of insurance fraud under this section for an act relating
3665 to a motor vehicle ~~personal injury protection~~ insurance policy
3666 loses his or her license to practice for 5 years and may not
3667 receive reimbursement under medical payments coverage in a motor
3668 vehicle insurance policy ~~for personal injury protection benefits~~
3669 for 10 years.

3670 Section 64. For the 2022-2023 fiscal year, the sum of
3671 \$83,651 in nonrecurring funds is appropriated from the Insurance
3672 Regulatory Trust Fund to the Office of Insurance Regulation for
3673 the purpose of implementing this act. This section shall take
3674 effect July 1, 2022.

3675 Section 65. Except as otherwise expressly provided in this
3676 act and except for this section, which shall take effect upon
3677 this act becoming a law, this act shall take effect July 1,
3678 2023.

2/2/2022

The Florida Senate
APPEARANCE RECORD

SB 150

Meeting Date

Banking / Insurance

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Ron Watson

Phone

850 567-1202

Address

9114 Seafair Lane

Email

watson.strategic@comcast.net

Street

Tallahassee

State

FL

Zip

32317

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 Chiropractic Physician Assoc

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

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

2/2/22

Meeting Date

150

Bill Number or Topic

B + T

Committee

Amendment Barcode (if applicable)

Name Katie Webb / APCIA

Phone

Address 119 E Park Ave

Email

Street

Tall FL 32301

City

State

Zip

Speaking: [] For [X] 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:

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 (flsenate.gov)

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S-001 (08/10/2021)

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The Florida Senate
APPEARANCE RECORD

150

Meeting Date

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

Bill Number or Topic

Banking & Insurance
Committee

Amendment Barcode (if applicable)

Name Adam Basford

Phone 274-7173

Address 516 N Adams St
Street

Email abasford@aif.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:

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

Associated Industries of FL

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

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2-2-22

Meeting Date

150

Bill Number or Topic

B&I

Committee

Amendment Barcode (if applicable)

Name

DAMIAN CARABALLO, MD

Phone

813-545-4342

Address

11911 MARBLEHEAD DR

Email

getdec44@gmail.com

Street

TAMPA

City

FL

State

33626

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 College of Emergency Physicians

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

02.22.22

150

Meeting Date

Bill Number or Topic

Banking & Insurance

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

Committee

Amendment Barcode (if applicable)

Name Kathy Maus

Phone 850-894-4111

Address 3600 Maclay Boulevard - Suite 101

Email kmaus@butler.legal

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:

Florida Justice Reform Institute

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

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

2/2/22

Meeting Date

150

Bill Number or Topic

B + J

Committee

Amendment Barcode (if applicable)

Name

Katherine Webb / GEICO

Phone

Address

119 E Park Ave

Email

Street

Tall

City

FL

State

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:

GEICO

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

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

SB 150

Bill Number or Topic

Feb 2, 2022

Meeting Date

Banking + Ins.

Committee

Amendment Barcode (if applicable)

Kimberly Driggers

Name

Phone

850.597.1355

111 SE 8th Ave, Unit 901

Address

Email

kdriggers@driggers-law.com

Fort Lauderdale, FL 33301

Street

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:

FL Chiropractic Assn.

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)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

2/1/22

Meeting Date

150

Bill Number (if applicable)

Topic Motor Vehicle Insurance

Amendment Barcode (if applicable)

Name Gary Guzzo

Job Title Consultant

Address 108 S. Monroe St.

Phone (850) 681-0024

Street

Tallahassee

FL

32301

Email gguzzo@flapartners.com

City

State

Zip

Speaking: For Against Information

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

Representing Allstate

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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The Florida Senate

APPEARANCE RECORD

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

2/2/22

Meeting Date

150

Bill Number or Topic

Banking & Insurance
Committee

Amendment Barcode (if applicable)

Name Doug Bell

Phone 850 205 9000

Address 119 S. Monroe
Street

Email doug.bell@mbdfirm.com

TCH
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:

Progressive Insurance Co.

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)

APPEARANCE RECORD

150

2/2/2022

Meeting Date

Bill Number or Topic

Senate BI

Committee

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

Amendment Barcode (if applicable)

Name Michael Carlson

Phone (850) 544-9576

Address 215 S. Monroe St. Ste. 835

Email michael.carlson@piff.net

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:

Personal Insurance Federation of Florida

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

150

2/2/22

Meeting Date

Bill Number or Topic

Banking & Insurance

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

Committee

Amendment Barcode (if applicable)

Name **George Feijoo ("Fay-Jew")**

Phone **8506810024**

Address **108 S. Monroe St.**

Email **grfeijoo@flapartners.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 Insurance Council

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)

APPEARANCE RECORD

SB 150

February 2, 2022

Meeting Date

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 Josh Aubuchon

Phone 850.583.2400

Address 201 East Park Avenue, Suite 200B

Email josh@dacfl.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:

State Farm Mutual Automobile Insurance Company

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 \(flisenote.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/2/22

Meeting Date

150

Bill Number or Topic

Banking & Insurance

Committee

Amendment Barcode (if applicable)

Name Caitlin Murray

Phone

Address

Email

Street

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:

NAMIC

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 150

Feb. 2, 2022

Meeting Date

Banking & Insurance

Committee

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

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Tiffany Faddis**

Phone **407-845-1756**

Address **7335 W. Sand Lake Rd., Suite 300**

Email **tiffany.faddis@newlinlaw.com**

Street

Orlando

FL

32819

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:

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

2/2/2022

SB 150

Meeting Date

Bill Number or Topic

Banking & Insurance

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

Committee

Amendment Barcode (if applicable)

Name

Paul HANDEHAN

Phone

561-704-0428

Address

120 S Monroe Street

Email

Paul@rambaconsulting.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:

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

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 19, 2022

I respectfully request that **Senate Bill #150**, relating to Motor Vehicle Coverage, be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 20

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 664

INTRODUCER: Banking and Insurance Committee and Senator Bradley and others

SUBJECT: Posttraumatic Stress Disorder Workers' Compensation for Law Enforcement, Correctional, and Correctional Probation Officers

DATE: February 3, 2022 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Johnson | Knudson | BI | Fav/CS |
| 2. | _____ | _____ | AEG | _____ |
| 3. | _____ | _____ | AP | _____ |

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 664 revises the current definition of first responders, for purposes of workers' compensation coverage for posttraumatic stress disorder (PTSD) benefits, to include part-time law enforcement officers and auxiliary law enforcement officers.

Further, CS/SB 664 provides workers' compensation indemnity benefits in specified circumstances for posttraumatic stress disorder (PTSD) suffered by a correctional officer regardless of whether the individual's PTSD is accompanied by a physical injury requiring medical treatment. CS/SB 664 provides that PTSD is a compensable occupational disease for a correctional officer (CO) if the PTSD resulted from a CO acting within the course and scope of employment. Additionally, an authorized treating psychiatrist must examine and diagnose the CO as having PTSD due to experiencing at least one of the delineated qualifying events.

The Division of Risk Management of the Department of Financial Services (DFS) estimates that the state Risk Management Trust Fund could potentially pay as much as \$8.4 million - \$16.8 million over the first three years of the bill becoming law, and DFS expects this amount would grow exponentially over time. The DFS anticipates an additional Workers' Compensation Specialist may be needed at a recurring cost of \$70,991 and non-recurring of \$4,591.

The bill would have an indeterminate negative fiscal impact on local governments.

II. Present Situation:

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association (APA) provides diagnostic criteria for mental disorders, including posttraumatic stress disorder (PTSD), in its *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5). PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or who have been threatened with death, sexual violence or serious injury.¹

Diagnosis

A diagnosis of PTSD requires exposure to an upsetting traumatic event.² Symptoms fall into the following four categories: intrusion, avoidance, alterations in cognition and mood, and alterations in arousal and reactivity.³ In order to diagnose a person with PTSD, symptoms must last for more than a month and must cause significant distress or problems in the individual's daily functioning.⁴

Prevalence Rates

The exact prevalence rate for PTSD is difficult to ascertain. About 15 million adults will have PTSD during a given year.⁵ About 8 percent of females develop PTSD during their lives compared with about 4 percent of males.⁶ Approximately 6–7 percent of the adult population in the United States will have PTSD at some point during their lifetime.⁷ Among the U.S. military veteran population, the prevalence variance in studies has ranged from approximately 30 percent of the Vietnam era veterans to more recently 13–14 percent of veterans serving in the dual wars in Iraq and Afghanistan over the last 20 years.⁸

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are more likely to develop PTSD compared to the general population.⁹ An estimated 30 percent of first responders develop behavioral health conditions, including depression and PTSD, as compared with 20 percent of the general population.¹⁰ A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.¹¹ Military veterans deployed from 2001 to 2007 had a 41

¹ See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* Available at [What Is PTSD? \(psychiatry.org\)](https://www.psychiatry.org) (Aug. 2020) (last visited Jan. 29, 2022).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ National Center for PTSD, *How Common is PTSD in Adults?* Available at [How Common is PTSD in Adults? - PTSD: National Center for PTSD \(va.gov\)](https://www.ptsd.va.gov) (last visited Jan. 29, 2022).

⁶ *Id.*

⁷ *Mo Med.* 2021 Nov-Dec.; 118(6): 546–551.

⁸ *Id.*

⁹ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

¹⁰ SAMHSA, *First Responders' Behavioral Health Concerns, Emergency Response, and Trauma* (May 2018) available at [First Responders: Behavioral Health Concerns, Emergency Response, and Trauma \(samhsa.gov\)](https://www.samhsa.gov) (last visited Jan. 29, 2022). The term, "first responders," includes emergency medical services, firefighters, and police officers.

¹¹ FireRescue1, *Increasing suicide rates among first responders spark concern*, available at [Increasing suicide rates among first responders spark concern \(firerescue1.com\)](https://www.firerescue1.com) (last visited Jan. 28, 2022).

percent higher suicide risk than the general population, according to the Department of Veterans Affairs.¹²

A study¹³ of the prevalence rates of PTSD among U.S. correction professionals included the following findings:

- The prevalence rate for symptoms of PTSD experienced within the past 30 days was 27 percent for the entire sample, and 31 percent and 22 percent for males and females, respectively;
- A higher rate of PTSD, 31 percent, was found among security personnel compared to all other types of personnel; and
- 100 percent of participants confirmed exposure to at least one VID (violence, injury, death) event during their career, with 28 VID events being the average number experienced by participants during their career.

In reference to the entire sample of correction professionals analyzed, PTSD-positive participants reported significantly:

- More exposure to workplace VID and negative VID-related emotions,
- Higher levels of depression, anxiety, and stress,
- More absenteeism, health services utilization, health conditions, and substance use, and
- Lower levels of pro-health behaviors, life functioning, and life satisfaction.¹⁴

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.¹⁵ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,¹⁶ or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.¹⁷

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.¹⁸ An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.¹⁹ An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the

¹² *Id*

¹³ Spinaris, Caterina, *et. al.* Posttraumatic Stress Disorder in United States Corrections Professionals: Prevalence and Impact on Health and Functioning (2012), available at [Posttraumatic Stress Disorder in United States Corrections Professionals: Prevalence and Impact on Health and Functioning | Office of Justice Programs \(ojp.gov\)](#) (last visited Jan. 29, 2022).

¹⁴ *Id.*

¹⁵ Section 440.09(1), F.S.

¹⁶ Section 440.38, F.S.

¹⁷ Section 627.311(5)(a), F.S.

¹⁸ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

¹⁹ Section 440.09(1), F.S.

specific substance caused the injury or diseases sustained by the employee.²⁰ Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.²¹

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.²² These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,²³ up to the maximum weekly benefit established by law.²⁴ Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability, as described below:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.²⁵
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.²⁶
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.²⁷

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a

²⁰ Section 440.02(1), F.S.

²¹ Section 440.13(2)(a), F.S.

²² Section 440.12(1), F.S.

²³ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

²⁴ Section 440.15(1)-(4), F.S.

²⁵ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

²⁶ Section 440.15(3), F.S.

²⁷ Section 440.15(1), F.S.

compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

Current PTSD Statutory Benefits for First Responders

In 2018, the Legislature revised the standards for determining compensability of PTSD as an occupational disease under workers' compensation coverage for first responders.²⁸ As a result, first responders who meet certain conditions may access indemnity and medical benefits for PTSD without an accompanying physical injury. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,²⁹ a firefighter as defined in s. 633.102, F.S.,³⁰ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,³¹ employed by state or local government. Further, a volunteer law enforcement officer, firefighter, or emergency medical technician or paramedic engaged by the state or a local government is considered a first responder of the state or local government.³²

Section 112.1815, F.S., provides workers' compensation indemnity benefits in specified circumstances for PTSD suffered by a law enforcement officer, a firefighter, an emergency medical technician, or a paramedic regardless of whether the individual's PTSD is accompanied by a physical injury requiring medical treatment. If the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
 - Seeing for oneself a deceased minor;
 - Witnessing directly the death of a minor;
 - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department,
 - Participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
 - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;

²⁸ Ch. 2018-124, Laws of Fla.

²⁹ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³⁰ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

³¹ "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

³² Section 112.1815, F.S.

- Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
- Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or
- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Further, the PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The first responder must file the notice of injury with their employer or carrier within 90 days of the qualifying event, described above, or manifestation of the PTSD, whichever is later. However, the claim is barred if it is not filed within 52 weeks of the qualifying event.

Current law requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

In 2019, the Department of Financial Services adopted Rule 69L-3.009, F.A.C., that specifies the types of injuries that qualify as grievous bodily harm of a nature that shocks the conscience, pursuant to s. 112.1815(5), F.S.

The Department of Financial Services/Division of Risk Management

The Division of Risk Management (Division) is responsible for the management of claims reported by or against state agencies and universities for coverage under the self-insurance fund, known as the State Risk Management Trust Fund. Coverages provided through the trust fund include workers' compensation, property, fleet automobile liability, general liability, federal civil rights and employment discrimination, and court awarded attorney fees.³³ The Division also provides loss prevention services and technical assistance to state agencies and universities for managing risk.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., to provide that the term, "first responder," includes part-time law enforcement officers as defined in s. 943.10(6), F.S., and auxiliary law enforcement officers as defined in s. 943.10(8), F.S. This would extend medical and indemnity benefits for PTSD for such officers if they meet other current requirements of this section. Agencies employing such

³³ Section 284.30, F.S.

³⁴ See MyFloridaCFO, Division of Risk Management available at [Administration \(myfloridacfo.com\)](https://www.myfloridacfo.com) (last visited Jan. 29, 2022).

officers are required to provide educational training related to mental health awareness, prevention, mitigation, and treatment. The section provides a technical conforming change.

Section 2 creates s. 112.18155, F.S., to provide that PTSD is a compensable occupational disease for a part-time or full-time correctional officer (CO) if the PTSD resulted from the officer acting within the course and scope of his or her employment; and is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier and has PTSD due to experiencing one of the specified qualifying events. For a CO, the qualifying events are:

- Being seriously injured by an inmate in a manner that shocks the conscience.
- Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act.
- Directly witnessing an injury, including an injury caused by a suicide attempt, to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
- Participating in the physical treatment of an injury, including an injury caused by an attempted suicide , to a person who subsequently died before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
- Manually transporting a person who was injured, including by a suicide attempt, and subsequently dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing a death, including a death by suicide, that involved grievous bodily harm of a nature that shocks the conscience.
- Directly witnessing a homicide regardless of whether the homicide was criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence.
- Seeing for oneself a decedent whose death involved grievous bodily harm of a nature that shocks the conscience.

The PTSD diagnosis must be proved by clear and convincing evidence. The PTSD benefits do not require a physical injury to the CO to be compensable. The following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

The bill provides the time for notice of injury or death is the same as s. 440.151(6), F.S., and is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim must be noticed properly within 52 weeks after the qualifying event.

An employing agency of a correctional officer is required to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

The DFS must adopt rules specifying injuries qualifying as grievous bodily harm of a nature that shocks the conscience for the purposes of this section.

Sections 3, 4, and 5 amend ss. 111.09, 119.071, and 627.659, F.S., respectively, to provide conforming cross references.

Section 6 provides the Legislature declares that this act fulfills an important state interest.

Section 7 provides the bill takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments. . . .” The provisions of this bill appear to apply to all persons similarly situated (state agencies, state universities, state colleges, and local governments employing law enforcement officers, correctional officers, and correctional probation officers.

Section 6 of the bill contains a finding that the Legislature declares that the bill fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The expansion of the definition of the term, “first responder,” to include part-time law enforcement officers, and auxiliary law enforcement officers will allow those officers to be eligible for medical and indemnity benefits for PTSD without having an accompanying physical injury if they meet certain conditions. Further, part-time and full-time correctional officers would be eligible for indemnity and medical benefits for PTSD without having an accompanying physical injury if they meet certain conditions.

Privately managed prisons would be impacted with increased workers’ compensation costs similar to that of the State Risk Management Trust Fund.³⁵

C. Government Sector Impact:**Department of Corrections³⁶**

The Department of Corrections (DOC) employs about 14,500 correctional officers (COs) and correctional probation officers and has approximately 20,500 overall positions with potential eligibility for benefits under the provisions of this bill. Since only a portion of these officers are exposed to a qualifying event or circumstance each year, DOC has provided a more detailed analysis of potential impacts of the qualifying events provided in CS/SB 664, as outlined below:

- There were 1,036 officers identified as having been injured by inmates in FY 2020/2021. This bill would eliminate these cases involving physical injury from the apportionment provisions in s. 440.093 F.S., as it relates to mental injuries.
- One incident has been identified as an employee being taken hostage by an inmate in 2021. There were zero identified occurrences in the previous three calendar years.
- There are approximately 300 COs who are exposed each year to a death that could meet the parameters outlined in these provisions of the bill. The DOC does not track deaths with specificity as to those where the death would qualify as to one that “shocks the conscience.”

The DOC states that the training and curriculum changes might be developed with existing resources and staff. However, there would be increased cost to the state associated with the expansion of PTSD coverage and eligibility.

Department of Financial Services/Division of Risk Management³⁷

The DFS notes that it is difficult to estimate the number of new workers’ compensation claims that would be filed as a result of enactment of the bill, but DFS expects the fiscal impact would be significant. Prevalence rates for correctional professions vary amongst

³⁵ Department of Financial Services, *2022 Legislative Analysis of SB 664* (Dec. 3, 2021) (on file with Senate Committee on Banking and Insurance).

³⁶ Department of Corrections, *2022 Agency Legislative Analysis of SB 664* (Dec. 2, 2021) (on file with Senate Banking and Insurance Committee).

³⁷ Department of Financial Services, *Legislative Analysis of Proposed CS/SB 664* (Jan. 28, 2022).

the studies e.g., 19-34 percent³⁸ and 27-31 percent.³⁹ Based upon the increased number of employees to be covered by this bill and the estimated number of correctional officers that are exposed to a qualifying event annually, the bill would likely have a significant impact on the Risk Management Trust Fund for claims expenditures and staffing.

Non-operating Loss Payment Category – Based on an assumption of 200 new PTSD claims per year, the DFS estimated that the RMTF could potentially pay as much as \$8.4 - \$16.8 million over the first three years after the enactment of the bill, and DFS expects that this amount would grow exponentially over time.

The bill would add approximately 18,738 additional state employee FTEs who would be eligible for workers' compensation PTSD benefits, as follows:

- Correctional officers: approximately 18,500 FTEs
- Part-time and auxiliary law enforcement officers: 238

The addition of the auxiliary and part-time officers eligible for PTSD is expected to be minimal due to the relatively limited exposure for the additional officers. The primary impact of this bill is the medical and indemnity coverage for correctional officers diagnosed with PTSD who experience a qualifying event. Correctional officers witness suicides and deaths in prisons, and some officers that work in the system for a long period of time likely experience multiple incidents. Therefore, it is likely that the number of claims filed and costs due to PTSD for this sector of employees would increase substantially, and could occur at a higher rate than what has been seen since the 2018 law was enacted.

Based on Department of Corrections information,⁴⁰ approximately 300 officers are exposed to a death that meets one of the qualifying events of the bill and 1,036 officers are injured by inmates each year. This provides an estimate of 1,336 officers who could potentially file a claim for PTSD. It is unknown how many of those officers exposed to a qualifying event would develop PTSD and file a workers' compensation claim. The DFS estimated a 15 percent annual rate of actual PTSD claims being filed, which may underestimate or overestimate of the actual number of claims filed. The DFS notes that the bill defines one of the qualifying events as a correctional officer being "seriously injured" by an inmate that shocks the conscience. However, it is unknown what would qualify as a serious injury. For that reason, DFS assumed that all 1,036 injured officers could be considered seriously injured.

One additional Workers' Compensation Specialist may be needed at a recurring cost of \$70,991 and non-recurring cost of \$4,591.

VI. Technical Deficiencies:

The CS does not provide rulemaking authority for the Department of Financial Services (DFS) to specify the types of injuries that would qualify a CO as being "seriously injured." It is unclear if

³⁸ *Id.*

³⁹ *Supra* note 13.

⁴⁰ *See* Department of Corrections analysis above and *supra* note 36.

this type of injury would be considered grievous bodily harm. If this term is not defined, it could result in additional litigation costs and delays in resolving compensability of claims.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 112.1815, 111.09, 119.071, and 627.659 of the Florida Statutes.

This bill creates section 112.18155 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on February 2, 2022:

The CS revises PTSD compensability provisions for correctional officers by changing the qualifying events for correctional officers and eliminating provisions creating eligibility for correctional probation officers.

- B. **Amendments:**

None.



976104

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/03/2022 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Delete lines 156 - 349

and insert:

a. Being seriously injured by an inmate in a manner that shocks the conscience.

b. Being taken hostage by an inmate or trapped in a life-threatening situation as a result of an inmate's act.

c. Directly witnessing an injury, including an attempted suicide, to a person who subsequently dies before or upon



976104

11 arrival at a hospital emergency department if the person was
12 injured by grievous bodily harm of a nature that shocks the
13 conscience.

14 d. Participating in the physical treatment of an injury,
15 including an attempted suicide, to a person who subsequently
16 dies before or upon arrival at a hospital emergency department
17 if the person was injured by grievous bodily harm of a nature
18 that shocks the conscience.

19 e. Manually transporting a person who was injured,
20 including by suicide attempt, and subsequently dies before or
21 upon arrival at a hospital emergency department if the person
22 was injured by grievous bodily harm of a nature that shocks the
23 conscience.

24 f. Directly witnessing a death, including a death by
25 suicide, that involved grievous bodily harm of a nature that
26 shocks the conscience.

27 g. Directly witnessing a homicide regardless of whether the
28 homicide was criminal or excusable, including murder, mass
29 killings, manslaughter, self-defense, misadventure, and
30 negligence.

31 h. Seeing for oneself a decedent whose death involved
32 grievous bodily harm of a nature that shocks the conscience.

33 (3) The posttraumatic stress disorder must be demonstrated
34 by clear and convincing medical evidence.

35 (4) Benefits for a correctional officer or part-time
36 correctional officer under this section:

37 (a) Do not require a physical injury to the correctional
38 officer or part-time correctional officer.

39 (b) Are not subject to any of the following:



976104

40 1. Apportionment due to a preexisting posttraumatic stress
41 disorder.

42 2. Any limitation on temporary benefits under s. 440.093.

43 3. The 1-percent limitation on permanent psychiatric
44 impairment benefits under s. 440.15(3).

45 (5) The time for notice of injury or death in cases of
46 compensable posttraumatic stress disorder under this section is
47 the same as in s. 440.151(6) and is measured from one of the
48 qualifying events listed in paragraph (2)(b) or the
49 manifestation of the disorder, whichever is later. A claim under
50 this section must be properly noticed within 52 weeks after the
51 qualifying event.

52 (6) The Department of Financial Services shall adopt rules
53 specifying injuries qualifying as grievous bodily harm of a
54 nature that shocks the conscience for the purposes of this
55 section.

56 (7) An employing agency of a correctional officer or part-
57 time correctional officer shall provide educational training
58 related to mental health awareness, prevention, mitigation, and
59 treatment.

60
61 ===== T I T L E A M E N D M E N T =====

62 And the title is amended as follows:

63 Delete lines 3 - 16

64 and insert:

65 workers' compensation for law enforcement and
66 correctional officers; amending s. 112.1815, F.S.;
67 defining the term "first responder" for the purposes
68 of including part-time and auxiliary law enforcement



976104

69 officers for workers' compensation benefits for
70 posttraumatic stress disorder and for educational
71 training related to mental health; creating s.
72 112.18155, F.S.; defining terms; providing that, under
73 certain circumstances, posttraumatic stress disorder
74 suffered by correctional officers and part-time
75 correctional officers is an occupational disease
76 compensable

By Senator Bradley

5-00715-22

2022664__

A bill to be entitled

An act relating to posttraumatic stress disorder workers' compensation for law enforcement, correctional, and correctional probation officers; amending s. 112.1815, F.S.; defining the term "first responder" for the purposes of including part-time and auxiliary law enforcement officers for workers' compensation benefits for posttraumatic stress disorder and for educational training related to mental health; creating ss. 112.18155 and 112.18156, F.S.; defining terms; providing that, under certain circumstances, posttraumatic stress disorder suffered by correctional officers and part-time correctional officers and by correctional probation officers and part-time correctional probation officers, respectively, is an occupational disease compensable by workers' compensation benefits; specifying the evidentiary standard for demonstrating such disorder; specifying that benefits do not require a physical injury and are not subject to certain apportionment or limitations; providing a time for notice of injury or death; requiring the Department of Financial Services to adopt certain rules; requiring an employing agency to provide specified mental health training; amending ss. 111.09, 119.071, and 627.659, F.S.; revising cross-references; providing a declaration of important state interest; providing an effective date.

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

Page 1 of 14

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Section 1. Subsections (5) and (6) of section 112.1815, Florida Statutes, are amended to read:

112.1815 Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries and posttraumatic stress disorder.-

(5) (a) For the purposes of this section and chapter 440, and notwithstanding sub-subparagraph (2) (a) 3. and ss. 440.093 and 440.151 (2), posttraumatic stress disorder, as described in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association, suffered by a first responder is a compensable occupational disease within the meaning of subsection (4) and s. 440.151 if:

1. The posttraumatic stress disorder resulted from the first responder acting within the course of his or her employment as provided in s. 440.091; and

2. The first responder is examined and subsequently diagnosed with such disorder by a licensed psychiatrist who is an authorized treating physician as provided in chapter 440 due to one of the following events:

a. Seeing for oneself a deceased minor;

b. Directly witnessing the death of a minor;

c. Directly witnessing an injury to a minor who subsequently died before or upon arrival at a hospital emergency department;

d. Participating in the physical treatment of an injured minor who subsequently died before or upon arrival at a hospital emergency department;

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- 59 e. Manually transporting an injured minor who subsequently
60 died before or upon arrival at a hospital emergency department;
- 61 f. Seeing for oneself a decedent whose death involved
62 grievous bodily harm of a nature that shocks the conscience;
- 63 g. Directly witnessing a death, including suicide, that
64 involved grievous bodily harm of a nature that shocks the
65 conscience;
- 66 h. Directly witnessing a homicide regardless of whether the
67 homicide was criminal or excusable, including murder, mass
68 killing as defined in 28 U.S.C. s. 530C, manslaughter, self-
69 defense, misadventure, and negligence;
- 70 i. Directly witnessing an injury, including an attempted
71 suicide, to a person who subsequently died before or upon
72 arrival at a hospital emergency department if the person was
73 injured by grievous bodily harm of a nature that shocks the
74 conscience;
- 75 j. Participating in the physical treatment of an injury,
76 including an attempted suicide, to a person who subsequently
77 died before or upon arrival at a hospital emergency department
78 if the person was injured by grievous bodily harm of a nature
79 that shocks the conscience; or
- 80 k. Manually transporting a person who was injured,
81 including by attempted suicide, and subsequently died before or
82 upon arrival at a hospital emergency department if the person
83 was injured by grievous bodily harm of a nature that shocks the
84 conscience.
- 85 (b) Such disorder must be demonstrated by clear and
86 convincing medical evidence.
- 87 (c) Benefits for a first responder under this subsection:

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- 88 1. Do not require a physical injury to the first responder;
89 and
- 90 2. Are not subject to:
- 91 a. Apportionment due to a preexisting posttraumatic stress
92 disorder;
- 93 b. Any limitation on temporary benefits under s. 440.093;
94 or
- 95 c. The 1-percent limitation on permanent psychiatric
96 impairment benefits under s. 440.15(3).
- 97 (d) The time for notice of injury or death in cases of
98 compensable posttraumatic stress disorder under this subsection
99 is the same as in s. 440.151(6) and is measured from one of the
100 qualifying events listed in subparagraph (a)2. or the
101 manifestation of the disorder, whichever is later. A claim under
102 this subsection must be properly noticed within 52 weeks after
103 the qualifying event.
- 104 (e) As used in this subsection, the term:
- 105 1. "Directly witnessing" means to see or hear for oneself.
- 106 2. "First responder" also includes a part-time law
107 enforcement officer as defined in s. 943.10(6) and an auxiliary
108 law enforcement officer as defined in s. 943.10(8).
- 109 3. "Manually transporting" means to perform physical labor
110 to move the body of a wounded person for his or her safety or
111 medical treatment.
- 112 ~~4.3-~~ "Minor" has the same meaning as in s. 1.01(13).
- 113 (f) The Department of Financial Services shall adopt rules
114 specifying injuries qualifying as grievous bodily harm of a
115 nature that shocks the conscience for the purposes of this
116 subsection.

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117 (6) An employing agency of a first responder, including
 118 volunteer first responders, must provide educational training
 119 related to mental health awareness, prevention, mitigation, and
 120 treatment. As used in this subsection, the term "first
 121 responder" also includes a part-time law enforcement officer as
 122 defined in s. 943.10(6) and an auxiliary law enforcement officer
 123 as defined in s. 943.10(8).

124 Section 2. Section 112.18155, Florida Statutes, is created
 125 to read:

126 112.18155 Correctional officers and part-time correctional
 127 officers; special provisions for posttraumatic stress disorder.-

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

129 (a) "Correctional officer" has the same meaning as in s.
 130 943.10(2).

131 (b) "Directly witnessing" has the same meaning as in s.
 132 112.1815(5)(e).

133 (c) "Manually transporting" has the same meaning as in s.
 134 112.1815(5)(e).

135 (d) "Mass killing" means three or more killings in a single
 136 incident.

137 (e) "Part-time correctional officer" has the same meaning
 138 as in s. 943.10(7).

139 (2) For purposes of this section and chapter 440, and
 140 notwithstanding ss. 440.093 and 440.151(2), posttraumatic stress
 141 disorder, as described in the Diagnostic and Statistical Manual
 142 of Mental Disorders, Fifth Edition, published by the American
 143 Psychiatric Association, suffered by a correctional officer or
 144 part-time correctional officer is a compensable occupational
 145 disease within the meaning of s. 440.151 if:

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146 (a) The posttraumatic stress disorder resulted from the
 147 correctional officer or part-time correctional officer acting
 148 within the course of his or her employment.

149 (b) The correctional officer or part-time correctional
 150 officer is:

151 1. Examined by a licensed psychiatrist who is an authorized
 152 treating physician as provided in chapter 440.

153 2. Diagnosed by the psychiatrist described in subparagraph
 154 1. as suffering from posttraumatic stress disorder due to one of
 155 the following events:

156 a. Breaking up a fight between inmates or trying to stop a
 157 murder or suicide attempt committed by an inmate.

158 b. Being seriously injured, bitten, or beaten by an inmate.

159 c. Receiving a threat to himself or herself or to a loved
 160 one which is made by an inmate or a person known to an inmate.

161 d. Being taken hostage by an inmate or trapped in a life-
 162 threatening situation as a result of an inmate's act.

163 e. Making a life-threatening mistake related to an inmate
 164 or another correctional officer or part-time correctional
 165 officer.

166 f. Not preventing, or not being able to prevent, a life-
 167 threatening situation involving an inmate or another
 168 correctional officer or part-time correctional officer from
 169 happening.

170 g. Killing or seriously injuring an inmate or another
 171 correctional officer or part-time correctional officer.

172 h. Directly witnessing an injury, including an injury
 173 caused by a suicide attempt, to an inmate or another
 174 correctional officer or part-time correctional officer who

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175 subsequently died before or upon arrival at a hospital emergency
 176 department or was injured by grievous bodily harm of a nature
 177 that shocks the conscience.

178 i. Participating in the physical treatment of an injury,
 179 including an injury caused by a suicide attempt, to an inmate or
 180 another correctional officer or part-time correctional officer
 181 who subsequently died before or upon arrival at a hospital
 182 emergency department or was injured by grievous bodily harm of a
 183 nature that shocks the conscience.

184 j. Manually transporting an inmate or another correctional
 185 officer or part-time correctional officer who was injured,
 186 including by a suicide attempt, by grievous bodily harm of a
 187 nature that shocks the conscience or who subsequently died
 188 before or upon arrival at a hospital emergency department.

189 k. Directly witnessing a death, including a death by
 190 suicide, of an inmate or another correctional officer or part-
 191 time correctional officer which involved grievous bodily harm of
 192 a nature that shocks the conscience.

193 l. Directly witnessing a homicide committed by an inmate or
 194 another correctional officer or part-time correctional officer,
 195 regardless of whether the homicide was criminal or excusable,
 196 including murder, mass killing, manslaughter, self-defense,
 197 misadventure, and negligence.

198 m. Seeing for oneself a decedent whose death involved
 199 grievous bodily harm of a nature that shocks the conscience.

200 n. Cleaning up an inmate's cell or other areas of a
 201 correctional institution after an injury or a death, including
 202 an injury by a suicide attempt or a death by suicide.

203 o. Encountering an inmate who was recently sexually

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204 assaulted.

205 (3) The posttraumatic stress disorder must be demonstrated
 206 by clear and convincing medical evidence.

207 (4) Benefits for a correctional officer or part-time
 208 correctional officer under this section:

209 (a) Do not require a physical injury to the correctional
 210 officer or part-time correctional officer.

211 (b) Are not subject to any of the following:

212 1. Apportionment due to a preexisting posttraumatic stress
 213 disorder.

214 2. Any limitation on temporary benefits under s. 440.093.

215 3. The 1-percent limitation on permanent psychiatric
 216 impairment benefits under s. 440.15(3).

217 (5) The time for notice of injury or death in cases of
 218 compensable posttraumatic stress disorder under this section is
 219 the same as in s. 440.151(6) and is measured from one of the
 220 qualifying events listed in paragraph (2)(b) or the
 221 manifestation of the disorder, whichever is later. A claim under
 222 this section must be properly noticed within 52 weeks after the
 223 qualifying event.

224 (6) The Department of Financial Services shall adopt rules
 225 specifying injuries qualifying as grievous bodily harm of a
 226 nature that shocks the conscience for the purposes of this
 227 section.

228 (7) An employing agency of a correctional officer or part-
 229 time correctional officer must provide educational training
 230 related to mental health awareness, prevention, mitigation, and
 231 treatment.

232 Section 3. Section 112.18156, Florida Statutes, is created

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233 to read:

234 112.18156 Correctional probation officers and part-time

235 correctional probation officers; special provisions for

236 posttraumatic stress disorder.-

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

238 (a) "Correctional probation officer" has the same meaning

239 as in s. 943.10(3).

240 (b) "Directly witnessing" has the same meaning as in s.

241 112.1815(5)(e).

242 (c) "Manually transporting" has the same meaning as in s.

243 112.1815(5)(e).

244 (d) "Mass killing" means three or more killings in a single

245 incident.

246 (e) "Part-time correctional probation officer" has the same

247 meaning as in s. 943.10(19).

248 (f) "Probationer" means a person assigned to a correctional

249 probation officer or part-time correctional probation officer

250 for supervised custody, surveillance, and control. The term

251 includes, but is not limited to, an inmate, a parolee, and a

252 community controllee.

253 (g) "Probationer-related activity" means an unlawful act or

254 activity that a probationer or a person known to a probationer

255 engages in.

256 (2) For purposes of this section and chapter 440, and

257 notwithstanding ss. 440.093 and 440.151(2), posttraumatic stress

258 disorder, as described in the Diagnostic and Statistical Manual

259 of Mental Disorders, Fifth Edition, published by the American

260 Psychiatric Association, suffered by a correctional probation

261 officer or part-time correctional probation officer is a

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262 compensable occupational disease within the meaning of s.

263 440.151 if:

264 (a) The posttraumatic stress disorder resulted from the

265 correctional probation officer or part-time correctional

266 probation officer acting within the course of his or her

267 employment.

268 (b) The correctional probation officer or part-time

269 correctional probation officer is:

270 1. Examined by a licensed psychiatrist who is an authorized

271 treating physician as provided in chapter 440.

272 2. Diagnosed by the psychiatrist described in subparagraph

273 1. as suffering from posttraumatic stress disorder due to one of

274 the following events:

275 a. Being seriously injured or beaten by a probationer or by

276 a person known to a probationer or involved in a probationer-

277 related activity.

278 b. Receiving a threat to himself or herself or to a loved

279 one which is made by a probationer or a person known to a

280 probationer or involved in a probationer-related activity.

281 c. Being taken hostage by a probationer or a person known

282 to a probationer or involved in a probationer-related activity.

283 d. Being trapped in a life-threatening situation as the

284 result of a probationer-related activity.

285 e. Making a life-threatening mistake related to a

286 probationer or another person when trying to stop a probationer-

287 related activity.

288 f. Not preventing, or not being able to prevent, a life-

289 threatening situation involving a probationer from happening.

290 g. Killing or seriously injuring a probationer or another

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291 person as a result of an intervention in a probationer-related
 292 activity.

293 h. Directly witnessing an injury, including an injury
 294 caused by a suicide attempt, to a probationer, or an injury
 295 caused to another person in a probationer-related activity, and
 296 the probationer or person subsequently died before or upon
 297 arrival at a hospital emergency department or was injured by
 298 grievous bodily harm of a nature that shocks the conscience.

299 i. Participating in the physical treatment of an injury,
 300 including by a suicide attempt, to a probationer, or an injury
 301 to another person in a probationer-related activity, and the
 302 probationer or person subsequently died before or upon arrival
 303 at a hospital emergency department or was injured by grievous
 304 bodily harm of a nature that shocks the conscience.

305 j. Manually transporting a probationer who was injured,
 306 including by a suicide attempt, or another person who was
 307 injured in a probationer-related activity, and:

308 (I) The injury was by grievous bodily harm of a nature that
 309 shocks the conscience; or

310 (II) The probationer or other person subsequently died
 311 before or upon arrival at a hospital emergency department.

312 k. Directly witnessing a death, including a death by
 313 suicide, of a probationer or a death of another person in a
 314 probationer-related activity which involved grievous bodily harm
 315 of a nature that shocks the conscience.

316 l. Directly witnessing a homicide committed by or against a
 317 probationer, regardless of whether the homicide was criminal or
 318 excusable, including murder, mass killing, manslaughter, self-
 319 defense, misadventure, and negligence.

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320 m. Being assigned excessively high caseloads or high
 321 special caseloads, such as caseloads of probationers who
 322 recidivate or commit violent crimes.

323 (3) The posttraumatic stress disorder must be demonstrated
 324 by clear and convincing medical evidence.

325 (4) Benefits for a correctional probation officer or part-
 326 time correctional probation officer under this section:

327 (a) Do not require a physical injury to the correctional
 328 probation officer or part-time correctional probation officer.

329 (b) Are not subject to any of the following:

330 1. Apportionment due to a preexisting posttraumatic stress
 331 disorder.

332 2. Any limitation on temporary benefits under s. 440.093.

333 3. The 1-percent limitation on permanent psychiatric
 334 impairment benefits under s. 440.15(3).

335 (5) The time for notice of injury or death in cases of
 336 compensable posttraumatic stress disorder under this section is
 337 the same as in s. 440.151(6) and is measured from one of the
 338 qualifying events listed in paragraph (2)(b) or the
 339 manifestation of the disorder, whichever is later. A claim under
 340 this section must be properly noticed within 52 weeks after the
 341 qualifying event.

342 (6) The Department of Financial Services shall adopt rules
 343 specifying injuries qualifying as grievous bodily harm of a
 344 nature that shocks the conscience for the purposes of this
 345 section.

346 (7) An employing agency of a correctional probation officer
 347 or part-time correctional probation officer must provide
 348 educational training related to mental health awareness,

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349 prevention, mitigation, and treatment.

350 Section 4. Paragraph (a) of subsection (1) of section
351 111.09, Florida Statutes, is amended to read:

352 111.09 Peer support for first responders.—

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

354 (a) "First responder" has the same meaning as provided in
355 s. 112.1815(1) ~~s. 112.1815~~ and includes 911 public safety
356 telecommunicators as defined in s. 401.465.

357 Section 5. Paragraph (d) of subsection (3) of section
358 119.071, Florida Statutes, is amended to read:

359 119.071 General exemptions from inspection or copying of
360 public records.—

361 (3) SECURITY AND FIRESAFETY.—

362 (d)1. Information relating to the Nationwide Public Safety
363 Broadband Network established pursuant to 47 U.S.C. ss. 1401 et
364 seq., held by an agency is confidential and exempt from s.
365 119.07(1) and s. 24(a), Art. I of the State Constitution if
366 release of such information would reveal:

367 a. The design, development, construction, deployment, and
368 operation of network facilities;

369 b. Network coverage, including geographical maps indicating
370 actual or proposed locations of network infrastructure or
371 facilities;

372 c. The features, functions, and capabilities of network
373 infrastructure and facilities;

374 d. The features, functions, and capabilities of network
375 services provided to first responders, as defined in s.
376 112.1815(1) ~~s. 112.1815~~, and other network users;

377 e. The design, features, functions, and capabilities of

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378 network devices provided to first responders and other network
379 users; or

380 f. Security, including cybersecurity, of the design,
381 construction, and operation of the network and associated
382 services and products.

383 2. This paragraph is subject to the Open Government Sunset
384 Review Act in accordance with s. 119.15 and shall stand repealed
385 on October 2, 2023, unless reviewed and saved from repeal
386 through reenactment by the Legislature.

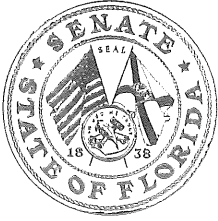
387 Section 6. Subsection (4) of section 627.659, Florida
388 Statutes, is amended to read:

389 627.659 Blanket health insurance; eligible groups.—Blanket
390 health insurance is that form of health insurance which covers
391 special groups of individuals as enumerated in one of the
392 following subsections:

393 (4) Under a policy or contract issued in the name of a
394 volunteer fire department, first aid group, local emergency
395 management agency as defined in s. 252.34(6), or other group of
396 first responders as defined in s. 112.1815(1) ~~s. 112.1815~~, which
397 is deemed the policyholder, covering all or any grouping of the
398 members or employees of the policyholder or covering all or any
399 participants in an activity or operation sponsored or supervised
400 by the policyholder.

401 Section 7. The Legislature determines and declares that
402 this act fulfills an important state interest.

403 Section 8. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

SENATOR JENNIFER BRADLEY
5th District

November 16, 2021

Senator Jim Boyd, Chairman
Senate Committee on Banking and Insurance
312 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Boyd:

I respectfully request that Senate Bill 664 be placed on the committee's agenda at your earliest convenience. This bill relates to posttraumatic stress disorder workers' compensation for law enforcement, correctional, and correctional probation officers.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Bradley".

Jennifer Bradley

cc: James Knudson, Staff Director
Amaura Canty, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

664

02/02/2022

Meeting Date

Bill Number or Topic

Banking

Committee

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

Amendment Barcode (if applicable)

Name

Steve Zona

Phone

904-398-7010

Address

5530 Beach Blvd

Email

SZona@FOPS30.com

Street

Jax

FL

32207

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:

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

02/02/2022

Meeting Date

664

Bill Number or Topic

BANKING & INDUSTRY

Committee

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

Amendment Barcode (if applicable)

Name MICK McHALE

Phone

Address 300 E BREWERS STREET

Email

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:

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

FLORIDA POLICE BENEVOLENT 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 \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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

2/2/22

Meeting Date

664

Bill Number or Topic

Banking & Insurance

Committee

Amendment Barcode (if applicable)

Name Richard Pinsky

Phone

Address 201 E. Park Ave

Email

Street

Tallahassee

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:

9-1-1 Emergency Dispatchers

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

6664

Bill Number or Topic

Meeting Date

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

Committee

Amendment Barcode (if applicable)

Name

Lisa Henning

Phone

850-766-8858

Address

242 Office Plaza

Email

lphlegislative@adco.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:

Fraternal Order of Police

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 730

INTRODUCER: Senators Harrell and Polsky

SUBJECT: Step-therapy Protocols

DATE: February 2, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Johnson | Knudson | BI | Favorable |
| 2. | | | HP | |
| 3. | | | RC | |

I. Summary:

SB 730 establishes standards for processing step-therapy protocol exemptions. A step-therapy protocol is a written protocol used by a health insurer or a health maintenance organization (HMO) that specifies the order in which certain medical procedures, treatments, or prescription drugs must be used to treat a condition. A protocol exemption is a determination by an insurer or HMO to authorize the use of an alternate procedure, treatment, or prescription drug to treat a condition of an insured or subscriber rather than the procedure, treatment, or drug indicated by the step-therapy protocol.

SB 730 provides that the insurer or HMO must prescribe the manner, form, and timeframe in which an insured or subscriber may request a protocol exemption. Further, SB 730 requires the insurer or HMO to authorize or deny a protocol exemption in reasonable amount of time. If the insurer or HMO denies the protocol exemption, the insurer or HMO must provide the insured or subscriber with a written response and the procedure for appealing a denial. The bill provides insurers and HMOs with wide discretion in meeting these requirements.

II. Present Situation:

Insurers use many cost containment and utilization review strategies to manage medical and drug spending and patient safety. For example, plans may place utilization management requirements on the use of certain medical treatments or drugs on their formulary. Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under a plan.¹ In some cases, plans require an insured or subscriber to use a step therapy protocol for drugs or a medical treatment, which requires the insured or subscriber to try one drug or medical procedure

¹ JAMA Health Forum. 2021;2(5):e210859.doi.

for treatment first to treat the medical condition before the insurer or HMO will authorized coverage for another drug, procedure, or treatment for that condition.²

Regulation of Insurers and Health Maintenance Organizations

The Office of Insurance Regulation (OIR) licenses and regulates the activities of insurers, health maintenance organizations (HMOs), and other risk-bearing entities.³ The Florida Insurance Code (code) requires health insurers and HMOs to provide cost containment measures. Section 627.4234, F.S., requires a health insurance policy or health care services plan, which provides medical, hospital, or surgical expense coverage delivered or issued for delivery in this state to include one or more specified procedures or provisions to contain costs or cost increases.

Prior Authorization

Any “health insurer” (health insurer, HMO, Medicaid managed care plan) or pharmacy benefit manager, on behalf of the health insurer, that does not use an online prior authorization form must use a standardized form adopted by the Financial Services Commission (FSC) to obtain a prior authorization for a medical procedure, course of treatment, or prescription drug benefit.⁴ The form must include all clinical documentation necessary for the health insurer to make a decision.

Step Therapy Protocols

The code⁵ prohibits insurers or HMOs issuing comprehensive major medical health coverage from requiring completion of a step therapy protocol for insureds or subscribers who demonstrate previous completion of a related step therapy process, if the following conditions are met:

- The insured or subscriber has previously been approved to receive the drug through a step therapy protocol imposed by a health insurer that issued major medical coverage to the insured; and,
- The insured or subscriber documentation that an insurer or HMO made payment for the drug on the insured’s behalf within the past 90 days.

However, this provision does not require an insurer or an HMO to add a drug to its drug formulary or cover a drug not currently covered in order to comply with the step therapy restriction.⁶

Federal Patient Protection and Affordable Care Act

² HEALTH AFFAIRS 40, No. 11 (2021) 1749-1757.

³ Section 20.121(3), F.S. the Office of Insurance Regulation is an office within the 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.

⁴ Section 627.42392, F.S.

⁵ Sections 627.4293 and 641.31(46), F.S.

⁶ *Id.*

The federal Patient Protection and Affordable Care Act (PPACA)⁷ requires health insurers and HMOs to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. The PPACA also mandates essential health benefits⁸ and other provisions.

The PPACA requires insurers and HMOs that offer qualified health plans (plans) to provide 10 categories of essential health benefits (EHB), which includes prescription drugs.⁹ For purposes of complying with the federal EHB requirements for prescription drugs, plans must include in their formulary drug list the greater of one drug for each U.S. Pharmacopeia (USP) category and class; or the same number of drugs in each USP category and class as the state's EHB benchmark plan.¹⁰

State and Federal Transparency Provisions Relating to Benefits, Coverage Exceptions, and Appeals for Insureds and Subscribers

Benefits

Health insurers and HMOs are required to provide an outline of coverage or other information describing the benefits, coverages, exclusions, and limitations of a policy or contract.¹¹ Further, each contract, certificate, or member handbook of an HMO must delineate the services for which a subscriber is entitled and any limitations under the contract.¹²

Access to Formulary Drug List and any Restrictions

Plans are required to publish on their website a current and complete list of all covered drugs on its formulary drug list, including any tiered structure and any restrictions on the way a drug can be obtained, in a manner that is easily accessible to insureds or subscribers, prospective insureds or subscribers, the state, and the public.¹³

Request for Prescription Drug Exception¹⁴

Federal rules establish a uniform exceptions process for health insurers and HMOs (plans) that allows an insured or subscriber, or their prescribing physician, to request and gain access to clinically appropriate drugs not otherwise covered by the insurer or HMO (request for exception).¹⁵ If a plan denies a request for a standard exception or an expedited exception request, the plan must have a process for the insured or subscriber to request the original

⁷ The Patient Protection and Affordable Care Act (Pub. L. No. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. No. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010.

⁸ 42 U.S.C. s.18022.

⁹ See Center for Consumer Information & Insurance Oversight, *Information on Essential Health Benefits (EHB) Benchmark Plans* <https://www.cms.gov/ccio/resources/data-resources/ehb.html> (last viewed Jan. 28, 2022) for Florida's benchmark plan.

¹⁰ 45 C.F.R. 156.122(a)

¹¹ Section 627.642, F.S.

¹² Section 641.31(4), F.S.

¹³ 45 C.F.R. s. 156.122(d).

¹⁴ 45 C.F.R. s. 156.122(c).

¹⁵ The exception process applies to drugs that are not included on the formulary drug list of the plan. The internal and external appeals process prescribed in 45 C.F.R. s. 147.136 applies if an enrollee receives an adverse benefit determination for a drug that is included on the plan's formulary drug list.

exception request and subsequent denial of such request be reviewed by an independent review organization. A plan must make its determination on the external exception request within 72 hours following receipt of a standard request, and within 24 hours following receipt an expedited exception.

Standard exception request. A plan must have a process for an insured or subscriber or their prescribing physician to request a standard review of a decision that a drug is not covered by the plan. A plan must make their determination on a standard exception and notify the insured or subscriber and the prescribing physician of the coverage determination no later than 72 hours following receipt of the request. A plan that grants a standard exception request must provide coverage of the non-formulary drug for the duration of the prescription, including refills.

Expedited exception request. A plan must have a process for an insured or subscriber, or their prescribing physician to request an expedited review based on exigent circumstances. Exigent circumstances exist when an enrollee is suffering from a health condition that may seriously jeopardize the enrollee's life, health, or ability to regain maximum function or when an enrollee is undergoing a current course of treatment using a non-formulary drug. A plan must make its coverage determination on an expedited review request based on exigent circumstances and notify the enrollee or the prescribing physician of its coverage determination no later than 24 hours following receipt of the request. A plan that grants an exception based on exigent circumstances must provide coverage of the non-formulary drug for the duration of the exigency.

Internal Claim Appeals and External Review Program¹⁶

Plans must implement an internal appeals and independent external review process for claims that are denied. Generally, an insured or subscriber may file an internal appeal with the plan within 180 days of receipt of the notice of a denied claim.¹⁷ If an insured or subscriber requests an internal appeal of a denied claim, the plan must provide a written determination of the decision within the following time:

- Within 30 days, if it is a request for prior authorization.
- Within 60 days, if the services have already been received.
- Within 72 hours or less for urgent care cases.¹⁸

An insured or subscriber must file a written request for an external review within four months after the date of receipt of the notice or final determination from the plan.¹⁹

A 2021 report analyzed claims denials and appeals in marketplace plans.²⁰ Of all denials with reasons reported for 2019, about 18 percent were denied because the claim was for an excluded

¹⁶ 45 C.F.R. s. 147.136. The rules apply to non-grandfathered plans, which include health insurance policies that were first sold or significantly modified in certain ways after March 23, 2010.

¹⁷ See Healthcare.gov, *Appealing a health plan decision-Internal appeals*, available at [Internal appeals | HealthCare.gov](#) (last visited Jan. 29, 2022). A claim is a request for coverage.

¹⁸ *Id.*

¹⁹ See Healthcare.gov, *Appealing a health plan decision-External Review*, available at [External Review | HealthCare.gov](#) (last visited Jan. 28, 2022).

²⁰ Kaiser Family Foundation, *Claims Denials and Appeals in ACA Marketplace Plans* (Jan. 20, 2021) available at [Claims Denials and Appeals in ACA Marketplace Plans | KFF](#) (last visited Jan. 28, 2022). The federal government requires HealthCare.gov plans or marketplace plans to report reasons for claims denials at the plan level.

service; about 9 percent were denied due to prior authorization or lack of referral, and less than 1 percent were denied based on medical necessity. The remaining plan-reported denials (72 percent) were denied for other reasons.²¹

Florida State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (DMS), through the Division of State Group Insurance, administers the state group insurance program by providing employee benefits such as health, life, dental, and vision insurance products under a cafeteria plan consistent with s. 125, Internal Revenue Code. To administer the state group health insurance program, the DMS contracts with third party administrators, HMOs, and a PBM for the state employees' prescription drug program pursuant to s. 110.12315, F.S. As a group plan, the program must comply with federal regulations of internal appeal and external review programs for drug exceptions and benefit disputes.

III. Effect of Proposed Changes:

Sections 1 and 2 amends ss. 627.42393 and 641.31, F.S., The sections defines the terms, "protocol exemption," and "step-therapy protocol."

The sections require a health insurer or HMO to publish on its website and provide to an insured or subscriber (or his or her health care provider) written procedures for requesting a protocol exemption or an appeal of an insurer or HMO's denial of a protocol exemption request. At a minimum, the procedure must include:

- The manner in which the insured or subscriber may request a protocol exemption, including a form for making the request.
- The manner and timeframe in which the health insurer or HMO must authorize or deny a protocol exemption request, including the requirement that such response must occur within a "reasonable time."
- The manner and the timeframe in which an insured or subscriber may appeal a denial of an insurer or HMO protocol exemption request.

An authorization of a protocol exemption request must specify the approved drug, procedure, or course of treatment. A denial must include a written explanation of the reason for the denial, and the procedure for appealing the denial. An insurer or HMO may request relevant medical records in support of a protocol exemption request.

Section 3 provides the act takes effect July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²¹ *Id.*

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:

Currently, insurers and HMOs must comply with federal regulations that prescribe uniform time, notice, and protocol to process drug exceptions and benefit denials and appeals for insureds and subscribers. The provisions of the bill are not consistent with the provisions of the federal rules, which may cause confusion for treating physicians, insureds, and subscribers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill requires insurers and HMOs to publish and provide a protocol exemption procedure to insureds and subscribers. The bill provides wide discretion for an insurer or HMO in establishing timeframes and the manner to review, deny, and appeal step therapy exceptions for a procedure, treatments, or prescription drugs. For instance, the bill does not specify:

- The manner in which an insurer must allow the protocol exemption requests to be made, just that the insurer or HMO provide a form for making the request.
- The content of the form used to request a protocol exemption.
- The “reasonable” timeframe in which the health insurer must authorize or deny a protocol exemption request.
- The manner and timeframe for appealing the insurer’s or HMO’s denial of a protocol exemption request.

This lack of specificity is in contrast to current federal rules, which establish a uniform exceptions process – including internal and external appeals – for health plans that allow an insured or subscriber, or their prescribing physician, to request and gain access to clinically appropriate drugs not otherwise covered by the insurer or HMO (request for exception) Existing federal rules also provide an expedited process for requesting and appealing denied covered benefits and drug exceptions that an insurer or HMOs must use when an insured or subscriber is suffering from a health condition that may seriously jeopardize his or her life, health, or ability to regain maximum function.

The federal regulations also provide the process and specific timelines and manner for an insurer or HMO to authorize or deny benefits, as well as an internal appeal process and external review process for an insured or subscriber.

It is unclear whether an insured or HMO must establish an expedited process for the drug exception requests or the internal and external appeals process for covered benefits. Federal regulations may preempt these provisions if an insurer or HMO prescribes a process that does not comply with the minimum federal protections for drug exceptions and benefit determinations. A state may determine that a plan of an insurer or HMO satisfies the requirements of Title 45 s. 156.122(c), relating to drug exception requests, if the plan has a process to allow an enrollee to request and gain access to clinically appropriate drugs not otherwise covered by the plan that is compliant with the state’s applicable coverage appeals laws and regulations that are at least as stringent as the requirements of (c) and include:

- An internal review;
- An external review;
- The ability to expedite the reviews; and
- Timeframes that are the same or shorter than the timeframes under (c).²²

It is unclear how the OIR would enforce the provisions of the bill since the provisions do not expressly require the Office of Insurance Regulation to ensure plans are complying with minimum federal requirements.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 627.42393 and 641.31 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.

²² 45 CFR 156.22(c)(4)

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 Harrell

25-00777A-22

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1 A bill to be entitled
 2 An act relating to step-therapy protocols; amending s.
 3 627.42393, F.S.; revising the circumstances under
 4 which step-therapy protocols may not be required;
 5 defining terms; requiring health insurers to publish
 6 on their websites and provide to their insureds
 7 specified information; providing requirements for
 8 procedures for requests and appeals of denials of
 9 protocol exemptions; providing requirements for
 10 authorizations and denials of protocol exemption
 11 requests; authorizing health insurers to request
 12 specified documentation under certain circumstances;
 13 amending s. 641.31, F.S.; revising the circumstances
 14 under which step-therapy protocols may not be
 15 required; defining terms; requiring health maintenance
 16 organizations to publish on their websites and provide
 17 to their subscribers specified information; providing
 18 requirements for procedures for requests and appeals
 19 of denials of protocol exemptions; providing
 20 requirements for authorizations and denials of
 21 protocol exemption requests; authorizing health
 22 maintenance organizations to request specified
 23 documentation under certain circumstances; providing
 24 an effective date.
 25
 26 Be It Enacted by the Legislature of the State of Florida:
 27
 28 Section 1. Section 627.42393, Florida Statutes, is amended
 29 to read:

Page 1 of 6

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

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30 627.42393 Step-therapy protocol.-
 31 ~~(2)(4)~~ In addition to the protocol exemptions granted
 32 pursuant to subsection (3), a health insurer issuing a major
 33 medical individual or group policy may not require a step-
 34 therapy protocol under the policy for a covered prescription
 35 drug requested by an insured if:
 36 (a) The insured has previously been approved to receive the
 37 prescription drug through the completion of a step-therapy
 38 protocol required by a separate health coverage plan; and
 39 (b) The insured provides documentation originating from the
 40 health coverage plan that approved the prescription drug as
 41 described in paragraph (a) indicating that the health coverage
 42 plan paid for the drug on the insured's behalf during the 90
 43 days immediately before the request.
 44 ~~(1)(2)~~ As used in this section, the term:
 45 (a) "Health coverage plan" means any of the following which
 46 is currently or was previously providing major medical or
 47 similar comprehensive coverage or benefits to the insured:
 48 1.(a) A health insurer or health maintenance organization.
 49 2.(b) A plan established or maintained by an individual
 50 employer as provided by the Employee Retirement Income Security
 51 Act of 1974, Pub. L. No. 93-406.
 52 3.(c) A multiple-employer welfare arrangement as defined in
 53 s. 624.437.
 54 4.(d) A governmental entity providing a plan of self-
 55 insurance.
 56 (b) "Protocol exemption" means a determination by a health
 57 insurer to authorize the use of another prescription drug,
 58 medical procedure, or course of treatment prescribed or

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59 recommended by the treating health care provider for the
 60 insured's condition rather than the one specified by the health
 61 insurer's step-therapy protocol.

62 (c) "Step-therapy protocol" means a written protocol that
 63 specifies the order in which certain prescription drugs, medical
 64 procedures, or courses of treatment must be used to treat an
 65 insured's condition.

66 (3) (a) A health insurer shall publish on its website and
 67 provide to an insured in writing a procedure for the insured and
 68 his or her health care provider to request a protocol exemption
 69 or an appeal of the health insurer's denial of a protocol
 70 exemption request. The procedure must include, at a minimum:

71 1. The manner in which the insured or health care provider
 72 may request a protocol exemption, including a form to request
 73 the protocol exemption.

74 2. The manner and timeframe in which the health insurer
 75 must authorize or deny a protocol exemption request, including
 76 the requirement that such response must occur within a
 77 reasonable time.

78 3. The manner and timeframe in which the insured or health
 79 care provider may appeal the health insurer's denial of a
 80 protocol exemption request.

81 (b) An authorization of a protocol exemption request must
 82 specify the approved prescription drug, medical procedure, or
 83 course of treatment. A denial of a protocol exemption request
 84 must include a written explanation of the reason for the denial,
 85 the clinical rationale that supports the denial, and the
 86 procedure for appealing the health insurer's denial.

87 (c) A health insurer may request relevant medical records

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88 in support of a protocol exemption request.

89 ~~(4)(3)~~ This section does not require a health insurer to
 90 add a drug to its prescription drug formulary or to cover a
 91 prescription drug that the insurer does not otherwise cover.

92 Section 2. Subsection (46) of section 641.31, Florida
 93 Statutes, is amended to read:

94 641.31 Health maintenance contracts.—

95 ~~(46) (b) (46) (a)~~ In addition to the protocol exemptions
 96 granted under paragraph (c), a health maintenance organization
 97 issuing major medical coverage through an individual or group
 98 contract may not require a step-therapy protocol under the
 99 contract for a covered prescription drug requested by a
 100 subscriber if:

101 1. The subscriber has previously been approved to receive
 102 the prescription drug through the completion of a step-therapy
 103 protocol required by a separate health coverage plan; and

104 2. The subscriber provides documentation originating from
 105 the health coverage plan that approved the prescription drug as
 106 described in subparagraph 1. indicating that the health coverage
 107 plan paid for the drug on the subscriber's behalf during the 90
 108 days immediately before the request.

109 ~~(a) (b)~~ As used in this subsection, the term:

110 1. "Health coverage plan" means any of the following which
 111 previously provided or is currently providing major medical or
 112 similar comprehensive coverage or benefits to the subscriber:

113 ~~a.1-~~ A health insurer or health maintenance organization.~~+~~

114 ~~b.2-~~ A plan established or maintained by an individual
 115 employer as provided by the Employee Retirement Income Security
 116 Act of 1974, Pub. L. No. 93-406.~~+~~

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117 ~~c.3-~~ A multiple-employer welfare arrangement as defined in
 118 s. 624.437, ~~or~~

119 ~~d.4-~~ A governmental entity providing a plan of self-
 120 insurance.

121 2. "Protocol exemption" means a determination by a health
 122 maintenance organization to authorize the use of another
 123 prescription drug, medical procedure, or course of treatment
 124 prescribed or recommended by the treating health care provider
 125 for the subscriber's condition rather than the one specified by
 126 the health maintenance organization's step-therapy protocol.

127 3. "Step-therapy protocol" means a written protocol that
 128 specifies the order in which certain prescription drugs, medical
 129 procedures, or courses of treatment must be used to treat a
 130 subscriber's condition.

131 (c)1. A health maintenance organization shall publish on
 132 its website and provide to a subscriber in writing a procedure
 133 for the subscriber and his or her health care provider to
 134 request a protocol exemption or an appeal of the health
 135 maintenance organization's denial of a protocol exemption
 136 request. The procedure must include, at a minimum:

137 a. The manner in which the subscriber or health care
 138 provider may request a protocol exemption, including a form to
 139 request the protocol exemption.

140 b. The manner and timeframe in which the health maintenance
 141 organization must authorize or deny a protocol exemption
 142 request, including the requirement that such response must occur
 143 within a reasonable time.

144 c. The manner and timeframe in which the subscriber or
 145 health care provider may appeal the health maintenance

25-00777A-22

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146 organization's denial of a protocol exemption request.

147 2. An authorization of a protocol exemption request must
 148 specify the approved prescription drug, medical procedure, or
 149 course of treatment. A denial of a protocol exemption request
 150 must include a written explanation of the reason for the denial,
 151 the clinical rationale that supports the denial, and the
 152 procedure for appealing the health maintenance organization's
 153 denial.

154 3. A health maintenance organization may request relevant
 155 medical records in support of a protocol exemption request.

156 ~~(d)(e)~~ This subsection does not require a health
 157 maintenance organization to add a drug to its prescription drug
 158 formulary or to cover a prescription drug that the health
 159 maintenance organization does not otherwise cover.

160 Section 3. This act shall take effect July 1, 2022.

The Florida Senate

APPEARANCE RECORD

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

SB 730

Bill Number or Topic

2/2/22

Meeting Date

Committee

Amendment Barcode (if applicable)

Name Jeff Scott

Phone 850 224-6496

Address 1430 Piedmont Dr. E.

Email jscott@flmedical.org

Street

Tallahassee

FL

32308

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] I am a registered lobbyist, representing:

Florida Medical Association

[] 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

SB 0730

02/02/2022

Meeting Date

Bill Number or Topic

Banking & Insurance

Committee

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Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name **AARP Ivonne Fernandez** Phone **- 954-850-7262**

Address **215 S Monroe Street - Suite 603** Email **ifernandez@aarp.org**

Street

Tallahassee FL

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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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/2/22

Meeting Date

730

Bill Number or Topic

Banking + Insurance

Committee

Amendment Barcode (if applicable)

Name Amanda Fraser

Phone 880 556 1401

Address

Email

Street

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: American Diabetes Assoc.

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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2/12/22

Meeting Date

730

Bill Number or Topic

Senate Budget

Committee

Amendment Barcode (if applicable)

Name Jared Willis

Phone

Address

Email

Street

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] 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:

Alliance for Patient Access

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

Tallahassee, Florida 32399-1100

SENATOR GAYLE HARRELL
25th District

COMMITTEES:
Transportation, *Chair*
Military and Veterans Affairs, Space,
and Domestic Security, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Children, Families, and Elder Affairs
Finance and Tax
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment

November 17, 2021

Senator Jim Boyd
312 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Boyd,

I respectfully request that **SB 730 – Step Therapy Protocols** be placed on the next available agenda for the Banking and Insurance Committee Meeting.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in blue ink that reads "Gayle".

Senator Gayle Harrell
Senate District 25

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

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019 FAX: (888) 263-7895
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

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 1066

INTRODUCER: Banking and Insurance Committee; Senators Burgess and Hooper

SUBJECT: Workers' Compensation Benefits for First Responders

DATE: February 3, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Johnson | Knudson | BI | Fav/CS |
| 2. | | | CA | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 expands compensability of first responders, as it relates to workers' compensation, by revising the deadline for first responders to file a notice of injury with their carrier or employer. The SB provides that the time of notice of injury is measured from one of the qualifying events or diagnosis of the disorder, whichever is later. Further, the SB provides that a claim is barred if the notice is not filed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. Current law provides the time for notice of injury or death is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim must be noticed within 52 weeks after the qualifying event. The SB would eliminate the 52-week deadline for filing a claim.

The potential fiscal impact on the State Risk Management Trust Fund could be significant based on the number of first responders employed by state agencies and universities. The bill will have a fiscal impact on local governments; however, the magnitude of the impact is indeterminate.

II. Present Situation:

In recent years, the issue of mental health has taken an even more prominent position in discussions across the country given the potential effects of the pandemic on first responders, healthcare workers, and others.¹ While first responders face the possibility of physical harm from

¹ NCCI, 2021 State of the Line Guide, Mental-Mental Injuries and Workers Compensation, available at [2021 State of the Line Guide \(ncci.com\)](https://www.ncci.com/lineguide) (last visited Jan. 29, 2022).

environmental and other exposures, their work may also negatively affect their mental health.² Pre-existing mental health conditions may be exacerbated and new mental health conditions may arise due to extremely stressful working conditions.³

Future costs for expanded PTSD coverage is a concern for some state and local governments.⁴ While treatment of PTSD is critical, the addition of PTSD coverage for select groups of state and local government employees introduces a new area of care less focused on physical treatment, the traditional type of workers' compensation care, and more focused on mental health treatment.⁵

Post-Traumatic Stress Disorder (PTSD)

The American Psychiatric Association provides diagnostic criteria for mental disorders, including PTSD, in its *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition* (DSM-5). PTSD is a psychiatric disorder that can occur in people who have experienced or witnessed a traumatic event such as a natural disaster, a serious accident, a terrorist act, war, combat, rape, or other violent personal assault.⁶ A diagnosis of PTSD requires exposure to an upsetting traumatic event; however, exposure can be indirect rather than first hand.⁷ Symptoms fall into the following four categories: intrusion, avoidance, alterations in cognition and mood, and alterations in arousal and reactivity.⁸ In order to diagnose a person with PTSD, symptoms must last for more than a month and must cause significant distress or problems in the individual's daily functioning.⁹

Many individuals develop symptoms within three months of the trauma; but symptoms may appear later and often persist for months and sometimes years.¹⁰ Further, PTSD often occurs with other related conditions, such as depression, substance use, memory problems and other physical and mental health problems.¹¹ One study noted that the onset of PTSD symptoms is usually in the first month after the traumatic event; however, in about 15 percent of the cases, there may be a delay of months or years before symptoms appear.¹² At least a third of the individuals who initially develop PTSD remain symptomatic for three years or longer, and are at risk of secondary problems such as substance abuse.¹³

²Johns Hopkins Public Health Awareness Programs, *First Responders, Mental Health Services, and the Law* (Apr. 25, 2013) available at [FirstResp_MHSvcs.pdf \(jhsph.edu\)](#) (last visited Jan. 29, 2022).

³ *Id.*

⁴ Optum, *States continue with PTDS and presumption coverage raising concerns over future impact* (Jun. 24, 2020), available at [PTSD Awareness \(optum.com\)](#) (last visited Jan. 29, 2022).

⁵ *Id.*

⁶ See American Psychiatric Association, *What is Posttraumatic Stress Disorder?* Available at [What Is PTSD? \(psychiatry.org\)](#) (Aug. 2020) (last visited Jan. 29, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Supra* at note 6.

¹¹ *Id.*

¹² National Collaborating Centre for Mental Health (UK). *Post-Traumatic Stress Disorder: The Management of PTSD in Adults and Children in Primary and Secondary Care*. Leicester (UK): Gaskell; (2005 updated 2018) available at [Post-traumatic stress disorder - Post-Traumatic Stress Disorder - NCBI Bookshelf \(nih.gov\)](#) (last visited Jan. 29, 2022).

¹³ *Id.*

Prevalence Rate

The exact prevalence rate for PTSD is difficult to ascertain. About 15 million adults will have PTSD during a given year.¹⁴ About six or seven percent of the population will have PTSD at some point in their lives.¹⁵ About eight percent of females develop PTSD during their lives compared with about four percent of males.¹⁶ The number of veterans with PTSD varies by service era. An estimated 30 percent of Vietnam veterans have had PTSD in their lifetime.¹⁷ In contrast, about 13-14 percent of Gulf War veterans have PTSD in a given year.¹⁸

Although estimates vary across occupations and the general population, some studies indicate that first responders and other professionals who are exposed to potentially traumatic events in their workplace are four to five times more likely to develop PTSD compared to the general population.¹⁹ An estimated 30 percent of first responders develop behavioral health conditions, including depression and PTSD, as compared with 20 percent of the general population.²⁰ A 2015 survey of 4,000 first responders found that 6.6 percent had attempted suicide, which is more than 10 times the rate in the general population.²¹ Military veterans deployed from 2001 to 2007 had a 41 percent higher suicide risk than the general population, according to the Department of Veterans Affairs.²²

Florida Workers' Compensation System

Employers are required to pay compensation or furnish benefits that are required under ch. 440, F.S., if an employee suffers an accidental compensable injury or death arising out of work performed in the course and the scope of the employment.²³ Generally, employers may secure coverage from an authorized carrier, qualify as a self-insurer,²⁴ or purchase coverage from the Workers' Compensation Joint Underwriting Association, the insurer of last resort.²⁵

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.²⁶ An accidental compensable injury must be the major contributing cause of any resulting injury, meaning that the cause must be more than 50 percent responsible for the injury

¹⁴ National Center for PTSD, How Common is PTSD in Adults? Available at [How Common is PTSD in Adults? - PTSD: National Center for PTSD \(va.gov\)](#) (last visited Jan. 29, 2022).

¹⁵Mo Med. 2021 Nov-Dec.; 118(6): 546–551.

¹⁶ *Supra* at note 14.

¹⁷ *Supra* at note 15.

¹⁸ *Id.*

¹⁹ *Psychological Trauma: Theory, Practice, and Policy* 2015, Vol. 7, No. 5, 500-506.

²⁰ SAMHSA, First Responders' Behavioral Health Concerns, Emergency Response, and Trauma (May 2018) available at [First Responders: Behavioral Health Concerns, Emergency Response, and Trauma \(samhsa.gov\)](#) (last visited Jan. 29, 2022). The term, "first responders," includes emergency medical services, firefighters, and police officers.

²¹ FireRescue1, Increasing suicide rates among first responders spark concern, available at [Increasing suicide rates among first responders spark concern \(firerescue1.com\)](#) (last visited Jan. 28, 2022).

²² *Id.*

²³ Section 440.09(1), F.S.

²⁴ Section 440.38, F.S.

²⁵ Section 627.311(5)(a), F.S.

²⁶ "Compensable" means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment. Section 440.13(1)(d), F.S.

as compared to all other causes combined, as demonstrated by medical evidence only.²⁷ An injury or disease caused by a toxic substance is not an injury by accident arising out of employment unless there is clear and convincing evidence establishing that exposure to the specific substance caused the injury or diseases sustained by the employee.²⁸ Injured workers are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prosthetics, for as long as the nature of the injury and process of recovery requires.²⁹

Indemnity benefits only become payable to employees who are disabled for at least eight days due to a compensable workplace injury.³⁰ These benefits are generally payable at 66 2/3 percent of the employee's average weekly wage,³¹ up to the maximum weekly benefit established by law.³² Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, and permanent total disability.

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.³³
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.³⁴
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, then the benefit is paid for five years.³⁵

Section 440.15(3), F.S., provides that permanent impairment benefits are limited for a permanent psychiatric impairment to one percent permanent impairment.

General Compensability for Mental or Nervous Injuries

Section 440.093, F.S., sets forth the conditions under which a mental or nervous injury is compensable. A mental or nervous injury due to only stress, fright, or excitement is not an injury by accident arising out of the employment. Mental or nervous injuries without an accompanying physical injury requiring medical treatment are not compensable. In addition, a physical injury resulting from a mental or nervous injury unaccompanied by a physical trauma requiring medical treatment is not compensable.

²⁷ Section 440.09(1), F.S.

²⁸ Section 440.02(1), F.S.

²⁹ Section 440.13(2)(a), F.S.

³⁰ Section 440.12(1), F.S.

³¹ An injured workers' average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.

³² Section 440.15(1)-(4), F.S.

³³ Section 440.15(2) and (4), F.S. Section 440.15(2)(a), F.S., specify that temporary total disability benefits are payable for 104 weeks; however, the Florida Supreme Court has found this provision unconstitutional and revived the standard of 260 weeks of payable temporary total disability benefits. *Westphal v. City of St. Petersburg*, 194 So.3d 311 (Fla. Jun. 9, 2016). Section 440.15(4)(e), F.S., provides that temporary partial disability benefits; however, the 1st DCA applied the holding in *Westphal* to these benefits finding the limitation unconstitutional and reverted the limitation to the 260 weeks previously allowed. *Jones v. Food Lion, Inc.*, No. 1D15-3488, 2016 Fla. App. LEXIS 16710 (Fla. 1st DCA Nov. 9, 2016).

³⁴ Section 440.15(3), F.S.

³⁵ Section 440.15(1), F.S.

Further, s. 440.093, F.S., provides that mental or nervous injuries occurring as a manifestation of an injury compensable under ch. 440, F.S., must be demonstrated by clear and convincing medical evidence. The compensable physical injury must be the major contributing cause of the mental or nervous injury. The law also limits the duration of temporary benefits for a compensable mental or nervous injury to no more than six months after the employee reaches maximum medical improvement.

PTSD Compensability for First Responders

In 2018, the Legislature revised the standards for determining compensability of PTSD as an occupational disease under workers' compensation coverage for first responders.³⁶ As a result, first responders who meet certain conditions may access indemnity and medical benefits for PTSD without an accompanying physical injury. A "first responder" is a law enforcement officer, as defined in s. 943.10, F.S.,³⁷ a firefighter as defined in s. 633.102, F.S.,³⁸ or an emergency medical technician or paramedic as defined in s. 401.23, F.S.,³⁹ employed by state or local government. Section 112.1815, F.S., authorizes the compensation of indemnity benefits for PTSD, if the first responder:

- Has PTSD that resulted from the course and scope of employment; and
- Is examined and diagnosed with PTSD by an authorized treating psychiatrist of the employer or carrier due to the first responder experiencing one of the following qualifying events relating to minors or others:
 - Seeing for oneself a deceased minor;
 - Witnessing directly the death of a minor;
 - Witnessing directly the injury to a minor who subsequently died prior to, or upon arrival at a hospital emergency department,
 - Participating in the physical treatment of, or manually transporting an injured minor who subsequently died before or upon arrival at a hospital emergency department;
 - Seeing for oneself a decedent who died due to grievous bodily harm of a nature that shocks the conscience;
 - Witnessing directly a death, including suicide, due to grievous bodily harm; or homicide, including murder, mass killings, manslaughter, self-defense, misadventure, and negligence;
 - Witnessing directly an injury that results in death, if the person suffered grievous bodily harm that shocks the conscience; or

³⁶ Ch. 2018-124, Laws of Fla.

³⁷ "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³⁸ "Firefighter" means an individual who holds a current and valid Firefighter Certificate of Compliance or Special Certificate of Compliance issued by the Division of State Fire Marshal within the Department of Financial Services pursuant to s. 633.408, F.S.

³⁹ "Emergency medical technician" means a person who is certified by the Department of Health to perform basic life support pursuant to pt. III of ch. 401, F.S. "Paramedic" means a person who is certified by the Department of Health to perform basic and advanced life support pursuant to pt. III of ch. 401, F.S.

- Participating in the physical treatment of an injury, including attempted suicide, or manually transporting an injured person who suffered grievous bodily harm, if the injured person subsequently died prior to or upon arrival at a hospital emergency department.

Further, the PTSD must be demonstrated by clear and convincing evidence. Medical and indemnity benefits for a first responder's PTSD are due regardless of whether the first responder incurred a physical injury, and the following provisions do not apply:

- Apportionment due to a preexisting PTSD;
- The one percent limitation on permanent psychiatric impairment benefits; or
- Any limitation on temporary benefits under s. 440.093, F.S.

Current law requires an employing agency of a first responder to provide educational training relating to mental health awareness, prevention, mitigation, and treatment.

Recent PTSD Litigation in Florida

In a recent workers' compensation case, the employer/servicing agent appealed the Judge of Compensation Claims (JCC) order awarding the claimant payment of indemnity benefits under s. 112.1815(5), F.S. On appeal, the Court held that the JCC misinterpreted the statute to find that the claimant had filed the notice of claim timely because it was filed within 52 weeks of the date of the manifestation of the claimant's PTSD.⁴⁰ The time for filing a notice of injury or death for compensable PTSD suffered by a first responder is measured from date of the qualifying events or the manifestation of the disorder, whichever is later. Further, the notice must be properly noticed within 52 weeks after the qualifying event. The time requirement for a notice of claim under s. 112.1815(5)(d), F.S., operates as a statute of repose that bars actions by setting a time limit within which an action must be filed as measured from a specified act, after which time cause of action extinguished.⁴¹

III. Effect of Proposed Changes:

Section 1 amends s. 112.1815, F.S., relating to PTSD compensability for first responders, to extend the deadline for a first responder to file a notice of injury with their carrier or employer within 90 days of the date of the qualifying event or the *diagnosis*, rather than manifestation, of the disorder. Further, a claim is barred if the notice is not file within 52 weeks after the qualifying event *or the diagnosis of the disorder, which is later*. This change would essentially eliminate the statute of repose for filing a notice.

Section 2 provides the Legislature finds that the bill fulfills an important state interest.

Section 3 provides that the bill takes effect July 1, 2022.

⁴⁰ *Palm Beach Cty Fire Rescue v. Wilkes*. 309 So.3d 687 (Fla. 1d DCA 2020).

⁴¹ *Id.*

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

Article VII, s. 18(a) of the State Constitution provides, in relevant part,, that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature; . [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....” The provisions of this bill appear to apply to all persons similarly situated (state agencies, state universities, state colleges, and local governments employing law enforcement officers, correctional officers, and correctional probation officers.

The bill does include legislative findings declaring that the act fulfills an important state interest.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

There is not an express constitutional prohibition against the retroactive application of a noncriminal statute, if a law impairs the obligations of a contract or a vested right, the law is invalid. The Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁴² However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, apply retroactively in certain situations.⁴³ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁴⁴ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁴⁵ However, even where the

⁴² U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁴³ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁴⁴ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁴⁵ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁴⁶ Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁴⁷

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁴⁸ The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁴⁹

The bill revises the deadline for filing a notice of injury for a PTSD claim. Currently, the time for such claim expires 52 weeks after the qualifying event. The bill provides that the time for notice of injury is measured from one of the qualifying events or the manifestation of the disorder, whichever is later. A claim under s. 112.1815, F.S., must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later. This would appear to be a substantive change.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will provide additional time for a first responder to file a notice of injury.

Private employers who employ first responders and secure workers’ compensation coverage through a carrier may experience an increase in their respective premiums due to the increase in workers’ compensation costs for first responders.

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline and implementation of the new standard.

C. Government Sector Impact:

The amount of increase in the cost of workers’ compensation coverage on local government is indeterminate. Some local governments self-insure and others secure coverage through carriers. It is unclear if fewer carriers will write this coverage because of the impact of the bill.

⁴⁶ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁴⁷ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

⁴⁸ U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁴⁹ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); *see, e.g., Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction’s expiration date both impaired contracts and constituted a taking of private property without due process).

Implementation of the bill may increase litigation costs due to the elimination of the current notice of injury deadline.

The bill will result in an increase in workers' compensation costs for the state Risk Management Trust Fund, which administers claims for state agencies and universities.⁵⁰

National Council on Compensation Insurance Preliminary Cost Impact of SB 1066

The National Council on Compensation Insurance (NCCI) estimates that, if enacted, SB 1066 would place upward pressure on workers compensation (WC) system costs in Florida. The magnitude of such an increase is unknown but could be material on the occupational classes affected.⁵¹ The first responder classifications represent approximately 2 percent of losses⁵² in Florida. If enacted, any potential cost impact would be realized through future loss experience, and reflected in subsequent NCCI rate filings in Florida, as appropriate.

The NCCI notes that in a recent fiscal note related to another bill, SB 664, the Florida Division of Workers' Compensation (DWC) of the Department of Financial Services indicated that, since the enactment of the 2018 first responder legislation, there have been 50 WC claims brought by first responders with PTSD injuries and no accompanying physical injury. To date, the total amount of WC benefits paid for these claims is over \$2.1 million, which translates to an average cost per claim of more than \$42,000. The proposed lengthening of time proposed in SB 1066 for notice of a claim may result in additional PTSD injuries receiving WC benefits that would not have otherwise met the notice requirements. While the number of such instances is unknown, data from the Florida DWC highlights that such claims can be material in cost.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 112.1815 of the Florida Statutes.

⁵⁰ Department of Financial Services, 2022 Legislative Analysis of SB 1066 (Dec. 12, 2021).

⁵¹ NCCI, *Preliminary Cost Impact Analysis of SB 1066* (Jan. 31, 2022) (on file with Senate Banking and Insurance Committee). The NCCI is the statistical rating organization for workers' compensation carriers in Florida and other states.

⁵² NCCI Workers Compensation Statistical Plan data for Florida policies becoming effective between 1/1/2011 and 12/31/2015. This figure of 2 percent may understate the total population share of Florida first responders, since the organizations employing them are often self-insured and therefore are not required to report data to NCCI.

IX. Additional Information:

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

Banking and Insurance Committee on Feb. 2, 2022;

The CS provides that the Legislature declares that the bill fulfills an important state interest.

- B. **Amendments:**

None.

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



815504

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/03/2022 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

Between lines 26 and 27

insert:

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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

And the title is amended as follows:

Between lines 8 and 9



815504

11 insert:
12 providing a declaration of important state interest;

By Senator Burgess

20-00719B-22

20221066__

1 A bill to be entitled

2 An act relating to workers' compensation benefits for
3 first responders; amending s. 112.1815, F.S.;
4 providing that the time for specified notice in
5 certain cases of compensable posttraumatic stress
6 disorder is measured from the time of the qualifying
7 event or the diagnosis of the disorder, rather than
8 the manifestation of the disorder, whichever is later;
9 providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1. Paragraph (d) of subsection (5) of section
14 112.1815, Florida Statutes, is amended to read:

15 112.1815 Firefighters, paramedics, emergency medical
16 technicians, and law enforcement officers; special provisions
17 for employment-related accidents and injuries.—

18 (5)

19 (d) The time for notice of injury or death in cases of
20 compensable posttraumatic stress disorder under this subsection
21 is the same as in s. 440.151(6) and is measured from one of the
22 qualifying events listed in subparagraph (a)2. or the diagnosis
23 ~~manifestation~~ of the disorder, whichever is later. A claim under
24 this subsection must be properly noticed within 52 weeks after
25 the qualifying event or the diagnosis of the disorder, whichever
26 is later.

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

The Florida Senate

APPEARANCE RECORD

1066

Bill Number or Topic

Amendment Barcode (if applicable)

2/2/2022

Meeting Date

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

Banking & Insurance Committee

Name Matt Puckett

Phone

Address 300 East Brevard Street

Email

Street

Tallahassee FL 32301

City

State

Zip

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

OR

Waive Speaking: [X] In Support [] Against

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[X] 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 Police Benevolent 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)

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

S-001 (08/10/2021)

APPEARANCE RECORD

1066

1066

Feb 2, 2022

Meeting Date

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 Jennifer Cook Pritt

Phone 850-219-3631

Address 2636 Mitcham Drive

Email jpritt@fpca.com

Street

Tallahassee

FL

32308

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:

FL Police Chiefs Association

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

APPEARANCE RECORD

2-2-22

Meeting Date

1066

Bill Number or Topic

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

Banking and Fin

Committee

Amendment Barcode (if applicable)

Name Robert Bage

Phone 850-833-9500

Address 7 Hollywood Blvd NE

Email rbage@fwb.org

Street

Fort Walton Beach, FL 32548

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:

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

2/2/22

Meeting Date

1066

Bill Number or Topic

BANKING & FINANCE

Committee

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

Amendment Barcode (if applicable)

Name CHIEF LAWRENCE REVELL

Phone (850) 556-1353

Address 234 E. 7th Ave

Email LAWRENCE.REVELL@TALGOW.COM

Street

TLH, FL 32303

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:

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

FEB 2, 2022

Meeting Date

SB 1066

Bill Number or Topic

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

BANKING & INSURANCE

Committee

Amendment Barcode (if applicable)

Name

Chief Ray Colburn

Phone

407-468-6622

Address

221 Pinewood Dr

Email

ray@afca.org

Street

Tallahassee FL

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 FIRE CHIEFS ASSOC.

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)

2/2/2022

APPEARANCE RECORD

SB ~~0004~~

1066

Meeting Date

Banking and Insurance

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

Bill Number or Topic

Committee

Wayne "Bernie" Bernoska

Amendment Barcode (if applicable)

321-231-9116

Name

Phone

Address

343 Madison St.

Email

bernie@fpfp.org

Street

Tallahassee

FL

32301

City

State

Zip

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

S-001 (08/10/2021)



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: December 17, 2021

I respectfully request that **Senate Bill #1066**, relating to Workers' Compensation Benefits for First Responders, be placed on the:

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

A handwritten signature in blue ink that reads "Danny".

Senator Danny Burgess
Florida Senate, District 20

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/CS/SB 1140

INTRODUCER: Banking and Insurance Committee; Regulated Industries Committee and Senator Perry

SUBJECT: Alarm Systems

DATE: February 3, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|-----------|---------------|
| 1. | <u>Kraemer</u> | <u>Imhof</u> | <u>RI</u> | <u>Fav/CS</u> |
| 2. | <u>Arnold</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>RC</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1140 reduces the initial training and continuing education requirements for fire alarm system agents with certain specialized certifications or training relating to fire alarm systems. Eligible agents need only meet a requirement for two hours of training in false alarms prevention required by s. 489.5185(1)(b), F.S.

The bill amends the definition of a low-voltage alarm system project to include video cameras and closed-circuit television (CCTV) systems used to signal or detect a burglary, fire, robbery, or medical emergency. Such systems use a closed circuit for the signal rather than the typical open transmission used in broadcast television.

The bill establishes an expedited permitting process for fire alarm system alterations, requiring the issuance, in person or electronically, of permits in specified circumstances.

The bill is effective July 1, 2022.

II. Present Situation:

Licensed Alarm System Contractors

Part II of ch. 489, F.S., dealing with electrical and alarm system contracting, sets forth requirements for qualified persons to be licensed if they have sufficient technical expertise in the

applicable trade, and have been tested on technical and business matters.¹ The Electrical Contractors' Licensing Board (ECLB) within the Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.²

An electrical contractor is a person whose business includes the electrical trade field and who has the experience, knowledge, and skill to install, repair, alter, add to, or design, in compliance with law, electrical wiring, fixtures, and appliances, and any related part, which generates, transmits, or uses electrical energy, in compliance with applicable plans, specifications, codes, laws, and regulations.³ The term "electrical contractor" also includes any person, firm, or corporation that engages in the business of electrical contracting under an expressed or implied contract or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁴

An alarm system is any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency.⁵ Licensure of electrical and alarm systems contractors is required, and applicants must have sufficient technical experience and be tested on technical and business matters.

An alarm system contractor is a person whose business includes the execution of contracts requiring the ability, experience, science, knowledge, and skill to conduct all alarm services for compensation, for all types of alarm systems for all purposes.⁶ The term "alarm system contractor" also includes any person, firm, or corporation that engages in the business of alarm contracting under an expressed or implied contract, or that undertakes, offers to undertake, or submits a bid to engage in the business of alarm contracting.⁷

An alarm system contractor whose business includes all types of alarm systems for all purposes is designated as an "alarm system contractor I, including fire alarm systems;" the practice area of an "alarm system contractor II" is identical except that it does not include fire alarm systems.⁸

The terms "registered alarm system contractor," and "registered electrical contractor" mean those contractors who have registered with the DBPR and met competency requirements for their trade category in the particular jurisdiction for which the registration is issued. Registered contractors may contract only in the jurisdiction for which the registration is issued.⁹

The term "certification" means the act by a contractor obtaining or holding a geographically unlimited certificate of competency from the DBPR.¹⁰ When an alarm system contractor is certified, the contractor possesses a certificate of competency, with some limitations as to the

¹ See s. 489.501, F.S.

² Section 489.507, F.S.

³ See s. 489.505(12), F.S.

⁴ *Id.*

⁵ Section 489.505(1), F.S.

⁶ See s. 489.505(2), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ See ss. 489.505(16), (21), and (22), F.S.

¹⁰ See ss. 489.505(4), (5), and (6), F.S.

scope of work that may be undertaken, without any mandatory licensure requirement.¹¹ The term “certified electrical contractor” means an electrical contractor who possesses a certificate of competency. To be certified a person must be 18 years of age, pass the certification examination, be of good moral character, and meet the eligibility requirements of s. 489.511(1)(b)3., F.S.¹²

Unless an exemption applies, the term “contracting” means engaging in business as a contractor or performing electrical or alarm work for compensation and includes, but is not limited to, performance of the work that may be performed by electrical or alarm system contractors.¹³ The attempted sale of contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure.¹⁴

The term “specialty contractor” means a contractor whose scope of practice is limited to a specific category of electrical or alarm system contracting, such as residential electrical contracting, maintenance of electrical fixtures, and fabrication, erection, installation, and maintenance of electrical advertising signs.¹⁵

Section 489.514, F.S., authorizes the ECLB to grandfather certain applicants for registered contract status, but only if application was made before November 1, 2021; under this provision, which now appears obsolete, the ECLB is required to certify an electrical, electrical specialty, or alarm system contractor to engage in the specified trade category throughout the state, upon:

- Receipt of a completed application;
- Payment of the appropriate fee;¹⁶ and
- Evidence that he or she qualifies for the certification in a trade category based on:
 - Having a valid registered local license;
 - Passing an approved written examination;
 - Having a minimum of five years’ contracting experience in the applicable trade category (with an active license and excluding probationary periods);

¹¹ See s. 489.505(7), F.S., which describes the limitations on the scope of a certificate of competency as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks. RMS is an acronym for “root mean square,” a statistical term defined as the square root of mean square, or effective voltage. See <http://www.learningaboutelectronics.com/Articles/RMS-voltage-and-current-explained.php#:~:text=RMS%20Voltage%20and%20Current-%20Explained.%20RMS,%20or%20root,power%20dissipation,%20in%20circuit,%20as%20this%20AC%20voltage.> (last visited January 27, 2022).

¹² Section 489.511(1)(b)3., F.S., provides experience requirements for certification.

¹³ See s. 489.505(9), F.S.; *see also*, ss. 489.505(2) and (12), F.S., for the various services that may be performed, and ss. 489.503(1) through (24), F.S., for the persons and types of work that are exempted from the term “contracting.”

¹⁴ See s. 489.505(9), F.S.

¹⁵ See s. 489.505(19), F.S.

¹⁶ The ECLB has established a \$196 fee for applications for registered contractor certification. See s. 489.109, F.S., and Fla. Admin. Code R. ch. 61G6-8.

- Never having had a contractor's license revoked, and during the last five years, not having had a suspended license or been assessed a fine in excess of \$500; and
- Meeting all required insurance and financial responsibility requirements.¹⁷

Mandatory Disclosure of Contractor Registration or Certification Numbers

Under s. 489.521(7), F.S., each registered or certified contractor must state the appropriate registration or certification number on each building permit application and each issued and recorded building permit. All city and county building departments must require, as a condition for building permit issuance, that the contractor applying for the permit verify his or her registration or certification as an electrical or alarm system contractor in the state.¹⁸

A contractor's registration or certification number must also be stated in each offer of services, business proposal, or advertisement, regardless of medium, used by that contractor; however, the term "advertisement" does not include business stationery or promotional novelties such as balloons, pencils, trinkets, or articles of clothing; this requirement does not apply to a newspaper, magazine, flyer, billboard, phone book, Internet, or broadcast advertisement for alarm system contracting as long as the contractor maintains a website that includes the number and the advertisement directs consumers to the website.¹⁹

The ECLB must assess a fine of not less than \$100 or issue a citation to any contractor who fails to include that contractor's certification or registration number when submitting an advertisement for publication, broadcast, or printing.²⁰ In addition, a person who claims in any advertisement to be a certified or registered contractor, but who does not hold a valid state certification or registration, commits a misdemeanor of the second degree.²¹

Fire Alarm Systems Agents; Licensing; Continuing Education Requirements

Section 489.505(28), F.S., defines "fire alarm system agent" as a person:

- Who is employed by a licensed fire alarm contractor or certified unlimited electrical contractor;
- Who is performing duties that are part of fire alarm system contracting requiring certification; and
- Whose specific duties include any of the following: altering, installing, maintaining, moving, repairing, replacing, servicing, selling, or monitoring a fire alarm system for compensation.

The provisions of s. 489.5185, F.S., include the requirements for fire alarm system agents, who may not be employed unless the person is at least 18 years of age, provides proof of a minimum of 14 hours of initial training, has not been convicted of a crime within the last three years

¹⁷ See s. 489.515(1)(b), F.S., which provides that an applicant must submit satisfactory evidence of workers' compensation insurance or an acceptable exemption issued by the DBPR, public liability and property damage insurance in amounts determined by the ECLB, and evidence of financial responsibility, credit, and business reputation of either the contractor or the business sought to be qualified for certification.

¹⁸ See s. 553.521(7)(a), F.S.

¹⁹ See s. 553.521(7)(b), F.S.

²⁰ *Id.*

²¹ As to a misdemeanor of the second degree, s. 775.082, F.S., provides such offense is punishable by a term of imprisonment not to exceed 60 days, and s. 775.083, F.S., provides such offense is punishable by a fine not to exceed \$500.

(related to the business of fire alarms), has a background check, and has not been convicted of a crime for controlled substances within the last three years.

The initial training for a fire alarm system agent must include basic fire alarm system technology in addition to related training in National Fire Protection Association (NFPA) codes and standards and access control training, with at least 2 hours of training in the prevention of false alarms.

A certified electrical contractor, a certified fire alarm system contractor, a registered fire alarm system contractor, a journeyman electrician licensed by any local jurisdiction, or an alarm technician licensed by a local jurisdiction that requires an examination and experience or training as licensure qualifications, is not required to complete the training required for fire alarm system agents, and a registered electrical contractor is not required to complete that training, provided he or she is only doing electrical work up to the alarm panel.²²

Section 489.5185(2)(c), F.S., provides that a nonsupervising employee working as a helper or apprentice under the direct, onsite, continuous supervision of a certified or registered electrical contractor, a certified or registered fire alarm system contractor, a journeyman electrician licensed by any local jurisdiction, an alarm technician licensed by a local jurisdiction that requires an examination and experience or training as licensure qualifications, or a qualified fire alarm system agent, is not required to complete any fire alarm system training and is not required to be 18 years of age or older. Persons who perform only monitoring²³ are not required to complete the training required for fire alarm system agents.

Each fire alarm system agent must receive six hours of continuing education on fire alarm system installation and repair and false alarm prevention every two years, from a board-approved sponsor of training and through a board-approved training course.²⁴ Failure to comply with any of the provisions of s. 489.5185, F.S., is grounds for disciplinary action against the contractor as set forth in s. 489.533, F.S.²⁵

Alarm system contractors may also hold certificates of competency from the DBPR, which are geographically unlimited.²⁶ Holders of those certificates are certified alarm system contractors, and the scope of certification is limited to specific alarm circuits and equipment.²⁷ There is no mandatory licensure requirement created by the availability of certification.²⁸

²² See Section 489.5185(2), F.S.

²³ See *supra* note 15.

²⁴ See Section 489.5185(5), F.S.

²⁵ See Section 489.5185(6), F.S.

²⁶ Sections 489.505(4) and 489.505(5), F.S.,

²⁷ Section 489.505(7), F.S., describes the limitations as those circuits originating in alarm control panels, equipment governed by the Articles 725, 760, 770, 800, and 810 of the National Electrical Code, Current Edition, and National Fire Protection Association Standard 72, Current Edition, as well as the installation, repair, fabrication, erection, alteration, addition, or design of electrical wiring, fixtures, appliances, thermostats, apparatus, raceways, and conduit, or any part thereof not to exceed 98 volts (RMS), when those items are for the purpose of transmitting data or proprietary video (satellite systems that are not part of a community antenna television or radio distribution system) or providing central vacuum capability or electric locks.

²⁸ *Id.*

National Institute of Certification in Engineering Technologies

The National Institute of Certification in Engineering Technologies (NICET), established in 1961, certifies engineering technicians and technologists, and more than 148,000 technicians and technologists have received NICET certification since then.²⁹ Certification programs include those for:³⁰

- Fire Alarm Systems;
- Inspection and Testing of Fire Alarm Systems;
- Inspection and Testing of Water-based Systems;
- Special Hazards Systems; and
- Water-based Systems Layout.

Certification requirements exist for four levels of Fire Alarm System (FAS) certification³¹ and two levels of Inspection and Testing of Fire Alarm Systems (I&TFAS) certification.³²

For a Level II Fire Alarm System certification, a person must:³³

- Pass Level I and Level II exams;
- Meet all Levels I and II performance measures; and
- Have at least two years of fire detection and signaling systems experience, which must include at least 12 months of fire alarm systems experience, including alarm and detection, notification, sprinkler monitoring, and interfaces and controls for agent releasing suppression systems.

For a Level II Inspection and Testing of Fire Alarm Systems certification, a person must:³⁴

- Pass Level I and Level II exam; and
- Meet all Levels I and II performance measures; and
- Have at least 18 months of experience in the inspection and testing of fire alarm and suppression systems.

Recertification is required every three years, by demonstrating continuing professional development.³⁵

²⁹ See NICET, *About Us*, <https://www.nicet.org/about-us/> (last visited January 27, 2022).

³⁰ See NICET, *Certification Programs*, at <https://www.nicet.org/certification-programs/> (last visited January 27, 2022).

³¹ See NICET, *Certification Programs, Fire Alarm Systems*, at <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/fire-alarm-systems/> (last visited January 27, 2022).

³² See NICET, *Certification Programs, FAS Exams and I&TFAS Exam Credits*, at <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/inspection-and-testing-of-fire-alarm-systems/fas-exams-and-i-tfas-exam-credits/> (last visited January 27, 2022).

³³ See NICET, *Certification Requirements*, <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/fire-alarm-systems/certification-requirements/> (last visited on January 27, 2022).

³⁴ See NICET, *Certification Requirements*, <https://www.nicet.org/certification-programs/electrical-and-mechanical-systems/inspection-and-testing-of-fire-alarm-systems/certification-requirements/> (last visited January 27, 2022).

³⁵ See NICET, *Recertify*, <https://www.nicet.org/recertify/> (last visited January 27, 2022).

Electronic Security Association

The Electronic Security Association (ESA), established in 1948 to represent the electronic security and life safety industry, asserts it is the largest trade association in the United States, with more than 500,000 industry professionals employed by ESA member companies.³⁶

Certification programs include:³⁷

- Certified Alarm Technician Level I;
- Certified Fire Alarm Technician Level II Fire;
- Certified Fire Alarm Designer Level III Fire; and
- Certified Residential Fire Alarm Inspector.

For certification as a Fire Alarm Technician Level II Fire, a person must:³⁸

- Be certified as an ESA Alarm Technician Level I or higher;
- Have 24 months of work history or have been certified as an ESA Alarm Technician Level I for 24 months or more; and
- Have completed the following two courses within the previous five years:
 - Fire Alarm Installation Methods course and pass the examination.
 - Life Safety Code course or International Building Code course and passed the associated examination.

For certification as a Fire Alarm Designer Technician Level III, a person must:³⁹

- Be certified as an ESA Fire Alarm Technician Level II;
- Have 60 months of work history in the field of fire alarms installation, inspection, testing, commissioning, project managing, plan preparation, or supervision;
- Have a personal recommendation from a professional with the professionalism, ethical standards, and technical abilities of the applicant (e.g., from licensed engineers, registered land surveyors, certified fire engineers/designers); and
- Have completed the Fire Alarm Designer course and passed the associated examination.

Recertification is required every two years, by completing 24 hours of continuing education approved by the ESA and other continuing education that may qualify.⁴⁰

The Florida Building Code

The Florida Building Code (building code) is the unified building code applicable to the design, construction, erection, alteration, modification, repair, or demolition of public or private

³⁶ See ESA, *About Us*, <https://esaweb.org/about/> (last visited January 27, 2022).

³⁷ See ESA, *ESA Certifications for Security, Sales and Fire*, <https://esaweb.org/training/certifications/certification-types/> (last visited January 27, 2022).

³⁸ ESA, *ESA Certified Fire Alarm Technician Level 2 (CFAT)*, <https://esaweb.org/training/certifications/cfat/> (last visited January 27, 2022).

³⁹ ESA, *Certified Fire Alarm Designer (CFAD) Level III Fire Certification*, <https://esaweb.org/training/certifications/cfad/> (last visited January 27, 2022).

⁴⁰ ESA, *How to Renew Your ESA Certification*, <https://esaweb.org/training/certification-renewal/#qualifying> (last visited January 27, 2022).

buildings, structures, and facilities in the state.⁴¹ The building code must be applied, administered, and enforced uniformly and consistently throughout the state.⁴² The building code is adopted, updated, interpreted, and maintained by the Florida Building Commission (commission), which is housed within the DBPR, but is enforced by authorized state and local government agencies.⁴³ The commission adopts an updated building code every three years through review of codes published by the International Code Council and the National Fire Protection Association.⁴⁴

Violations of the building code are enforced by the appropriate enforcing agency or local government pursuant to s. 553.79, F.S., relating to required permits, and s. 553.80, F.S., relating to enforcement of the building code. Each local government and each legally constituted enforcement district with statutory authority must regulate building construction and, if authorized in legislation, each state agency, must enforce the building code by seeking injunctive relief from any court to address noncompliance with the building code.⁴⁵

Fire Alarm Permit Applications to Local Enforcement Agencies

Under Section 553.7921, F.S., a uniform fire alarm permit application with specified supporting documentation must be filed before installing or replacing a fire alarm, or repairing an existing alarm system, if the local enforcement authority requires a plan review before conducting these activities. The uniform fire alarm permit application must be accompanied by specified supporting documentation, must be signed by the owner or an authorized representative, and the contractor or the contractor's agent, and may be filed electronically or by facsimile.⁴⁶

Low-voltage Alarm System Projects

Section 553.793, F.S., relating to streamlined low-voltage alarm system installation permitting, provides that a "low-voltage alarm system project" is a project related to the installation, maintenance, inspection, replacement, or service of a new or existing alarm system that is hardwired and operating at low voltage, or a new or existing low-voltage electric fence. The term includes ancillary attached equipment, including but not limited to, home-automation equipment, thermostats, closed-circuit television systems, access controls, battery recharging devices, and video cameras. If the installation or replacement of a fire alarm requires a plan review by the local building code enforcement agency, streamlined permitting may not be used.⁴⁷

⁴¹ See s. 553.72, F.S. Part IV of ch. 553, F.S., cited as the "Florida Building Codes Act." See s. 553.70, F.S. The Florida Building Code, 7th Edition, is available at https://www.floridabuilding.org/bc/bc_default.aspx (last visited January 27, 2022).

⁴² See s. 553.72(1), F.S.

⁴³ See s. 553.72(3), F.S.

⁴⁴ See s. 553.73(7), F.S., which requires review of the International Building Code, the International Fuel Gas Code, the International Existing Building Code, the International Mechanical Code, the International Plumbing Code, and the International Residential Code, all of which are copyrighted and published by the International Code Council, and the National Electrical Code, which is copyrighted and published by the National Fire Protection Association.

⁴⁵ See s. 553.83, F.S.

⁴⁶ See s. 553.7921, F.S., which sets forth the Uniform Fire Alarm Permit Application.

⁴⁷ See s. 553.793(4), F.S.

Under streamlined permitting, licensed electrical and alarm system contractors are authorized to purchase uniform basic permit labels for low-voltage alarm system projects⁴⁸ from local governments by submitting identification of the contractor and proof of the contractor's registration or certification as a licensed contractor, without any other project information about a project.⁴⁹

Contractors may purchase labels in bulk for one or more unspecified current or future projects, although the labels are valid only for one year and may be used only in the jurisdiction of the local government issuing the labels.⁵⁰ Local governments may not charge more than \$40 per permit label per project per unit, and may not require any other charge associated with the installation or replacement of a new or existing hardwired, low-voltage alarm system project.

Licensed electrical and alarm system contractors are not required to notify a local government before working on a low-voltage alarm system project, but first must post an unused permit label in a conspicuous place on the premises.⁵¹ Within 14 days after completion of the project, the contractor must submit a Uniform Notice of a Low Voltage Alarm System Project to the local government; a local enforcement government may take disciplinary action against a contractor who fails to timely submit the required notice.⁵²

A local enforcement agency may coordinate directly with the property owner or customer for inspection of a low-voltage alarm system project, and if a project fails an inspection, the contractor must take corrective action in order to pass the inspection.⁵³

Another permit label is not required for any subsequent maintenance, inspection, or service of a low-voltage alarm system project that was initially permitted using the streamlined permitting process.⁵⁴

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 489.5185, F.S., relating to firm alarm system agents, to reduce the number of required initial training hours and continuing education hours required for fire alarm system agents holding certain certifications. The requirement of 14 hours of initial training hours is reduced to two hours of board-approved training in the prevention of false alarms, if a person holds a current:

- National Institute of Certification in Engineering Technologies (NICET) Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems;
- Electronic Security Association (ESA) Certified Fire Alarm Technician certification; or
- ESA Certified Fire Alarm Designer certification.

⁴⁸ Section 553.793(2), F.S., provides that permits are not required to install, maintain, inspect, replace, or service a wire alarm system or its components or attachments.

⁴⁹ See s. 553.793(5), F.S.

⁵⁰ See ss. 553.80 and 553.83, F.S.

⁵¹ See ss. 553.793(6) and (7), F.S.

⁵² See s. 553.793(7), F.S.

⁵³ See s. 553.793(9), F.S.

⁵⁴ See s. 553.791(11), F.S.

Under the bill, the requirement of six hours of board-approved continuing education every two years on fire alarm system installation and repair and false alarm prevention is also reduced for persons holding the above certifications, with such persons required to complete only two hours of continuing education prevention of false alarms every two years.

Section 2 of the bill provides that a low-voltage alarm system project includes video cameras and closed-circuit television (CCTV) systems used to signal or detect a burglary, fire, robbery, or medical emergency. A CCTV system (i.e., video surveillance) transmits a signal to another location, but unlike broadcast television, the signal is sent via a closed circuit and not openly transmitted.⁵⁵ Currently, the definition of low-voltage alarm system project in s. 553.793(1)(b), F.S., includes video cameras and CCTV systems only as ancillary components or equipment attached to a low-voltage alarm system project.

Section 3 of the bill creates s. 553.7932, F.S., to establish a simplified permitting process for certain limited fire alarm system alterations. The bill provides:

- The term “contractor” means a person qualified to engage in electrical or alarm system contracting pursuant to a certificate or registration issued by the DBPR under part II of ch. 489, F.S.
- The term “fire alarm system project” means a fire alarm system alteration of a total of 20 or fewer initiating devices and notification devices, or the installation or replacement of a fire communicator connected to an existing fire alarm control panel in an existing commercial, residential, apartment, cooperative, or cooperative building.
- A local enforcement agency:
 - May require a contractor to submit a completed application and payment, as a condition of obtaining a permit for an eligible fire alarm system project;
 - May not require a contractor to submit plans or specifications as a condition of obtaining a permit for an eligible fire alarm system project;
 - Must issue a permit for an eligible fire alarm system project in person or electronically;
 - Must require at least one inspection of an eligible fire alarm system project to ensure compliance with applicable codes and standards; if an eligible fire alarm system project fails an inspection, the contractor must take corrective action as necessary to pass inspection.
- A contractor must keep a copy of the plans and specifications at a fire alarm system project worksite and make them available to the inspector at each inspection.

The bill is effective July 1, 2022.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁵⁵ See https://en.wikipedia.org/wiki/Closed-circuit_television (last visited January 27, 2022). The term “closed circuit television” is not defined in Florida law.

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:

According to the Department of Business and Professional Regulation (DBPR), the expenditures will be reduced for initial training and continuing education by applicants and licensees (with the required certifications) who seek or renew a fire alarm system agent license.⁵⁶ Further, the expedited permitting process for fire alarm system alterations may reduce the time and cost involved for such permits.⁵⁷

C. Government Sector Impact:

According to the DBPR, local governments may experience increased expenditures to administer the required expedited permitting process created by the bill, but the amount cannot be determined at this time.⁵⁸

The DBPR also notes that the Florida Building Commission must initiate rulemaking for:

- The regulation of closed circuit television systems used to signal or detect a burglary, fire, robbery, or medical emergency as low-voltage alarm systems projects; and
- The new expedited permitting process for eligible fire alarm system alarms.⁵⁹

VI. Technical Deficiencies:

None.

⁵⁶ See Department of Business and Professional Regulation, *2022 Agency Legislative Bill Analysis for HB 669 (identical to SB 1144)* at 4 (Nov. 29, 2021) (on file with the Senate Committee on Regulated Industries).

⁵⁷ *Id.*

⁵⁸ *Id.* at 3.

⁵⁹ *Id.* at 6.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.5185 and 553.793.

This bill creates section 553.7932 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 Committee on February 2, 2022:

The committee substitute adds “video cameras” to the definition of “low-voltage alarm system project” in s. 553.793, F.S.

CS by Regulated Industries Committee on January 18, 2022:

The committee substitute:

- Clarifies that the term “low-voltage alarm system project” includes ancillary components or equipment attached to a low-voltage alarm system or low-voltage electric fence.
- Significantly revises the simplified permitting process for eligible fire alarm system projects, to include:
 - Expanding the fire alarm system projects eligible for simplified permitting to include certain existing residential and cooperative buildings;
 - Providing that a local enforcement agency:
 1. May require a contractor to submit a completed application and payment, as a condition of obtaining a permit for an eligible fire alarm system project;
 2. May not require a contractor to submit plans or specifications as a condition of obtaining a permit for an eligible fire alarm system project;
 3. Must issue a permit for an eligible fire alarm system project in person or electronically;
 4. Must require at least one inspection of an eligible fire alarm system project to ensure compliance with applicable codes and standards;
- Requires a contractor, if an eligible fire alarm system project fails an inspection, to take corrective action as necessary to pass inspection; and
- Requires a contractor to keep a copy of the plans and specifications at the project worksite and make them available to the inspector at each inspection.

B. Amendments:

None.

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



126314

LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: RCS | . | |
| 02/02/2022 | . | |
| | . | |
| | . | |
| | . | |

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

Senate Amendment (with title amendment)

1
2
3 Delete line 65
4 and insert:
5 defined in s. 489.505, including video cameras and closed-
6 circuit television

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

9 And the title is amended as follows:

10 Delete line 11



126314

11 and insert:
12 project" to include certain video cameras and closed-
13 circuit television systems; creating s. 553.7932,
14 F.S.; defining terms;

By the Committee on Regulated Industries; and Senator Perry

580-02080-22

20221140c1

A bill to be entitled

An act relating to alarm systems; amending s. 489.5185, F.S.; authorizing individuals with certain fire alarm certifications to complete a reduced number of training and continuing education hours for the prevention of false alarms; requiring the training and continuing education sponsors and courses to be approved by the Electrical Contractors' Licensing Board; amending s. 553.793, F.S.; revising the definition of the term "low-voltage alarm system project"; creating s. 553.7932, F.S.; defining terms; authorizing a local enforcement agency to require a contractor to submit certain documentation and payment for obtaining a permit for a fire alarm system project; prohibiting a local enforcement agency from requiring plans and specifications as a condition for obtaining a permit for a fire alarm system project; requiring a local enforcement agency to issue certain permits in person or electronically; requiring a local enforcement agency to perform at least one inspection for a fire alarm system project; requiring a contractor to keep certain documentation at a worksite for a fire alarm system project and make such documentation available for inspection; providing an effective date.

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

Section 1. Subsection (5) of section 489.5185, Florida

Page 1 of 4

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

580-02080-22

20221140c1

Statutes, is amended, and paragraph (f) is added to subsection (2) of that section, to read:

489.5185 Fire alarm system agents.—

(2)

(f) If a person holds a current National Institute of Certification in Engineering Technologies (NICET) Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems, a current certification as an Electronic Security Association (ESA) Certified Fire Alarm Technician, or a current certification as an ESA Certified Fire Alarm Designer, he or she is required to complete only the 2 hours of training in the prevention of false alarms required by paragraph (1) (b) from a board-approved sponsor of training and through a board-approved training course.

(5) (a) Except as provided in paragraph (b), each fire alarm system agent must receive 6 hours of continuing education on fire alarm system installation and repair and false alarm prevention every 2 years from a board-approved sponsor of training and through a board-approved training course.

(b) A person holding a current NICET Level II certification or higher in Fire Alarm Systems or Inspection and Testing of Fire Alarm Systems, certification as an ESA Certified Fire Alarm Technician, or certification as an ESA Certified Fire Alarm Designer is required to complete only 2 hours of continuing education training in the prevention of false alarms every 2 years from a board-approved sponsor of training and through a board-approved training course.

Section 2. Paragraph (b) of subsection (1) of section 553.793, Florida Statutes, is amended to read:

Page 2 of 4

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

580-02080-22

20221140c1

59 553.793 Streamlined low-voltage alarm system installation
60 permitting.—

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

62 (b) “Low-voltage alarm system project” means a project
63 related to the installation, maintenance, inspection,
64 replacement, or service of a new or existing alarm system, as
65 defined in s. 489.505, including closed-circuit television
66 systems used to signal or detect a burglary, fire, robbery, or
67 medical emergency, that is hardwired and operating at low
68 voltage, as defined in the National Electrical Code Standard 70,
69 Current Edition, or a new or existing low-voltage electric
70 fence. The term also includes, and ancillary components or
71 equipment attached to ~~such~~ a low-voltage alarm system or low-
72 voltage electric fence, including, but not limited to, home-
73 automation equipment, thermostats, closed-circuit television
74 systems, access controls, battery recharging devices, and video
75 cameras.

76 Section 3. Section 553.7932, Florida Statutes, is created
77 to read:

78 553.7932 Simplified permitting process for fire alarm
79 system projects.—

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

81 (a) “Contractor” means a person who is qualified to engage
82 in the business of electrical or alarm system contracting
83 pursuant to a certificate or registration issued by the
84 department under part II of chapter 489.

85 (b) “Fire alarm system project” means a fire alarm system
86 alteration of a total of 20 or fewer initiating devices and
87 notification devices, or the installation or replacement of a

580-02080-22

20221140c1

88 fire communicator connected to an existing fire alarm control
89 panel in an existing commercial, residential, apartment,
90 cooperative, or condominium building.

91 (2) (a) A local enforcement agency may require a contractor,
92 as a condition of obtaining a permit for a fire alarm system
93 project, to submit a completed application and payment.

94 (b) A local enforcement agency may not require a contractor
95 to submit plans or specifications as a condition of obtaining a
96 permit for a fire alarm system project.

97 (3) A local enforcement agency must issue a permit for a
98 fire alarm system project in person or electronically.

99 (4) A local enforcement agency must require at least one
100 inspection of a fire alarm system project to ensure compliance
101 with applicable codes and standards. If a fire alarm system
102 project fails an inspection, the contractor must take corrective
103 action as necessary to pass inspection.

104 (5) A contractor must keep a copy of the plans and
105 specifications at a fire alarm system project worksite and make
106 such plans and specifications available to the inspector at each
107 inspection.

108 Section 4. 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: January 20, 2022

I respectfully request that **CS/Senate Bill #1140**, relating to Alarm Systems, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

2/2/22

Meeting Date

The Florida Senate APPEARANCE RECORD

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

SB 1140

Bill Number or Topic

Banking + Insurance

Committee

Amendment Barcode (if applicable)

Name David Shepp

Phone 863 581-4250

Address P.O. Box 3739

Street

Email shepp@thesoutherngroup.com

Lakeland FL 33802

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 Automatic Fire Alarm 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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2/2/22

Meeting Date

Banking and Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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SB 1140

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Diana Ferguson

Phone

850-681-6788

Address

119 S Monroe Street Suite 202

Email

dferguson@rutledge-ecenia.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:

ADT

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 \(flsenate.gov\)](https://www.flsenate.gov/2020-2022-JointRules.pdf)

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2-2-22

Meeting Date

The Florida Senate APPEARANCE RECORD

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

SB 1140 - Alarms

Bill Number or Topic

Committee

Name

Michael Sudheimer

Phone

850-276-2600

Amendment Barcode (if applicable)

Address

1106 Beachview DR NE

Email

Michaels@wescavelives.com

Street

FWB

City

FL

State

32547

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:

Alarm Association of Florida

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

11/2/22

Meeting Date

1140

Bill Number or Topic

Banking and Insurance

Committee

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

Amendment Barcode (if applicable)

Name Phillip Suder man

Phone

Address

Email

Street

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:

Answers for Prosperity

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 1190

INTRODUCER: Senator Boyd

SUBJECT: Two-way Radio Communication Enhancement Systems

DATE: February 2, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|-----------|------------------|
| 1. | <u>Hackett</u> | <u>Ryon</u> | <u>CA</u> | Favorable |
| 2. | <u>Schrader</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1190 provides that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal strength requirements, but may not be required by local fire authorities in apartment buildings that are 75 feet or less in height.

Local fire authorities set minimum standards for radio signal strength throughout buildings within their jurisdictions in order to ensure consistent fire and rescue communication capabilities.

The bill takes effect July 1, 2022.

II. Present Situation:

Florida Fire Prevention Code

The State Fire Marshal, by rule, adopts the Florida Fire Prevention Code (Florida Fire Code), which contains all firesafety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such firesafety laws and rules.¹ The State Fire Marshal adopts a new edition of the Florida Fire Code every three years.² The Florida Fire Code is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code*, along with the current edition of the *Life Safety Code, NFPA 101*.³ The 7th, and current, edition took effect on December 31, 2020.⁴ State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the Florida Fire Code as the minimum fire

¹ Fla. Admin. Code R. 69A-60.002.

² Section 633.202(1), F.S.

³ Section 633.202(2), F.S.

⁴ Division of State Fire Marshal, *Florida Fire Prevention Code*, available at <https://www.myfloridacfo.com/division/sfm/bfp/floridafirepreventioncodepage.htm> (last visited Jan. 30, 2022).

prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.⁵ The Florida Fire Code applies to every building and structure throughout the state with few exceptions.⁶ Municipalities, counties, and special districts with firesafety responsibilities may supplement the Florida Fire Code with more stringent standards adopted in accordance with s. 633.208, F.S.⁷

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments. All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users. The radio is the lifeline that connects the firefighters to command and outside assistance when in the most desperate of situations.⁸

Modern focus on radio signal strength stems from difficulties experienced by firefighters attempting rescue operations on September 11, 2001, in the World Trade Towers, who found that in certain areas of the building their radio signal degraded, making live communication difficult or impossible.⁹

Two-way radio communication enhancement systems are devices installed after a building is constructed that accept and then amplify radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.¹⁰

⁵ Sections 633.108 and 633.208, F.S.

⁶ Section 633.208, F.S., and Fla. Admin. Code R. 69A-60.002(1).

⁷ Section 633.208(3), F.S., and Fla. Admin. Code R 69A-60.002(2).

⁸ Federal Emergency Management Agency, United States Fire Administration. Voice Radio Communications Guide for the Fire Service (June 2016), p. 1, *available at*

https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf

(last visited Jan. 30, 2022).

⁹ See *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review*, National Fire Protection Association's (NFPA), *available at* <https://www.nfpa.org/-/media/Files/News-and-Research/Fire-statistics-and-reports/Executive-summaries/evacsystemstallbuildingsliteraturereviewexecsum.ashx#:~:text=According%20to%20the%20definition%20of,floor%20of%20the%20highest%20occupiable> (last visited Jan. 30, 2022) and Fire Engineering, *World Trade Center Disaster: Initial Response*, <https://www.fireengineering.com/firefighting/world-trade-center-disaster-initial-response/#gref> (Sep 1, 2002) (last visited Jan 30, 2022).

¹⁰ See *High-Rise Public Safety System Integrators*, Treasure Island Fire Department, *available at*

https://www.mytreasureisland.org/residents/departments/fire_dept/local_high-rise_public_safety_system_integrators.php

(last visited Jan. 30, 2022); *Information Bulletin: Two-Way Radio Communication Enhancement System Requirements*, East Lake Tarpon Special Fire Control District, *available at*

<https://www.elfr.org/files/e2eae3cb2/Bulletin+East+Lake+Two+Way+Communications.pdf> (last visited Jan. 30, 2022).

Florida Fire Code Minimum Radio Signal Strength

The Florida Fire Code provides that all new and existing buildings must maintain minimum radio signal strength at a level determined by the authority having jurisdiction (local fire authorities).¹¹ Where required by a local fire authority, two-way radio communication enhancement systems must comply with federal standards for installation, maintenance, and use of emergency services communications systems.¹² Additionally, if a two-way radio communication enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.¹³

Minimum Radio Signal Strength for High-rise Buildings

Section 633.202(18), F.S., enacted in 2016¹⁴ and recently amended in 2021,¹⁵ provides that local fire authorities must determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. A high-rise building is a building greater than 75 feet in height where the building height is measured from the lowest level of fire department vehicle access to the floor of the highest story that can be occupied.¹⁶ Existing high-rise buildings are not required to comply with minimum radio strength requirements until January 1, 2025. However, by January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

A 2018 declaratory statement from the Department of Financial Services clarified that the compliance timeframes provided in s. 633.202(18), F.S., apply only to high-rise buildings and do not apply to buildings less than 75 feet in height.¹⁷ Thus, compliance with minimum radio signal strength requirements for non-high-rise buildings is controlled by s. 11.10 of the Florida Fire Code, which provides no grace periods or acceptable timeframes for compliance.

III. Effect of Proposed Changes:

Section 1 amends s. 633.202(18), F.S., to provide that two-way radio communication enhancement systems may be used to comply with a local authority's minimum radio signal

¹¹ Florida Fire Prevention Code (7th ed.) s. 11.10.1. The "authority having jurisdiction" is typically the designated head fire and rescue officer of the county, municipality, or special district with fire safety responsibilities over an area.

¹² Florida Fire Prevention Code (7th ed.) s. 11.10.2.

¹³ Florida Fire Prevention Code (7th ed.) s. 11.10.3.

¹⁴ Ch. 2016-129, s. 27, L.O.F. At the time of its enactment, the subsection was s. 633.202(17), F.S.

¹⁵ Ch. 2021-113, s. 25, L.O.F.

¹⁶ NFPA 101, Life Safety Code, 2021 edition - Ch. 3.3.37.7.

¹⁷ Department of Financial Services Declaratory Statement, *In the Matter of Charles B. Parks, Chief Florida Fire Code Official of Broward County*, (April 18, 2018), available at https://www.doah.state.fl.us/FLAID/DFS/2018/DFS_217787-17-DS_12042019_013047.pdf (last visited Jan. 30, 2022).

strength requirements, but may not be required by local fire authorities for apartment buildings that are 75 feet or less in height.

Section 2 provides that the bill takes effect 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Apartment building owners may see positive impact from being able to utilize less costly improvement options to meet radio strength standards in certain buildings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 633.202 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.

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

By Senator Boyd

21-01019-22

20221190__

A bill to be entitled

An act relating to two-way radio communication enhancement systems; amending s. 633.202, F.S.; authorizing the use of two-way radio communication enhancement systems to comply with certain radio signal strength requirements in the Florida Fire Prevention Code; specifying that such systems or equivalent systems are not required in certain apartment buildings; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new high-rise and existing high-rise buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings that are 75 feet or less in height. Existing buildings are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems ~~system enhancement communications~~ as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio

Page 1 of 2

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

21-01019-22

20221190__

strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing apartment buildings are not required to comply until January 1, 2025. However, existing apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

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

APPEARANCE RECORD

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

FEB 2, 2022

Meeting Date

SB 1190

Bill Number or Topic

BANKING & INSURANCE

Committee

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Phone 407-468-6622

Address 221 Pinewood Dr.

Street

Email ray@ffca.org

TALLAHASSEE FL

City

State

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] 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 Fire Chiefs Assoc.

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

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2/2/22

Meeting Date

1190

Bill Number or Topic

BANKING / INS

Committee

Amendment Barcode (if applicable)

Name

JANE PASQUALONE - FL FIRE MARSHAL'S ASSOC.

Phone

770 932 1555

Address

PO Box 325

Email

INFO@FFMIA.ORG

Street

North Sound

FL

33475

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:

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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/2/22

Meeting Date

1190

Bill Number or Topic

Banking + Ins

Committee

Amendment Barcode (if applicable)

Name Richard Pinsky

Phone

Address 201 E. Park Av.

Email

Street

Tallahassee

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:

Emergency Communications Industry of Florida

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

1190

Bill Number or Topic

2/2/22

Meeting Date

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

Banking + Ins

Committee

Amendment Barcode (if applicable)

Name Will Rogers

Phone

Address 2248 Morrison Blvd Ste H

Email

Street

Mindon

City

NC

State

89423

Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[X] 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:

American Fire Work Inc

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

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

1190

Bill Number or Topic

2/2/22
Meeting Date

Business & Finance
Committee

Amendment Barcode (if applicable)

Name Rob Olson Phone _____

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

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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 1246

INTRODUCER: Senator Gruters

SUBJECT: Benchmark Replacements for London Interbank Offered Rate

DATE: February 2, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Arnold</u> | <u>Knudson</u> | <u>BI</u> | Favorable |
| 2. | _____ | _____ | <u>CM</u> | _____ |
| 3. | _____ | _____ | <u>RC</u> | _____ |

I. Summary:

SB 1246 provides for a transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for the London Interbank Offered Rate (LIBOR) for contracts and instruments lacking transition provisions. The bill provides for conforming changes to be made to the contract or instrument, voids fallback provisions based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill.

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change.

The bill provides a statement of overpowering public necessity for the bill and a statement of legislative finding that there are no alternative means to meet this public necessity.

Finally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

The bill takes effect upon becoming a law.

II. Present Situation:

Background on LIBOR

LIBOR is the reference rate at which large banks indicate that they can borrow short-term wholesale funds from one another on an unsecured basis in the interbank market.¹ The origins of LIBOR can be traced back to a loan transaction in 1969 in which multiple banks were joint lenders (i.e., a syndicated loan) on a large loan of \$80 million.² The interest rate of the loan was based on the weighted average of the funding costs for each of the participating banks plus a spread for profit.³ The rate was recalculated periodically; hence, the rate was variable and reflected market conditions.⁴ The idea caught on, and eventually nearly all syndicated loans used LIBOR to calculate the interest charged.⁵ Soon the rate was adopted by bankers outside the loan market who were looking for an elegant proxy for bank borrowing costs that was simple, fair, and appeared to be independent.⁶

In addition to providing loans at rates tied to LIBOR, banks whose submissions determined the fixing of LIBOR had also begun to borrow heavily using LIBOR-based contracts by the mid-1980s, creating an incentive to underreport funding costs.⁷ As a result, the British Bankers' Association (BBA) took control of the rate in 1986 to formalize the data collection and governance process.⁸ In that year, LIBOR settings were calculated for the U.S. dollar, the British pound, and the Japanese yen.⁹ Over time, the inclusion of additional currencies and integration of existing currencies into the euro left the BBA with oversight of settings for over ten currencies as of 2012.¹⁰ Fifteen maturity terms were reported for each currency, ranging from overnight to a 1 year term.¹¹

Today, LIBOR is calculated daily by the Intercontinental Exchange (ICE) Benchmark Administration.¹² Eighteen international banks submit rates that each bank believes it would pay, not what it actually pays, if it had to borrow money from another bank on the interbank lending market in London.¹³ The four highest and four lowest submissions are then removed in order to calculate LIBOR.¹⁴ Prior to the end of 2021, the ICE Benchmark Administration calculated the

¹ David Hou & David Skeie, *LIBOR: Origins, Economics, Crisis, Scandal, and Reform*, Federal Reserve Bank of New York Staff Reports (March 2014), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr667.pdf (last visited January 28, 2022).

² *Id.*

³ Gavin Finch and Liam Vaughan, *The Man Who Invented the World's Most Important Number* (November 29, 2016), <https://www.bloomberg.com/news/features/2016-11-29/the-man-who-invented-libor-iw3fpmed> (last visited January 28, 2022).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ David Hou & David Skeie, *supra* note 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Miranda Marquit and Benjamin Curry, *What Is Libor And Why Is It Being Abandoned?*, Forbes (December 16, 2020), <https://www.forbes.com/advisor/investing/what-is-libor/> (last visited January 28, 2022).

¹³ *Id.*

¹⁴ *Id.*

rate in five currencies (UK Pound Sterling, the Swiss Franc, the Euro, Japanese Yen, and the U.S. Dollar), and LIBOR was produced in seven maturity terms or “tenors” (overnight/spot next, 1-week, 1-month, 2-month, 3-month, 6-month, and 12-month).¹⁵

LIBOR has come under increasing scrutiny from regulators and financial markets alike following the 2008 financial crisis as well as documented patterns of manipulation by participating banks.¹⁶ Others have noted the declining correlations between LIBOR and actual bank funding costs.¹⁷ In 2017, the entity that regulates LIBOR, the Financial Conduct Authority (FCA) of the United Kingdom, stated that LIBOR would cease after the end of 2021.¹⁸ However, most U.S. Dollar LIBOR tenors have been extended to the end of June 2023 to enable time for the market to transition away from LIBOR.¹⁹ The 1-week and 2-month U.S. Dollar LIBOR ended at the end of 2021.²⁰ The FCA has recommended transitions to alternative rates before these dates.²¹

Adoption of the SOFR

In 2014, the Federal Reserve Board and the Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC) to address risks related to the U.S. Dollar LIBOR.²² The ARRC’s initial objectives were to identify risk-free alternative reference rates for the U.S. Dollar LIBOR, identify best practices for contract robustness, and create an implementation plan with metrics of success and a timeline to support an orderly adoption.²³ The ARCC was reconstituted in 2018 with an expanded membership to serve as a forum to coordinate planning across cash and derivatives products as well as market participants currently using the U.S. Dollar LIBOR.²⁴ The ARRC is comprised of a diverse set of private-sector entities, each with an important presence in markets affected by the U.S. Dollar LIBOR, and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members.²⁵

In 2017, the ARRC identified SOFR as its recommended alternative to the U.S. Dollar LIBOR.²⁶ SOFR is fully-transaction based and is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities.²⁷ SOFR is based on transaction data from three segments of the Treasury repurchase agreement market: (1) tri-party repurchase agreements, (2) General Collateral Finance repurchase agreements; and (3) bilateral repurchase agreement

¹⁵ *Id.*; Financial Conduct Authority, *About LIBOR Transition*, <https://www.fca.org.uk/markets/libor-transition> (last visited January 28, 2022).

¹⁶ Marquit and Curry, *supra* note 12.

¹⁷ Bowman et al., *How Correlated is LIBOR with Bank Funding Costs?* (June 29, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/how-correlated-is-libor-with-bank-funding-costs-20200629.htm> (last visited January 28, 2022).

¹⁸ Financial Conduct Authority, *supra* note 15.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Alternative Reference Rates Committee, *Frequently Asked Questions* (August 27, 2021), <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf> (last visited January 28, 2022).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

transactions cleared through the Fixed Income Clearing Corporation.²⁸ The Federal Reserve Bank of New York currently publishes SOFR data daily, as well as SOFR Averages and a SOFR Index.²⁹

LIBOR Discontinuance

LIBOR has been used in setting interest rates for adjustable rate mortgages, asset-backed securities, municipal bonds, credit default swaps, private student loans, and other types of debt.³⁰ The total exposure to the U.S. Dollar LIBOR, as of the fourth quarter of 2020, was \$223 trillion.³¹ Although the derivatives market accounts for a large majority of the outstanding value of all financial products referencing the U.S. Dollar LIBOR, LIBOR is also referenced in several trillion dollars of corporate loans, floating-rate mortgages, floating-rate notes, and securitized products.³²

Financial institutions and other market participants have been in the process of assessing their exposure to the discontinuation of LIBOR, and various financial regulators have discouraged the use of LIBOR as a reference rate in new contracts after December 31, 2021.³³ Some financial contracts that reference LIBOR include robust fallback language that contemplates a replacement interest rate index or replacement interest rate calculation in the event that the rate referenced in the contract is discontinued. While an estimated 67 percent of current LIBOR exposures will mature before LIBOR ceases at the end of June 2023, an estimated \$74 trillion will remain outstanding.³⁴ This fact underscores the importance of finding solutions for legacy contracts, including legacy LIBOR contracts that have no provisions to replace LIBOR upon its cessation.³⁵ The ARRC believes that legislation is a necessary step to address those contracts.³⁶

Recent Legislative Reforms

Federal Legislation

Similar to the bill, federal legislation (H.R. 4616) has been proposed that would provide for the transition of certain financial contracts away from LIBOR.³⁷ In the event a contract referencing LIBOR does not have a fallback or replacement rate provision in effect when LIBOR is retired, or a replacement rate is not selected by a determining person as defined by H.R. 4616, H.R. 4616

²⁸ *Id.*

²⁹ *Id.*

³⁰ Marquit and Curry, *supra* note 12.

³¹ Alternative Reference Rates Committee, *supra* note 22.

³² *Id.*

³³ See, e.g., U.S. Securities and Exchange Commission Office of Compliance Inspections and Examinations, *Risk Alert* (June 18, 2020), https://www.sec.gov/files/Risk%20Alert%20-%20OCIE%20LIBOR%20Initiative_1.pdf (last visited Jan. 21, 2022); Board of Governors of the Federal Reserve System et al., *Statement on LIBOR Transition* (November 30, 2020), <https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf> (last visited January 28, 2022); Rohit Chopra, *Joint Statement on Managing the LIBOR Transition* (Oct. 20, 2021), <https://www.consumerfinance.gov/about-us/newsroom/joint-statement-on-managing-the-libor-transition/#note5> (last visited January 28, 2022).

³⁴ Alternative Reference Rates Committee, *supra* note 22.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Adjustable Interest Rate (LIBOR) Act of 2021, H.R. 4616, 117th Cong., <https://www.congress.gov/bill/117th-congress/house-bill/4616/text> (last visited January 28, 2022).

provides for a transition to SOFR as the replacement rate.³⁸ H.R. 4616 also provides for conforming changes to these contracts, the continuity and enforceability of these contracts, and protections against liability as a result of such a transition.³⁹ H.R. 4616 passed the House but has not yet been acted upon in the Senate.⁴⁰

State Legislation

New York⁴¹ and Alabama⁴² have passed similar legislation.

III. Effect of Proposed Changes:

Section 1 creates s. 687.15, F.S., Benchmark replacements for the London Interbank Offered Rate, and provides several provisions related the transition to the Secured Overnight Financing Rate (SOFR) as the replacement rate for LIBOR for contracts and instruments lacking transition provisions.

The bill provides the following legislative finding:

The Legislature finds that the discontinuation of (LIBOR)⁴³ as a viable interest rate threatens the continued viability of certain contracts, securities, and instruments and the rights of the parties to those contracts, securities, or instruments. Furthermore, the threat of unknown and potentially unbounded liability and the viability of contracts, securities, and instruments threatens the state's economy and has created an overpowering public necessity to provide an immediate and remedial legislative solution. Therefore, the Legislature intends for parties to certain contracts, securities, or instruments, as provided in [the bill], to enjoy heightened legal protections as a result of the discontinuation of LIBOR. The Legislature also finds that there are no alternative means to meet this public necessity. The Legislature finds that the public interest as a whole is best served by providing certainty to these contracts, securities, and instruments and the parties thereto, so that these contracts, securities, and instruments may remain viable and continue to be enforceable in the state.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Discontinuance of the London interbank offered rate, Assembly Bill 164B, <https://legislation.nysenate.gov/pdf/bills/2021/A164B> (last visited January 28, 2022).

⁴² Financial transactions, Senate Bill 279, <https://legiscan.com/AL/text/SB279/id/2379813> (last visited January 28, 2022).

⁴³ "LIBOR" means, for purposes of the application of the bill to any particular contract, security, or instrument, the United States Dollar LIBOR, formerly known as the London Interbank Offered Rate, as administered by ICE Benchmark Administration, or any predecessor or successor thereof, or any tenor thereof, as applicable, that is used in making any calculation or determination of benchmark rates.

Under the bill, various LIBOR discontinuance events⁴⁴ trigger a LIBOR replacement date⁴⁵ for a contract, security, or instrument⁴⁶ that uses LIBOR as a benchmark⁴⁷ and that:

- Does not contain a fallback provision;⁴⁸ or
- Contains fallback provisions resulting in a benchmark replacement⁴⁹ that is based in any way on a LIBOR value.

For such a contract, security, or instrument, on the LIBOR replacement date, the recommended benchmark replacement will be the benchmark replacement by operation of law. The

⁴⁴ "LIBOR discontinuance event" means the earliest to occur of any of the following:

a. A public statement or publication of information by, or on behalf of, the administrator of LIBOR announcing that the administrator has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

b. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the Federal Reserve System, an insolvency official with jurisdiction over the administrator of LIBOR, a resolution authority with jurisdiction over the administrator of LIBOR, or a court or an entity with similar insolvency or resolution authority over the administrator of LIBOR, announcing that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely, if, at the time of the statement or publication, there is no successor administrator that will continue to provide LIBOR.

c. A public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

A public statement or publication of information that affects one or more tenors of LIBOR does not constitute a LIBOR discontinuance event with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

⁴⁵ "LIBOR replacement date" means:

a. In the case of a LIBOR discontinuance event described in a. or b. (*supra* note 44), the later of:

(I) The date of the public statement or publication of information referenced in a. or b. (*supra* note 44); or

(II) The date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR.

b. In the case of a LIBOR discontinuance event described in c. (*supra* note 44), the date of the public statement or publication of information referenced in c. (*supra* note 44).

2. A date that affects one or more tenors of LIBOR does not constitute a LIBOR replacement date with respect to a contract, security, or instrument that:

a. Provides for only one tenor of LIBOR, if the contract, security, or instrument requires interpolation and the tenor can be interpolated from LIBOR tenors that are not so affected; or

b. Allows a party to choose from more than one tenor of LIBOR and any of the tenors is not so affected or, if the contract, security, or instrument requires interpolation, can be interpolated from LIBOR tenors that are not so affected.

⁴⁶ "Contract, security, or instrument" includes, without limitation, any contract, agreement, mortgage, deed of trust, lease, instrument, obligation, or security, whether representing debt or equity, and including any interest in a corporation, partnership, or limited liability company.

⁴⁷ "Benchmark" means an index of interest rates or dividend rates that is used, in whole or in part, as the basis of, or as a reference for, calculating or determining a valuation, payment, or other measurement under or with respect to a contract, security, or instrument.

⁴⁸ "Fallback provision" means a term in a contract, security, or instrument which sets forth a methodology or procedure for determining a benchmark replacement, including any term relating to the date on which the benchmark replacement becomes effective, without regard to whether a benchmark replacement can be determined in accordance with the methodology or procedure.

⁴⁹ "Benchmark replacement" means a benchmark, an interest rate, or a dividend rate that may or may not be based, in whole or in part, on a prior setting of LIBOR, to replace LIBOR or any interest rate or dividend rate based on LIBOR, whether on a temporary, permanent, or indefinite basis, under or with respect to a contract, security, or instrument.

recommended benchmark is a benchmark replacement based on SOFR⁵⁰ and must include any recommended spread adjustment⁵¹ and any benchmark replacement conforming change⁵² that have been selected or recommended by a relevant recommending body⁵³ with respect to the type of contract, security, or instrument.

After the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.

For any contract, security, or instrument that uses LIBOR as a benchmark and that contains fallback provisions allowing or requiring the selection of a benchmark replacement that is based in any way on a LIBOR value or a benchmark replacement that is similar to LIBOR, a determining person⁵⁴ may, but is not required to, select the recommended benchmark replacement as the benchmark replacement after the occurrence of a LIBOR discontinuance event. In such case, the selection of the recommended benchmark replacement must be:

- Irrevocable;

⁵⁰ "SOFR" means, with respect to any day, the secured overnight financing rate published for the day by the Federal Reserve Bank of New York as the administrator of the benchmark, or a successor administrator, on the Federal Reserve Bank of New York's website.

⁵¹ "Recommended spread adjustment" means a spread adjustment, or method for calculating or determining the spread adjustment, which has been selected or recommended by a relevant recommending body for a recommended benchmark replacement for a particular type of contract, security, or instrument and for a particular term to account for the effects of the transition or change from LIBOR to a recommended benchmark replacement. This term may be a positive or negative value or zero.

⁵² "Benchmark replacement conforming change" means, with respect to any type of contract, security, or instrument, a technical, administrative, or operational change, alteration, or modification that is associated with and reasonably necessary to the use, adoption, calculation, or implementation of a recommended benchmark replacement and that has been selected or recommended by a relevant recommending body. However, if, in the reasonable judgment of a calculating person, the change, alteration, or modification selected or recommended by a relevant recommending body does not apply to the contract, security, or instrument or is insufficient to allow administration and calculation of the recommended benchmark replacement, the benchmark replacement conforming change may include other changes, alterations, or modifications that, in the reasonable judgment of the calculating person:

1. Are necessary to allow administration and calculation of the recommended benchmark replacement under or with respect to the contract, security, or instrument in a manner consistent with market practice for substantially similar contracts, securities, or instruments and, to the extent practicable, the manner in which the contract, security, or instrument was administered immediately before the LIBOR replacement date.

2. Would not result in a disposition of the contract, security, or instrument for federal income tax purposes.

"Calculating person" means, with respect to any contract, security, or instrument, a person responsible for calculating or determining a valuation, payment, or other measurement based on a benchmark. This person may be the determining person. See *infra* note 54 for the definition of "determining person".

⁵³ "Relevant recommending body" means the Federal Reserve Board, the Federal Reserve Bank of New York, the ARRC, or a successor to any of these.

⁵⁴ "Determining person" means, with respect to any contract, security, or instrument, the following persons in decreasing order of priority:

1. A person so specified.
2. A person with the authority, right, or obligation to do any of the following:
 - a. Determine the benchmark replacement that will take effect on the LIBOR replacement date.
 - b. Calculate or determine a valuation, payment, or other measurement based on a benchmark.
 - c. Notify other persons of the occurrence of a LIBOR discontinuance event, a LIBOR replacement date, or a benchmark replacement.

- Made by the earlier of the LIBOR replacement date or the latest date for selecting a benchmark replacement according to the contract, security, or instrument; and
- Used in any determination of the benchmark under or with respect to the contract, security, or instrument occurring on and after the LIBOR replacement date.

If a recommended benchmark replacement becomes the benchmark replacement for a contract, security, or instrument under the bill, then all benchmark replacement conforming changes that are applicable to the recommended benchmark replacement must become an integral part of the contract, security, or instrument by operation of law.

The selection or use of a recommended benchmark replacement as a benchmark replacement under or with respect to a contract, security, or instrument, by operation of the bill, constitutes:

- A commercially reasonable replacement for and a commercially substantial equivalent to LIBOR.
- A reasonable, comparable, or analogous term for LIBOR under or with respect to the contract, security, or instrument.
- A replacement that is based on a methodology or information that is similar or comparable to LIBOR.
- Substantial performance by any person of any right or obligation relating to or based on LIBOR under or with respect to a contract, security, or instrument.

A LIBOR discontinuance event, a LIBOR replacement date, the selection or use of a recommended benchmark replacement as a benchmark replacement, or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill, may not:

- Be deemed to impair or affect the right of any person to receive a payment, or affect the amount or timing of the payment, under a contract, security, or instrument;
- Have the effect of discharging or excusing performance under a contract, security, or instrument for any reason, claim, or defense, including, but not limited to, any force majeure or other provision in a contract, security, or instrument;
- Have the effect of giving any person the right to unilaterally terminate or suspend performance under a contract, security, or instrument;
- Have the effect of constituting a breach of a contract, security, or instrument; or
- Have the effect of voiding or nullifying a contract, security, or instrument.

A person is not liable for damages to any other person, and is not subject to any claim or request for equitable relief, arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, in each case, by operation of the bill. The selection or use of the recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change may not give rise to any claim or cause of action by any person in law or in equity.

The selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change, by operation of the bill, may not be deemed to:

- Be an amendment or modification of a contract, security, or instrument.
- Prejudice, impair, or affect a person's rights, interests, or obligations under or with respect to a contract, security, or instrument.

Except as otherwise provided in the bill, the bill may not be interpreted as creating a negative inference or negative presumption regarding the validity or enforceability of any of the following:

- A benchmark replacement that is not a recommended benchmark replacement.
- A spread adjustment, or method for calculating or determining a spread adjustment, which is not a recommended spread adjustment.
- A change, alteration, or modification to or with respect to a contract, security, or instrument which is not a benchmark replacement conforming change.

The bill does not alter or impair any of the following:

- A written agreement by all requisite parties which, retrospectively or prospectively, provides that a contract, security, or instrument is not subject to the bill without necessarily referring specifically to the statute created by the bill.
- A contract, security, or instrument that contains fallback provisions that would result in a benchmark replacement that is not based on LIBOR, including, but not limited to, the prime rate or the federal funds rate. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- A contract, security, or instrument as to which a determining person does not elect to use a recommended benchmark replacement or as to which a determining person elects to use a recommended benchmark replacement before the occurrence of a LIBOR discontinuance event. However, after the occurrence of a LIBOR discontinuance event, any fallback provisions in a contract, security, or instrument which provide for a benchmark replacement based on or otherwise involving a poll, survey, or inquiry for quotes or information concerning interbank lending rates or any interest rate or dividend rate based on LIBOR will be void and of no force or effect.
- The application to a recommended benchmark replacement of any cap, floor, modifier, or spread adjustment to which LIBOR had been subject pursuant to the terms of a contract, security, or instrument.

Notwithstanding the Uniform Commercial Code⁵⁵ or any other law of this state, and except as otherwise provided in the bill, the bill applies to all contracts, securities, and instruments, including contracts with respect to commercial transactions, and may not be superseded by any other law of this state.

Section 2 provides that the provisions of the bill are remedial in nature and apply retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or

⁵⁵ Chapters 670-680, F.S., comprise the Uniform Commercial Code. s. 671.101, F.S.

securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021.

Section 3 provides that this act takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Impairment of Contracts and Due Process

Both the Florida and the United States Constitutions prohibit the state from passing a law impairing contractual obligations.⁵⁶ However, the Legislature may provide that a non-criminal law, including one that affects existing contractual obligations, applies retroactively in certain situations.⁵⁷ In determining whether a law may be applied retroactively, courts first determine whether the law is procedural, remedial, or substantive in nature.⁵⁸ A purely procedural or remedial law may apply retroactively without offending the Constitution, but a substantive law generally may not apply retroactively absent clear legislative intent to the contrary.⁵⁹ However, even where the Legislature has expressly stated that a law will have retroactive application, a court may reject that application if the law impairs a vested right, creates a new obligation, or imposes a new penalty.⁶⁰ Further, where a law is designed to serve a remedial purpose, a court may decide not to apply the law retroactively where doing so “would attach new legal consequences to events completed before its enactment.”⁶¹

⁵⁶ U.S. Const. art. I, s. 10; Art. I, s. 10, Fla. Const.

⁵⁷ U.S. Const. art. I, ss. 9 and 10; Art. 1, s. 10, Fla. Const.

⁵⁸ A procedural law merely establishes the means and methods for applying or enforcing existing duties or rights. A remedial law confers or changes a remedy, i.e., the means employed in enforcing an existing right or in redressing an injury. A substantive law creates, alters, or impairs existing substantive rights. *Windom v. State*, 656 So. 2d 432 (Fla. 1995); *St. John's Village I, Ltd. v. Dept. of State*, 497 So. 2d 990 (Fla. 5th DCA 1986); *McMillen v. State Dept. of Revenue*, 74 So. 2d 1234 (Fla. 1st DCA 1999).

⁵⁹ *State Farm Mutual Automobile Ins. Co. v. Laforet*, 658 So. 2d 55 (Fla. 1995).

⁶⁰ *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So. 3d 873 (Fla. 2010).

⁶¹ *L. Ross, Inc. v. R.W. Roberts Const. Co.*, 481 So. 2d 484 (Fla. 1986).

Moreover, both the Florida and United States Constitutions prohibit the taking of life, liberty, or property without due process of law.⁶² The right to contract, as long as no fraud or deception is involved and the contract is otherwise legal, is both a liberty and a property right subject to due process protections, and the impairment of contracts may, in certain instances, be viewed as the taking of property without due process.⁶³

For certain contracts and instruments, the bill provides for a transition to SOFR as the replacement rate for LIBOR, provides for conforming changes to be made to the contract or instrument, voids fallback provisions that are based on LIBOR, and provides for construction of rights and duties under contracts affected by the bill. Additionally, the bill contains a statement of legislative intent indicating that the bill is remedial in nature and applies retroactively to all contracts, agreements, mortgages, deeds of trust, leases, instruments, obligations, or securities, whether representing debt or equity, and including all interests in a corporation, partnership, or limited liability company, in existence on December 31, 2021. Whether the Legislature's retroactive modification of such contracts and instruments is procedural, remedial, or substantive, and whether such modification implicates the constitutional right to contract or the constitutional right to due process, is for the courts to decide.

Access to Courts

In *Kluger v. White*,⁶⁴ the Florida Supreme Court evaluated to what extent the Legislature may alter a civil cause of action. The Court stated that it would not completely prohibit the Legislature from altering a cause of action, but neither would it allow the Legislature "to destroy a traditional and long-standing cause of action upon mere legislative whim" The takeaway from *Kluger* and other relevant case law is that the Legislature may:

- Reduce the right to bring a cause of action as long as the right is not entirely abolished.⁶⁵
- Abolish a cause of action that is not "traditional and long-standing" – that is, a cause of action that did not exist at common law, and that did not exist in statute before the adoption of the Florida Constitution's Declaration of Rights.⁶⁶
- Abolish a cause of action if the Legislature either:
 - Provides a reasonable commensurate benefit in exchange;⁶⁷ or

⁶² U.S. Const. amends. V and XIV; Art. I, s. 21, Fla. Const.

⁶³ *Miles v. City of Edgewater Police Dept.*, 190 So. 3d 171 (Fla. 1st DCA 2016); see, e.g., *Griffin v. Sharpe*, 65 So. 2d 751 (Fla. 1953) (finding that a statute removing a specific deed restriction's expiration date both impaired contracts and constituted a taking of private property without due process).

⁶⁴ *Kluger*, 281 So. 2d 1 (Fla. 1973).

⁶⁵ See *Achord v. Osceola Farms Co.*, 52 So. 3d 699 (Fla. 2010).

⁶⁶ See *Anderson v. Gannett Comp.*, 994 So. 2d 1048 (Fla. 2008) (false light was not actionable under the common law); *McPhail v. Jenkins*, 382 So. 2d 1329 (Fla. 1980) (wrongful death was not actionable under the common law); see also *Kluger*, 281 So. 2d at 4 ("We hold, therefore, that where a right of access to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State . . . the Legislature is without power to abolish such a right without providing a reasonable alternative . . . unless the Legislature can show an overpowering public necessity . . .").

⁶⁷ *Kluger*, 281 So. 2d at 4; see *Univ. of Miami v. Echarte*, 618 So. 2d 189 (Fla. 1993) (upholding statutory cap on medical malpractice damages because the Legislature provided arbitration, which is a "commensurate benefit" for a claimant); *accord Lasky v. State Farm Ins. Co.*, 296 So. 2d 9 (Fla. 1974); but see *Smith v. Dept. of Ins.*, 507 So. 2d 1080 (Fla. 1992) (striking down noneconomic cap on damages, which, although not wholly abolishing a cause of action, did not provide a commensurate benefit).

- Shows an "overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."⁶⁸

The bill precludes liability, a claim, or a cause of action arising out of or related to the selection or use of a recommended benchmark replacement or the determination, implementation, or performance of a benchmark replacement conforming change. The bill also provides a statement demonstrating the overpowering public necessity for the bill and a finding that there are no alternative means to meet this public necessity.

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 creates section 687.15 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.

⁶⁸ *Kluger*, 281 So. 2d at 4-5 (noting that in 1945, the Legislature abolished the right to sue for several causes of action, but successfully demonstrated "the public necessity required for the total abolition of a right to sue") (citing *Rotwein v. Gersten*, 36 So. 2d 419 (Fla. 1948); see *Echarte*, 618 So. 2d at 195 ("Even if the medical malpractice arbitration statutes at issue did not provide a commensurate benefit, we would find that the statutes satisfy the second prong of *Kluger* which requires a legislative finding that an 'overpowering public necessity' exists, and further that 'no alternative method of meeting such public necessity can be shown'").

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



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LEGISLATIVE ACTION

| | | |
|------------|---|-------|
| Senate | . | House |
| Comm: WD | . | |
| 02/01/2022 | . | |
| | . | |
| | . | |
| | . | |

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 687.15, Florida Statutes, is created to
read:

687.15 Benchmark replacements for the London Interbank
Offered Rate.—

(1) The Legislature finds that the discontinuation of the
London Interbank Offered Rate (LIBOR) as a viable interest rate



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11 threatens the continued viability of certain contracts,
12 securities, and instruments and the rights of the parties to
13 those contracts, securities, or instruments. Furthermore, the
14 threat of unknown and potentially unbounded liability and the
15 viability of contracts, securities, and instruments threatens
16 the state's economy and has created an overpowering public
17 necessity to provide an immediate and remedial legislative
18 solution. Therefore, the Legislature intends for parties to
19 certain contracts, securities, or instruments, as provided in
20 this section, to enjoy heightened legal protections as a result
21 of the discontinuation of LIBOR. The Legislature also finds that
22 there are no alternative means to meet this public necessity.
23 The Legislature finds that the public interest as a whole is
24 best served by providing certainty to these contracts,
25 securities, and instruments and the parties thereto, so that
26 these contracts, securities, and instruments may remain viable
27 and continue to be enforceable in the state.

28 (2) As used in this section, the term:

29 (a) "Benchmark" means an index of interest rates or
30 dividend rates that is used, in whole or in part, as the basis
31 of, or as a reference for, calculating or determining a
32 valuation, payment, or other measurement under or with respect
33 to a contract, security, or instrument.

34 (b) "Benchmark replacement" means a benchmark, an interest
35 rate, or a dividend rate that may or may not be based, in whole
36 or in part, on a prior setting of LIBOR, to replace LIBOR or any
37 interest rate or dividend rate based on LIBOR, whether on a
38 temporary, permanent, or indefinite basis, under or with respect
39 to a contract, security, or instrument.



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40 (c) "Benchmark replacement conforming change" means, with
41 respect to any type of contract, security, or instrument, a
42 technical, administrative, or operational change, alteration, or
43 modification that is associated with and reasonably necessary to
44 the use, adoption, calculation, or implementation of a
45 recommended benchmark replacement and that has been selected or
46 recommended by a relevant recommending body. However, if, in the
47 reasonable judgment of a calculating person, the change,
48 alteration, or modification selected or recommended by a
49 relevant recommending body does not apply to the contract,
50 security, or instrument or is insufficient to allow
51 administration and calculation of the recommended benchmark
52 replacement, the benchmark replacement conforming change may
53 include other changes, alterations, or modifications that, in
54 the reasonable judgment of the calculating person:

55 1. Are necessary to allow administration and calculation of
56 the recommended benchmark replacement under or with respect to
57 the contract, security, or instrument in a manner consistent
58 with market practice for substantially similar contracts,
59 securities, or instruments and, to the extent practicable, the
60 manner in which the contract, security, or instrument was
61 administered immediately before the LIBOR replacement date.

62 2. Would not result in a disposition of the contract,
63 security, or instrument for federal income tax purposes.

64 (d) "Calculating person" means, with respect to any
65 contract, security, or instrument, a person responsible for
66 calculating or determining a valuation, payment, or other
67 measurement based on a benchmark. This person may be the
68 determining person.



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69 (e) "Contract, security, or instrument" includes, without
70 limitation, any contract, agreement, mortgage, deed of trust,
71 lease, instrument, obligation, or security, whether representing
72 debt or equity, and including any interest in a corporation,
73 partnership, or limited liability company.

74 (f) "Determining person" means, with respect to any
75 contract, security, or instrument, the following persons in
76 decreasing order of priority:

77 1. A person so specified.

78 2. A person with the authority, right, or obligation to do
79 any of the following:

80 a. Determine the benchmark replacement that will take
81 effect on the LIBOR replacement date.

82 b. Calculate or determine a valuation, payment, or other
83 measurement based on a benchmark.

84 c. Notify other persons of the occurrence of a LIBOR
85 discontinuance event, a LIBOR replacement date, or a benchmark
86 replacement.

87 (g) "Fallback provision" means a term in a contract,
88 security, or instrument which sets forth a methodology or
89 procedure for determining a benchmark replacement, including any
90 term relating to the date on which the benchmark replacement
91 becomes effective, without regard to whether a benchmark
92 replacement can be determined in accordance with the methodology
93 or procedure.

94 (h) "LIBOR" means, for purposes of the application of this
95 section to any particular contract, security, or instrument, the
96 United States dollar LIBOR, formerly known as the London
97 Interbank Offered Rate, as administered by ICE Benchmark



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98 Administration, or any predecessor or successor thereof, or any
99 tenor thereof, as applicable, that is used in making any
100 calculation or determination of benchmark rates.

101 (i)1. "LIBOR discontinuance event" means the earliest to
102 occur of any of the following:

103 a. A public statement or publication of information by, or
104 on behalf of, the administrator of LIBOR announcing that the
105 administrator has ceased or will cease to provide LIBOR
106 permanently or indefinitely, if, at the time of the statement or
107 publication, there is no successor administrator that will
108 continue to provide LIBOR.

109 b. A public statement or publication of information by the
110 regulatory supervisor for the administrator of LIBOR, the
111 Federal Reserve System, an insolvency official with jurisdiction
112 over the administrator of LIBOR, a resolution authority with
113 jurisdiction over the administrator of LIBOR, or a court or an
114 entity with similar insolvency or resolution authority over the
115 administrator of LIBOR, announcing that the administrator of
116 LIBOR has ceased or will cease to provide LIBOR permanently or
117 indefinitely, if, at the time of the statement or publication,
118 there is no successor administrator that will continue to
119 provide LIBOR.

120 c. A public statement or publication of information by the
121 regulatory supervisor for the administrator of LIBOR announcing
122 that LIBOR is no longer representative.

123 2. A public statement or publication of information that
124 affects one or more tenors of LIBOR does not constitute a LIBOR
125 discontinuance event with respect to a contract, security, or
126 instrument that:



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127 a. Provides for only one tenor of LIBOR, if the contract,
128 security, or instrument requires interpolation and the tenor can
129 be interpolated from LIBOR tenors that are not so affected; or

130 b. Allows a party to choose from more than one tenor of
131 LIBOR and any of the tenors is not so affected or, if the
132 contract, security, or instrument requires interpolation, can be
133 interpolated from LIBOR tenors that are not so affected.

134 (j)1. "LIBOR replacement date" means:

135 a. In the case of a LIBOR discontinuance event described in
136 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
137 of:

138 (I) The date of the public statement or publication of
139 information referenced in sub-subparagraph (i)1.a. or sub-
140 paragraph (i)1.b.; or

141 (II) The date on which the administrator of LIBOR
142 permanently or indefinitely ceases to provide LIBOR.

143 b. In the case of a LIBOR discontinuance event described in
144 sub-subparagraph (i)1.c., the date of the public statement or
145 publication of information referenced in sub-subparagraph
146 (i)1.c.

147 2. A date that affects one or more tenors of LIBOR does not
148 constitute a LIBOR replacement date with respect to a contract,
149 security, or instrument that:

150 a. Provides for only one tenor of LIBOR, if the contract,
151 security, or instrument requires interpolation and the tenor can
152 be interpolated from LIBOR tenors that are not so affected; or

153 b. Allows a party to choose from more than one tenor of
154 LIBOR and any of the tenors is not so affected or, if the
155 contract, security, or instrument requires interpolation, can be



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156 interpolated from LIBOR tenors that are not so affected.

157 (k) "Recommended benchmark replacement" means, with respect
158 to any particular type of contract, security, or instrument, a
159 benchmark replacement based on SOFR that must include any
160 recommended spread adjustment and any benchmark replacement
161 conforming change that have been selected or recommended by a
162 relevant recommending body with respect to the type of contract,
163 security, or instrument.

164 (l) "Recommended spread adjustment" means a spread
165 adjustment, or method for calculating or determining the spread
166 adjustment, which has been selected or recommended by a relevant
167 recommending body for a recommended benchmark replacement for a
168 particular type of contract, security, or instrument and for a
169 particular term to account for the effects of the transition or
170 change from LIBOR to a recommended benchmark replacement. This
171 term may be a positive or negative value or zero.

172 (m) "Relevant recommending body" means the Federal Reserve
173 Board, the Federal Reserve Bank of New York, the Alternative
174 Reference Rates Committee, or a successor to any of them.

175 (n) "SOFR" means, with respect to any day, the secured
176 overnight financing rate published for the day by the Federal
177 Reserve Bank of New York as the administrator of the benchmark,
178 or a successor administrator, on the Federal Reserve Bank of New
179 York's website.

180 (3) On the LIBOR replacement date, the recommended
181 benchmark replacement, by operation of law, shall be the
182 benchmark replacement for a contract, security, or instrument
183 that uses LIBOR as a benchmark and that:

184 (a) Does not contain a fallback provision; or



185 (b) Contains fallback provisions resulting in a benchmark
186 replacement, other than a recommended benchmark replacement,
187 that is based in any way on a LIBOR value.

188 (4) After the occurrence of a LIBOR discontinuance event,
189 any fallback provisions in a contract, security, or instrument
190 which provide for a benchmark replacement based on or otherwise
191 involving a poll, survey, or inquiry for quotes or information
192 concerning interbank lending rates or any interest rate or
193 dividend rate based on LIBOR shall be void and of no force or
194 effect.

195 (5) (a) A determining person may, but is not required to,
196 select the recommended benchmark replacement as the benchmark
197 replacement after the occurrence of a LIBOR discontinuance
198 event. The selection of the recommended benchmark replacement
199 must be:

- 200 1. Irrevocable;
201 2. Made by the earlier of the LIBOR replacement date or the
202 latest date for selecting a benchmark replacement according to
203 the contract, security, or instrument; and
204 3. Used in any determination of the benchmark under or with
205 respect to the contract, security, or instrument occurring on
206 and after the LIBOR replacement date.

207 (b) Paragraph (a) applies to a contract, security, or
208 instrument that uses LIBOR as a benchmark and that contains
209 fallback provisions allowing or requiring the selection of a
210 benchmark replacement that is:

- 211 1. Based in any way on a LIBOR value; or
212 2. The substantive equivalent of paragraph (7) (a),
213 paragraph (7) (b), or paragraph (7) (c).



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214 (6) If a recommended benchmark replacement becomes the
215 benchmark replacement for a contract, security, or instrument
216 under this section, then all benchmark replacement conforming
217 changes that are applicable to the recommended benchmark
218 replacement must become an integral part of the contract,
219 security, or instrument by operation of law.

220 (7) The selection or use of a recommended benchmark
221 replacement as a benchmark replacement under or with respect to
222 a contract, security, or instrument by operation of this section
223 constitutes all of the following:

224 (a) A commercially reasonable replacement for and a
225 commercially substantial equivalent to LIBOR.

226 (b) A reasonable, comparable, or analogous term for LIBOR
227 under or with respect to the contract, security, or instrument.

228 (c) A replacement that is based on a methodology or
229 information that is similar or comparable to LIBOR.

230 (d) Substantial performance by any person of any right or
231 obligation relating to or based on LIBOR under or with respect
232 to a contract, security, or instrument.

233 (8) A LIBOR discontinuance event, a LIBOR replacement date,
234 the selection or use of a recommended benchmark replacement as a
235 benchmark replacement, or the determination, implementation, or
236 performance of a benchmark replacement conforming change, in
237 each case, by operation of this section, may not:

238 (a) Be deemed to impair or affect the right of any person
239 to receive a payment, or affect the amount or timing of the
240 payment, under a contract, security, or instrument;

241 (b) Have the effect of discharging or excusing performance
242 under a contract, security, or instrument for any reason, claim,



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243 or defense, including, but not limited to, any force majeure or
244 other provision in a contract, security, or instrument;

245 (c) Have the effect of giving any person the right to
246 unilaterally terminate or suspend performance under a contract,
247 security, or instrument;

248 (d) Have the effect of constituting a breach of a contract,
249 security, or instrument; or

250 (e) Have the effect of voiding or nullifying a contract,
251 security, or instrument.

252 (9) A person is not liable for damages to any other person,
253 and is not subject to any claim or request for equitable relief,
254 arising out of or related to the selection or use of a
255 recommended benchmark replacement or the determination,
256 implementation, or performance of a benchmark replacement
257 conforming change, in each case, by operation of this section.

258 The selection or use of the recommended benchmark replacement or
259 the determination, implementation, or performance of a benchmark
260 replacement conforming change may not give rise to any claim or
261 cause of action by any person in law or in equity.

262 (10) The selection or use of a recommended benchmark
263 replacement or the determination, implementation, or performance
264 of a benchmark replacement conforming change, by operation of
265 this section, may not be deemed to:

266 (a) Be an amendment or modification of a contract,
267 security, or instrument.

268 (b) Prejudice, impair, or affect a person's rights,
269 interests, or obligations under or with respect to a contract,
270 security, or instrument.

271 (11) Except as provided in subsection (3) or subsection



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272 (5), this section may not be interpreted as creating a negative
273 inference or negative presumption regarding the validity or
274 enforceability of any of the following:

275 (a) A benchmark replacement that is not a recommended
276 benchmark replacement.

277 (b) A spread adjustment, or method for calculating or
278 determining a spread adjustment, which is not a recommended
279 spread adjustment.

280 (c) A change, alteration, or modification to or with
281 respect to a contract, security, or instrument which is not a
282 benchmark replacement conforming change.

283 (12) This section does not alter or impair any of the
284 following:

285 (a) A written agreement by all requisite parties which,
286 retrospectively or prospectively, provides that a contract,
287 security, or instrument is not subject to this section without
288 necessarily referring specifically to this section. As used in
289 this paragraph, the term "requisite parties" means all parties
290 required to amend the terms and provisions of a contract,
291 security, or instrument that would otherwise be altered or
292 affected by this section.

293 (b) A contract, security, or instrument that contains
294 fallback provisions that would result in a benchmark replacement
295 that is not based on LIBOR, including, but not limited to, the
296 prime rate or the federal funds rate. However, the contract,
297 security, or instrument is subject to subsection (4).

298 (c) A contract, security, or instrument subject to
299 subsection (5) as to which a determining person does not elect
300 to use a recommended benchmark replacement or as to which a



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301 determining person elects to use a recommended benchmark
302 replacement before the occurrence of a LIBOR discontinuance
303 event. However, the contract, security, or instrument is subject
304 to subsection (4).

305 (d) The application to a recommended benchmark replacement
306 of any cap, floor, modifier, or spread adjustment to which LIBOR
307 had been subject pursuant to the terms of a contract, security,
308 or instrument.

309 (13) Notwithstanding the Uniform Commercial Code or any
310 other law of this state, and except as otherwise provided in
311 this section, this section applies to all contracts, securities,
312 and instruments, including contracts with respect to commercial
313 transactions, and may not be superseded by any other law of this
314 state.

315 Section 2. This act is remedial in nature and applies
316 retroactively to all contracts, agreements, mortgages, deeds of
317 trust, leases, instruments, obligations, or securities, whether
318 representing debt or equity, and including all interests in a
319 corporation, partnership, or limited liability company, in
320 existence on December 31, 2021.

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

322
323 ===== T I T L E A M E N D M E N T =====

324 And the title is amended as follows:

325 Delete everything before the enacting clause
326 and insert:

327 A bill to be entitled
328 An act relating to benchmark replacements for London
329 Interbank Offered Rate; creating s. 687.15, F.S.;



330 providing legislative findings and intent and a
331 statement of public interest; providing definitions;
332 requiring that recommended benchmark replacements
333 selected or recommended by specified persons be
334 benchmark replacements on the United States dollar
335 London Interbank Offered Rate (LIBOR) replacement date
336 for certain contracts, securities, and instruments;
337 requiring certain fallback provisions in contracts,
338 securities, and instruments providing specified
339 benchmark replacements to be disregarded and void;
340 authorizing specified persons to select benchmark
341 replacements under certain circumstances; providing
342 requirements for such selection; providing
343 applicability; requiring benchmark replacement
344 conforming changes to become an integral part of
345 contracts, securities, and instruments under certain
346 circumstances; providing construction; providing that
347 a person is not liable for damages and is not subject
348 to claims and requests for equitable relief under
349 certain circumstances; providing applicability;
350 prohibiting other laws from superseding specified
351 provisions; providing that the act is remedial in
352 nature; providing retroactive applicability; providing
353 an effective date.

By Senator Gruters

23-01121-22

20221246__

1 A bill to be entitled
 2 An act relating to benchmark replacements for London
 3 Interbank Offered Rate; creating s. 687.15, F.S.;
 4 providing legislative findings and intent and a
 5 statement of public interest; defining terms;
 6 requiring that recommended benchmark replacements
 7 selected or recommended by specified persons be
 8 benchmark replacements on the United States dollar
 9 London Interbank Offered Rate (LIBOR) replacement date
 10 for certain contracts, securities, and instruments;
 11 requiring that certain fallback provisions in
 12 contracts, securities, and instruments providing
 13 specified benchmark replacements be disregarded and
 14 void; authorizing specified persons to select
 15 benchmark replacements under certain circumstances;
 16 providing requirements for such selection; providing
 17 applicability; requiring that benchmark replacement
 18 conforming changes become an integral part of
 19 contracts, securities, and instruments under certain
 20 circumstances; providing requirements for selections
 21 or uses of recommended benchmark replacements as
 22 benchmark replacements; providing construction;
 23 providing that a person is not liable for damages and
 24 is not subject to claims and requests for equitable
 25 relief under certain circumstances; providing
 26 applicability; prohibiting other laws from superseding
 27 specified provisions; providing that the act is
 28 remedial in nature; providing retroactive
 29 applicability; providing an effective date.

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

23-01121-22

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30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Section 687.15, Florida Statutes, is created to
 34 read:
 35 687.15 Benchmark replacements for the London Interbank
 36 Offered Rate.—
 37 (1) The Legislature finds that the discontinuation of the
 38 London Interbank Offered Rate (LIBOR) as a viable interest rate
 39 threatens the continued viability of certain contracts,
 40 securities, and instruments and the rights of the parties to
 41 those contracts, securities, or instruments. Furthermore, the
 42 threat of unknown and potentially unbounded liability and the
 43 viability of contracts, securities, and instruments threatens
 44 the state's economy and has created an overpowering public
 45 necessity to provide an immediate and remedial legislative
 46 solution. Therefore, the Legislature intends for parties to
 47 certain contracts, securities, or instruments, as provided in
 48 this section, to enjoy heightened legal protections as a result
 49 of the discontinuation of LIBOR. The Legislature also finds that
 50 there are no alternative means to meet this public necessity.
 51 The Legislature finds that the public interest as a whole is
 52 best served by providing certainty to these contracts,
 53 securities, and instruments and the parties thereto, so that
 54 these contracts, securities, and instruments may remain viable
 55 and continue to be enforceable in the state.
 56 (2) As used in this section, the term:
 57 (a) "Benchmark" means an index of interest rates or
 58 dividend rates that is used, in whole or in part, as the basis

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

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59 of, or as a reference for, calculating or determining a
 60 valuation, payment, or other measurement under or in respect of
 61 a contract, security, or instrument.

62 (b) "Benchmark replacement" means a benchmark, an interest
 63 rate, or a dividend rate that may or may not be based, in whole
 64 or in part, on a prior setting of LIBOR, to replace LIBOR or any
 65 interest rate or dividend rate based on LIBOR, whether on a
 66 temporary, permanent, or indefinite basis, under or in respect
 67 of a contract, security, or instrument.

68 (c) "Benchmark replacement conforming change" means, with
 69 respect to any type of contract, security, or instrument, a
 70 technical, administrative, or operational change, alteration, or
 71 modification that is associated with and reasonably necessary to
 72 the use, adoption, calculation, or implementation of a
 73 recommended benchmark replacement and that meets the following
 74 conditions:

75 1. The change, alteration, or modification has been
 76 selected or recommended by a relevant recommending body.

77 2. If, in the reasonable judgment of the calculating
 78 person, the change, alteration, or modification selected or
 79 recommended under subparagraph 1. does not apply to the
 80 contract, security, or instrument or is insufficient to allow
 81 administration and calculation of the recommended benchmark
 82 replacement, the benchmark replacement conforming change must
 83 include other changes, alterations, or modifications that, in
 84 the reasonable judgment of the calculating person:

85 a. Are necessary to allow administration and calculation of
 86 the recommended benchmark replacement under or in respect of the
 87 contract, security, or instrument in a manner consistent with

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88 market practice for substantially similar contracts, securities,
 89 or instruments and, to the extent practicable, the manner in
 90 which the contract, security, or instrument was administered
 91 immediately before the LIBOR replacement date; and

92 b. Would not result in a disposition of the contract,
 93 security, or instrument for federal income tax purposes.

94 (d) "Calculating person" means, with respect to any
 95 contract, security, or instrument, a person responsible for
 96 calculating or determining a valuation, payment, or other
 97 measurement based on a benchmark. This person may be the
 98 determining person.

99 (e) "Contract, security, or instrument" includes, without
 100 limitation, any contract, agreement, mortgage, deed of trust,
 101 lease, instrument, obligation, or security, whether representing
 102 debt or equity, and including any interest in a corporation,
 103 partnership, or limited liability company.

104 (f) "Determining person" means, with respect to any
 105 contract, security, or instrument, the following persons in
 106 decreasing order of priority:

107 1. A person so specified.

108 2. A person with the authority, right, or obligation to do
 109 any of the following:

110 a. Determine the benchmark replacement that will take
 111 effect on the LIBOR replacement date.

112 b. Calculate or determine a valuation, payment, or other
 113 measurement based on a benchmark.

114 c. Notify other persons of the occurrence of a LIBOR
 115 discontinuance event, a LIBOR replacement date, or a benchmark
 116 replacement.

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117 (g) "Fallback provision" means a term in a contract,
 118 security, or instrument which sets forth a methodology or
 119 procedure for determining a benchmark replacement, including any
 120 term relating to the date on which the benchmark replacement
 121 becomes effective, without regard to whether a benchmark
 122 replacement can be determined in accordance with the methodology
 123 or procedure.

124 (h) "LIBOR" means, for purposes of the application of this
 125 section to any particular contract, security, or instrument, the
 126 United States dollar LIBOR, formerly known as the London
 127 Interbank Offered Rate, as administered by ICE Benchmark
 128 Administration, or any predecessor or successor thereof, or any
 129 tenor thereof, as applicable, that is used in making any
 130 calculation or determination of benchmark rates.

131 (i)1. "LIBOR discontinuance event" means the earliest to
 132 occur of any of the following:

133 a. A public statement or publication of information by, or
 134 on behalf of, the administrator of LIBOR announcing that the
 135 administrator has ceased or will cease to provide LIBOR
 136 permanently or indefinitely, if, at the time of the statement or
 137 publication, there is no successor administrator that will
 138 continue to provide LIBOR.

139 b. A public statement or publication of information by the
 140 regulatory supervisor for the administrator of LIBOR, the
 141 Federal Reserve System, an insolvency official with jurisdiction
 142 over the administrator of LIBOR, a resolution authority with
 143 jurisdiction over the administrator of LIBOR, or a court or an
 144 entity with similar insolvency or resolution authority over the
 145 administrator of LIBOR, announcing that the administrator of

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146 LIBOR has ceased or will cease to provide LIBOR permanently or
 147 indefinitely, if, at the time of the statement or publication,
 148 there is no successor administrator that will continue to
 149 provide LIBOR.

150 c. A public statement or publication of information by the
 151 regulatory supervisor for the administrator of LIBOR announcing
 152 that LIBOR is no longer representative.

153 2. A public statement or publication of information that
 154 affects one or more tenors of LIBOR does not constitute a LIBOR
 155 discontinuance event with respect to a contract, security, or
 156 instrument that:

157 a. Provides for only one tenor of LIBOR, if the contract,
 158 security, or instrument requires interpolation and the tenor can
 159 be interpolated from LIBOR tenors that are not so affected; or

160 b. Allows a party to choose from more than one tenor of
 161 LIBOR and any of the tenors is not so affected or, if the
 162 contract, security, or instrument requires interpolation, can be
 163 interpolated from LIBOR tenors that are not so affected.

164 (j)1. "LIBOR replacement date" means:

165 a. In the case of a LIBOR discontinuance event described in
 166 sub-subparagraph (i)1.a. or sub-subparagraph (i)1.b., the later
 167 of:

168 (I) The date of the public statement or publication of
 169 information referenced in sub-subparagraph (i)1.a. or sub-
 170 paragraph (i)1.b.; or

171 (II) The date on which the administrator of LIBOR
 172 permanently or indefinitely ceases to provide LIBOR.

173 b. In the case of a LIBOR discontinuance event described in
 174 sub-subparagraph (i)1.c., the date of the public statement or

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175 publication of information referenced in sub-subparagraph
 176 (i)1.c.
 177 2. A date that affects one or more tenors of LIBOR does not
 178 constitute a LIBOR replacement date with respect to a contract,
 179 security, or instrument that:
 180 a. Provides for only one tenor of LIBOR, if the contract,
 181 security, or instrument requires interpolation and the tenor can
 182 be interpolated from LIBOR tenors that are not so affected; or
 183 b. Allows a party to choose from more than one tenor of
 184 LIBOR and any of the tenors is not so affected or, if the
 185 contract, security, or instrument requires interpolation, can be
 186 interpolated from LIBOR tenors that are not so affected.
 187 (k) "Recommended benchmark replacement" means, with respect
 188 to any particular type of contract, security, or instrument, a
 189 benchmark replacement based on SOFR that must include any
 190 recommended spread adjustment and any benchmark replacement
 191 conforming change that have been selected or recommended by a
 192 relevant recommending body with respect to the type of contract,
 193 security, or instrument.
 194 (l) "Recommended spread adjustment" means a spread
 195 adjustment, or method for calculating or determining the spread
 196 adjustment, which has been selected or recommended by a relevant
 197 recommending body for a recommended benchmark replacement for a
 198 particular type of contract, security, or instrument and for a
 199 particular term to account for the effects of the transition or
 200 change from LIBOR to a recommended benchmark replacement. This
 201 term may be a positive or negative value or zero.
 202 (m) "Relevant recommending body" means the Federal Reserve
 203 Board, the Federal Reserve Bank of New York, the Alternative

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204 Reference Rates Committee, or a successor to any of them.
 205 (n) "SOFR" means, with respect to any day, the secured
 206 overnight financing rate published for the day by the Federal
 207 Reserve Bank of New York as the administrator of the benchmark,
 208 or a successor administrator, on the Federal Reserve Bank of New
 209 York's website.
 210 (3) On the LIBOR replacement date, the recommended
 211 benchmark replacement, by operation of law, shall be the
 212 benchmark replacement for a contract, security, or instrument
 213 that uses LIBOR as a benchmark and that:
 214 (a) Does not contain a fallback provision; or
 215 (b) Contains fallback provisions resulting in a benchmark
 216 replacement, other than a recommended benchmark replacement,
 217 that is based in any way on a LIBOR value.
 218 (4) After the occurrence of a LIBOR discontinuance event,
 219 any fallback provisions in a contract, security, or instrument
 220 which provide for a benchmark replacement based on or otherwise
 221 involving a poll, survey, or inquiry for quotes or information
 222 concerning interbank lending rates or any interest rate or
 223 dividend rate based on LIBOR shall be void and of no force or
 224 effect.
 225 (5) (a) A determining person may, but is not required to,
 226 select the recommended benchmark replacement as the benchmark
 227 replacement after the occurrence of a LIBOR discontinuance
 228 event. The selection of the recommended benchmark replacement
 229 must be:
 230 1. Irrevocable;
 231 2. Made by the earlier of the LIBOR replacement date or the
 232 latest date for selecting a benchmark replacement according to

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233 the contract, security, or instrument; and
 234 3. Used in any determination of the benchmark under or with
 235 respect to the contract, security, or instrument occurring on
 236 and after the LIBOR replacement date.
 237 (b) Paragraph (a) applies to a contract, security, or
 238 instrument that uses LIBOR as a benchmark and that contains
 239 fallback provisions allowing or requiring the selection of a
 240 benchmark replacement that is:
 241 1. Based in any way on a LIBOR value; or
 242 2. The substantive equivalent of paragraph (7) (a),
 243 paragraph (7) (b), or paragraph (7) (c).
 244 (6) If a recommended benchmark replacement becomes the
 245 benchmark replacement for a contract, security, or instrument
 246 under this section, then all benchmark replacement conforming
 247 changes that are applicable to the recommended benchmark
 248 replacement must become an integral part of the contract,
 249 security, or instrument by operation of law.
 250 (7) The selection or use of a recommended benchmark
 251 replacement as a benchmark replacement under or in respect of a
 252 contract, security, or instrument by operation of this section
 253 must constitute all of the following:
 254 (a) A commercially reasonable replacement for and a
 255 commercially substantial equivalent to LIBOR.
 256 (b) A reasonable, comparable, or analogous term for LIBOR
 257 under or in respect of the contract, security, or instrument.
 258 (c) A replacement that is based on a methodology or
 259 information that is similar or comparable to LIBOR.
 260 (d) Substantial performance by any person of any right or
 261 obligation relating to or based on LIBOR under or in respect of

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262 a contract, security, or instrument.
 263 (8) A LIBOR discontinuance event, a LIBOR replacement date,
 264 the selection or use of a recommended benchmark replacement as a
 265 benchmark replacement, or the determination, implementation, or
 266 performance of a benchmark replacement conforming change, in
 267 each case, by operation of this section, may not:
 268 (a) Be deemed to impair or affect the right of any person
 269 to receive a payment, or affect the amount or timing of the
 270 payment, under a contract, security, or instrument;
 271 (b) Have the effect of discharging or excusing performance
 272 under a contract, security, or instrument for any reason, claim,
 273 or defense, including, but not limited to, any force majeure or
 274 other provision in a contract, security, or instrument;
 275 (c) Have the effect of giving any person the right to
 276 unilaterally terminate or suspend performance under a contract,
 277 security, or instrument;
 278 (d) Have the effect of constituting a breach of a contract,
 279 security, or instrument; or
 280 (e) Have the effect of voiding or nullifying a contract,
 281 security, or instrument.
 282 (9) A person is not liable for damages to any other person,
 283 and is not subject to any claim or request for equitable relief,
 284 arising out of or related to the selection or use of a
 285 recommended benchmark replacement or the determination,
 286 implementation, or performance of a benchmark replacement
 287 conforming change, in each case, by operation of this section.
 288 The selection or use of the recommended benchmark replacement or
 289 the determination, implementation, or performance of a benchmark
 290 replacement conforming change may not give rise to any claim or

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291 cause of action by any person in law or in equity.
 292 (10) The selection or use of a recommended benchmark
 293 replacement or the determination, implementation, or performance
 294 of a benchmark replacement conforming change, by operation of
 295 this section, may not be deemed to:
 296 (a) Be an amendment or modification of a contract,
 297 security, or instrument.
 298 (b) Prejudice, impair, or affect a person's rights,
 299 interests, or obligations under or in respect of a contract,
 300 security, or instrument.
 301 (11) Except as provided in subsection (3) or subsection
 302 (5), this section may not be interpreted as creating a negative
 303 inference or negative presumption regarding the validity or
 304 enforceability of any of the following:
 305 (a) A benchmark replacement that is not a recommended
 306 replacement benchmark.
 307 (b) A spread adjustment, or method for calculating or
 308 determining a spread adjustment, which is not a recommended
 309 spread adjustment.
 310 (c) A change, alteration, or modification to or in respect
 311 of a contract, security, or instrument which is not a benchmark
 312 replacement conforming change.
 313 (12) This section does not alter or impair any of the
 314 following:
 315 (a) A written agreement by all requisite parties which,
 316 retrospectively or prospectively, provides that a contract,
 317 security, or instrument is not subject to this section without
 318 necessarily referring specifically to this section. As used in
 319 this paragraph, the term "requisite parties" means all parties

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320 required to amend the terms and provisions of a contract,
 321 security, or instrument that would otherwise be altered or
 322 affected by this section.
 323 (b) A contract, security, or instrument that contains
 324 fallback provisions that would result in a benchmark replacement
 325 that is not based on LIBOR, including, but not limited to, the
 326 prime rate or the federal funds rate. However, the contract,
 327 security, or instrument is subject to subsection (4).
 328 (c) A contract, security, or instrument subject to
 329 subsection (5) as to which a determining person does not elect
 330 to use a recommended benchmark replacement or as to which a
 331 determining person elects to use a recommended benchmark
 332 replacement before the occurrence of a LIBOR discontinuance
 333 event. However, the contract, security, or instrument is subject
 334 to subsection (4).
 335 (d) The application to a recommended benchmark replacement
 336 of any cap, floor, modifier, or spread adjustment to which LIBOR
 337 had been subject pursuant to the terms of a contract, security,
 338 or instrument.
 339 (13) Notwithstanding the Uniform Commercial Code or any
 340 other law of this state, and except as otherwise provided in
 341 this section, this section applies to all contracts, securities,
 342 and instruments, including contracts with respect to commercial
 343 transactions, and may not be superseded by any other law of this
 344 state.
 345 Section 2. This act is remedial in nature and applies
 346 retroactively to all contracts, agreements, mortgages, deeds of
 347 trust, leases, instruments, obligations, or securities, whether
 348 representing debt or equity, and including all interests in a

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349 corporation, partnership, or limited liability company, in
350 existence on December 31, 2021.

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

The Florida Senate

APPEARANCE RECORD

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

2/2/22 Meeting Date

1246 Bill Number or Topic

BIT Committee

Amendment Barcode (if applicable)

Name Anthony DiMarco

Phone 224-2245

Address 1001 Thomasville Rd

Email adimarc@floridabankers.com

Tallahassee FL 32303 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.
I am a registered lobbyist, representing: FL Bankers Association
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

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 12, 2022

I respectfully request that **Senate Bill #1246**, relating to Benchmark Replacements for London Interbank Offered Rate, be placed on the:

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

Please let me know if you have 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
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 1272

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Liens and Bonds

DATE: February 3, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

- SB 1272 revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S. In general, the bill:
- Deletes a provision allowing alternatives to the posting of a payment bond for contractors working on a public project.
- Clarifies that a lienor giving a required notice of nonpayment to the surety shall do so with a copy of the notice.
- Require that a notice of nonpayment may not be served earlier than 30 days after the first furnishing of labor for a public project or a construction or maintenance project with the Department of Transportation;
- Revises the definition of “final furnishing” as it relates to specially fabricated materials and creates a definition of “specially fabricated materials.”
- Revises the timeframes during which a notice to contractor may be served for public projects.
- Revises the definition of “clerk’s office.”
- Revises the term contractor under the Construction Lien Law to include licensed general contractors or building contractors under certain conditions.
- Creates a definition of finance charge.
- Creates provisions for the computation of time under the Construction Lien Law for recording of documents and filing of actions.

- Revises the submissions a building permit applicant must make in regards to notices of commitment and limits the civil liability of permit issuing authorities.
- Revises provisions relating to notices of termination.
- Revises service of documents requirements.
- Specifies that a lien can be discharged in whole or in part and revises the requirements for discharge due to satisfaction or release of the lien.
- Specifies that a contest of lien must be recorded to be effective.
- Revises provisions relating to attorney fees.
- Allows for certain required forms to be notarized online.
- Modifies the minimum bond amount necessary to transfer a lien to a security from \$1,000 to \$5,000. The amendment also creates a requirement that said bond be recorded with the certificate of such.
- Deletes an obsolete provision.
- Makes technical and conforming changes.
-

The bill takes effect July 1, 2022.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Large-scale construction projects are usually headed by a general contractor who is responsible for the day-to-day running of the project as a whole. They will generally supervise, coordinate, and engage subcontractors to complete the project.¹ Under that, there may be sub-subcontractors, laborers, and materialmen, which, as with the general contractor and subcontractors, have an interest in receiving payment for their work. Unfortunately, given the complexity of many construction projects, money moving from the owner (or bank financing the construction project), downstream to the general contractor, and then to these other groups, does not always make it to each person that performed work on the project.² To address this issue, Florida's Construction Lien Law allows individuals to have a lien or prospective lien on the property which they have improved. Persons having a lien on a property and are known as lienors. Construction liens are part of a larger subset of security interests encumbering property as a way to recover a debt.³ Mechanisms that address the interests of property owners and lienors relating to construction are set forth in the Construction Lien Law, codified in part I of chapter 713, F.S., for private construction contracts, s. 255.05, F.S., for public construction contracts, and s. 337.18, F.S., for construction or maintenance contracts with the Department of Transportation.

¹ The Law Dictionary, *What is General Contractor*, <https://thelawdictionary.org/general-contractor/> (last visited Jan. 28, 2022).

² Klingen, Leonard, *Florida's Unwieldy by Effective Construction Lien Law*, 93(1) FLORIDA BAR JOURNAL 26 (Jan/Feb 2019), available at <https://www.floridabar.org/the-florida-bar-journal/floridas-unwieldy-but-effective-construction-lien-law/#:~:text=A%20glance%20at%20any%20urban,construction%20is%20still%20big%20business.&text=Construction%20liens%20are%20a%20subset,to%20those%20claiming%20a%20debt.>

³ Klingen, *supra* note 2.

Privity, Notice, and the Construction Lien Law

The concept of “privity” is used throughout ch. 713, F.S.; however, the term is not defined for the chapter. At common law, privity is established when there is a substantive legal relationship between parties.⁴ An important issue in construction law is privity arising from a direct contractual relationship. As stated, it is often the case that many parties working on a construction project are not in a direct contractual relationship with the owner, but instead have a contract with a general contractor or a subcontractor under the general contractor. Such persons, at common law, would not be in privity with the owner, and therefore could not seek payment for their work from the owner. Florida’s lien law revises this concept to ensure payment for all of those that perform work on a construction project, regardless of whether they have direct contractual relationship with the owner. Florida’s courts have described this modification of privity under the lien law thusly:

In order to create privity under the lien statute, there must be, in addition to knowledge of the owner that a certain person is furnishing labor or material for the contractor to be used in the execution of his contract, an express or implied assumption by the owner of a contractual obligation to pay for the labor or materials furnished ... While such privity may be made out by circumstantial, as well as direct and positive evidence, the ultimate conclusion must be made to appear that the owner voluntarily put himself in such situation toward the materialman or laborer as to make him liable on an implied agreement to pay for the labor or material furnished, not as a secondary, but as a primary debtor on the account.⁵

To this end, Florida’s Construction Lien Law requires notice. Otherwise, a lienor’s identity, work, and charges for services might be unknown to the owner or contractor unless the lienor complies with the notice requirements of the Construction Lien Laws.⁶ Further, compliance with the notice requirements by the various deadlines is a prerequisite to enforcing a lien or pursuing a claim against a payment bond.

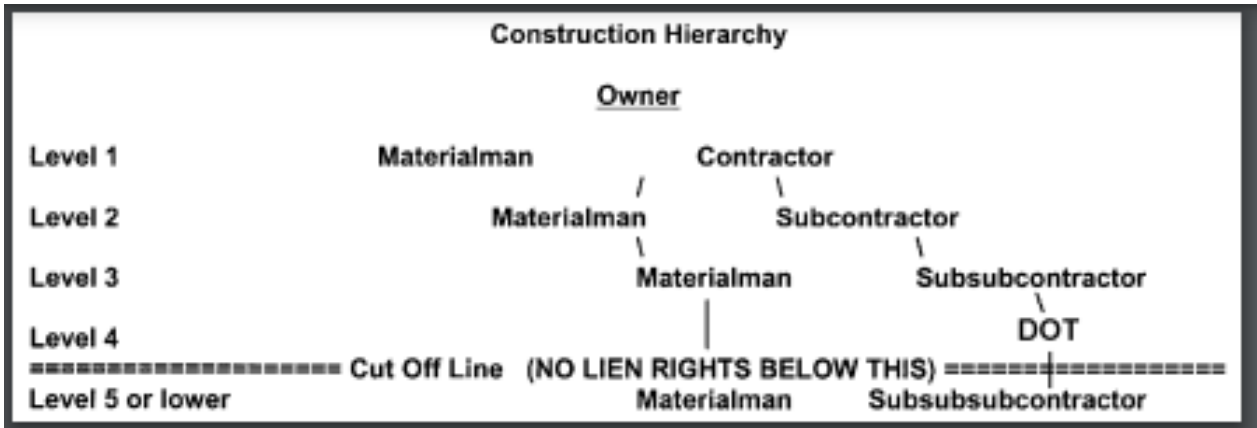
The type of work done, or the class of license held, is immaterial to whether one is a lienor. However, unlicensed persons working on a construction project, where a license is required for such work, are not lienors. In addition, material suppliers supplying to another material supplier and sub-sub-subcontractors are also not lienors. The distinction between contractors, subcontractors, and sub-subcontractors is determined by how far away from the owner these

⁴ Cornell Law School: Legal Information Institute, Privity, available at <https://www.law.cornell.edu/wex/privity#:~:text=When%20two%20or%20more%20parties,result%20of%20privity%20of%20contract> (last visited Jan 29, 2022).

⁵ Section 8:9. Lienors, 8 Fla. Prac., Constr. Law Manual § 8:9 (2021-2022 ed.), citing *Harper Lumber & Mfg. Co. v. Teate*, 98 Fla. 1055, 125 So. 21 (1929); *Pinewood Plumbing Supply, Inc. v. Centennial Const., Inc.*, 489 So. 2d 216 (Fla. 3d DCA 1986); *Tompkins Land Co., Inc. v. Edge*, 341 So. 2d 206 (Fla. 4th DCA 1976); *Warshaw v. Pym*, 266 So. 2d 355 (Fla. 3d DCA 1972); *First Nat. Bank v. Southern Lumber & Supply Co.*, 106 Fla. 821, 145 So. 594 (1932); *Brewer v. Lighting Unlimited of Florida, Inc.*, 603 So. 2d 52 (Fla. 5th DCA 1992); and *Adee v. Great Southeast Carpet Gallery, Inc.*, 562 So. 2d 409 (Fla. 5th DCA 1990).

⁶ See s. 713.06, F.S., which specifies the required notice to the owner regarding liens for persons not in privity with said owner.

persons are in the chain of contract.⁷ The chart below demonstrates, who would, and who would not, lien rights based on this chain of contract:



Source: Section 8:9. Lienors, 8 Fla. Prac., Constr. Law Manual § 8:9 (2021-2022 ed.).

Building Permit Warning to Owner

When a property owner obtains a building permit for an improvement, the permit includes a large, capitalized, boldface warning about the Construction Lien Law and how a person’s failure to comply with the law may result in the person paying twice for the same improvement. The warning states:

WARNING TO OWNER: YOUR FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF COMMENCEMENT⁸

A person may pay twice for an improvement if a payment is an “improper payment.” The distinction between a proper and an improper payment may be described as follows:

If an owner fulfills all the duties the [Construction] Lien Law places upon him, his liability for all mechanics’ lien claims cannot exceed the contract price. However, if the owner makes improper payments, then he has failed to comply with the [Construction] Lien Law, and his liability for mechanics’ lien claims may exceed the contract price.⁹

⁷ Fla. Prac., Constr. Law Manual, *Supra* note 5.

⁸ Section 713.135(1)(a), F.S.

⁹ *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977) (citations omitted).

Notice of Commencement

Before construction begins on a project, a private property owner or the owner's authorized agent must generally file a notice of commencement with the office of the clerk of the circuit court of the county in which the property is located (clerk) and post a certified copy of the notice on the property to be improved.¹⁰ This notice identifies who owns the property,¹¹ the physical location of the property, the name and address of the contractor, a description of the improvement, the name and address of the surety on the payment bond (if such bond exists), name and address of any person making a loan for the improvement, and any person upon whom service to the owner may be made.¹² Lienors use the contact information in the notice of commencement to keep the property owner or lessee informed of their identity, work on the construction project, and need to be paid.

When there is a construction loan on the project, the duty to record the notice is assumed by the lender and the lender must do so prior to disbursing any funds to a contractor. However, the duty to post the certified copy of the notice on the property to be improved remains with the owner in this situation.¹³

A notice of commencement generally has a duration of 1 year after it is recorded.¹⁴ Any construction liens recorded while the notice of commencement is in effect generally attach and take effect on the date that notice of commencement is recorded; in the event that a notice of commencement is not filed, liens attach and take priority as of the time each claim of lien is recorded.¹⁵ Additionally, a payment made by the owner after the notice of commencement expires is considered an improper payment.¹⁶

A building permit applicant must also generally file with the permit issuing authority, before the first inspection, either a certified copy of the recorded notice of commencement or a notarized statement that the notice was filed for recording, along with a copy of said notice. In the absence

¹⁰ Section 713.13, F.S. The notice is not required for certain projects, including:

- An improvement for which the direct contract price is \$2,500 or less.
- Public construction projects since land improved under such projects are not defined as "real property" under s. 713.01, F.S., and public property cannot have a lien placed upon it. However, a recent court decision in the 3rd District Court of Appeal, *James B. Pirtle Constr., Co., Inc. v. Warren Henry Automobiles, Inc.*, 329 So. 3d 205 (Fla. 3d DCA 2021), did clarify that liens on tenant improvements on public property are permissible.
- Direct contracts to repair or replace an existing heating or air-conditioning system in an amount less than \$7,500. Section 713.135(1)(d).

¹¹ Under s. 713.13(1)(a)3., F.S., this would include the name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner. A lessee who contracts for the improvements is an owner as defined under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest. To be an "owner" under the Construction Lien Law, one must own an interest in the property being improved and enter into a contract with a contractor for improving said property. Section 713.01(23), F.S.

¹² Section 713.13, F.S.

¹³ Section 713.13(7), F.S.

¹⁴ Section 713.13(1)(c), F.S.

¹⁵ Section 713.07(2), F.S.

¹⁶ Section 713.13(1)(c), F.S. In addition, *Tamarac Village, Inc., v. Bates & Daly Co.*, 348 So. 2d 23, 24 (Fla. 4th DCA 1977), the appellate court held that a payment made by the property owner to a contractor is an improper payment if the payment is made *before* the notice of commencement is recorded. The decision was based on s. 713.06(3)(a), F.S. (1973), which stated, "The owner shall not pay any money on account of a direct contract prior to recording of the notice provided in §713.13, and any amount so paid shall be held improperly paid." This provision has since been repealed.

of the filing of a certified copy of the recorded notice of commencement, the issuing authority or a private provider performing inspection services may not perform or approve subsequent inspections until the applicant files the appropriate certified copy with the issuing authority.¹⁷

Payment Bonds

One way an owner of a property can reduce their exposure to the Construction Lien Law, is to require their contractor to obtain a payment bond that meets the requirements of s. 713.23, F.S. For a private project, contractors are not obligated to obtain a payment bond; however having such a bond in place, exempts the property owner from other portions of the lien law, excepting construction liens filed by their own contractor.¹⁸ These bonds form a three-part contract between the owner, the contractor, and the surety to ensure that liens are not filed on the property, serving as the security for payment in lieu of the typical right to claim a lien. The payment bond must be furnished in at least the amount of the original contract price before beginning the construction project, and a copy of the bond must be attached to the recorded notice of commencement.¹⁹

Once a proper payment bond is in place, if a lienor (other than the main contractor) places a lien upon the project property, the owner or contractor may take the bond to the clerk who records the notice of bond. This has the legal effect of transferring the lien claim from the property to the payment bond.²⁰ There are, however, two different types of payment bonds—unconditional and conditional. An unconditional payment bond requires the surety to pay unpaid subcontractors, laborers, and material suppliers, regardless of whether the owner paid the contractor for said parties' materials and services. In contrast, a conditional bond, which is a creature of statute under s. 713.245, F.S., requires payment from the surety only where the owner has paid the contractor, but the contractor has not paid the subcontractors, laborers, and materials suppliers underneath them.²¹ If the contractor has not been paid for these parties' portion of the project, these parties can still file a lien against the construction project property.²² Therefore, it is critical for owners with conditional payment bonds to keep close tabs on what each payment they make is for and the status of payments to these parties.²³ These types of bonds are not widely used because of the difficult accounting generally required for the owner to keep track of them.²⁴

Generally, Construction Lien Law does not apply to publicly owned property.²⁵ Given this, Florida has enacted legislation requiring payment and performance bonds to be given by contractors for protection of payment to lower-tier subcontractors, suppliers, and laborers.²⁶

¹⁷ Section 713.135, F.S.

¹⁸ Section 8:5. Owner's duties—With s. 713.23, Fla. Stat. payment bond, 8 Fla. Prac., Constr. Law Manual § 8:5 (2021-2022 ed.).

¹⁹ Section 713.23(1)(a), F.S.

²⁰ Fla. Prac., Constr. Law Manual, *supra* note 18.

²¹ Section 713.245, F.S.

²² *Id.* and § 8:7. Owner's duties—With § 713.245, Fla. Stat. conditional payment bond, 8 Fla. Prac., Constr. Law Manual § 8:7 (2021-2022 ed.).

²³ Owner's duties—With § 713.245, Fla. Stat. conditional payment bond, *supra* note 22.

²⁴ Section 8:57. Conditional payment bond and forms, 8 Fla. Prac., Constr. Law Manual § 8:57 (2021-2022 ed.).

²⁵ See *supra*, note 10.

²⁶ Section 10:19. Public statutory payment/performance bonds—Generally, 8 Fla. Prac., Constr. Law Manual § 10:19 (2021-2022 ed.).

Section 255.05, F.S., requires contractors to obtain a payment and performance bond for public projects over \$100,000 to effectuate this protection. However, in lieu of the payment bond, a contractor working on a public project may file with the state, county, city, or other political authority an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of chapter 625, F.S., dealing with investments. The purpose of these alternatives is to provide the same protection to lower-tier subcontractors, suppliers, and laborers as provided by the payment and performance bond.²⁷

Construction Management Services

The traditional concept of a construction manager is that they participate in the design process regarding cost and constructability, but they do not take on the responsibility of paying contractors, subcontractors, and suppliers as with a traditional contractor setup. However, such a person does, in general, manage the construction process. One of the issues with construction management is that there is no uniformity in its application or setup.²⁸ This has given rise to a question in Construction Lien Law as to whether a construction manager may file a lien similar to a contractor or other party permissible under ch. 713, F.S., such as architects and engineers.²⁹

Licensed General and Building Contractors

Section 489.105, F.S., defines a contractor, in part, as the person who is qualified for, and is only responsible for, the project contracted for and means the person who, for compensation, undertakes to, submits a bid to, or does themselves or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure. The section specifies 17 different types of contractors, including general contractors and building contractors (s. 489.105, (a) and (b), F.S., respectively):

- A general contractor is a contractor whose services are unlimited as to the type of work they may do, who may contract for any activity requiring licensure under part I, ch. 489, F.S., and who may perform any work requiring licensure under this part I, ch. 489, F.S.³⁰
- A building contractor is a contractor whose services are limited to:
 - Construction of commercial buildings and single-dwelling or multiple-dwelling residential buildings, which do not exceed three stories in height, and accessory use structures in connection therewith or a contractor whose services are limited to remodeling, repair; or
 - Improvement of any size building if the services do not affect the structural members of the building.

²⁷ Section 255.05(7), F.S.

²⁸ Section 7:7. Construction manager, 8 Fla. Prac., Constr. Law Manual § 7:7 (2021-2022 ed.)

²⁹ See Scott Wolfe, Jr., *Can Construction Managers File Mechanics Liens?*, <https://www.levelset.com/blog/can-construction-managers-filemechanics-liens/> (last visited Jan. 30, 2022).

³⁰ Subject to certain exceptions specified in s. 489.113, F.S.

Notices of Termination

An owner may terminate the effectiveness of a notice of commencement by recording a notice of termination.³¹ In other words, by recording a notice of termination, a property owner can prevent the improved property from being subject to liens from unknown lienors. The property owner may record the notice of termination after all lienors who have served a notice to owner have been served with the notice of termination and after all lienors have been paid in full or paid their pro rata portion of the contractor's direct contract with the owner.³²

The notice of termination may be effective as early as 30 days after it is recorded.³³ However, a lienor has 45 days after commencing to furnish labor, services, or materials to serve a notice to owner, which is a prerequisite to recording a lien on the improved property.³⁴ As a result, lienors who begin work within 15 days before a notice of termination is recorded may have their lien rights cutoff before the time period to serve a notice to owner expires.

Serving Notices

The proper functioning of the Construction Lien Law is substantially based on the delivery and receipt of notices among property owners, lienors, contractors, and sureties. Prior to October 1, 1987, service could only be accomplished in the manner provided by law for the service of process; as such, service was generally accomplished having a sheriff or a special process server hand-deliver a document. This situation contributed to Florida's sheriff's offices being overly-burdened in trying to serve summonses, subpoenas, and other writs. Thus, this method for serving of notices under the Construction Lien Law was eliminated as of October, 1987, by s. 10, ch. 87-405, Laws of Florida.

When instruments including notices are served, the Construction Lien Law allows service to be accomplished by:

- Actual delivery to the person to be served;
- Common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery;" the evidence of such delivery may be in electronic format; or
- If neither of the first two methods can be accomplished, posting on the project site.³⁵

³¹ Section 713.132(1), F.S. The notice of termination must include the following:

- The same information as in the notice of commencement;
- The recording office document book and page reference numbers and date of the notice of commencement;
- A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;
- A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;
- A statement that all lienors have been paid in full; and
- A statement that the owner has, before recording the notice of termination, served a copy of the notice of termination on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner.

This requirement is excepted for a lienor who has executed a waiver and release of lien upon final payment.

³² Section 713.132(1)(e), (2), and (4), F.S.

³³ Section 713.13(4), F.S.

³⁴ Section 713.06(2)(a), F.S.

³⁵ Section 713.18(2), F.S.

In general, service of a document is effective on the “date of mailing.”³⁶ Current law also provides that service of a construction lien notice on one property owner or on one partner of a partnership that owns a property is deemed to provide notice to all owners or partners.³⁷

Notice to Owner/Notice to Contractor

After a notice of commencement is posted and recorded, lienors must serve the property owner and the contractor with a notice to owner or notice to contractor.³⁸ Serving these documents within the statutory timeframes is a prerequisite to enforcing a lien on the improved property or a claim against a payment bond.³⁹ For public construction projects, pursuant to s. 255.05(2)(a), F.S., and private projects, pursuant to s. 713.23(1)(c), F.S., the notice must be served no later than 45 days after the first furnishing of services or materials for the project.

A notice to owner informs the owner of a lienor’s identity and work performed.⁴⁰ Upon receipt of the notice, the owner becomes responsible for ensuring that the lienor is paid for its work even if the contractor is paid in full. To protect against a lien by the lienor or having to pay twice for the same work, the notice warns:

UNDER FLORIDA LAW, YOUR FAILURE TO MAKE SURE THAT WE ARE PAID MAY RESULT IN A LIEN AGAINST YOUR PROPERTY AND YOUR PAYING TWICE. TO AVOID A LIEN AND PAYING TWICE, YOU MUST OBTAIN A WRITTEN RELEASE FROM US EVERY TIME YOU PAY YOUR CONTRACTOR.⁴¹

A notice to contractor is similar to a notice to owner, but it is required when the contractor furnishes a payment bond that exempts the owner’s property from liens or when the contract is for a public improvement.⁴² A notice to contractor advises the contractor of the identity of the lienor and the lienor’s work, and informs the contractor that the lienor intends to look to the contractor’s bond if the lienor is not paid.

Notice of Nonpayment

A notice to owner or a notice to contractor makes an owner aware of the lienor’s identity to ensure that the lienor is paid for its work. If a lienor is not paid immediately upon commencing to furnish labor, services, or materials on a construction project, the lienor may serve a notice of nonpayment on the property owner or, for contracts having a payment and performance bond, on the contractor and surety.⁴³ A notice of nonpayment “must be under oath and served during the

³⁶ Section 713.18(3)(a), F.S. This statute only includes a reference to “mailing,” so there is some ambiguity as to how to apply it for methods of delivery other than sending by United States Mail.

³⁷ Section 713.18(4), F.S.

³⁸ Sections 255.05(2)(a)2., 337.18(1)(c), 713.06(2), and 713.23(1)(c), F.S.

³⁹ *Id.*

⁴⁰ Section 713.06(2)(c), F.S.

⁴¹ Section 713.06(2)(c), F.S.

⁴² Sections 713.23(1)(a), 337.18(1)(c), and 255.05(2)(a)2., F.S.

⁴³ Sections 713.23(1)(d), 255.05(2)(a), and 337.18(1)(c), F.S.

progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor.”⁴⁴

Duration of Liens

Section 713.22, F.S. states that under the Construction Lien Law, an action to enforce a properly recorded construction lien must be brought within one year of recording or one year after the recording of an amended claim of lien showing a later final furnishing date, unless the owner of the subject property chooses to shorten the enforcement period by recording a notice of contest of lien in the clerk’s office. Upon this contest of lien being filed, the clerk must serve notice on the lienor. Upon receipt of such notice, a lienor failing to file suit within 60 days to enforce their lien, shall have such lien extinguished.

Discharge of Liens

Section 713.21, F.S., specifies that liens under the Construction Lien Law may be discharged by:

- Entering satisfaction of the lien upon the margin of the record thereof in the clerk’s office when not otherwise prohibited by law;
- The satisfaction of the lienor, duly acknowledged and recorded in the clerk’s office;
- Failing to begin an action to enforce the lien within the statutorily-prescribed time frame;
- The issuance of an order discharging such by the circuit court of the county where the property is located; and
- Recording with the clerk a court judgment or decree showing the lien action’s final determination.

Transfer of Liens to Security

Section 713.24, F.S., states that any lien under the Construction Lien Law may be transferred from the real property to other security by a person with an interest in the real property or the contract under which the lien is claimed by either depositing money or filing a bond with the clerk’s office. Such deposit or bond must either in an amount equal to the amount demanded in such claim of lien, plus interest thereon at the legal rate for 3 years, plus \$1,000 or 25 percent of the amount demanded in the claim of lien, whichever is greater. Upon the provision of such deposit or bond, the clerk must make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien.⁴⁵

Attorney’s Fees and Costs

Section 713.29, F.S., states that in an action to enforce a lien or claim against a bond under the Construction Lien Law, a prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration.

⁴⁴ Section 713.23(1)(d), F.S. With respect to notices of nonpayment for public construction projects and construction maintenance projects, ss. 255.05(2)(a)2. and 337.18(2)(c), F.S., provide the same deadline.

⁴⁵ Section 713.24(1), F.S.

Computation of Time

The Construction Lien Law, though it does provide critical time frames for serving of certain notices and other documents, does not specifically provide a method for the computation of such time. Florida does, however, have a default method for computing time when statute does not already provide for such. Rule 2.514, Florida Rules of Judicial Administration, provides that when the stated period is in days, or a longer period of time:

- Begin counting from the next day that is not a Saturday, Sunday, or legal holiday;
- Count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, or falls within any period of time extended through an order of the chief justice under Florida Rule of Judicial Administration 2.205(a)(2)(B)(iv), the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday and does not fall within any period of time extended through an order of the chief justice.

III. Effect of Proposed Changes:

This bill revises several provisions of the Construction Lien Law, which is codified in part I of chapter 713, F.S., as detailed below.

Payment Bonds

Section 1 of the bill deletes from s. 255.05, F.S., a provision allowing, in lieu of the required payment bond, a contractor working on a public project to file with the state, county, city, or other political authority an alternative form of security in the form of cash, a money order, a certified check, a cashier's check, an irrevocable letter of credit, or a security of a type listed in part II of chapter 625, F.S., dealing with investments.

Notice to Contractor and Notice of Nonpayment

The bill amends several sections of Florida law relating to notices to contractors and notices of nonpayment. Specifically, the bill, under s. 255.05, F.S. (**section 1** of the bill) and s. 713.23, F.S. (**section 12** of the bill):

- Provides that the signatory of a notice of nonpayment may utilize an online notary.
- Clarifies that a lienor giving a required notice of nonpayment to the contractor must also include a copy of the notice provided to the surety.

The bill also revises in s. 713.01, F.S. (**section 3** of the bill) the definition of "final furnishing." The term is expanded to state that with respect to specially fabricated materials, final furnishing means:

- The date that the last portion of the specially fabricated materials is delivered to the site of the improvement; or
- If any portion of the specially fabricated materials is not delivered to the site of the improvement by no fault of the lienor, the term means 90 days after the date the lienor completes the fabrication or 90 days before the expiration of the notice of commencement, whichever is earlier.

In addition, for a construction project on public buildings under s. 255.05, F.S., **section 1** of the bill provides that if a payment bond is not recorded before the commencement of work or before the recommencement of work after a default or abandonment, if applicable the claimant may serve the contractor with a notice to contractor up to 45 days after the date that the claimant is served with a copy of said bond. The bill also reduces the waiting period of 45 days after the first furnishing of labor, services, or materials, to file a notice of nonpayment under s. 255.05, F.S., and s. 337.18, F.S., to 30 days (**Sections 1** and **2** of the bill, respectively).

Additional Definitions Used in the Construction Lien Law

Section 3 amends s. 713.01, F.S., which provides definitions of terms used in the Construction Lien Law.

Revision of the Definition of Clerk's Office

The bill revises the definition of “clerk’s office” under the Construction Lien Law to include another office serving as the county recorder as provided by law.

Revision of the Term Contractor under the Construction Lien Law

The bill revises the definition of the term “contractor” in s. 713.01, F.S. to include a licensed general contractor or building contractor who provides construction management services, which include scheduling and coordinating both preconstruction and construction phases for the successful, timely, and economical completion of the construction project or who provides program management services, which include schedule control, cost control, and coordination in providing or procuring planning, design, and construction. The effect of this change is to clarify that a licensed general contractor and a building contractor, meeting these criteria, may claim construction liens under the Construction Lien Law if they are not paid for their work.

Defining the Term Finance Charge under the Construction Lien Law

The bill defines the term “finance charge” under the Construction Lien Law to mean a contractually specified additional amount to be paid by the obligor on any balance that remains unpaid by the due date set forth in the credit agreement or other contract.

Defining the Term Specially Fabricated Materials

The bill defines the term “specially fabricated materials” under the Construction Lien Law to mean materials designed and fabricated for use in a particular improvement that are not generally suited for or readily adaptable for use in a similar improvement.

Computation of Time

Section 4 of the bill creates s. 713.011, F.S., establishing a method for the computation of time under the Construction Lien Law for recording a document or filing an action. This has the effect of overriding, for this area of law for said circumstances, the default method for computing time provided in rule 2.514, Florida Rules of Judicial Administration. Specifically, the section states that:

- In computing any time period for recording a document or filing an action under the Construction Lien Law, if the last day of the time period is a Saturday, Sunday, legal holiday, or any day observed as a holiday by the clerk's office, the time period is extended to the end of the next business day.
- During a state of emergency declared under ch. 252, F.S., during which the clerk's office is closed, the time periods for recording a document or filing an action under the Construction Lien Law are tolled. Upon the expiration of the declared state of emergency, the number of days that were remaining for any such time period on the first day of the declared state of emergency commences on the first business day after the expiration of the declared state of emergency.

In computing a time period, a federal, state, or local governmental order closing or directing the closure of the clerk's office for any reason constitutes a state of emergency and a clerk's office is considered closed if it is not accepting documents for recording or filing by any means.

Mobile Home Parks

Section 5 of the bill, amending s. 713.10, F.S., regarding the extent of liens, clarifies that mobile home parks are not subject to liens for improvements made by their lessees who are leasing a mobile home lot in said park.

Notices of Commencement

The notice of commencement form for a construction project provides the name and address of the owner of the property to be improved and the names and addresses of others who may be responsible for the project, including the fee simple title holder, lessee, contractor, surety, and lender. **Section 6** of the bill, amending s. 713.13, F.S., revises the notice of commencement form to allow that the signatory of the notice may use an online notary.

Section 8 of the bill also makes technical revisions to, and substantially amends, s. 713.135, F.S., regarding notices of commencement. Specifically, it authorizes a building permit applicant to submit to the clerk official records identifying information for the recorded notice of commencement, including the instrument number, to the issuing authority in lieu of a certified copy of the notice or notarized statement of filing. In addition, the section states that the permit issuing authority is not liable in a civil action for a failure to verify that:

- A notarized statement that the notice of commencement has been filed for recording along with a copy thereof; or
- The clerk's office official records identifying information that includes the instrument number for the notice of commencement or the number and page of book where the notice of commencement is recorded.

Notices of Termination

Section 7 of the bill revises several provisions regarding notices of termination pursuant to s. 713.132, F.S. Specifically, the bill requires that an owner serve a copy of the notice of termination on any lienor who timely serves a notice to owner after the notice of termination is recorded and to affirm in said notice that they will do so. This section also deletes a provision

that allows an owner to record a notice of termination after completion of construction or construction ceases; instead, the notice may only be recorded after all lienors have been paid in full. In addition, the section clarifies that the notice of termination must include the official records reference numbers and recording date affixed to the notice of commencement by the clerk.

In addition, the section requires that a notice of termination be served on each lienor who has a direct contract with the owner and on each lienor who has timely and properly served a notice to owner before the recording of the notice of termination. Said notice must be recorded in the official records of the county in which the improvement is located. If properly served, the notice terminates the notice of commencement 30 days after the notice of termination is recorded. However, a notice of commencement is not terminated as to any lienor who lacks a direct contract with the owner who timely serves a notice to owner after the notice of termination is recorded until 30 days after such person is served with the notice of termination.

Service of Documents

Section 9 of the bill, amending s. 713.18, F.S., makes technical changes and revises certain provisions relating to the service of documents under the Construction Lien Law. Specifically, the section:

- Changes the term “actual” delivery to clarify that it means “hand” delivery.
- Clarifies that service by mail must be made on the person to be served.
- Requires the person serving a notice to owner or a preliminary notice to contractor maintain electronic tracking records generated by the U.S. Postal Service, deleting the requirement that the records be electronic and specifying that they may be either generated or approved by the U.S. Postal Service. The section also deletes the requirements that such tracking records contain the name and address of the person being served.
- Specifies that for the service of a notice to owner or a preliminary notice to contractor to be effective upon mailing, all requirements of 713.18, F.S., must have been met.
- Clarifies that service of notice sent through an approved delivery service is effective on the date of mailing or shipping. Currently, the statute only specifies that the “date of mailing” applied.

The section also provides that section 713.18, F.S., applies to service of documents for bonds of contractors constructing public buildings under s. 255.05, F.S., and surety bonds for construction or maintenance contracts with the Department of Transportation, under s. 337.18, F.S. **Sections 1** and **2** of the bill also make conforming changes to implement this provision.

Discharge of Liens

Section 10 of the bill, amending s. 713.21, F.S., specifies that the methods used for discharging a lien may be used to discharge a lien in whole or in part. Additionally, the section provides that for a satisfaction or release of the lienor to be effective to discharge a lien, the satisfaction or release must include the lienor’s notarized signature and set forth the official records’ reference numbers and recording date affixed by the recording office on the subject lien.

Duration of a Lien

Section 11 of bill specifies that, under s. 713.22, F.S., the clerk's office must serve a recorded copy of the notice of contest of lien on the lienor. Thus, said notice would have to be recorded prior to service to constitute effective service.

Transfer of Liens to Security

Section 13 of the bill revises s. 713.24, F.S., to modify the minimum bond amount necessary to transfer a lien to a security from \$1,000 to \$5,000. The bill also creates a requirement that said bond be recorded with the certificate of such.

Attorney Fees

Section 15 of the bill, amending s. 713.29, F.S., provides that for liens that have been transferred to a security, a prevailing party in an action to enforce said lien still may (as with other actions to enforce a lien) recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court. The bill also revises s. 255.05, F.S., (**section 1** of the bill) to clarify that an arbitrator can set reasonable attorney fees in an enforcement of claim action for a payment bond of a contractor constructing public buildings.

Technical and Conforming Changes

- **Section 14** of the bill deletes s. 713.25, F.S., which is an outdated provision stating that ch. 65-456, F.S., shall take effect on July 1, 1965, but shall not apply to any act required to be done within a time period which is running on that date nor shall apply to existing projects where its operation would impair vested rights.
- **Section 16** of the bill amends s. 95.11, F.S., conforming cross references.

Effective Date

Section 17 of the bill 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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill makes a number of changes that may clarify potential ambiguities in the Construction Lien Law, this may reduce confusion and litigation in this area of law. In addition, the bill's provisions may cause more subcontractors, laborers, and material suppliers to receive due compensation for the labor, services, or materials they supply for construction projects.

In addition, the provision of the bill eliminating the option for a contractor working on a public project to provide an alternative form of security in lieu of a payment bond may increase costs for contractors working on such projects.

Finally, the provision of the bill increasing the minimum bond amount necessary to transfer a lien to a security will likely increase the costs on persons having an interest in real property, upon which a lien has been placed, who wish to transfer such lien to a security.

C. Government Sector Impact:

Eliminating the option for a contractor working on a public project to provide an alternative form of security in lieu of a payment bond may reduce the field of contractors willing to bid on such contracts.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.05, 337.18, 713.01, 713.10, 713.13, 713.132, 713.135, 713.18, 713.21, 713.22, 713.23, 713.24, and 713.29,

This bill creates section 713.011 of the Florida Statutes.

This bill repeals section 713.25 of the Florida Statutes.

This bill conforms cross references in section 95.11 of the Florida Statutes.

IX. Additional Information:

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

CS by Banking and Insurance on February 2, 2022:

The committee substitute amended the bill to:

- Revise the requirements for service for a notice to contractor on a public project if a payment bond is not recorded before commencement or recommencement of work;
- Require that a notice of nonpayment may not be served earlier than 30 days after the first furnishing of labor for a public project or a construction or maintenance project with the Department of Transportation;
- Delete a specification that the provisions for the waiver of a claim or a right to claim against a payment bond provided in s. 713.235, F.S., also apply to surety bonds for construction or maintenance contracts with the Department of Transportation;
- Revise the definitions of final furnishing (with respect to specially fabricated materials) and finance charge;
- Create a definition of specially fabricated materials;
- Narrow the scope of a computing of time provision for the Construction Lien Law to only apply it to recording of a document or filing of an action, and also revising how such time is computed.
- Delete a provision that a lienor may only record one claim of lien covering their entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under multiple direct contracts.
- Restore to current law the notice of commencement for the Construction Lien Law; however, the authorization for online notarization is retained from the original bill.
- Modify the minimum bond amount necessary to transfer a lien to a security from \$1,000 to \$5,000. The amendment also creates a requirement that said bond be recorded with the certificate of such.
- Delete a repeal of s. 713.245, F.S., relating to conditional payment bonds.
- Make technical and conforming changes.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

| Senate | . | House |
|------------|---|-------|
| Comm: RCS | . | |
| 02/03/2022 | . | |
| | . | |
| | . | |
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The Committee on Banking and Insurance (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) and subsections
(6) and (7) of section 255.05, Florida Statutes, are amended,
and a new subsection (11) is added to that section, to read:

255.05 Bond of contractor constructing public buildings;
form; action by claimants.—

(2) (a) 1. If a claimant is no longer furnishing labor,



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11 services, or materials on a project, a contractor or the
12 contractor's agent or attorney may elect to shorten the time
13 within which an action to enforce any claim against a payment
14 bond must be commenced by recording in the clerk's office a
15 notice in substantially the following form:

16
17 NOTICE OF CONTEST OF CLAIM
18 AGAINST PAYMENT BOND

19
20 To: ...(Name and address of claimant)...

21
22 You are notified that the undersigned contests your notice
23 of nonpayment, dated,, and served on the
24 undersigned on,, and that the time within
25 which you may file suit to enforce your claim is limited to 60
26 days after the date of service of this notice.

27
28 DATED on,

29
30 Signed: ...(Contractor or Attorney)...

31
32 The claim of a claimant upon whom such notice is served and who
33 fails to institute a suit to enforce his or her claim against
34 the payment bond within 60 days after service of such notice is
35 extinguished automatically. The contractor or the contractor's
36 attorney shall serve a copy of the notice of contest on ~~to~~ the
37 claimant at the address shown in the notice of nonpayment or
38 most recent amendment thereto and shall certify to such service
39 on the face of the notice and record the notice.



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40 2. A claimant, except a laborer, who is not in privity with
41 the contractor shall, before commencing or not later than 45
42 days after commencing to furnish labor, services, or materials
43 for the prosecution of the work, serve the contractor with a
44 written notice that he or she intends to look to the bond for
45 protection. If the payment bond is not recorded before the
46 commencement of work or before the recommencement of work after
47 a default or abandonment, if applicable, as required by s.
48 255.05(1), the claimant may serve the contractor with such
49 written notice up to 45 days after the date that the claimant is
50 served with a copy of the bond. A claimant who is not in privity
51 with the contractor and who has not received payment for
52 furnishing his or her labor, services, or materials shall serve
53 a written notice of nonpayment on the contractor and a copy of
54 the notice on the surety. The notice of nonpayment must ~~shall~~ be
55 under oath and served during the progress of the work or
56 thereafter but may not be served earlier than 30 ~~45~~ days after
57 the first furnishing of labor, services, or materials by the
58 claimant or later than 90 days after the final furnishing of the
59 labor, services, or materials by the claimant or, with respect
60 to rental equipment, later than 90 days after the date that the
61 rental equipment was last on the ~~job~~ site of the improvement
62 available for use. Any notice of nonpayment served by a claimant
63 who is not in privity with the contractor which includes sums
64 for retainage must specify the portion of the amount claimed for
65 retainage. An action for the labor, services, or materials may
66 not be instituted against the contractor or the surety unless
67 the notice to the contractor and notice of nonpayment have been
68 served, if required by this section. Notices required or



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69 permitted under this section must be served in accordance with
70 s. 713.18. A claimant may not waive in advance his or her right
71 to bring an action under the bond against the surety. In any
72 action brought to enforce a claim against a payment bond under
73 this section, the prevailing party is entitled to recover a
74 reasonable fee for the services of his or her attorney for trial
75 and appeal or for arbitration, in an amount to be determined by
76 the court or arbitrator, which fee must be taxed as part of the
77 prevailing party's costs, as allowed in equitable actions. The
78 time periods for service of a notice of nonpayment or for
79 bringing an action against a contractor or a surety are ~~shall be~~
80 measured from the last day of furnishing labor, services, or
81 materials by the claimant and may not be measured by other
82 standards, such as the issuance of a certificate of occupancy or
83 the issuance of a certificate of substantial completion. The
84 negligent inclusion or omission of any information in the notice
85 of nonpayment that has not prejudiced the contractor or surety
86 does not constitute a default that operates to defeat an
87 otherwise valid bond claim. A claimant who serves a fraudulent
88 notice of nonpayment forfeits his or her rights under the bond.
89 A notice of nonpayment is fraudulent if the claimant has
90 willfully exaggerated the amount unpaid, willfully included a
91 claim for work not performed or materials not furnished for the
92 subject improvement, or prepared the notice with such willful
93 and gross negligence as to amount to a willful exaggeration.
94 However, a minor mistake or error in a notice of nonpayment, or
95 a good faith dispute as to the amount unpaid, does not
96 constitute a willful exaggeration that operates to defeat an
97 otherwise valid claim against the bond. The service of a



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98 fraudulent notice of nonpayment is a complete defense to the
99 claimant's claim against the bond. The notice of nonpayment
100 under this subparagraph must include the following information,
101 current as of the date of the notice, and must be in
102 substantially the following form:

103
104 NOTICE OF NONPAYMENT

105
106 To: ...(name of contractor and address)...

107
108 ...(name of surety and address)...

109
110 The undersigned claimant notifies you that:

111 1. Claimant has furnished ...(describe labor, services, or
112 materials)... for the improvement of the real property
113 identified as ...(property description).... The corresponding
114 amount unpaid to date is \$...., of which \$.... is unpaid
115 retainage.

116 2. Claimant has been paid to date the amount of \$.... for
117 previously furnishing ...(describe labor, services, or
118 materials)... for this improvement.

119 3. Claimant expects to furnish ...(describe labor,
120 services, or materials)... for this improvement in the future
121 (if known), and the corresponding amount expected to become due
122 is \$.... (if known).

123
124 I declare that I have read the foregoing Notice of Nonpayment
125 and that the facts stated in it are true to the best of my
126 knowledge and belief.



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127
128 DATED on,

129

130 ... (signature and address of claimant)...

131

132 STATE OF FLORIDA
133 COUNTY OF

134

135 The foregoing instrument was sworn to (or affirmed) and
136 subscribed before me by means of physical presence or sworn to
137 (or affirmed) by online notarization this day of,
138 ... (year) ..., by ... (name of signatory)

139

140 ... (Signature of Notary Public - State of Florida) ...
141 ... (Print, Type, or Stamp Commissioned Name of Notary
142 Public) ...

143

144 Personally Known OR Produced Identification

145

146 Type of Identification Produced.....

147

148 (6) All payment bond forms used by a public owner and all
149 payment bonds executed pursuant to this section by a surety
150 shall make reference to this section by number, shall contain
151 reference to the notice and time limitation provisions in
152 subsections (2) and (9) ~~(10)~~, and shall comply with the
153 requirements of paragraph (1) (a).

154 ~~(7) In lieu of the bond required by this section, a~~
155 ~~contractor may file with the state, county, city, or other~~



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156 ~~political authority an alternative form of security in the form~~
157 ~~of cash, a money order, a certified check, a cashier's check, an~~
158 ~~irrevocable letter of credit, or a security of a type listed in~~
159 ~~part II of chapter 625. Any such alternative form of security~~
160 ~~shall be for the same purpose and be subject to the same~~
161 ~~conditions as those applicable to the bond required by this~~
162 ~~section. The determination of the value of an alternative form~~
163 ~~of security shall be made by the appropriate state, county,~~
164 ~~city, or other political subdivision.~~

165 (11) Unless otherwise provided in this section, service of
166 any document must be made in accordance with s. 713.18.

167 Section 2. Paragraph (c) of subsection (1) of section
168 337.18, Florida Statutes, is amended, and subsection (6) is
169 added to that section, to read:

170 337.18 Surety bonds for construction or maintenance
171 contracts; requirement with respect to contract award; bond
172 requirements; defaults; damage assessments.-

173 (1)

174 (c) A claimant, except a laborer, who is not in privity
175 with the contractor shall, before commencing or not later than
176 90 days after commencing to furnish labor, materials, or
177 supplies for the prosecution of the work, furnish the contractor
178 with a notice that he or she intends to look to the bond for
179 protection. A claimant who is not in privity with the contractor
180 and who has not received payment for his or her labor,
181 materials, or supplies shall deliver to the contractor and to
182 the surety written notice of the performance of the labor or
183 delivery of the materials or supplies and of the nonpayment. The
184 notice of nonpayment may be served at any time during the



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185 progress of the work or thereafter but not before 30 ~~45~~ days
186 after the first furnishing of labor, services, or materials, and
187 not later than 90 days after the final furnishing of the labor,
188 services, or materials by the claimant or, with respect to
189 rental equipment, not later than 90 days after the date that the
190 rental equipment was last on the ~~job~~ site of the improvement
191 available for use. An action by a claimant, except a laborer,
192 who is not in privity with the contractor for the labor,
193 materials, or supplies may not be instituted against the
194 contractor or the surety unless both notices have been given.
195 Written notices required or permitted under this section must
196 ~~may~~ be served in accordance with ~~any manner provided in~~ s.
197 713.18.

198 (6) Unless otherwise provided in this section, service of
199 any document must be made in accordance with s. 713.18.

200 Section 3. Present subsections (13) through (27) and
201 subsections (28) and (29) of section 713.01, Florida Statutes,
202 are redesignated as subsections (14) through (28) and
203 subsections (30) and (31), respectively, new subsections (13)
204 and (29) are added to that section, and subsections (4), (8),
205 and (12) of that section are amended, to read:

206 713.01 Definitions.—As used in this part, the term:

207 (4) "Clerk's office" means the office of the clerk of the
208 circuit court of the county, or another office serving as the
209 county recorder as provided by law, in which the real property
210 is located.

211 (8) "Contractor" means a person other than a materialman or
212 laborer who enters into a contract with the owner of real
213 property for improving it, or who takes over from a contractor



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214 as so defined the entire remaining work under such contract. The
215 term "contractor" includes an architect, landscape architect, or
216 engineer who improves real property pursuant to a design-build
217 contract authorized by s. 489.103(16). The term also includes a
218 licensed general contractor or building contractor, as those
219 terms are defined in s. 489.105(3)(a) and (b), respectively, who
220 provides construction management services, which include
221 scheduling and coordinating both preconstruction and
222 construction phases for the successful, timely, and economical
223 completion of the construction project or who provides program
224 management services, which include schedule control, cost
225 control, and coordination in providing or procuring planning,
226 design, and construction.

227 (12) "Final furnishing" means the last date that the lienor
228 furnishes labor, services, or materials. Such date may not be
229 measured by other standards, such as the issuance of a
230 certificate of occupancy or the issuance of a certificate of
231 final completion, and does not include the correction of
232 deficiencies in the lienor's previously performed work or
233 materials supplied. With respect to rental equipment, the term
234 means the date that the rental equipment was last on the ~~job~~
235 site of the improvement and available for use. With respect to
236 specially fabricated materials, the term means the date that the
237 last portion of the specially fabricated materials is delivered
238 to the site of the improvement, or if any portion of the
239 specially fabricated materials is not delivered to the site of
240 the improvement by no fault of the lienor, the term means 90
241 days after the date the lienor completes the fabrication or 90
242 days before the expiration of the notice of commencement,



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243 whichever is earlier.

244 (13) "Finance charge" means a contractually specified
245 additional amount to be paid by the obligor on any balance that
246 remains unpaid by the due date set forth in the credit agreement
247 or other contract.

248 (29) "Specially fabricated materials" means materials
249 designed and fabricated for use in a particular improvement that
250 are not generally suited for or readily adaptable for use in a
251 similar improvement.

252 Section 4. Section 713.011, Florida Statutes, is created to
253 read:

254 713.011 Computation of time.—

255 (1) In computing any time period for recording a document
256 or filing an action under this part, if the last day of the time
257 period is a Saturday, Sunday, legal holiday, or any day observed
258 as a holiday by the clerk's office, the time period is extended
259 to the end of the next business day.

260 (2) During a state of emergency declared under chapter 252
261 during which the clerk's office is closed, the time periods for
262 recording a document or filing an action under this part are
263 tolled. Upon the expiration of the declared state of emergency,
264 the number of days that were remaining for any such time period
265 on the first day of the declared state of emergency commences on
266 the first business day after the expiration of the declared
267 state of emergency.

268 (3) For purposes of this section, a federal, state, or
269 local governmental order closing or directing the closure of the
270 clerk's office for any reason constitutes a state of emergency
271 and a clerk's office is considered closed if it is not accepting



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272 documents for recording or filing by any means.

273 Section 5. Paragraph (b) of subsection (2) of section
274 713.10, Florida Statutes, is amended, and subsection (4) is
275 added to that section, to read:

276 713.10 Extent of liens.—

277 (2)

278 (b) The interest of the lessor is not subject to liens for
279 improvements made by the lessee when:

280 1. The lease, or a short form or a memorandum of the lease
281 that contains the specific language in the lease prohibiting
282 such liability, is recorded in the official records of the
283 county where the premises are located before the recording of a
284 notice of commencement for improvements to the premises and the
285 terms of the lease expressly prohibit such liability; or

286 2. The terms of the lease expressly prohibit such
287 liability, and a notice advising that leases for the rental of
288 premises on a parcel of land prohibit such liability has been
289 recorded in the official records of the county in which the
290 parcel of land is located before the recording of a notice of
291 commencement for improvements to the premises, and the notice
292 includes the following:

293 a. The name of the lessor.

294 b. The legal description of the parcel of land to which the
295 notice applies.

296 c. The specific language contained in the various leases
297 prohibiting such liability.

298 d. A statement that all or a majority of the leases entered
299 into for premises on the parcel of land expressly prohibit such
300 liability.



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301 ~~3. The lessee is a mobile home owner who is leasing a~~
302 ~~mobile home lot in a mobile home park from the lessor.~~

303
304 A notice that is consistent with subparagraph 2. effectively
305 prohibits liens for improvements made by a lessee even if other
306 leases for premises on the parcel do not expressly prohibit
307 liens or if provisions of each lease restricting the application
308 of liens are not identical.

309 (4) The interest of the lessor is not subject to liens for
310 improvements made by the lessee when the lessee is a mobile home
311 owner who is leasing a mobile home lot in a mobile home park
312 from the lessor.

313 Section 6. Paragraphs (a) and (d) of subsection (1) of
314 section 713.13, Florida Statutes, are amended to read:

315 713.13 Notice of commencement.—

316 (1) (a) Except for an improvement that is exempt under
317 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
318 agent before actually commencing to improve any real property,
319 or recommencing completion of any improvement after default or
320 abandonment, whether or not a project has a payment bond
321 complying with s. 713.23, shall record a notice of commencement
322 in the clerk's office and ~~forthwith~~ post either a certified copy
323 thereof or a notarized statement that the notice of commencement
324 has been filed for recording along with a copy thereof. The
325 notice of commencement shall contain all of the following
326 information:

327 1. A description sufficient for identification of the real
328 property to be improved. The description should include the
329 legal description of the property and also should include the



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330 street address and tax folio number of the property if available
331 or, if there is no street address available, such additional
332 information as will describe the physical location of the real
333 property to be improved.

334 2. A general description of the improvement.

335 3. The name and address of the owner, the owner's interest
336 in the site of the improvement, and the name and address of the
337 fee simple titleholder, if other than such owner. A lessee who
338 contracts for the improvements is an owner as defined under s.
339 713.01 ~~s. 713.01(23)~~ and must be listed as the owner together
340 with a statement that the ownership interest is a leasehold
341 interest.

342 4. The name and address of the contractor.

343 5. The name and address of the surety on the payment bond
344 under s. 713.23, if any, and the amount of such bond.

345 6. The name and address of any person making a loan for the
346 construction of the improvements.

347 7. The name and address within the state of a person other
348 than himself or herself who may be designated by the owner as
349 the person upon whom notices or other documents may be served
350 under this part; and service upon the person so designated
351 constitutes service upon the owner.

352 (d) A notice of commencement must be in substantially the
353 following form:

354
355 Permit No..... Tax Folio No.....

356 NOTICE OF COMMENCEMENT

357 State of....

358 County of....



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387

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....
2. General description of improvement:.....
3. Owner information or Lessee information if the Lessee contracted for the improvement:
 - a. Name and address:.....
 - b. Interest in property:.....
 - c. Name and address of fee simple titleholder (if different from Owner listed above):.....
- 4.a. Contractor: ...(name and address)....
 - b. Contractor's phone number:.....
5. Surety (if applicable, a copy of the payment bond is attached):
 - a. Name and address:.....
 - b. Phone number:.....
 - c. Amount of bond: \$.....
- 6.a. Lender: ...(name and address)....
 - b. Lender's phone number:.....
7. Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided by Section 713.13(1)(a)7., Florida Statutes:
 - a. Name and address:.....
 - b. Phone numbers of designated persons:.....
 - 8.a. In addition to himself or herself, Owner designates



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388 of to receive a copy of the Lienor's
389 Notice as provided in Section 713.13(1)(b), Florida Statutes.

390 b. Phone number of person or entity designated by
391 owner:.....

392 9. Expiration date of notice of commencement (the
393 expiration date will be 1 year after ~~from~~ the date of recording
394 unless a different date is specified).....

395
396 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
397 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
398 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
399 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
400 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
401 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
402 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
403 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
404 COMMENCEMENT.

405
406 ...(Signature of Owner or Lessee, or Owner's or Lessee's
407 Authorized Officer/Director/Partner/Manager)...

408
409 ...(Signatory's Title/Office)...

410
411 The foregoing instrument was acknowledged before me by means of
412 physical presence or acknowledged before me by means of
413 online notarization, this day of, ...(year)...., by
414 ...(name of person)... as ...(type of authority, . . . e.g.
415 officer, trustee, attorney in fact)... for ...(name of party on
416 behalf of whom instrument was executed)....



417
418 ... (Signature of Notary Public - State of Florida) ...
419
420 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
421

422 Personally Known OR Produced Identification
423

424 Type of Identification Produced.....

425 Section 7. Subsections (1), (3), and (4) of section
426 713.132, Florida Statutes, are amended to read:

427 713.132 Notice of termination.—

428 (1) An owner may terminate the period of effectiveness of a
429 notice of commencement by executing, swearing to, and recording
430 a notice of termination that contains all of the following:

431 (a) The same information as the notice of commencement.†

432 (b) The official records' ~~recording office document book~~
433 ~~and page~~ reference numbers and recording date affixed by the
434 recording office on ~~of~~ the recorded notice of commencement.†

435 (c) A statement of the date as of which the notice of
436 commencement is terminated, which date may not be earlier than
437 30 days after the notice of termination is recorded.†

438 (d) A statement specifying that the notice applies to all
439 the real property subject to the notice of commencement or
440 specifying the portion of such real property to which it
441 applies.†

442 (e) A statement that all lienors have been paid in full.†
443 ~~and~~

444 (f) A statement that the owner has, before recording the
445 notice of termination, served a copy of the notice of



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446 ~~termination on the contractor and~~ on each lienor who has a
447 direct contract with the owner or who has timely served a notice
448 to owner, and a statement that the owner will serve a copy of
449 the notice of termination on each lienor who timely serves a
450 notice to owner after the notice of termination has been
451 recorded. The owner is not required to serve a copy of the
452 notice of termination on any lienor who has executed a waiver
453 and release of lien upon final payment in accordance with s.
454 713.20.

455 (3) An owner may ~~not~~ record a notice of termination at any
456 time after ~~except after completion of construction, or after~~
457 ~~construction ceases before completion and~~ all lienors have been
458 paid in full or pro rata in accordance with s. 713.06(4).

459 (4) If an owner or a contractor, by fraud or collusion,
460 knowingly makes any fraudulent statement or affidavit in a
461 notice of termination or any accompanying affidavit, the owner
462 and the contractor, or either of them, ~~as the case may be,~~ is
463 liable to any lienor who suffers damages as a result of the
464 filing of the fraudulent notice of termination, ~~and~~ and any such
465 lienor has a right of action for damages ~~occasioned thereby.~~

466 (5) ~~(4)~~ A notice of termination must be served before
467 recording on each lienor who has a direct contract with the
468 owner and on each lienor who has timely and properly served a
469 notice to owner in accordance with this part before the
470 recording of the notice of termination. A notice of termination
471 must be recorded in the official records of the county in which
472 the improvement is located. If properly served before recording
473 in accordance with this subsection, the notice of termination
474 terminates the period of effectiveness of the notice of



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475 commencement 30 days after the notice of termination is recorded
476 in the official records is effective to terminate the notice of
477 commencement at the later of 30 days after recording of the
478 notice of termination or a later the date stated in the notice
479 of termination as the date on which the notice of commencement
480 is terminated. However, if a lienor who began work under the
481 notice of commencement before its termination lacks a direct
482 contract with the owner and timely serves his or her notice to
483 owner after the notice of termination has been recorded, the
484 owner must serve a copy of the notice of termination upon such
485 lienor, and the termination of the notice of commencement as to
486 that lienor is effective 30 days after service of the notice of
487 termination, if the notice of termination has been served
488 pursuant to paragraph (1)(f) on the contractor and on each
489 lienor who has a direct contract with the owner or who has
490 served a notice to owner.

491 Section 8. Subsections (1) and (3) of section 713.135,
492 Florida Statutes, are amended to read:

493 713.135 Notice of commencement and applicability of lien.-

494 (1) When a ~~any~~ person applies for a building permit, the
495 authority issuing such permit shall:

496 (a) Print on the face of each permit card in no less than
497 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
498 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
499 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
500 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
501 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
502 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
503 COMMENCEMENT."



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504 (b) Provide the applicant and the owner of the real
505 property upon which improvements are to be constructed with a
506 printed statement stating that the right, title, and interest of
507 the person who has contracted for the improvement may be subject
508 to attachment under the Construction Lien Law. The Department of
509 Business and Professional Regulation shall furnish, for
510 distribution, the statement described in this paragraph, and the
511 statement must be a summary of the Construction Lien Law and
512 must include an explanation of the provisions of the
513 Construction Lien Law relating to the recording, and the posting
514 of copies, of notices of commencement and a statement
515 encouraging the owner to record a notice of commencement and
516 post a copy of the notice of commencement in accordance with s.
517 713.13. The statement must also contain an explanation of the
518 owner's rights if a lienor fails to furnish the owner with a
519 notice as provided in s. 713.06(2) and an explanation of the
520 owner's rights as provided in s. 713.22. The authority that
521 issues the building permit must obtain from the Department of
522 Business and Professional Regulation the statement required by
523 this paragraph and must mail, deliver by electronic mail or
524 other electronic format or facsimile, or personally deliver that
525 statement to the owner or, in a case in which the owner is
526 required to personally appear to obtain the permit, provide that
527 statement to any owner making improvements to real property
528 consisting of a single or multiple family dwelling up to and
529 including four units. However, the failure by the authorities to
530 provide the summary does not subject the issuing authority to
531 liability.

532 (c) In addition to providing the owner with the statement



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533 as required by paragraph (b), inform each applicant who is not
534 the person whose right, title, and interest is subject to
535 attachment that, as a condition to the issuance of a building
536 permit, the applicant must promise in good faith that the
537 statement will be delivered to the person whose property is
538 subject to attachment.

539 (d) Furnish to the applicant two or more copies of a form
540 of notice of commencement conforming with s. 713.13.

541 (e) Require ~~If the direct contract is greater than \$2,500,~~
542 the applicant to shall file with the issuing authority before
543 ~~prior to~~ the first inspection ~~either a certified copy of the~~
544 ~~recorded~~ notice of commencement if the direct contract is
545 greater than \$2,500. For purposes of this paragraph, the term
546 "copy of the notice of commencement" means a certified copy of
547 the recorded notice of commencement, or a notarized statement
548 that the notice of commencement has been filed for recording,
549 along with a copy thereof, or the clerk's office official
550 records identifying information that includes the instrument
551 number for the notice of commencement or the number and page of
552 book where the notice of commencement is recorded, as identified
553 by the clerk.

554 1. In the absence of the filing of a ~~certified~~ copy of the
555 ~~recorded~~ notice of commencement, the issuing authority or a
556 private provider performing inspection services may not perform
557 or approve subsequent inspections until the applicant files by
558 mail, facsimile, hand delivery, or any other means such
559 ~~certified~~ copy with the issuing authority.

560 2. The ~~certified~~ copy of the notice of commencement must
561 contain the name and address of the owner, the name and address



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562 of the contractor, and the location or address of the property
563 being improved. The issuing authority shall verify that the name
564 and address of the owner, the name of the contractor, and the
565 location or address of the property being improved which is
566 contained in the ~~certified~~ copy of the notice of commencement is
567 consistent with the information in the building permit
568 application.

569 3. The issuing authority shall provide the recording
570 information on the ~~certified~~ copy of the ~~recorded~~ notice of
571 commencement to any person upon request.

572 4. This subsection does not require the recording of a
573 notice of commencement before ~~prior to~~ the issuance of a
574 building permit. If a local government requires a separate
575 permit or inspection for installation of temporary electrical
576 service or other temporary utility service, land clearing, or
577 other preliminary site work, such permits may be issued and such
578 inspections may be conducted without providing the issuing
579 authority with a ~~certified~~ copy of the ~~a recorded~~ notice of
580 commencement ~~or a notarized statement regarding a recorded~~
581 ~~notice of commencement. This subsection does not apply to a~~
582 ~~direct contract to repair or replace an existing heating or air-~~
583 ~~conditioning system in an amount less than \$7,500.~~

584 (f) ~~(e)~~ Not require that a notice of commencement be
585 recorded as a condition of the application for, or processing or
586 issuance of, a building permit. However, this paragraph does not
587 modify or waive the inspection requirements set forth in this
588 subsection.

589
590 This subsection does not apply to a direct contract to repair or



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591 replace an existing heating or air-conditioning system in an
592 amount less than \$7,500.

593 (3) An issuing authority under subsection (1) is not liable
594 in any civil action for the failure to verify that a certified
595 copy of the recorded notice of commencement, a notarized
596 statement that the notice of commencement has been filed for
597 recording along with a copy thereof, or the clerk's office
598 official records identifying information that includes the
599 instrument number for the notice of commencement or the number
600 and page of book where the notice of commencement is recorded,
601 as identified by the clerk, has been filed in accordance with
602 this section.

603 Section 9. Section 713.18, Florida Statutes, is amended to
604 read:

605 713.18 Manner of serving documents ~~notices and other~~
606 ~~instruments.~~

607 (1) Unless otherwise specifically provided by law, service
608 of any document notices, claims of lien, affidavits,
609 assignments, and other instruments permitted or required under
610 this part, s. 255.05, or s. 337.18, or copies thereof when so
611 permitted or required, ~~unless otherwise specifically provided in~~
612 ~~this part,~~ must be made by one of the following methods:

613 (a) By hand ~~actual~~ delivery to the person to be served; if
614 a partnership, to one of the partners; if a corporation, to an
615 officer, director, managing agent, or business agent; or, if a
616 limited liability company, to a member or manager.

617 (b) By common carrier delivery service or by registered,
618 Global Express Guaranteed, or certified mail to the person to be
619 served, with postage or shipping paid by the sender and with



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620 evidence of delivery, which may be in an electronic format.

621 (c) By posting on the site of the improvement if service as
622 provided by paragraph (a) or paragraph (b) cannot be
623 accomplished.

624 (2) Notwithstanding subsection (1), service of a notice to
625 owner or a preliminary notice to contractor under this part, s.
626 255.05, or s. 337.18, ~~or s. 713.23~~ is effective as of the date
627 of mailing and the requirements for service under this section
628 have been satisfied if all of the following requirements have
629 been met:

630 (a) The notice is mailed by registered, Global Express
631 Guaranteed, or certified mail, with postage prepaid, to the
632 person to be served and addressed as prescribed ~~at any of the~~
633 ~~addresses set forth~~ in subsection (3).~~7~~

634 (b) The notice is mailed within 40 days after the date the
635 lienor first furnishes labor, services, or materials.~~7~~ ~~and~~

636 (c) 1. The person who served the notice maintains a
637 registered or certified mail log that shows the registered or
638 certified mail number issued by the United States Postal
639 Service, the name and address of the person served, and the date
640 stamp of the United States Postal Service confirming the date of
641 mailing; or

642 2. The person who served the notice maintains ~~electronic~~
643 tracking records approved or generated by the United States
644 Postal Service containing the postal tracking number, ~~the name~~
645 ~~and address of the person served~~, and verification of the date
646 of receipt by the United States Postal Service.

647 (3) (a) Notwithstanding subsection (1), service of a
648 document under an instrument pursuant to this section is



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649 effective on the date of mailing or shipping, and the
650 requirements for service under this section have been satisfied,
651 ~~the instrument~~ if the document ~~it~~:

652 1. Is sent to the last address shown in the notice of
653 commencement or any amendment thereto or, in the absence of a
654 notice of commencement, to the last address shown in the
655 building permit application, or to the last known address of the
656 person to be served. ~~;~~ and

657 2. Is returned as being "refused," "moved, not
658 forwardable," or "unclaimed," or is otherwise not delivered or
659 deliverable through no fault of the person serving the document
660 ~~item~~.

661 (b) If the address shown in the notice of commencement or
662 any amendment thereto ~~to the notice of commencement~~, or, in the
663 absence of a notice of commencement, in the building permit
664 application, is incomplete for purposes of mailing or delivery,
665 the person serving the document ~~item~~ may complete the address
666 and properly format it according to United States Postal Service
667 addressing standards using information obtained from the
668 property appraiser or another public record without affecting
669 the validity of service under this section.

670 (4) A document ~~notice~~ served by a lienor on one owner or
671 one partner of a partnership owning the real property is deemed
672 served on ~~notice to~~ all owners and partners.

673 Section 10. Section 713.21, Florida Statutes, is amended to
674 read:

675 713.21 Discharge of lien.—A lien properly perfected under
676 this chapter may be discharged, or released in whole or in part,
677 by any of the following methods:



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678 (1) By entering satisfaction of the lien upon the margin of
679 the record thereof in the clerk's office when not otherwise
680 prohibited by law. This satisfaction shall be signed by the
681 lienor, the lienor's agent or attorney and attested by said
682 clerk. Any person who executes a claim of lien has ~~shall have~~
683 authority to execute a satisfaction in the absence of actual
684 notice of lack of authority to any person relying on the same.

685 (2) By the satisfaction or release of the lienor, duly
686 acknowledged and recorded in the clerk's office. The
687 satisfaction or release must include the lienor's notarized
688 signature and set forth the official records' reference numbers
689 and recording date affixed by the recording office on the
690 subject lien. Any person who executes a claim of lien has ~~shall~~
691 ~~have~~ authority to execute a satisfaction or release in the
692 absence of actual notice of lack of authority to any person
693 relying on the same.

694 (3) By failure to begin an action to enforce the lien
695 within the time prescribed in this part.

696 (4) By an order of the circuit court of the county where
697 the property is located, as provided in this subsection. Upon
698 filing a complaint therefor by any interested party the clerk
699 shall issue a summons to the lienor to show cause within 20 days
700 why his or her lien should not be enforced by action or vacated
701 and canceled of record. Upon failure of the lienor to show cause
702 why his or her lien should not be enforced or the lienor's
703 failure to commence such action before the return date of the
704 summons the court shall forthwith order cancellation of the
705 lien.

706 (5) By recording in the clerk's office the original or a



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707 certified copy of a judgment or decree of a court of competent
708 jurisdiction showing a final determination of the action.

709 Section 11. Subsection (2) of section 713.22, Florida
710 Statutes, is amended to read:

711 713.22 Duration of lien.—

712 (2) An owner or the owner's attorney may elect to shorten
713 the time prescribed in subsection (1) within which to commence
714 an action to enforce any claim of lien or claim against a bond
715 or other security under s. 713.23 or s. 713.24 by recording in
716 the clerk's office a notice in substantially the following form:

717

718 NOTICE OF CONTEST OF LIEN

719 To: ...(Name and address of lienor)...

720

721 You are notified that the undersigned contests the claim of lien
722 filed by you on, ...(year)..., and recorded in Book
723, Page, of the public records of County, Florida,
724 and that the time within which you may file suit to enforce your
725 lien is limited to 60 days from the date of service of this
726 notice. This day of, ...(year)....

727

728 Signed: ...(Owner or Attorney)...

729

730 The lien of any lienor upon whom such recorded notice is served
731 and who fails to institute a suit to enforce his or her lien
732 within 60 days after service of such recorded notice shall be
733 extinguished automatically. The clerk shall serve, in accordance
734 with s. 713.18, a copy of the recorded notice of contest to the
735 lien claimant at the address shown in the claim of lien or most



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736 recent amendment thereto and shall certify to such service and
737 the date of service on the face of the notice and record the
738 notice.

739 Section 12. Paragraphs (d) and (e) of subsection (1) of
740 section 713.23, Florida Statutes, are amended to read:

741 713.23 Payment bond.—

742 (1)

743 (d) In addition, a lienor who has not received payment for
744 furnishing his or her labor, services, or materials must, as a
745 condition precedent to recovery under the bond, serve a written
746 notice of nonpayment on ~~to~~ the contractor and a copy of the
747 notice on the surety. The notice must be under oath and served
748 during the progress of the work or thereafter, but may not be
749 served later than 90 days after the final furnishing of labor,
750 services, or materials by the lienor, or, with respect to rental
751 equipment, later than 90 days after the date the rental
752 equipment was on the ~~job~~ site of the improvement and available
753 for use. A notice of nonpayment that includes sums for retainage
754 must specify the portion of the amount claimed for retainage.
755 The required notice satisfies this condition precedent with
756 respect to the payment described in the notice of nonpayment,
757 including unpaid finance charges due under the lienor's
758 contract, and with respect to any other payments which become
759 due to the lienor after the date of the notice of nonpayment.
760 The time period for serving a notice of nonpayment is ~~shall be~~
761 measured from the last day of furnishing labor, services, or
762 materials by the lienor and may not be measured by other
763 standards, such as the issuance of a certificate of occupancy or
764 the issuance of a certificate of substantial completion. The



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765 failure of a lienor to receive retainage sums not in excess of
766 10 percent of the value of labor, services, or materials
767 furnished by the lienor is not considered a nonpayment requiring
768 the service of the notice provided under this paragraph. If the
769 payment bond is not recorded before commencement of
770 construction, the time period for the lienor to serve a notice
771 of nonpayment may, at the option of the lienor, be calculated
772 from the date specified in this section or the date the lienor
773 is served a copy of the bond. However, the limitation period for
774 commencement of an action on the payment bond as established in
775 paragraph (e) may not be expanded. The negligent inclusion or
776 omission of any information in the notice of nonpayment that has
777 not prejudiced the contractor or surety does not constitute a
778 default that operates to defeat an otherwise valid bond claim. A
779 lienor who serves a fraudulent notice of nonpayment forfeits his
780 or her rights under the bond. A notice of nonpayment is
781 fraudulent if the lienor has willfully exaggerated the amount
782 unpaid, willfully included a claim for work not performed or
783 materials not furnished for the subject improvement, or prepared
784 the notice with such willful and gross negligence as to amount
785 to a willful exaggeration. However, a minor mistake or error in
786 a notice of nonpayment, or a good faith dispute as to the amount
787 unpaid, does not constitute a willful exaggeration that operates
788 to defeat an otherwise valid claim against the bond. The service
789 of a fraudulent notice of nonpayment is a complete defense to
790 the lienor's claim against the bond. The notice under this
791 paragraph must include the following information, current as of
792 the date of the notice, and must be in substantially the
793 following form:



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NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is \$...., of which \$.... is unpaid retainage.

2. The lienor has been paid to date the amount of \$.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is \$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on,

...(signature and address of lienor)...



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STATE OF FLORIDA
COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and
subscribed before me by means of physical presence or sworn to
(or affirmed) by online notarization, this day of,
...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

(e) An action for the labor, ~~or~~ materials, or supplies may
not be instituted or prosecuted against the contractor or surety
unless both notices have been given, if required by this
section. An action may not be instituted or prosecuted against
the contractor or against the surety on the bond under this
section after 1 year from the performance of the labor or
completion of delivery of the materials and supplies. The time
period for bringing an action against the contractor or surety
on the bond is ~~shall be~~ measured from the last day of furnishing
labor, services, or materials by the lienor. The time period may
not be measured by other standards, such as the issuance of a
certificate of occupancy or the issuance of a certificate of
substantial completion. A contractor or the contractor's
attorney may elect to shorten the time within which an action to



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852 enforce any claim against a payment bond provided under this
853 section or s. 713.245 must be commenced at any time after a
854 notice of nonpayment, if required, has been served for the claim
855 by recording in the clerk's office a notice in substantially the
856 following form:

857
858 NOTICE OF CONTEST OF CLAIM
859 AGAINST PAYMENT BOND

860
861 To: ...(Name and address of lienor)...

862 You are notified that the undersigned contests your notice
863 of nonpayment, dated,, and served on the undersigned
864 on,, and that the time within which you may file suit
865 to enforce your claim is limited to 60 days after ~~from~~ the date
866 of service of this notice.

867
868 DATED on,

869
870 Signed: ...(Contractor or Attorney)...

871
872 The claim of any lienor upon whom the notice is served and who
873 fails to institute a suit to enforce his or her claim against
874 the payment bond within 60 days after service of the notice
875 shall be extinguished automatically. The contractor or the
876 contractor's attorney shall serve a copy of the notice of
877 contest to the lienor at the address shown in the notice of
878 nonpayment or most recent amendment thereto and shall certify to
879 such service on the face of the notice and record the notice.

880 Section 13. Subsections (1) and (3) of section 713.24,



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881 Florida Statutes, are amended to read:
882 713.24 Transfer of liens to security.-
883 (1) Any lien claimed under this part may be transferred, by
884 any person having an interest in the real property upon which
885 the lien is imposed or the contract under which the lien is
886 claimed, from such real property to other security by either:
887 (a) Depositing in the clerk's office a sum of money, or
888 (b) Filing in the clerk's office a bond executed as surety
889 by a surety insurer licensed to do business in this state,
890
891 either to be in an amount equal to the amount demanded in such
892 claim of lien, plus interest thereon at the legal rate for 3
893 years, plus \$5,000 ~~\$1,000~~ or 25 percent of the amount demanded
894 in the claim of lien, whichever is greater, to apply on any
895 attorney ~~attorney's~~ fees and court costs that may be taxed in
896 any proceeding to enforce said lien. Such deposit or bond shall
897 be conditioned to pay any judgment or decree which may be
898 rendered for the satisfaction of the lien for which such claim
899 of lien was recorded. Upon making such deposit or filing such
900 bond, the clerk shall make and record a certificate, which must
901 include a copy of the deposit or bond used to transfer, showing
902 the transfer of the lien from the real property to the security
903 and shall mail a copy thereof together with a copy of the
904 deposit or bond used to transfer by registered or certified mail
905 to the lienor named in the claim of lien so transferred, at the
906 address stated therein. Upon filing the certificate of transfer,
907 the real property shall thereupon be released from the lien
908 claimed, and such lien shall be transferred to said security. In
909 the absence of allegations of privity between the lienor and the



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910 owner, and subject to any order of the court increasing the
911 amount required for the lien transfer deposit or bond, no other
912 judgment or decree to pay money may be entered by the court
913 against the owner. The clerk is ~~shall be~~ entitled to a service
914 charge for making and serving the certificate, in the amount of
915 up to \$20, from which the clerk shall remit \$5 to the Department
916 of Revenue for deposit into the General Revenue Fund. If the
917 transaction involves the transfer of multiple liens, an
918 additional charge of up to \$10 for each additional lien shall be
919 charged, from which the clerk shall remit \$2.50 to the
920 Department of Revenue for deposit into the General Revenue Fund.
921 For recording the certificate and approving the bond, the clerk
922 shall receive her or his usual statutory service charges as
923 prescribed in s. 28.24. Any number of liens may be transferred
924 to one such security.

925 (3) Any party having an interest in such security or the
926 property from which the lien was transferred may at any time,
927 and any number of times, file a complaint in chancery in the
928 circuit court of the county where such security is deposited, or
929 file a motion in a pending action to enforce a lien, for an
930 order to require additional security, reduction of security,
931 change or substitution of sureties, payment of discharge
932 thereof, or any other matter affecting said security. If the
933 court finds that the amount of the deposit or bond in excess of
934 the amount claimed in the claim of lien is insufficient to pay
935 the lienor's attorney ~~attorney's~~ fees and court costs incurred
936 in the action to enforce the lien, the court must increase the
937 amount of the cash deposit or lien transfer bond. Nothing in
938 this section shall be construed to vest exclusive jurisdiction



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939 in the circuit courts over transfer bond claims for nonpayment
940 of an amount within the monetary jurisdiction of the county
941 courts.

942 Section 14. Section 713.25, Florida Statutes, is repealed.

943 Section 15. Section 713.29, Florida Statutes, is amended to
944 read:

945 713.29 Attorney ~~Attorney's~~ fees.—In any action brought to
946 enforce a lien, including a lien that has been transferred to
947 security, or to enforce a claim against a bond under this part,
948 the prevailing party is entitled to recover a reasonable fee for
949 the services of her or his attorney for trial and appeal or for
950 arbitration, in an amount to be determined by the court, which
951 fee must be taxed as part of the prevailing party's costs, as
952 allowed in equitable actions.

953 Section 16. Paragraph (b) of subsection (2) and paragraph
954 (e) of subsection (5) of section 95.11, Florida Statutes, are
955 amended to read:

956 95.11 Limitations other than for the recovery of real
957 property.—Actions other than for recovery of real property shall
958 be commenced as follows:

959 (2) WITHIN FIVE YEARS.—

960 (b) A legal or equitable action on a contract, obligation,
961 or liability founded on a written instrument, except for an
962 action to enforce a claim against a payment bond, which shall be
963 governed by the applicable provisions of paragraph (5) (e), s.
964 255.05(9) ~~s. 255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), and
965 except for an action for a deficiency judgment governed by
966 paragraph (5) (h).

967 (5) WITHIN ONE YEAR.—



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968 (e) Except for actions governed by s. 255.05(9) ~~s.~~
969 ~~255.05(10)~~, s. 337.18(1), or s. 713.23(1)(e), an action to
970 enforce any claim against a payment bond on which the principal
971 is a contractor, subcontractor, or sub-subcontractor as defined
972 in s. 713.01, for private work as well as public work, from the
973 last furnishing of labor, services, or materials or from the
974 last furnishing of labor, services, or materials by the
975 contractor if the contractor is the principal on a bond on the
976 same construction project, whichever is later.

977 Section 17. This act shall take effect July 1, 2022.

978
979 ===== T I T L E A M E N D M E N T =====

980 And the title is amended as follows:

981 Delete everything before the enacting clause
982 and insert:

983 A bill to be entitled
984 An act relating to liens and bonds; amending s.
985 255.05, F.S.; revising when a notice of contest of
986 claim against a payment bond and a notice of
987 nonpayment must be served; requiring that a copy of a
988 notice of nonpayment be served on the surety; revising
989 the process for notarizing a notice of nonpayment;
990 removing the authority for a contractor to file an
991 alternative form of security rather than a bond;
992 requiring service of documents to be made in a
993 specified manner; conforming provisions to changes
994 made by the act; making technical changes; amending s.
995 337.18, F.S.; revising when a notice of nonpayment may
996 be served; requiring service of documents to be made



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997 in a specified manner; conforming provisions to
998 changes made by the act; amending s. 713.01, F.S.;
999 revising and defining terms; creating s. 713.011,
1000 F.S.; providing for the computation of time for
1001 recording a document or filing an action when certain
1002 time periods fall on specified days or during a
1003 declared state of emergency; providing that certain
1004 orders constitute a state of emergency; specifying
1005 when a clerk's office is considered closed; amending
1006 s. 713.10, F.S.; revising the extent of certain liens;
1007 amending s. 713.13, F.S.; conforming a cross-
1008 reference; revising the process for notarizing a
1009 notice of commencement; amending s. 713.132, F.S.;
1010 revising requirements for a notice of termination;
1011 revising when an owner may record a notice of
1012 termination; specifying when a notice of termination
1013 terminates the notice of commencement; amending s.
1014 713.135, F.S.; defining the term "copy of the notice
1015 of commencement"; providing applicability; making
1016 technical changes; providing that an issuing authority
1017 is not liable for failing to verify that specified
1018 information has been filed; amending s. 713.18, F.S.;
1019 requiring service of documents relating to
1020 construction bonds to be made in a specified manner;
1021 making technical changes; amending s. 713.21, F.S.;
1022 authorizing the full or partial release of a lien
1023 under specified conditions; amending s. 713.22, F.S.;
1024 revising the information required in a notice of
1025 contest of lien; amending s. 713.23, F.S.; requiring



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1026 that a copy of a notice of nonpayment be served on the
1027 surety; revising the process for notarizing a notice
1028 of nonpayment under a payment bond; amending s.
1029 713.24, F.S.; revising the amount required in addition
1030 to the deposit or bond that applies toward attorney
1031 fees and costs; requiring the clerk to make a copy of
1032 the deposit or bond used to transfer a lien to other
1033 security and mail it to the lienor; repealing s.
1034 713.25, F.S., relating to applicability of ch. 65-456;
1035 amending s. 713.29, F.S.; authorizing attorney fees in
1036 actions to enforce a lien that has been transferred to
1037 security; amending s. 95.11, F.S.; conforming a cross-
1038 reference; providing an effective date.

By Senator Bradley

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1 A bill to be entitled
 2 An act relating to liens and bonds; amending s.
 3 255.05, F.S.; revising when a notice of claim against
 4 a payment bond and a notice of nonpayment must be
 5 served; requiring that a copy of a notice of
 6 nonpayment be served on the surety; revising when a
 7 notice of nonpayment must be served; revising the
 8 process for notarizing a notice of nonpayment;
 9 removing the authority for a contractor to file an
 10 alternative form of security rather than a bond;
 11 requiring service of documents to be made in a
 12 specified manner; conforming provisions to changes
 13 made by the act; making technical changes; amending s.
 14 337.18, F.S.; revising when a notice of nonpayment
 15 must be served; providing that certain waivers apply
 16 to certain contracts; requiring service of documents
 17 to be made in a specified manner; conforming
 18 provisions to changes made by the act; amending s.
 19 713.01, F.S.; revising and defining terms; creating s.
 20 713.011, F.S.; providing for the computation of time
 21 when certain time periods fall on specified days or
 22 during a declared state of emergency; providing that
 23 certain orders constitute a state of emergency;
 24 amending s. 713.09, F.S.; authorizing a lienor to
 25 record one claim of lien for multiple direct
 26 contracts; amending s. 713.10, F.S.; revising the
 27 extent of certain liens; amending s. 713.13, F.S.;
 28 revising information to be included in a notice of
 29 commencement; conforming a cross-reference; revising

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30 the process for notarizing a notice of commencement;
 31 amending s. 713.132, F.S.; revising requirements for a
 32 notice of termination; amending s. 713.135, F.S.;
 33 defining the term "copy of the notice of
 34 commencement"; making technical changes; providing
 35 that an issuing authority is not liable for failing to
 36 verify that specified information has been filed;
 37 amending s. 713.18, F.S.; requiring service of
 38 documents relating to construction bonds to be made in
 39 a specified manner; making technical changes; amending
 40 s. 713.21, F.S.; authorizing the full or partial
 41 release of a lien under specified conditions; amending
 42 s. 713.22, F.S.; revising the information required in
 43 a notice of contest of lien; amending s. 713.23, F.S.;
 44 requiring that a copy of a notice of nonpayment be
 45 served on the surety; revising the process for
 46 notarizing a notice of nonpayment under a payment
 47 bond; conforming provisions to changes made by the
 48 act; amending s. 713.235, F.S.; conforming cross-
 49 references; making technical changes; repealing s.
 50 713.245, F.S., relating to conditional payment bonds;
 51 repealing s. 713.25, F.S., relating to applicability
 52 of ch. 65-456, Laws of Florida; amending s. 713.29,
 53 F.S.; authorizing attorney fees in actions to enforce
 54 a lien that has been transferred to security; amending
 55 s. 95.11, F.S.; conforming cross-references; providing
 56 an effective date.

57
 58 Be It Enacted by the Legislature of the State of Florida:

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59
60 Section 1. Present subsections (8) through (11) of section
61 255.05, Florida Statutes, are redesignated as subsections (7)
62 through (10), respectively, a new subsection (11) is added to
63 that section, and paragraph (a) of subsection (2) and present
64 subsections (6) and (7) are amended, to read:

65 255.05 Bond of contractor constructing public buildings;
66 form; action by claimants.-

67 (2) (a) 1. If a claimant is no longer furnishing labor,
68 services, or materials on a project, a contractor or the
69 contractor's agent or attorney may elect to shorten the time
70 within which an action to enforce any claim against a payment
71 bond must be commenced by recording in the clerk's office a
72 notice in substantially the following form:

73
74 NOTICE OF CONTEST OF CLAIM
75 AGAINST PAYMENT BOND

76
77 To: ... (Name and address of claimant) ...

78
79 You are notified that the undersigned contests your notice
80 of nonpayment, dated,, and served on the
81 undersigned on,, and that the time within
82 which you may file suit to enforce your claim is limited to 60
83 days after the date of service of this notice.

84
85 DATED on,

86
87 Signed: ... (Contractor or Attorney) ...

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88
89 The claim of a claimant upon whom such notice is served and who
90 fails to institute a suit to enforce his or her claim against
91 the payment bond within 60 days after service of such notice is
92 extinguished automatically. The contractor or the contractor's
93 attorney shall serve a copy of the notice of contest on ~~to~~ the
94 claimant at the address shown in the notice of nonpayment or
95 most recent amendment thereto and shall certify to such service
96 on the face of the notice and record the notice.

97 2. A claimant, except a laborer, who is not in privity with
98 the contractor shall, before commencing or not later than 45
99 days after commencing to furnish labor, services, or materials
100 for the prosecution of the work, serve the contractor with a
101 written notice that he or she intends to look to the bond for
102 protection. If a certified copy of the recorded payment bond is
103 not provided before commencing work or before recommending work
104 after a default or abandonment, as required under paragraph
105 (1) (b), then the claimant may serve the contractor with such
106 written notice up to 45 days after the date that the claimant is
107 served with a copy of the bond. A claimant who is not in privity
108 with the contractor and who has not received payment for
109 furnishing his or her labor, services, or materials shall serve
110 a written notice of nonpayment on the contractor and a copy of
111 the notice on the surety. The notice of nonpayment ~~must~~ ~~shall~~ be
112 under oath and served during the progress of the work or
113 thereafter but ~~may not be served earlier than 45 days after the~~
114 ~~first furnishing of labor, services, or materials by the~~
115 ~~claimant~~ ~~or~~ later than 90 days after the final furnishing of the
116 labor, services, or materials by the claimant or, with respect

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117 to rental equipment, later than 90 days after the date that the
 118 rental equipment was last on the ~~job~~ site of the improvement
 119 available for use. Any notice of nonpayment served by a claimant
 120 who is not in privity with the contractor which includes sums
 121 for retainage must specify the portion of the amount claimed for
 122 retainage. An action for the labor, services, or materials may
 123 not be instituted against the contractor or the surety unless
 124 the notice to the contractor and notice of nonpayment have been
 125 served, if required by this section. Notices required or
 126 permitted under this section must be served in accordance with
 127 s. 713.18. A claimant may not waive in advance his or her right
 128 to bring an action under the bond against the surety. In any
 129 action brought to enforce a claim against a payment bond under
 130 this section, the prevailing party is entitled to recover a
 131 reasonable fee for the services of his or her attorney for trial
 132 and appeal or for arbitration, in an amount to be determined by
 133 the court or arbitrator, which fee must be taxed as part of the
 134 prevailing party's costs, as allowed in equitable actions. The
 135 time periods for service of a notice of nonpayment or for
 136 bringing an action against a contractor or a surety are ~~shall be~~
 137 measured from the last day of furnishing labor, services, or
 138 materials by the claimant and may not be measured by other
 139 standards, such as the issuance of a certificate of occupancy or
 140 the issuance of a certificate of substantial completion. The
 141 negligent inclusion or omission of any information in the notice
 142 of nonpayment that has not prejudiced the contractor or surety
 143 does not constitute a default that operates to defeat an
 144 otherwise valid bond claim. A claimant who serves a fraudulent
 145 notice of nonpayment forfeits his or her rights under the bond.

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146 A notice of nonpayment is fraudulent if the claimant has
 147 willfully exaggerated the amount unpaid, willfully included a
 148 claim for work not performed or materials not furnished for the
 149 subject improvement, or prepared the notice with such willful
 150 and gross negligence as to amount to a willful exaggeration.
 151 However, a minor mistake or error in a notice of nonpayment, or
 152 a good faith dispute as to the amount unpaid, does not
 153 constitute a willful exaggeration that operates to defeat an
 154 otherwise valid claim against the bond. The service of a
 155 fraudulent notice of nonpayment is a complete defense to the
 156 claimant's claim against the bond. The notice of nonpayment
 157 under this subparagraph must include the following information,
 158 current as of the date of the notice, and must be in
 159 substantially the following form:

NOTICE OF NONPAYMENT

161 To: ...(name of contractor and address)...

162 ... (name of surety and address)...

163 The undersigned claimant notifies you that:

164 1. Claimant has furnished ...(describe labor, services, or
 165 materials)... for the improvement of the real property
 166 identified as ...(property description)... The corresponding
 167 amount unpaid to date is \$...., of which \$.... is unpaid
 168 retainage.

169 2. Claimant has been paid to date the amount of \$.... for
 170 previously furnishing ...(describe labor, services, or
 171
 172
 173
 174

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175 materials)... for this improvement.

176 3. Claimant expects to furnish ...(describe labor,
 177 services, or materials)... for this improvement in the future
 178 (if known), and the corresponding amount expected to become due
 179 is \$.... (if known).

180

181 I declare that I have read the foregoing Notice of Nonpayment
 182 and that the facts stated in it are true to the best of my
 183 knowledge and belief.

184

185 DATED on,

186

187(signature and address of claimant)...

188

189 STATE OF FLORIDA
 190 COUNTY OF

191

192 The foregoing instrument was sworn to (or affirmed) and
 193 subscribed before me by means of physical presence or sworn to
 194 (or affirmed) by online notarization this day of,
 195 ...(year)..., by ...(name of signatory)....

196

197 ...(Signature of Notary Public - State of Florida)...

198 ...(Print, Type, or Stamp Commissioned Name of Notary
 199 Public)...

200

201 Personally Known OR Produced Identification

202

203 Type of Identification Produced.....

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204

205 (6) All payment bond forms used by a public owner and all
 206 payment bonds executed pursuant to this section by a surety
 207 shall make reference to this section by number, shall contain
 208 reference to the notice and time limitation provisions in
 209 subsections (2) and (9) ~~(10)~~, and shall comply with the
 210 requirements of paragraph (1) (a).

211 ~~(7) In lieu of the bond required by this section, a~~
 212 ~~contractor may file with the state, county, city, or other~~
 213 ~~political authority an alternative form of security in the form~~
 214 ~~of cash, a money order, a certified check, a cashier's check, an~~
 215 ~~irrevocable letter of credit, or a security of a type listed in~~
 216 ~~part II of chapter 625. Any such alternative form of security~~
 217 ~~shall be for the same purpose and be subject to the same~~
 218 ~~conditions as those applicable to the bond required by this~~
 219 ~~section. The determination of the value of an alternative form~~
 220 ~~of security shall be made by the appropriate state, county,~~
 221 ~~city, or other political subdivision.~~

222 (11) Unless otherwise provided in this section, service of
 223 any document must be made in accordance with s. 713.18.

224 Section 2. Paragraph (c) of subsection (1) of section
 225 337.18, Florida Statutes, is amended, and subsection (6) is
 226 added to that section, to read:

227 337.18 Surety bonds for construction or maintenance
 228 contracts; requirement with respect to contract award; bond
 229 requirements; defaults; damage assessments.-

230 (1)
 231 (c) A claimant, except a laborer, who is not in privity
 232 with the contractor shall, before commencing or not later than

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233 90 days after commencing to furnish labor, materials, or
 234 supplies for the prosecution of the work, furnish the contractor
 235 with a notice that he or she intends to look to the bond for
 236 protection. A claimant who is not in privity with the contractor
 237 and who has not received payment for his or her labor,
 238 materials, or supplies shall deliver to the contractor and to
 239 the surety written notice of the performance of the labor or
 240 delivery of the materials or supplies and of the nonpayment. The
 241 notice of nonpayment may be served at any time during the
 242 progress of the work or thereafter but not ~~before 45 days after~~
 243 ~~the first furnishing of labor, services, or materials, and not~~
 244 later than 90 days after the final furnishing of the labor,
 245 services, or materials by the claimant or, with respect to
 246 rental equipment, not later than 90 days after the date that the
 247 rental equipment was last on the ~~job~~ site of the improvement
 248 available for use. An action by a claimant, except a laborer,
 249 who is not in privity with the contractor for the labor,
 250 materials, or supplies may not be instituted against the
 251 contractor or the surety unless both notices have been given.
 252 Written notices required or permitted under this section must
 253 ~~may~~ be served in accordance with any manner provided in s.
 254 713.18, and provisions for the waiver of a claim or a right to
 255 claim against a payment bond as described in s. 713.235 apply to
 256 all contracts under this section.

257 (6) Unless otherwise provided in this section, service of
 258 any document must be made in accordance with s. 713.18.

259 Section 3. Present subsections (13) through (29) of section
 260 713.01, Florida Statutes, are redesignated as subsections (14)
 261 through (30), respectively, a new subsection (13) is added to

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262 that section, and subsections (4), (8), and (12) of that section
 263 are amended, to read:

264 713.01 Definitions.—As used in this part, the term:

265 (4) "Clerk's office" means the office of the clerk of the
 266 circuit court of the county, or another office serving as the
 267 county recorder as provided by law, in which the real property
 268 is located.

269 (8) "Contractor" means a person other than a materialman or
 270 laborer who enters into a contract with the owner of real
 271 property for improving it, or who takes over from a contractor
 272 as so defined the entire remaining work under such contract. The
 273 term "contractor" includes an architect, landscape architect, or
 274 engineer who improves real property pursuant to a design-build
 275 contract authorized by s. 489.103(16). The term also includes a
 276 licensed general contractor or building contractor, as those
 277 terms are defined in s. 489.105(3) (a) and (b), respectively, who
 278 provides construction management services, which include
 279 scheduling and coordinating both preconstruction and
 280 construction phases for the successful, timely, and economical
 281 completion of the construction project or who provides program
 282 management services, which include schedule control, cost
 283 control, and coordination in providing or procuring planning,
 284 design, and construction.

285 (12) "Final furnishing" means the last date that the lienor
 286 furnishes labor, services, or materials. Such date may not be
 287 measured by other standards, such as the issuance of a
 288 certificate of occupancy or the issuance of a certificate of
 289 final completion, and does not include the correction of
 290 deficiencies in the lienor's previously performed work or

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291 materials supplied. With respect to rental equipment, the term
 292 means the date that the rental equipment was last on the ~~job~~
 293 site of the improvement and available for use. With respect to
 294 specialty fabricated materials, the term means the date that the
 295 last portion of the specialty fabricated materials is delivered
 296 to the site of the improvement, or if any portion of the
 297 specialty fabricated materials is not delivered to the site of
 298 the improvement by no fault of the lienor, the term means 9
 299 months after the date the lienor completes the fabrication, 9
 300 months after the date the lienor receives the last portion of
 301 the specialty fabricated materials needed to complete the order,
 302 or the date the notice of commencement expires, whichever is
 303 later.

304 (13) "Finance charge" means a contractually specified
 305 additional amount to be paid by the obligor on any unpaid
 306 balance if the obligor fails to pay the entire principal amount
 307 to the obligee by the due date set forth in the credit agreement
 308 or other contract.

309 Section 4. Section 713.011, Florida Statutes, is created to
 310 read:

311 713.011 Computation of time.-

312 (1) In computing any time period under this part, if the
 313 last day of the time period is a Saturday, Sunday, legal
 314 holiday, or any day observed as a holiday by the clerk's office,
 315 the time period is extended to the end of the next business day.

316 (2) During a state of emergency declared under chapter 252
 317 in which the clerk's office is closed or not accessible because
 318 of the state of emergency, any time periods imposed under this
 319 part are tolled. Upon the expiration of the declared state of

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320 emergency, the number of days that were remaining for any
 321 specified time period under this part on the first day of the
 322 declared state of emergency shall commence on the first business
 323 day after the end of the declared state of emergency.

324 (3) A federal, state, or local governmental order closing
 325 or directing the closure of the clerk's office for any reason
 326 constitutes a state of emergency for purposes of this section.

327 Section 5. Section 713.09, Florida Statutes, is amended to
 328 read:

329 713.09 Single claim of lien.-A lienor ~~may be required to~~
 330 record only one claim of lien covering his or her entire demand
 331 against the real property when the amount demanded is for labor
 332 or services or material furnished for more than one improvement
 333 under the same direct contract or multiple direct contracts. The
 334 single claim of lien is sufficient even though the improvement
 335 is for one or more improvements located on separate lots,
 336 parcels, or tracts of land. If materials to be used on one or
 337 more improvements on separate lots, parcels, or tracts of land
 338 ~~under one direct contract~~ are delivered by a lienor to a place
 339 designated by the person with whom the materialman contracted,
 340 other than the site of the improvement, the delivery to the
 341 place designated is prima facie evidence of delivery to the site
 342 of the improvement and incorporation in the improvement. The
 343 single claim of lien may be limited to a part of multiple lots,
 344 parcels, or tracts of land and their improvements or may cover
 345 all of the lots, parcels, or tracts of land and improvements. If
 346 a ~~In each~~ claim of lien under this section is for multiple
 347 direct contracts, the owner under the direct ~~contracts~~ ~~contract~~
 348 must be the same person for all lots, parcels, or tracts of land

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349 against which a single claim of lien is recorded.

350 Section 6. Paragraph (b) of subsection (2) of section
351 713.10, Florida Statutes, is amended, and subsection (4) is
352 added to that section, to read:

353 713.10 Extent of liens.—

354 (2)

355 (b) The interest of the lessor is not subject to liens for
356 improvements made by the lessee when:

357 1. The lease, or a short form or a memorandum of the lease
358 that contains the specific language in the lease prohibiting
359 such liability, is recorded in the official records of the
360 county where the premises are located before the recording of a
361 notice of commencement for improvements to the premises and the
362 terms of the lease expressly prohibit such liability; or

363 2. The terms of the lease expressly prohibit such
364 liability, and a notice advising that leases for the rental of
365 premises on a parcel of land prohibit such liability has been
366 recorded in the official records of the county in which the
367 parcel of land is located before the recording of a notice of
368 commencement for improvements to the premises, and the notice
369 includes the following:

370 a. The name of the lessor.

371 b. The legal description of the parcel of land to which the
372 notice applies.

373 c. The specific language contained in the various leases
374 prohibiting such liability.

375 d. A statement that all or a majority of the leases entered
376 into for premises on the parcel of land expressly prohibit such
377 liability.

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378 ~~3. The lessee is a mobile home owner who is leasing a~~
379 ~~mobile home lot in a mobile home park from the lessor.~~

380

381 A notice that is consistent with subparagraph 2. effectively
382 prohibits liens for improvements made by a lessee even if other
383 leases for premises on the parcel do not expressly prohibit
384 liens or if provisions of each lease restricting the application
385 of liens are not identical.

386 (4) The interest of the lessor is not subject to liens for
387 improvements made by the lessee when the lessee is a mobile home
388 owner who is leasing a mobile home lot in a mobile home park
389 from the lessor.

390 Section 7. Paragraphs (a) and (d) of subsection (1) of
391 section 713.13, Florida Statutes, are amended to read:

392 713.13 Notice of commencement.—

393 (1) (a) Except for an improvement that is exempt under
394 ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized
395 agent before actually commencing to improve any real property,
396 or recommencing completion of any improvement after default or
397 abandonment, whether or not a project has a payment bond
398 complying with s. 713.23, shall record a notice of commencement
399 in the clerk's office and ~~forthwith~~ post either a certified copy
400 thereof or a notarized statement that the notice of commencement
401 has been filed for recording along with a copy thereof. The
402 notice of commencement shall contain all of the following
403 information:

404 1. A description sufficient for identification of the real
405 property to be improved. The description should include the
406 legal description of the property and also should include the

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407 street address and tax folio number of the property if available
 408 or, if there is no street address available, such additional
 409 information as will describe the physical location of the real
 410 property to be improved.

411 2. A general description of the improvement.

412 3. The name and address of the owner, the owner's interest
 413 in the site of the improvement, and the name and address of the
 414 fee simple titleholder, if other than such owner.

415 4. The name and address of the lessee, if the A lessee who
 416 contracts for the improvements as is an owner as defined in s.
 417 713.01 under s. 713.01(23) and must be listed as the owner
 418 together with a statement that the ownership interest is a
 419 leasehold interest.

420 ~~5.4.~~ The name and address of the contractor.

421 ~~6.5.~~ The name and address of the surety on the payment bond
 422 under s. 713.23, if any, and the amount of such bond.

423 ~~7.6.~~ The name and address of any person making a loan for
 424 the construction of the improvements.

425 ~~8.7.~~ The name and address within the state of a person
 426 other than himself or herself who may be designated by the owner
 427 as the person upon whom notices or other documents may be served
 428 under this part; and service upon the person so designated
 429 constitutes service upon the owner.

430 (d) A notice of commencement must be in substantially the
 431 following form:

432

433 Permit No..... Tax Folio No.....

434 NOTICE OF COMMENCEMENT

435 State of....

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436 County of....

437

438 The undersigned hereby gives notice that improvement will be
 439 made to certain real property, and in accordance with Chapter
 440 713, Florida Statutes, the following information is provided in
 441 this Notice of Commencement.

442 1. Description of property: ...(legal description of the
 443 property, and street address if available)....

444 2. General description of improvement:.....

445 3.a. Owner: ...name and address.....

446 b. Owner's phone number:.... ~~Owner information or Lessee~~
 447 ~~information if the Lessee contracted for the improvement:~~

448 ~~a. Name and address:.....~~

449 ~~c.b.~~ Interest in property:.....

450 ~~d.e.~~ Name and address of fee simple titleholder (if
 451 different from Owner listed above):.....

452 4.a. Lessee, if the lessee contracted for the improvement:
 453 ...(name and address)....

454 b. Lessee's phone number:.....

455 5.a. Contractor: ...(name and address)....

456 b. Contractor's phone number:.....

457 ~~6.5.~~ Surety (if applicable, a copy of the payment bond is
 458 attached):

459 a. Name and address:.....

460 b. Phone number:.....

461 c. Amount of bond: \$.....

462 7.a. ~~6.a.~~ Lender: ...(name and address)....

463 b. Lender's phone number:.....

464 8.7. Persons within the State of Florida designated by

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465 Owner upon whom notices or other documents may be served as
 466 provided by Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida
 467 Statutes:
 468 a. Name and address:.....
 469 b. Phone numbers of designated persons:.....
 470 ~~9.a.8.a.~~ In addition to himself or herself, Owner
 471 designates of to receive a copy of the
 472 Lienor's Notice as provided in Section 713.13(1)(b), Florida
 473 Statutes.
 474 b. Phone number of person or entity designated by
 475 owner:.....
 476 10.9. Expiration date of notice of commencement (the
 477 expiration date will be 1 year after ~~from~~ the date of recording
 478 unless a different date is specified).....
 479
 480 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
 481 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
 482 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
 483 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
 484 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
 485 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
 486 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
 487 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
 488 COMMENCEMENT.
 489
 490 ...(Signature of Owner or Lessee, or Owner's or Lessee's
 491 Authorized Officer/Director/Partner/Manager)...
 492
 493 ...(Signatory's Title/Office)...

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494
 495 The foregoing instrument was acknowledged before me by means of
 496 physical presence or acknowledged before me by means of
 497 online notarization, this day of, ...(year)..., by
 498 ...(name of person)... as ...(type of authority, . . . e.g.
 499 officer, trustee, attorney in fact)... for ...(name of party on
 500 behalf of whom instrument was executed)....
 501
 502 ...(Signature of Notary Public - State of Florida)...
 503
 504 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
 505
 506 Personally Known OR Produced Identification
 507
 508 Type of Identification Produced.....
 509 Section 8. Present subsection (4) of section 713.132,
 510 Florida Statutes, is redesignated as subsection (5) and amended,
 511 a new subsection (4) is added to that section, and subsections
 512 (1) and (3) of that section are amended, to read:
 513 713.132 Notice of termination.-
 514 (1) An owner may terminate the period of effectiveness of a
 515 notice of commencement by executing, swearing to, and recording
 516 a notice of termination that contains all of the following:
 517 (a) The same information as the notice of commencement, +
 518 (b) The official records' ~~recording office document book~~
 519 ~~and page~~ reference numbers and recording date affixed by the
 520 recording office on ~~of~~ the recorded notice of commencement, +
 521 (c) A statement of the date as of which the notice of
 522 commencement is terminated, which date may not be earlier than

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523 30 days after the notice of termination is recorded.†

524 (d) A statement specifying that the notice applies to all
525 the real property subject to the notice of commencement or
526 specifying the portion of such real property to which it
527 applies.†

528 (e) A statement that all lienors have been paid in full.†
529 ~~and~~

530 (f) A statement that the owner has, before recording the
531 notice of termination, served a copy of the notice of
532 termination ~~on the contractor and~~ on each lienor who has a
533 direct contract with the owner or who has timely served a notice
534 to owner, and a statement that the owner will serve a copy of
535 the notice of termination on each lienor who timely serves a
536 notice to owner after the notice of termination has been
537 recorded. The owner is not required to serve a copy of the
538 notice of termination on any lienor who has executed a waiver
539 and release of lien upon final payment in accordance with s.
540 713.20.

541 (3) An owner may ~~not~~ record a notice of termination at any
542 time after ~~except after completion of construction, or after~~
543 ~~construction ceases before completion and~~ all lienors have been
544 paid in full or pro rata in accordance with s. 713.06(4).

545 (4) If an owner or a contractor, by fraud or collusion,
546 knowingly makes any fraudulent statement or affidavit in a
547 notice of termination or any accompanying affidavit, the owner
548 and the contractor, or either of them, ~~as the case may be,~~ is
549 liable to any lienor who suffers damages as a result of the
550 filing of the fraudulent notice of termination,† and any such
551 lienor has a right of action for damages ~~occasioned thereby.~~

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552 (5) ~~(4)~~ A notice of termination must be served before
553 recording on each lienor who has a direct contract with the
554 owner and on each lienor who has timely and properly served a
555 notice to owner in accordance with this part before the
556 recording of the notice of termination. A notice of termination
557 must be recorded in the official records of the county in which
558 the improvement is located. If properly served before recording
559 in accordance with this subsection, the notice of termination
560 terminates the period of effectiveness of the notice of
561 commencement 30 days after the notice of termination is recorded
562 in the official records ~~is effective to terminate the notice of~~
563 ~~commencement at the later of 30 days after recording of the~~
564 ~~notice of termination or a later the date stated in the notice~~
565 of termination as the date on which the notice of commencement
566 is terminated. However, if a lienor who began work under the
567 notice of commencement before its termination lacks a direct
568 contract with the owner and timely serves his or her notice to
569 owner after the notice of termination has been recorded, the
570 owner must serve a copy of the notice of termination upon such
571 lienor, and the termination of the notice of commencement as to
572 that lienor is effective 30 days after service of the notice of
573 termination ~~if the notice of termination has been served~~
574 ~~pursuant to paragraph (1)(f) on the contractor and on each~~
575 ~~lienor who has a direct contract with the owner or who has~~
576 ~~served a notice to owner.~~

577 Section 9. Subsections (1) and (3) of section 713.135,
578 Florida Statutes, are amended to read:

579 713.135 Notice of commencement and applicability of lien.—

580 (1) When a ~~any~~ person applies for a building permit, the

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581 authority issuing such permit shall:

582 (a) Print on the face of each permit card in no less than
583 14-point, capitalized, boldfaced type: "WARNING TO OWNER: YOUR
584 FAILURE TO RECORD A NOTICE OF COMMENCEMENT MAY RESULT IN YOUR
585 PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF
586 COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE
587 THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT
588 WITH YOUR LENDER OR AN ATTORNEY BEFORE RECORDING YOUR NOTICE OF
589 COMMENCEMENT."

590 (b) Provide the applicant and the owner of the real
591 property upon which improvements are to be constructed with a
592 printed statement stating that the right, title, and interest of
593 the person who has contracted for the improvement may be subject
594 to attachment under the Construction Lien Law. The Department of
595 Business and Professional Regulation shall furnish, for
596 distribution, the statement described in this paragraph, and the
597 statement must be a summary of the Construction Lien Law and
598 must include an explanation of the provisions of the
599 Construction Lien Law relating to the recording, and the posting
600 of copies, of notices of commencement and a statement
601 encouraging the owner to record a notice of commencement and
602 post a copy of the notice of commencement in accordance with s.
603 713.13. The statement must also contain an explanation of the
604 owner's rights if a lienor fails to furnish the owner with a
605 notice as provided in s. 713.06(2) and an explanation of the
606 owner's rights as provided in s. 713.22. The authority that
607 issues the building permit must obtain from the Department of
608 Business and Professional Regulation the statement required by
609 this paragraph and must mail, deliver by electronic mail or

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610 other electronic format or facsimile, or personally deliver that
611 statement to the owner or, in a case in which the owner is
612 required to personally appear to obtain the permit, provide that
613 statement to any owner making improvements to real property
614 consisting of a single or multiple family dwelling up to and
615 including four units. However, the failure by the authorities to
616 provide the summary does not subject the issuing authority to
617 liability.

618 (c) In addition to providing the owner with the statement
619 as required by paragraph (b), inform each applicant who is not
620 the person whose right, title, and interest is subject to
621 attachment that, as a condition to the issuance of a building
622 permit, the applicant must promise in good faith that the
623 statement will be delivered to the person whose property is
624 subject to attachment.

625 (d) Furnish to the applicant two or more copies of a form
626 of notice of commencement conforming with s. 713.13.

627 (e) Require ~~If the direct contract is greater than \$2,500,~~
628 the applicant to ~~shall~~ file with the issuing authority before
629 prior to the first inspection ~~either a certified copy of the~~
630 ~~recorded~~ notice of commencement if the direct contract is
631 greater than \$2,500. For purposes of this paragraph, the term
632 "copy of the notice of commencement" means a certified copy of
633 the recorded notice of commencement, ~~or~~ a notarized statement
634 that the notice of commencement has been filed for recording,
635 along with a copy thereof, or the clerk's office official
636 records identifying information that includes the instrument
637 number for the notice of commencement or the number and page of
638 book where the notice of commencement is recorded, as identified

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639 by the clerk.

640 1. In the absence of the filing of a ~~certified~~ copy of the
 641 ~~recorded~~ notice of commencement, the issuing authority or a
 642 private provider performing inspection services may not perform
 643 or approve subsequent inspections until the applicant files by
 644 mail, facsimile, hand delivery, or any other means such
 645 ~~certified~~ copy with the issuing authority.

646 2. The ~~certified~~ copy of the notice of commencement must
 647 contain the name and address of the owner, the name and address
 648 of the contractor, and the location or address of the property
 649 being improved. The issuing authority shall verify that the name
 650 and address of the owner, the name of the contractor, and the
 651 location or address of the property being improved which is
 652 contained in the ~~certified~~ copy of the notice of commencement is
 653 consistent with the information in the building permit
 654 application.

655 3. The issuing authority shall provide the recording
 656 information on the ~~certified~~ copy of the ~~recorded~~ notice of
 657 commencement to any person upon request.

658 4. This subsection does not require the recording of a
 659 notice of commencement before ~~prior to~~ the issuance of a
 660 building permit. If a local government requires a separate
 661 permit or inspection for installation of temporary electrical
 662 service or other temporary utility service, land clearing, or
 663 other preliminary site work, such permits may be issued and such
 664 inspections may be conducted without providing the issuing
 665 authority with a ~~certified~~ copy of the a recorded notice of
 666 commencement ~~or a notarized statement regarding a recorded~~
 667 ~~notice of commencement. This subsection does not apply to a~~

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668 ~~direct contract to repair or replace an existing heating or air-~~
 669 ~~conditioning system in an amount less than \$7,500.~~

670 (f)(e) Not require that a notice of commencement be
 671 recorded as a condition of the application for, or processing or
 672 issuance of, a building permit. However, this paragraph does not
 673 modify or waive the inspection requirements set forth in this
 674 subsection.

675 This subsection does not apply to a direct contract to repair or
 676 replace an existing heating or air-conditioning system in an
 677 amount less than \$7,500.

679 (3) An issuing authority under subsection (1) is not liable
 680 in any civil action for the failure to verify that a certified
 681 copy of the recorded notice of commencement, a notarized
 682 statement that the notice of commencement has been filed for
 683 recording along with a copy thereof, or the clerk's office
 684 official records identifying information that includes the
 685 instrument number for the notice of commencement or the number
 686 and page of book where the notice of commencement is recorded,
 687 as identified by the clerk, has been filed in accordance with
 688 this section.

689 Section 10. Section 713.18, Florida Statutes, is amended to
 690 read:

691 713.18 Manner of serving documents ~~notices and other~~
 692 ~~instruments.~~

693 (1) Unless otherwise specifically provided by law, service
 694 of any document ~~notices, claims of lien, affidavits,~~
 695 ~~assignments, and other instruments~~ permitted or required under
 696 this part, s. 255.05, or s. 337.18, or copies thereof when so

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697 permitted or required, ~~unless otherwise specifically provided in~~
 698 ~~this part~~, must be made by one of the following methods:

699 (a) By ~~hand actual~~ delivery to the person to be served; if
 700 a partnership, to one of the partners; if a corporation, to an
 701 officer, director, managing agent, or business agent; or, if a
 702 limited liability company, to a member or manager.

703 (b) By common carrier delivery service or by registered,
 704 Global Express Guaranteed, or certified mail to the person to be
 705 served, with postage or shipping paid by the sender and with
 706 evidence of delivery, which may be in an electronic format.

707 (c) By posting on the site of the improvement if service as
 708 provided by paragraph (a) or paragraph (b) cannot be
 709 accomplished.

710 (2) Notwithstanding subsection (1), service of a notice to
 711 owner or a preliminary notice to contractor under this part, s.
 712 255.05, or s. 337.18, or s. 713.23 is effective as of the date
 713 of mailing and the requirements for service under this section
 714 have been satisfied if all of the following requirements have
 715 been met:

716 (a) The notice is mailed by registered, Global Express
 717 Guaranteed, or certified mail, with postage prepaid, to the
 718 person to be served and addressed as prescribed at any of the
 719 ~~addresses set forth~~ in subsection (3).⁺

720 (b) The notice is mailed within 40 days after the date the
 721 lienor first furnishes labor, services, or materials,⁺ ~~and~~

722 (c) 1. The person who served the notice maintains a
 723 registered or certified mail log that shows the registered or
 724 certified mail number issued by the United States Postal
 725 Service, the name and address of the person served, and the date

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726 stamp of the United States Postal Service confirming the date of
 727 mailing; or

728 2. The person who served the notice maintains ~~electronic~~
 729 tracking records approved or generated by the United States
 730 Postal Service containing the postal tracking number, ~~the name~~
 731 ~~and address of the person served~~, and verification of the date
 732 of receipt by the United States Postal Service.

733 (3) (a) Notwithstanding subsection (1), service of a
 734 document under an instrument pursuant to this section is
 735 effective on the date of mailing or shipping, and the
 736 requirements for service under this section have been satisfied,
 737 ~~the instrument if the document is:~~

738 1. Is sent to the last address shown in the notice of
 739 commencement or any amendment thereto or, in the absence of a
 740 notice of commencement, to the last address shown in the
 741 building permit application, or to the last known address of the
 742 person to be served,⁺ ~~and~~

743 2. Is returned as being "refused," "moved, not
 744 forwardable," or "unclaimed," or is otherwise not delivered or
 745 deliverable through no fault of the person serving the document
 746 ~~item~~.

747 (b) If the address shown in the notice of commencement or
 748 any amendment ~~thereto to the notice of commencement~~, or, in the
 749 absence of a notice of commencement, in the building permit
 750 application, is incomplete for purposes of mailing or delivery,
 751 the person serving the document item may complete the address
 752 and properly format it according to United States Postal Service
 753 addressing standards using information obtained from the
 754 property appraiser or another public record without affecting

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755 the validity of service under this section.

756 (4) A document ~~notice~~ served by a lienor on one owner or
757 one partner of a partnership owning the real property is deemed
758 served on notice to all owners and partners.

759 Section 11. Section 713.21, Florida Statutes, is amended to
760 read:

761 713.21 Discharge of lien.—A lien properly perfected under
762 this chapter may be discharged, or released in whole or in part,
763 by any of the following methods:

764 (1) By entering satisfaction of the lien upon the margin of
765 the record thereof in the clerk's office when not otherwise
766 prohibited by law. This satisfaction shall be signed by the
767 lienor, the lienor's agent or attorney and attested by said
768 clerk. Any person who executes a claim of lien has ~~shall have~~
769 authority to execute a satisfaction in the absence of actual
770 notice of lack of authority to any person relying on the same.

771 (2) By the satisfaction or release of the lienor, duly
772 acknowledged and recorded in the clerk's office. The
773 satisfaction or release must include the lienor's notarized
774 signature and set forth the official records' reference numbers
775 and recording date affixed by the recording office on the
776 subject lien. Any person who executes a claim of lien has ~~shall~~
777 ~~have~~ authority to execute a satisfaction or release in the
778 absence of actual notice of lack of authority to any person
779 relying on the same.

780 (3) By failure to begin an action to enforce the lien
781 within the time prescribed in this part.

782 (4) By an order of the circuit court of the county where
783 the property is located, as provided in this subsection. Upon

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784 filing a complaint therefor by any interested party the clerk
785 shall issue a summons to the lienor to show cause within 20 days
786 why his or her lien should not be enforced by action or vacated
787 and canceled of record. Upon failure of the lienor to show cause
788 why his or her lien should not be enforced or the lienor's
789 failure to commence such action before the return date of the
790 summons the court shall forthwith order cancellation of the
791 lien.

792 (5) By recording in the clerk's office the original or a
793 certified copy of a judgment or decree of a court of competent
794 jurisdiction showing a final determination of the action.

795 Section 12. Subsection (2) of section 713.22, Florida
796 Statutes, is amended to read:

797 713.22 Duration of lien.—

798 (2) An owner or the owner's attorney may elect to shorten
799 the time prescribed in subsection (1) within which to commence
800 an action to enforce any claim of lien or claim against a bond
801 or other security under s. 713.23 or s. 713.24 by recording in
802 the clerk's office a notice in substantially the following form:

803 NOTICE OF CONTEST OF LIEN

804 To: ...(Name and address of lienor)...

805
806
807 You are notified that the undersigned contests the claim of lien
808 filed by you on, ...(year)..., and recorded in Book
809, Page, of the public records of County, Florida,
810 and that the time within which you may file suit to enforce your
811 lien is limited to 60 days from the date of service of this
812 notice. This day of, ...(year)....

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813
814 Signed: ... (Owner or Attorney) ...

815
816 The lien of any lienor upon whom such recorded notice is served
817 and who fails to institute a suit to enforce his or her lien
818 within 60 days after service of such recorded notice shall be
819 extinguished automatically. The clerk shall serve, in accordance
820 with s. 713.18, a copy of the recorded notice of contest to the
821 lien claimant at the address shown in the claim of lien or most
822 recent amendment thereto and shall certify to such service and
823 the date of service on the face of the notice and record the
824 notice.

825 Section 13. Paragraphs (d) and (e) of subsection (1) of
826 section 713.23, Florida Statutes, are amended to read:

827 713.23 Payment bond.—

828 (1)

829 (d) In addition, a lienor who has not received payment for
830 furnishing his or her labor, services, or materials must, as a
831 condition precedent to recovery under the bond, serve a written
832 notice of nonpayment on ~~to~~ the contractor and a copy of the
833 notice on the surety. The notice must be under oath and served
834 during the progress of the work or thereafter, but may not be
835 served later than 90 days after the final furnishing of labor,
836 services, or materials by the lienor, or, with respect to rental
837 equipment, later than 90 days after the date the rental
838 equipment was on the ~~job~~ site of the improvement and available
839 for use. A notice of nonpayment that includes sums for retainage
840 must specify the portion of the amount claimed for retainage.
841 The required notice satisfies this condition precedent with

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842 respect to the payment described in the notice of nonpayment,
843 including unpaid finance charges due under the lienor's
844 contract, and with respect to any other payments which become
845 due to the lienor after the date of the notice of nonpayment.
846 The time period for serving a notice of nonpayment ~~is shall be~~
847 measured from the last day of furnishing labor, services, or
848 materials by the lienor and may not be measured by other
849 standards, such as the issuance of a certificate of occupancy or
850 the issuance of a certificate of substantial completion. The
851 failure of a lienor to receive retainage sums not in excess of
852 10 percent of the value of labor, services, or materials
853 furnished by the lienor is not considered a nonpayment requiring
854 the service of the notice provided under this paragraph. If the
855 payment bond is not recorded before commencement of
856 construction, the time period for the lienor to serve a notice
857 of nonpayment may, at the option of the lienor, be calculated
858 from the date specified in this section or the date the lienor
859 is served a copy of the bond. However, the limitation period for
860 commencement of an action on the payment bond as established in
861 paragraph (e) may not be expanded. The negligent inclusion or
862 omission of any information in the notice of nonpayment that has
863 not prejudiced the contractor or surety does not constitute a
864 default that operates to defeat an otherwise valid bond claim. A
865 lienor who serves a fraudulent notice of nonpayment forfeits his
866 or her rights under the bond. A notice of nonpayment is
867 fraudulent if the lienor has willfully exaggerated the amount
868 unpaid, willfully included a claim for work not performed or
869 materials not furnished for the subject improvement, or prepared
870 the notice with such willful and gross negligence as to amount

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871 to a willful exaggeration. However, a minor mistake or error in
872 a notice of nonpayment, or a good faith dispute as to the amount
873 unpaid, does not constitute a willful exaggeration that operates
874 to defeat an otherwise valid claim against the bond. The service
875 of a fraudulent notice of nonpayment is a complete defense to
876 the lienor's claim against the bond. The notice under this
877 paragraph must include the following information, current as of
878 the date of the notice, and must be in substantially the
879 following form:

880 NOTICE OF NONPAYMENT

881 To ...(name of contractor and address)...

882 ... (name of surety and address)...

883 The undersigned lienor notifies you that:

884 1. The lienor has furnished ...(describe labor, services,
885 or materials)... for the improvement of the real property
886 identified as ...(property description).... The corresponding
887 amount unpaid to date is \$...., of which \$.... is unpaid
888 retainage.

889 2. The lienor has been paid to date the amount of \$.... for
890 previously furnishing ...(describe labor, services, or
891 materials)... for this improvement.

892 3. The lienor expects to furnish ...(describe labor,
893 services, or materials)... for this improvement in the future
894 (if known), and the corresponding amount expected to become due

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900 is \$.... (if known).

901
902 I declare that I have read the foregoing Notice of Nonpayment
903 and that the facts stated in it are true to the best of my
904 knowledge and belief.

905 DATED on,

906 ...(signature and address of lienor)...

907
908 STATE OF FLORIDA
909 COUNTY OF.....

910 The foregoing instrument was sworn to (or affirmed) and
911 subscribed before me by means of physical presence or sworn to
912 (or affirmed) by online notarization, this ... day of ...,
913 ... (year) ..., by ... (name of signatory)....

914 ... (Signature of Notary Public - State of Florida) ...
915 ... (Print, Type, or Stamp Commissioned Name of Notary
916 Public) ...

917 Personally Known OR Produced Identification

918 Type of Identification Produced.....

919 (e) An action for the labor, ~~or~~ materials, or supplies may
920 not be instituted or prosecuted against the contractor or surety
921 unless both notices have been given, if required by this
922 section. An action may not be instituted or prosecuted against
923 the contractor or against the surety on the bond under this

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929 section after 1 year from the performance of the labor or
 930 completion of delivery of the materials and supplies. The time
 931 period for bringing an action against the contractor or surety
 932 on the bond ~~is shall be~~ measured from the last day of furnishing
 933 labor, services, or materials by the lienor. The time period may
 934 not be measured by other standards, such as the issuance of a
 935 certificate of occupancy or the issuance of a certificate of
 936 substantial completion. A contractor or the contractor's
 937 attorney may elect to shorten the time within which an action to
 938 enforce any claim against a payment bond provided under this
 939 section ~~or s. 713.245~~ must be commenced at any time after a
 940 notice of nonpayment, if required, has been served for the claim
 941 by recording in the clerk's office a notice in substantially the
 942 following form:

943
 944 NOTICE OF CONTEST OF CLAIM
 945 AGAINST PAYMENT BOND
 946

947 To: ...(Name and address of lienor)...

948 You are notified that the undersigned contests your notice
 949 of nonpayment, dated,, and served on the undersigned
 950 on,, and that the time within which you may file suit
 951 to enforce your claim is limited to 60 days after ~~from~~ the date
 952 of service of this notice.

953
 954 DATED on,

955
 956 Signed: ...(Contractor or Attorney)...

957

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958 The claim of any lienor upon whom the notice is served and who
 959 fails to institute a suit to enforce his or her claim against
 960 the payment bond within 60 days after service of the notice
 961 shall be extinguished automatically. The contractor or the
 962 contractor's attorney shall serve a copy of the notice of
 963 contest to the lienor at the address shown in the notice of
 964 nonpayment or most recent amendment thereto and shall certify to
 965 such service on the face of the notice and record the notice.

966 Section 14. Subsections (1) and (2) of section 713.235,
 967 Florida Statutes, are amended to read:

968 713.235 Waivers of right to claim against payment bond;
 969 forms.-

970 (1) When a person is required to execute a waiver of his or
 971 her right to make a claim against a payment bond provided under
 972 ~~purquant to~~ s. 713.23 ~~or s. 713.245~~, in exchange for, or to
 973 induce payment of, a progress payment, the waiver may be in
 974 substantially the following form:

975
 976 WAIVER OF RIGHT TO CLAIM
 977 AGAINST THE PAYMENT BOND
 978 (PROGRESS PAYMENT)
 979

980 The undersigned, in consideration of the sum of \$....
 981 hereby waives its right to claim against the payment bond for
 982 labor, services, or materials furnished through ...(insert
 983 date)..., to ...(insert the name of your customer)... on the job
 984 of ...(insert the name of the owner)..., for improvements to the
 985 following described project:

986

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987 (description of project)

988

989 This waiver does not cover any retention or any labor, services,
990 or materials furnished after the date specified.

991 DATED on

992 ... (Lienor) ...

993 By:

994 (2) When a person is required to execute a waiver of his or
995 her right to make a claim against a payment bond provided under
996 ~~puruant to~~ s. 713.23 ~~or s. 713.245~~, in exchange for, or to
997 induce payment of, the final payment, the waiver may be in
998 substantially the following form:

999

1000 WAIVER OF RIGHT TO CLAIM

1001 AGAINST THE PAYMENT BOND

1002

1003 (FINAL PAYMENT)

1004

1005 The undersigned, in consideration of the final payment in
1006 the amount of \$...., hereby waives its right to claim against
1007 the payment bond for labor, services, or materials furnished to
1008 ... (insert the name of your customer) ... on the job of
1009 ... (insert the name of the owner) ..., for improvements to the
1010 following described project:

1011 (description of project)

1012

1013 DATED on

1014 ... (Lienor) ...

1015 By:

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1016 Section 15. Section 713.245, Florida Statutes, is repealed.

1017 Section 16. Section 713.25, Florida Statutes, is repealed.

1018 Section 17. Section 713.29, Florida Statutes, is amended to
1019 read:

1020 713.29 ~~Attorney~~ Attorney's fees.—In any action brought to
1021 enforce a lien, including a lien that has been transferred to
1022 security, or to enforce a claim against a bond under this part,
1023 the prevailing party is entitled to recover a reasonable fee for
1024 the services of her or his attorney for trial and appeal or for
1025 arbitration, in an amount to be determined by the court, which
1026 fee must be taxed as part of the prevailing party's costs, as
1027 allowed in equitable actions.

1028 Section 18. Paragraph (b) of subsection (2) and paragraph
1029 (e) of subsection (5) of section 95.11, Florida Statutes, are
1030 amended to read:

1031 95.11 Limitations other than for the recovery of real
1032 property.—Actions other than for recovery of real property shall
1033 be commenced as follows:

1034 (2) WITHIN FIVE YEARS.—

1035 (b) A legal or equitable action on a contract, obligation,
1036 or liability founded on a written instrument, except for an
1037 action to enforce a claim against a payment bond, which shall be
1038 governed by the applicable provisions of paragraph (5) (e), s.
1039 255.05(9) ~~s. 255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), and
1040 except for an action for a deficiency judgment governed by
1041 paragraph (5) (h).

1042 (5) WITHIN ONE YEAR.—

1043 (e) Except for actions governed by s. 255.05(9) ~~s.~~
1044 ~~255.05(10)~~, s. 337.18(1), or s. 713.23(1) (e), an action to

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1045 enforce any claim against a payment bond on which the principal
1046 is a contractor, subcontractor, or sub-subcontractor as defined
1047 in s. 713.01, for private work as well as public work, from the
1048 last furnishing of labor, services, or materials or from the
1049 last furnishing of labor, services, or materials by the
1050 contractor if the contractor is the principal on a bond on the
1051 same construction project, whichever is later.

1052 Section 19. This act shall take effect July 1, 2022.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JENNIFER BRADLEY
5th District

COMMITTEES:
Community Affairs, *Chair*
Agriculture, *Vice Chair*
Appropriations Subcommittee on Agriculture,
Environment, and General Government
Education
Ethics and Elections
Judiciary
Reapportionment

SELECT SUBCOMMITTEE:
Select Subcommittee on Congressional
Reapportionment, *Chair*

JOINT COMMITTEES:
Joint Legislative Auditing Committee
Joint Select Committee on Collective Bargaining

January 27, 2022

Senator Jim Boyd, Chairman
Senate Banking and Insurance Committee
312 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 1272 be placed on the committee's agenda at your convenience. The bill relates to liens and bonds.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Bradley".

Jennifer Bradley

cc: Mr. James Knudson, Staff Director
Ms. Amaura Canty, Administrative Assistant

REPLY TO:

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

Senate's Website: www.flsenate.gov

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

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

2/2/22

Meeting Date

SB 1272

Bill Number or Topic

BANKING & INSURANCE

Committee

Amendment Barcode (if applicable)

Name FRENCH BROWN

Phone 850-459-0992

Address 106 E. COLLEGE AVE, SUITE 200

Email fbrown@deanmead.com

Street

TAMPA 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:

Real Property, Probate, AND Trust LAW Sections of the FL BAR

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

APPEARANCE RECORD

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2/2/22

Meeting Date

1272

Bill Number or Topic

B & J

Committee

Amendment Barcode (if applicable)

Name

Melissa Ramba

Phone

850-570-0269

Address

108 S Monroe

Email

Melissa@Flapartners.com

Street

Tall

City

FL

State

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:

National Assoc. Credit Managers

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 1272

2-2-22

Meeting Date

Bill Number or Topic

BSI

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

Committee

Amendment Barcode (if applicable)

Name

KARI HERBRANK

Phone

850-566-7824

Address

245 S. MONROE ST

Email

Street

TALLAHASSEE FL 32301

City

State

Zip

Speaking:

For



Information

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:

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

APPEARANCE RECORD

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

2/2/22

Meeting Date

1272

Bill Number or Topic

Banking & Insurance
Committee

Amendment Barcode (if applicable)

Name Doug Bell

Phone 850 205 9000

Address 119 S. Monroe St.
Street

Email doug.bell@whdflw.com

TCH

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:

Associated General Contractors

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 1476

INTRODUCER: Senator Wright

SUBJECT: Prescription Drug Coverage

DATE: February 2, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Johnson | Knudson | BI | Favorable |
| 2. | _____ | _____ | AEG | _____ |
| 3. | _____ | _____ | AP | _____ |

I. Summary:

SB 1476 revises provisions of the Florida Insurance Code (code) relating to the oversight of pharmacy benefit managers (PBMs) by the Office of Insurance Regulation (OIR). Specifically, the bill:

- Authorizes OIR to conduct market conduct examinations of PBMs to determine compliance with applicable provisions of the code;
- Requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions;
- Authorizes an audited pharmacy to appeal certain final audit findings made by health insurers or HMO, or PBM acting on their behalf; and
- Provides that a person who fails to register with OIR while operating as a PBM is subject to a \$10,000 fine for each violation.

The Office of Insurance Regulation estimates that it will incur a negative fiscal impact, ranging from \$125,000 to \$200,000, to contract with a pharmacist to provide oversight of PBM market conduct examinations and respond to complaints involving pharmacy audits.

The Division of State Group Insurance program may incur an indeterminate negative fiscal impact relating to the administrative costs of any market conduct examination of its PBM by the OIR, to the extent such examination occurs and such costs are passed down to participants of the program.

The bill is effective July 1, 2022.

II. Present Situation:

National Health Care Expenditures in 2020¹

Health care spending in the United States increased 9.7 percent to reach \$4.1 trillion in 2020, a much faster rate than the 4.3 percent increase experienced in 2019. Gross Domestic Product declined 2.2 percent in 2020, leading to a sharp increase in the share of the overall economy related to health care spending—from 17.6 percent in 2019 to 19.7 percent in 2020. The acceleration in national health spending in 2020 was primarily due to a 36.0 percent increase in federal expenditures for health care that occurred largely in response to the COVID-19 pandemic.

In regards to retail prescription drugs, spending increased 3.0 percent to \$348.4 billion in 2020, a slower rate than in 2019 when spending increased 4.3 percent. The slowdown was a result of a 4.2-percent decline in out-of-pocket expenditures, which resulted from slower overall utilization and an increased use of coupons, which lower point-of-sale expenditures for consumers.

The Prescription Drug Supply Chain

In recent years, the affordability of prescription drugs has gained attention, resulting in PBMs and drug manufacturers coming under scrutiny as policymakers have attempted to understand their role in the drug supply chain. Many stakeholders (drug manufacturers, drug wholesalers, pharmacy services administrative organizations, pharmacy benefit managers, health plans, employers, and consumers) are involved with, and pay different prices for, prescription drugs as they move from the drug manufacturer to the insured.

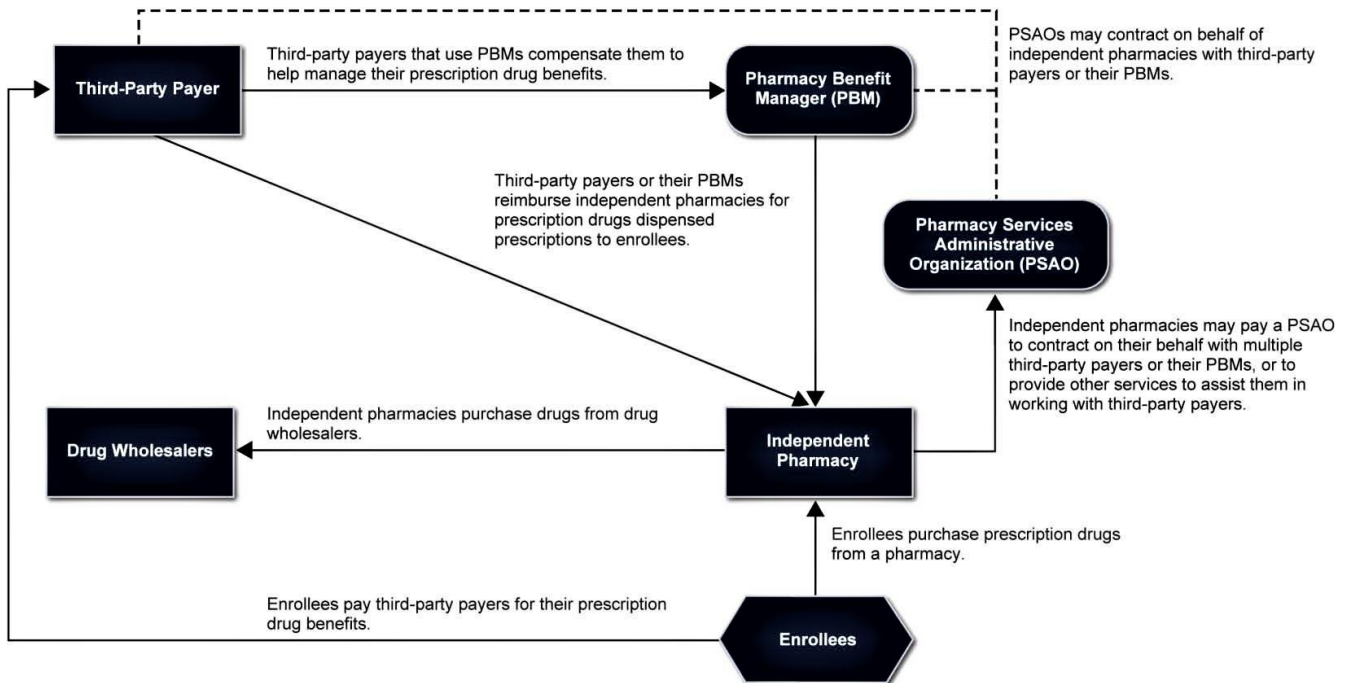
Due to a lack of transparency in the marketplace, it can be difficult to determine the final price of a prescription drug. The final price of a drug may include rebates and discounts to insurers, HMOs, or pharmacy benefit managers that are not disclosed.² Market participants, such as drug wholesalers, may add their own markups and fees, and drug manufacturers may offer direct consumer discounts, such as prescription drug coupons that can be redeemed when filling a particular prescription at a pharmacy.³

¹ Centers for Medicare and Medicaid Services, *National Health Expenditure 2020 Highlights*, <https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsHistorical> (last visited Jan. 28, 2022).

² *Annu. Rev. Public Health*. 1999. 20:361–401.

³ Reynolds, Ian, *et. al.*, *The Prescription Drug Landscape, Explored* (Mar. 2019). The Pew Charitable Trusts.

Some independent pharmacies may contract with pharmacy services administrative organizations (PSAO) to interact on their behalf with other stakeholders, such as drug wholesalers and third-party payers, such as large private and public health plans and their PBMs.⁴ The PSAOs develop networks of pharmacies by signing contractual agreements with each pharmacy that authorizes them to negotiate with third-party payers on the pharmacy's behalf. Drug wholesalers and independent pharmacy cooperatives owned the majority of PSAOs in operation in 2011 or 2012.⁵ Health insurers, HMOs, or self-insured employers may contract with PBMs to manage their prescription drug benefits. The interaction among key entities involved in the distribution and payment of prescription drugs is depicted below:⁶



Source: GAO analysis based on interviews and industry reports.

A Study of 15 Large Employer Plans⁷

In response to concerns about rising drug costs, a recent study evaluated drug utilization from plan sponsors to estimate savings from reducing the use of high cost, low-value drugs and described some of the cost concerns and challenges relating to the drug supply chain, as follows:

PBMs negotiate with pharmaceutical manufacturers for price discounts, which are typically paid as rebates based on sales volumes driven by formulary placement. Rebates can reduce the final net price to the plan sponsor and may be passed on to patients. However, in exchange for low administration fees, plan sponsors allow

⁴ General Accounting Office, *The Number, Role, and Ownership of Pharmacy Services Administrative Organizations* (GAO-13-176) (Feb 28, 2013), <https://www.gao.gov/products/GAO-13-176> (last visited Jan. 28, 2022).

⁵ *Id.*

⁶ *Id.*

⁷ Vela, Lauren, *Reducing Wasteful Spending in Employers' Pharmacy Benefit Plans* (Aug. 2019) the Commonwealth Fund, <https://www.commonwealthfund.org/publications/issue-briefs/2019/aug/reducing-wasteful-spending-employers-pharmacy-benefit-plans> (last viewed Jan. 28, 2022).

PBMs to keep a portion of the negotiated rebates and other fees. Contracts between PBMs and plan sponsors contain rebate guarantees, perpetuating the demand for high-rebate drugs by encouraging PBMs to maximize rebate revenue, giving preference to some drugs over others on formularies based on rebate revenue rather than their value and final cost to the patient or plan sponsor. Additionally, PBMs earn revenue from “spread” pricing, which is the difference between what PBMs pay pharmacies on behalf of plan sponsors and what PBMs are reimbursed by the plan sponsor. This also encourages PBMs to prioritize higher-cost drugs to allow for a larger spread.

The report further describes additional factors that may increase costs for employers and insureds:

[P]lan sponsors often allow broad formularies that include wasteful drugs because they are concerned that employees will be disappointed if their prescribed drugs are not covered. Doctors prescribe these drugs because they are often unaware of drug costs. Pharmaceutical manufacturers contribute to these patterns by promoting their products through “detailers” — pharmaceutical salespeople calling on doctors — when less costly alternatives may be clinically appropriate for patients. Plan sponsors have addressed the resulting high spending by increasing patient cost-sharing on lower-value drugs. Manufacturers counteract cost-sharing and formulary management tools by flooding the market with copayment coupons that undermine the benefit structure put in place by plan sponsors.⁸

Pharmacy Benefit Managers

Many public and private employers and health plans contract with PBMs to help manage drug costs.⁹ Some of the services provided by the PBMs include processing pharmacy claims; providing mail-order pharmacy services to their customers; negotiating rebates (discounts paid by a drug manufacturer to a PBM), developing pharmacy networks, creating drug formularies; reviewing drug utilization; and providing disease management.¹⁰ Generally, a contract between a PBM and a health plan or an employer specifies the amount a plan or an employer will pay a PBM for brand name and generic drugs and specify certain savings guarantees.¹¹ A recent report found that PBMs passed through 78 percent of manufacturer rebates to health plans in 2012 and 91 percent in 2016.¹² For the same period, the report noted that manufacturer rebates grew from \$39.7 billion to \$89.5 billion, and played a growing role in partially offsetting increases in list prices, which the study noted have risen more quickly than overall retail prescription drug spending.¹³

⁸ *Id.*

⁹ Pharmacy Benefit Managers and Their Role in Drug Spending (Apr. 22, 2019), <https://www.commonwealthfund.org/publications/explainer/2019/apr/pharmacy-benefit-managers-and-their-role-drug-spending> (last visited Jan. 28, 2022).

¹⁰ *Id.*

¹¹ *Policy Options To Help Self-Insured Employers Improve PBM Contracting Efficiency*, Health Affairs Blog, (May 29, 2019). DOI: 10.1377/hblog20190529.43197.

¹² *Supra* note 3.

¹³ *Id.*

In recent years, significant consolidations in the PBM industry have occurred. Further, many health insurers are acquiring PBMs. Many entities have cited reducing drug cost as a factor for many of the acquisitions.¹⁴ In 2020, three PBMs, CVS Health (including Caremark and Aetna), the Express Scripts business of Cigna, and the OptumRx business of the UnitedHealth Group, were estimated to process about 77 percent of all equivalent prescription claims.¹⁵ The remaining estimated 22 percent was processed by Humana Pharmacy Solutions (8 percent), Medimpact Healthcare Systems, (6 percent), Prime Therapeutics (4 percent), and all other PBMs and cash pay (4 percent). In 2018, three PBMs processed about 76 percent of all equivalent prescription claims: CVS Health (including Caremark and Aetna), Express Scripts, and OptumRx (UnitedHealth).¹⁶

Reimbursement of Pharmacies by PBMs

Generally, the maximum allowable cost (MAC) price represents the upper limit price that a plan will pay or reimburse for generic drugs and sometimes brand drugs that have generic versions available (multisource brands).¹⁷ A PBM can maintain multiple MAC lists, each tied to the requirements of a particular employee benefit plan or other payer.¹⁸ A MAC pricing list is a cost management tool that is developed from a proprietary survey of wholesale prices existing in the marketplace, taking into account market share, inventory, reasonable profit margins, and other factors.¹⁹ One of the goals of the MAC pricing list is to ensure that the pharmacy or their buying groups are motivated to seek and purchase generic drugs at the lowest price.²⁰ If a pharmacy procures a higher-priced product, the pharmacy may not make as much profit or, in some instances, may lose money on that specific purchase.²¹

Retail Pharmacies

Independent pharmacies are a type of retail pharmacy with a physical store location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs.²² Nationwide, the number of independent pharmacies in the United States continues to decline. In 2010, there were 23,106 independent pharmacies; by

¹⁴ Barlas, Stephen, Vertical Integration Heats Up in Drug Industry: Will Medication Price Hikes Cool Down as a Result? *P & T: a peer-reviewed journal for formulary management* vol. 43,1 (2018): 31-39.

¹⁵ Drug Channels, [Drug Channels: The Top Pharmacy Benefit Managers of 2020: Vertical Integration Drives Consolidation](#) (Apr. 6, 2021) (last visited Jan. 7, 2022).

¹⁶ Drug Channels, CVS, Express Scripts, and the Evolution of the PBM Business Model (May 29, 2019) at <https://www.drugchannels.net/2019/05/cvs-express-scripts-and-evolution-of.html> (last visited Jan. 28, 2022).

¹⁷ Academy of Managed Care Pharmacy, Maximum Allowable Cost (MAC) Pricing (Oct. 28, 2021), <https://www.amcp.org/policy-advocacy/policy-advocacy-focus-areas/where-we-stand-position-statements/maximum-allowable-cost-mac-pricing> (last visited Jan. 28, 2022).

¹⁸ Hyman, David, *The Unintended Consequences of Restrictions on the Use of Maximum Allowable Cost Programs ("MACs") for Pharmacy Reimbursement* (Apr. 2015), at <https://www.pcmnet.org/wp-content/uploads/2016/08/hyman-mac-white-paper-april-2015.pdf> (last visited Jan. 29, 2022)

¹⁹ *Id.*

²⁰ *Supra* note 17.

²¹ *Id.*

²² Arnold, Karen, *Independent Pharmacies: Not Dead Yet*, (Jan. 12, 2019, vol. 163, issue 1) *Drug Topics*, Voice of the Pharmacist, <https://www.drugtopics.com/view/independent-pharmacies-not-dead-yet> (last visited Jan. 28, 2022).

2017, that number had dropped to 21,909.²³ As of June 2021, there were 19,397 independent pharmacies.²⁴

The decision of employers, HMOs, or insurers to contract with PBMs may shift business away from smaller, local retail pharmacies that are also known as independent pharmacies. Historically, independent pharmacies were important health care providers in their communities and their pharmacists had long-term relationships with their patients.²⁵ However, many independent pharmacies have closed in recent years because of the competition resulting from the proliferation of large, chain retail pharmacies²⁶ that can negotiate with PBMs at deeply discounted reimbursement levels based on large volume sales.

Further, innovations and greater competition in the pharmacy marketplace are occurring. In 2018, Amazon acquired PillPack, a mail-order pharmacy, which has pharmacy licenses in all 50 states.²⁷ Further, many digital pharmacies are entering the marketplace and focus on certain strategies, such as:

- Home delivery of individual prescriptions;
- Operating at least one brick-and mortar retail location (so that the pharmacy can remain in a PBM's network);
- Dispensing 30-day prescriptions, not 90-day maintenance prescriptions;
- Offering a mobile application so consumers can manage their account, order prescription refills, and schedule delivery; and
- Providing telehealth consultations with prescribers.²⁸

Federal Oversight of Health Insurance

On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA) was signed into law.²⁹ Among its significant changes to the U.S. health insurance system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting medical conditions and without basing premiums on any health-related factors.³⁰ The PPACA imposes many other requirements on qualified health plans offered by individual

²³ *Id.*

²⁴ Chain Drug Review, NCPA releases 2021 NCPA Digest Report (Oct. 11, 2021) [NCPA releases 2021 NCPA Digest report - CDR – Chain Drug Review](#) (last visited Jan. 28, 2022). The store count in previous years' Digest reports was based on an NCPA analysis of NCPDP data and NCPA research, which most recently produced a store count of 21,683 in 2019.

²⁵ Independent pharmacies are a type of retail pharmacy with a store-based location—often in rural and underserved areas—that dispense medications to consumers, including both prescription and over-the-counter drugs. *See supra* note 4. (last visited Feb. 1, 2022).

²⁶ Such as Walmart, CVS, Walgreens, or Publix.

²⁷ Garcia, Ahiz, *Amazon rolls out “Amazon Pharmacy” branding to PillPack*, CNN Business (Nov. 15, 2019), <https://www.cnn.com/2019/11/15/tech/amazon-pharmacy-pillpack/index.html> (last visited Jan. 22, 2022).

²⁸ Drug Channels, *The Promise and Limits of Digital Pharmacies* (Feb. 16, 2021) at <https://www.drugchannels.net/2021/02/the-promise-and-limits-of-digital.html> (last visited Feb. 28, 2022).

²⁹ Pub. L. 111–148 was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the PPACA, was enacted on March 30, 2010. The two laws are collectively referred to as the “Patient Protection and Affordable Care Act.”

³⁰ Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act (PHSA), (42 U.S.C. s. 300gg et seq.).

and group plans, including required benefits, reporting of medical loss ratios, and internal and external appeals of adverse benefit determinations.³¹

Medical Loss Ratios, Rebates, and Spread Pricing

If an insurer or HMO spends less than 80 percent in the individual or small group market (85 percent in the large group market) of premium on medical care and efforts to improve the quality of care, they must refund the portion of premium that exceeds this limit.³² The 80 percent (or 85 percent) is the medical loss ratio (MLR). The PBMs must report rebate information to the health insurers and HMOs, and the insurer or HMO includes this information as a deduction from the amount of incurred claims in the MLR reporting to the Department of Health and Human Services (HHS).³³

Insurer Reporting of Health Plan Spending on Drugs

Beginning in 2021, federal law requires a group health plan or health insurance issuer offering group or individual health insurance coverage must report to the Secretary of the Department of Labor and the Secretary of the Department of Treasury the following information with respect to the health plan or coverage in the previous plan year:

- The 50 brand prescription drugs most frequently dispensed and the total number of paid claims for each drug;
- The 50 most costly prescription drugs by total annual spending;
- The 50 prescription drugs with the greatest increase in plan expenditures over the preceding plan year;
- Total spending on health care services by such plan or coverage, categorized by type of costs, including hospital, health care provider, clinical services, prescription drugs, and other medical costs;
- Spending on prescription drugs by the plan or coverage, and the enrollees;
- Average monthly premium paid by the employer and by participants and beneficiaries; and
- Impact of rebates, fees and other remuneration paid by drug manufacturers on premiums and out-of-pocket costs.³⁴

Office of Insurance Regulation

The OIR is responsible for the regulation of insurers, HMOs, and other risk-bearing entities.³⁵ Prior to transacting insurance in Florida or operating a HMO, an insurer or HMO, respectively must meet certain requirements to obtain a certificate of authority from OIR.³⁶ Section 624.3161, authorizes OIR to conduct market conduct examinations of insurers.³⁷ The entity subject to an examination is responsible for the payment of the examination costs, as provided in s. 624.320, F.S.

³¹ *Id.*

³² 45 CFR 158.210 and 158.211.

³³ 42 U.S.C. s. 2718.

³⁴ 42 USC s. 300gg-120.

³⁵ Section 20.121(3)(a)1., F.S.

³⁶ Sections 624.404 and 641.21, F.S.

³⁷ Section 624.3161, F.S.

Oversight of PBMs

A PBM is a person or entity doing business in Florida, which contracts to administer prescription drug benefits on behalf of a health insurer or an HMO to insureds or subscribers of this state.³⁸ The PBMs are required to register with the OIR.³⁹ The registration process requires an applicant to remit a nonrefundable fee not to exceed \$500, a copy of certain corporate documents, and a completed registration form. The current registration fee is \$5.⁴⁰ Initial registration and registration certificate renewals are valid for 2 years and are nontransferable.⁴¹ Currently, 66 pharmacy benefit managers have a letter of registration with the OIR.⁴²

Mandatory Contractual Provisions. The Insurance Code⁴³ mandates that contracts between health insurers or HMOs and PBMs contain certain provisions. However, there is no statutory penalty if the PBM does not comply with these contractual provisions. These mandatory contractual provisions require the PBM to:

- Update the maximum allowable cost (MAC) pricing information at least once every 7 calendar days;
- Maintain a process that will eliminate drugs from the MAC lists or modify drug prices in a timely manner to remain consistent with changes in pricing data;
- Not limit a pharmacist’s ability to disclose whether the cost-sharing obligation exceeds the retail price for a covered prescription drug, and the availability of a more affordable alternative drug, pursuant to s. 465.0244, F.S.; and
- Not require an insured to pay for a prescription drug at the point of sale in an amount that exceeds the lesser of:
 - The applicable cost sharing amount; or
 - The retail price of the drug in the absence of prescription drug coverage.

Maximum Allowable Cost. Current law defines the term, “maximum allowable cost” (MAC) as the per-unit amount that a PBM reimburses a pharmacist for a prescription drug, excluding dispensing fees, prior to the application of copayments, coinsurance, and other cost-sharing charges, if any.⁴⁴

Payment of claims. Current law requires a PBM, acting on behalf of an insurer or HMO, to pay a provider’s claim within a prescribed time.⁴⁵ Further, the Department of Financial Services reviews alleged violations, relating to claims of providers not paid or denied by the insurer or HMO.⁴⁶

³⁸ Section 624.490, F.S.

³⁹ *Id.*

⁴⁰ Office of Insurance Regulation, Registration Form for Pharmacy Benefit Manager [AllFormsPBM.pdf \(flair.com\)](#) (last visited Jan. 27, 2022).

⁴¹ Rules 69O-238.001 and 69O-238.002, F.A.C.

⁴² OIR, Company Directory: Search Results available at <https://www.flair.com/CompanySearch/> (last visited Jan. 28, 2022).

⁴³ Sections 627.64741, 627.6572, and 641.314, F.S.

⁴⁴ *Id.*

⁴⁵ Sections 627.6131 and 641.3155, F.S.

⁴⁶ Department of Financial Services, *Medical Providers, find out who to contact about your claim payment concerns* at <https://apps.fldfs.com/eservice/MedicalProvider.aspx> (last viewed Jan. 28, 2022).

Florida Pharmacy Audits

Pursuant to ch. 465, F.S., the Florida Pharmacy Act, a “pharmacy” includes a community pharmacy, an institutional pharmacy, a nuclear pharmacy, a special pharmacy, and an Internet pharmacy. The term “community pharmacy” includes every location where medicinal drugs are compounded, dispensed, stored, or sold or where prescriptions are filled or dispensed on an outpatient basis.⁴⁷ The term, “independent pharmacy,” is not defined.

Pharmacies are subject to routine audits by an insurer, HMO, or a PBM acting on behalf of an insurer or HMO. Audits of pharmacies are conducted to determine compliance with respect to billing, reimbursement, and other contractual requirements.⁴⁸ Section 465.1885, F.S., prescribes the following rights of a pharmacy in connection with an audit conducted directly or indirectly by an insurance company, a managed care company, or a PBM:

- To be notified at least 7 calendar days before the initial onsite audit;
- To have the onsite audit scheduled after the first 3 calendar days of a month unless the pharmacist consents otherwise;
- To have the audit period limited to 24 months after the date a claim is submitted to or adjudicated by the entity;
- To have an audit that requires clinical or professional judgment conducted by or in consultation with a pharmacist;
- To use the written and verifiable records of a hospital, physician, or other authorized practitioner, which are transmitted by any means of communication, to validate the pharmacy records in accordance with state and federal law;
- To be reimbursed for a claim that was retroactively denied for a clerical error, typographical error, scrivener’s error, or computer error if the prescription was properly and correctly dispensed, unless a pattern of such errors exists, fraudulent billing is alleged, or the error results in actual financial loss to the entity;
- To receive the preliminary audit report within 120 days after the conclusion of the audit;
- To produce documentation to address a discrepancy or audit finding within 10 business days after the preliminary audit report is delivered to the pharmacy;
- To receive the final audit report within 6 months after receiving the preliminary audit report; and
- To have recoupment or penalties based on actual overpayments and not according to the accounting practice of extrapolation.⁴⁹

However, neither the Department of Health nor the Board of Pharmacy has authority under ch. 465, F.S., the Florida Pharmacy Act, to enforce these provisions against any entity not complying with these requirements.

⁴⁷ Section 465.003(11), F.S.

⁴⁸ JD Supra, *Pharmacy Compliance: Will Your Pharmacy’s Policies and Protocols Withstand a DEA or PBM Audit?* (Aug. 3, 2020), at <https://www.jdsupra.com/legalnews/pharmacy-compliance-will-your-pharmacy-78764/> (last visited Jan. 28, 2022).

⁴⁹ Section 465.188, F.S., prescribes the rights of a pharmacy in connection with a Medicaid audit.

Statewide Provider and Health Plan Claim Dispute Resolution Program

The Agency for Health Care Administration (Agency), administers the Statewide Provider and Health Plan Claim Dispute Resolution Program, which assists contracted and noncontracted providers and health plans to resolve claim disputes that are not resolved by the provider and the health plan.⁵⁰ The Agency contracts with an independent dispute resolution organization to assist health care providers and health plans in order to resolve claim disputes. These services are available to Medicaid managed care providers and health plans. Claims submitted to managed care plans that have been denied in full or in part, or allegedly underpaid or overpaid, may be eligible for dispute under the arbitration process.⁵¹

State Group Insurance Program

Under the authority of s. 110.123, F.S., the Department of Management Services (department), through the Division of State Group Insurance (DSGI), administers the state group insurance program under a cafeteria plan consistent with s. 125, Internal Revenue Code to provide medical and prescription drug benefits for state employees and state university employees. To administer the program, the department contracts with third-party administrators for self-insured health plans, fully insured HMOs, and a pharmacy benefits manager (PBM) for the self-insured State Employees' Prescription Drug Program (program) pursuant to s.110.12315, F.S. The current PBM for the state employees' prescription drug plan is CaremarkPCS Health, LLC (CVS Caremark).⁵²

2020 U.S. Supreme Court Decision

In 2015, Arkansas enacted a law⁵³ that effectively requires PBMs to reimburse Arkansas pharmacies at a price equal to or higher than the pharmacy's acquisition cost. To accomplish this result, the law requires PBMs to update their MAC lists in a timely manner when drug prices increase, and to provide pharmacies with an administrative appeal process to challenge MAC reimbursement rates that are below the pharmacies' acquisition costs.⁵⁴ If a pharmacy could not have acquired the drug at a lower price from its typical wholesaler, a PBM must increase its reimbursement rate to cover the pharmacy's acquisition cost.⁵⁵ A PBM must also allow pharmacies to "reverse and rebill" each reimbursement claim affected by the pharmacy's inability to procure the drug from its typical wholesaler at a price equal to or less than the MAC reimbursement price.⁵⁶ Lastly, the law allows a pharmacy to decline to sell a drug to a consumer if the relevant PBM will reimburse the pharmacy at less than its acquisition cost.⁵⁷

⁵⁰ Section 408.7057, F.S.

⁵¹ *Id.*

⁵² Department of Management Services, Division of State Group Insurance, Contacts, available at [Contact Information / Health | MyBenefits / Department of Management Services \(myflorida.com\)](#) (last visited Jan. 27, 2022)

⁵³ AR SB 688, 2015 90th General Assembly (Apr. 2, 2015). Act 900, 2015 Session.

⁵⁴ Arkansas Code 17-92-507 (2019 Supp.)

⁵⁵ Section 17-92-507(c)(4)(C)(i)(b) (Supp. 2019)

⁵⁶ Section 17-92-507(c)(4)(C)(iii) (Supp. 2019)

⁵⁷ Section 17-92-507(e) (Supp. 2019)

In late 2020, the U.S. Supreme Court decided that Arkansas' law regulating PBMs was not preempted by the federal Employee Retirement Income Security Act of 1974 (ERISA)⁵⁸ because the Arkansas law has neither an impermissible connection with nor reference to ERISA⁵⁹ and is therefore not preempted.⁶⁰

III. Effect of Proposed Changes:

Section 1 amends s. 624.3161, F.S., to authorize the OIR to conduct market conduct examinations of PBMs. This section currently authorizes the OIR to examine insurers and other specified entities.

Section 2 amends s. 624.490, F.S., to provide that a person who fails to register with OIR while operating as pharmacy benefit manager is subject to a fine of \$10,000 per violation.

Section 3 transfers s. 465.1885, F.S., renumbers the section as s. 624.491, F.S., and amends the section to clarify that the existing rights of a pharmacy, relating to a pharmacy audit, are statutory requirements for an insurer or HMO, or any entity acting on behalf of the insurer or HMO, including but not limited to a PBM, conducting a pharmacy audit. The section specifies:

- Prior notice requirements for onsite audits;
- Audit date scheduling requirements;
- Use of a consulting pharmacist;
- Limitation on the duration of the audit period;
- Use of written and verifiable records of health care providers to validate pharmacy records;
- Retroactive reimbursement for claims denied for certain errors;
- Deadline for the provision of preliminary audits;
- Allowance for production of preliminary documentation to rebut an audit finding;
- Deadline for production of the final audit; and
- Methodology for calculating final recoupment and penalties.

The section authorizes a pharmacy to appeal final audit findings as to whether a claim payment is due and the amount of a claim payment is due with the Statewide Provider and Health Plan Claim Dispute Resolution Program at the Agency for Health Care Administration pursuant to s. 408.7057, F.S.

The section provides that a health insurer or HMO that, under terms of a contract, transfers to a PBM the obligation to pay a pharmacy licensed under ch. 465, F.S., for any pharmacy claim arising from services provided to or for the benefit of an insured or subscriber remains responsible for a violation of this section.

Section 4 provides that this bill takes effect July 1, 2022.

⁵⁸ 88 Stat. 829, as amended, 29 U. S. C. s. 1001 *et seq.*

⁵⁹ 29 USC s. 1144(a).

⁶⁰ RUTLEDGE v. PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION (Dec. 10, 2020) No. 18-540.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill clarifies statutory provisions relating to pharmacy audits to impose audit requirements rather than rights, which will provide greater transparency regarding the audit process. The bill provides pharmacies with a process to appeal PBM audit filings related to claim payments with the Statewide Provider and Health Plan Claim Dispute Resolution Program.

Since the bill authorizes OIR to conduct market conduct examinations of PBMs, the bill will increase the administrative costs of health insurers, HMOs, and PBMs to the extent PBMs are examined. Entities examined by OIR are responsible for the payment of the examination expenses.⁶¹

C. Government Sector Impact:

Office of Insurance Regulation⁶²

⁶¹ Section 624.6131(4), F.S.

⁶² Office of Insurance Regulation, *2022 Legislative Session, Analysis SB 1476* (Jan. 10, 2022).

According to OIR, the bill will have negative fiscal impact of \$125,000 to \$200,000 on a recurring basis to contract with a pharmacist. The OIR would incur costs associated with obtaining pharmacy-related training or contracting with a pharmacist in order to provide effective oversight of PBM market conduct examinations and respond to any complaints involving pharmacy audits.

Department of Management Services/Division of State Group Insurance

The costs of a PBM market conduct examination conducted by the OIR could result in an indeterminate increase in administrative costs of the program's PBM. These costs could be recouped from individuals enrolled in the Division of State Group Insurance program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 3 requires a health insurer or health maintenance organizations (HMO), and any entity acting on their behalf, including a PBM, to comply with the pharmacy audit provisions. However, no penalty is authorized for noncompliance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 624.3161 and 624.490.

This bill creates section 624.491 of the Florida Statutes.

This bill repeals section 465.1885 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.)

B. Amendments:

None.

By Senator Wright

14-00145A-22

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A bill to be entitled

An act relating to prescription drug coverage; amending s. 624.3161, F.S.; authorizing the Office of Insurance Regulation to examine pharmacy benefit managers; specifying that certain examination costs are payable by persons examined; amending s. 624.490, F.S.; providing a penalty for failure to register as a pharmacy benefit manager under certain circumstances; transferring, renumbering, and amending s. 465.1885, F.S.; revising the entities conducting pharmacy audits to which certain requirements and restrictions apply; authorizing audited pharmacies to appeal certain findings; providing that health insurers and health maintenance organizations that transfer a certain payment obligation to pharmacy benefit managers remain responsible for specified violations; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 624.3161, Florida Statutes, are amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the office shall examine each pharmacy benefit manager as defined in s. 624.490; each licensed rating organization; each advisory organization; each group, association, carrier; as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance; and each authorized insurer

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transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

(3) The examination may be conducted by an independent professional examiner under contract to the office, in which case payment shall be made directly to the contracted examiner by the insurer or person examined in accordance with the rates and terms agreed to by the office and the examiner.

Section 2. Present subsection (6) of section 624.490, Florida Statutes, is redesignated as subsection (7), and a new subsection (6) is added to that section, to read:

624.490 Registration of pharmacy benefit managers.—

(6) A person who fails to register with the office while operating as a pharmacy benefit manager is subject to a fine of \$10,000 for each violation.

Section 3. Section 465.1885, Florida Statutes, is transferred, renumbered as section 624.491, Florida Statutes, and amended to read:

624.491 ~~465.1885~~ Pharmacy audits, ~~rights~~.—

(1) A health insurer or health maintenance organization providing pharmacy benefits through a major medical individual or group health insurance policy or a health maintenance organization contract, respectively, must comply with the requirements of this section when the health insurer or health maintenance organization or any person or entity acting on behalf of the health insurer or health maintenance organization, including, but not limited to, a pharmacy benefit manager as

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59 defined in s. 624.490, audits the records of a pharmacy licensed
 60 under chapter 465. The person or entity conducting such audit
 61 ~~must if an audit of the records of a pharmacy licensed under~~
 62 ~~this chapter is conducted directly or indirectly by a managed~~
 63 ~~care company, an insurance company, a third party payer, a~~
 64 ~~pharmacy benefit manager, or an entity that represents~~
 65 ~~responsible parties such as companies or groups, referred to as~~
 66 ~~an "entity" in this section, the pharmacy has the following~~
 67 ~~rights:~~

68 (a) Except as provided in subsection (3), notify the
 69 pharmacy ~~To be notified~~ at least 7 calendar days before the
 70 initial onsite audit for each audit cycle.

71 (b) Not schedule an ~~To have the~~ onsite audit during
 72 ~~scheduled after~~ the first 3 calendar days of a month unless the
 73 pharmacist consents otherwise.

74 (c) Limit the duration of ~~To have~~ the audit period limited
 75 to 24 months after the date a claim is submitted to or
 76 adjudicated by the entity.

77 (d) In the case of ~~To have~~ an audit that requires clinical
 78 or professional judgment, conduct the audit in consultation
 79 with, or allow the audit to be conducted by, or in consultation
 80 ~~with~~ a pharmacist.

81 (e) Allow the pharmacy to use the written and verifiable
 82 records of a hospital, physician, or other authorized
 83 practitioner, which are transmitted by any means of
 84 communication, to validate the pharmacy records in accordance
 85 with state and federal law.

86 (f) Reimburse the pharmacy ~~To be reimbursed~~ for a claim
 87 that was retroactively denied for a clerical error,

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88 typographical error, scrivener's error, or computer error if the
 89 prescription was properly and correctly dispensed, unless a
 90 pattern of such errors exists, fraudulent billing is alleged, or
 91 the error results in actual financial loss to the entity.

92 (g) Provide the pharmacy with a copy of ~~To receive~~ the
 93 preliminary audit report within 120 days after the conclusion of
 94 the audit.

95 (h) Allow the pharmacy to produce documentation to address
 96 a discrepancy or audit finding within 10 business days after the
 97 preliminary audit report is delivered to the pharmacy.

98 (i) Provide the pharmacy with a copy of ~~To receive~~ the
 99 final audit report within 6 months after the pharmacy's receipt
 100 ~~of receiving~~ the preliminary audit report.

101 (j) Calculate any ~~To have~~ recoupment or penalties based on
 102 actual overpayments and not according to the accounting practice
 103 of extrapolation.

104 (2) ~~The rights contained in~~ This section does ~~do~~ not apply
 105 to:

106 (a) Audits in which suspected fraudulent activity or other
 107 intentional or willful misrepresentation is evidenced by a
 108 physical review, review of claims data or statements, or other
 109 investigative methods;

110 (b) Audits of claims paid for by federally funded programs;
 111 or

112 (c) Concurrent reviews or desk audits that occur within 3
 113 business days after ~~of~~ transmission of a claim and where no
 114 chargeback or recoupment is demanded.

115 (3) An entity that audits a pharmacy located within a
 116 Health Care Fraud Prevention and Enforcement Action Team (HEAT)

14-00145A-22

20221476__

117 Task Force area designated by the United States Department of
118 Health and Human Services and the United States Department of
119 Justice may dispense with the notice requirements of paragraph
120 (1) (a) if such pharmacy has been a member of a credentialed
121 provider network for less than 12 months.

122 (4) Pursuant to s. 408.7057, and after receipt of the final
123 audit report issued under paragraph (1) (i), a pharmacy may
124 appeal the findings of the final audit report as to whether a
125 claim payment is due and as to the amount of a claim payment.

126 (5) A health insurer or health maintenance organization
127 that, under terms of a contract, transfers to a pharmacy benefit
128 manager the obligation to pay a pharmacy licensed under chapter
129 465 for any pharmacy benefit claims arising from services
130 provided to or for the benefit of an insured or subscriber
131 remains responsible for a violation of this section.

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

2/2/2022

Meeting Date

The Florida Senate APPEARANCE RECORD

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

1476

Bill Number or Topic

Banking & Ins
Committee

Amendment Barcode (if applicable)

Name Joni Hunt

Phone 386 425 4233

Address Halifax Health
Street

Email Joni.Hunt@Halifax.org

303 N Clyde Morris Blvd Daytona Beach FL 32114
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:

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.

2/2/22

Meeting Date

Banking & Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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1476

Bill Number or Topic

Name **Greg Black**

Amendment Barcode (if applicable)

Phone **509-8022**

Address **PO Box 838**

Email **greg@waypointstrat.com**

Street

TLH

City

FL

State

32302

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:

National Association of Chain Drug Stores

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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02/02/2022

Meeting Date

Banking and Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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1476

Bill Number or Topic

Name **Lauren Whritenour**

Amendment Barcode (if applicable)

Phone **(850) 509-3610**

Address **108 E. Jefferson St Suite A**

Email **lauren.claire.henderson@gmail.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:

EPIC Pharmacy

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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2/2/22
Meeting Date
BUI
Committee

The Florida Senate APPEARANCE RECORD

SB 1474
Bill Number or Topic

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

Amendment Barcode (if applicable)

Name Claudia Adams

Phone 850 567 0979

Address
Street Tallahassee
City Tallahassee State FL Zip

Email claudia@adamsstadvocates.com

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:

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 1476

2/3/22

Meeting Date

Banking and Insurance

Committee

Deliver both copies of this form to
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Bill Number or Topic

Amendment Barcode (if applicable)

Name Larry Williams

Phone 850.521.1980

Address 215 S. Monroe Street, Suite 601

Email lwilliams@gunster.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:

American Pharmacy Cooperative, Inc.

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)

APPEARANCE RECORD

SB1476

February 2, 2022

Meeting Date

Bill Number or Topic

Banking and Insurance

Committee

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

Amendment Barcode (if applicable)

Name **Michael Jackson**

Phone **8502222400**

Address **610 North Adams Street**

Email **jackson@pharmview.com**

Street

Tallahassee

Florida

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 Pharmacy Association

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

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

2/2/22

1476

Meeting Date

Bill Number or Topic

Senat Banking Fund

Committee

Amendment Barcode (if applicable)

Name

Andy Behrman

Phone

850 251 7130

Address

Email

abehrman@fachc.org

Street

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 Association of Community Health Centers

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)

2/02/22

Meeting Date

Banking & Insurance

Committee

The Florida Senate APPEARANCE RECORD

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

1476

Bill Number or Topic

Name Kelly Mallette

Amendment Barcode (if applicable)

Phone (850) 224-3427

Address 104 W Jefferson Street

Email Kelly@rtbookpa.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:

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

Small Business Pharmacies Aligned for Reform

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-Joint-Rules.pdf)

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 20, 2022

I respectfully request that **Senate Bill 1476**, relating to Prescription Drug Coverage, be placed on the:

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

A handwritten signature in cursive script that reads "Tom A. Wright".

Senator Tom A. Wright
Florida Senate, District 14

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1728

INTRODUCER: Banking and Insurance Committee and Senator Boyd

SUBJECT: Property Insurance

DATE: February 3, 2022

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------------|----------------|------------|---------------|
| 1. | <u>Arnold/Knudson</u> | <u>Knudson</u> | <u>BI</u> | <u>Fav/CS</u> |
| 2. | _____ | _____ | <u>AEG</u> | _____ |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1728 addresses contractor solicitations related to property insurance roof claims, the type of homeowners' insurance coverage that insurers must offer for roof losses, and various aspects of Citizens Property Insurance Corporation.

Property Insurance Claims for Roof Damage

The bill allows contractors to make written or electronic communications that encourage, instruct, or induce a consumer to contact a contractor or public adjuster for the purpose of making an insurance claim for roof damage if such communication includes the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and
- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation. With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

The bill allows residential property insurers to offer only homeowners' insurance policies that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement that an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners' policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner's insurance policies with roof surface type reimbursement schedules approved by the Office of Insurance Regulation, but must also offer policies that provide replacement cost reimbursement.

Additionally, the bill allows an insurer to issue homeowners' policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof.

A homeowners' policy that utilizes a roof surface replacement schedule or provides roof coverage on a stated value basis must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

Citizens Property Insurance Corporation

The bill increases the insurance expertise required of certain appointed members of the Citizens Board of Governors and to require that the Citizens executive director must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

The bill limits the application of the Citizens "glidepath" to personal lines residential policies covering an insured's *primary residence* and any commercial lines residential policy. "Glidepath" is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.¹ Other properties would be charged the actuarially indicated rate.

The bill provides that whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Under current law, Citizens policyholders remain eligible for coverage unless the offer from an authorized insurer is less than the policyholder's Citizens renewal premium.

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

¹ The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

II. Present Situation:

Florida Residential Property Insurance Market Data and CS/CS/CS/SB 76 (2021)

According to the Florida Office of Insurance Regulation (OIR), from 2017 through the second quarter of 2021, Florida domestic property insurers had cumulative net underwriting losses that resulted in a cumulative net income in excess of negative \$1 billion.²

Prior to the 2021 Legislative Session, the OIR reported an increasing trend of domestic property insurers filing for rate increases. Insurers submitted 105 rate filings in 2020 for increases of 10 percent or more, with OIR approving 55 of those filings. In 2016, OIR approved only 6 rate increases of at least 10 percent.³

In a presentation to the Florida Senate Committee on Banking and Insurance on January 12, 2021, the State Insurance Commissioner attributed the net underwriting losses, combined ratios, and resulting rate increases displayed above to several related trends and behaviors present in Florida's domestic property insurance market:

- Claims with litigation;
- Claims solicitation; and
- Adverse loss reserve development.⁴

In 2020, OIR conducted a data call of Florida's domestic property insurers.⁵ According to the State Insurance Commissioner, the results of the data call showed that the severity of non-weather water claims with litigation is nearly double claims that are closed without litigation.⁶

According to OIR, the increased severity of claims involving litigation is driving adverse loss reserve development, leading to high rate filings.⁷ Loss reserve development is the difference between the original loss as initially reserved by the insurer and its subsequent evaluation later or at the time of its final disposal.⁸ When adverse loss reserve development occurs, the claim costs more than its reserve was originally estimated by the insurer.

In response to the aforementioned challenges in Florida's property insurance market, the 2021 Legislature passed CS/CS/CS/SB 76 (2021).⁹ The bill addressed multiple aspects of the property

² David Altmaier, Florida Office of Insurance Regulation, Overview of the Florida Insurance Market, pg. 6 (September 22, 2021). https://www.flsenate.gov/Committees/Show/BI/MeetingPacket/5252/9419_MeetingPacket_5252_2.pdf (last accessed January 30, 2022).

³ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁴ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁵ <https://www.flair.com/Sections/PandC/AssignmentofBenefits.aspx> (last visited Jan. 27, 2021).

⁶ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁷ Florida Senate, *Meeting of the Committee on Banking and Insurance* (January 12, 2021) (statement of David Altmaier, Commissioner, Florida Office of Insurance Regulation).

⁸ International Risk Management Institute, *Glossary*, <https://www.irmi.com/term/insurance-definitions/loss-development> (last visited Jan. 27, 2021).

⁹ Ch. 2021-77, Laws of Florida.

insurance market, including solicitations regarding roof claims, notice of bringing a civil action in a property insurance dispute, attorney fee awards in first-party property insurance litigation, and the eligibility standards and ratemaking of Citizens Property Insurance Corporation.

Property Insurance Practices by Contractors

The 2021 property insurance law attempted to address increases in roof claims by prohibiting contractors, and persons acting on behalf of contractors, from:

- Soliciting residential property owners through prohibited advertisements, which are communications to a consumer that encourage, instruct, or induce a consumer to contact a contractor to file an insurance claim for roof damage;
- Offering the residential property owner consideration to perform a roof inspection or file an insurance claim;
- Offering or receiving consideration for referrals when property insurance proceeds are payable;
- Engaging in unlicensed public adjusting; and
- Providing an authorization agreement to the insured without providing a good faith estimate.

The above acts are subject to license discipline by the Department of Business and Professional Regulation and a \$10,000 fine per violation. The law provides that the residential property owner may void the contract with the contractor within 10 days of its execution if the contractor fails to provide notice to the residential property owner of the contractor's prohibited practices.

The law prohibits licensed contractors and subcontractors from advertising, soliciting, offering to handle, handling, or performing public adjuster (PA) services without a license. The prohibition does not prohibit the contractor from recommending that the consumer consider contacting his or her insurer to determine if the proposed repair is covered by insurance.

The law prohibits a PA, PA apprentice, or person acting on behalf of a PA or PA apprentice, from offering financial inducements for allowing a roof inspection of residential property or making an insurance claim for roof damage. The law also prohibits them from offering or accepting consideration for referring services related to a roof claim. Each violation subjects the PA or PA licensee to up to a \$10,000 fine. Unlicensed persons not otherwise exempted from PA licensure commit the unlicensed practice of public adjusting when they do these prohibited acts, and are subject to a \$10,000 fine per act and the criminal penalty for unlicensed activity.

Regulations of Commercial Speech

The United States Supreme Court set forth the standards for analyzing whether a restriction on commercial speech¹⁰ violates the First Amendment of the United States Constitution in the case of *Central Hudson Gas & Elec. Corp. v. Public Service Commission of New York*.¹¹ Justice Powell succinctly set forth the standards.

¹⁰ Commercial speech is expression related solely to the economic interests of the speaker and its audience.

¹¹ 447 U.S. 557 (1980).

In commercial speech cases, then, a four-part analysis has developed. At the outset, we must determine whether the expression is protected by the First Amendment. For commercial speech to come within that provision, it at least must concern lawful activity and not be misleading. Next, we ask whether the asserted governmental interest is substantial. If both inquiries yield positive answers, we must determine whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest.¹²

The court explained in *Central Hudson* that if a law restricts commercial speech that address speech that is not misleading or related to unlawful activity, the government's power to regulate such speech is limited:

If the communication is neither misleading nor related to unlawful activity, the government's power is more circumscribed. The State must assert a substantial interest to be achieved by restrictions on commercial speech. Moreover, the regulatory technique must be in proportion to that interest. The limitation on expression must be designed carefully to achieve the State's goal. Compliance with this requirement may be measured by two criteria. First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

Florida Courts have applied the *Central Hudson* test to determine whether government restrictions on commercial speech violate article 1, section 4 of the Florida Constitution.¹³

The United State Supreme Court in *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, noted that state laws that require disclosures in advertising do not receive the same degree of constitutional protection as a prohibition on commercial free speech.

Because the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of the information such speech provides, appellant's constitutionally protected interest in not providing any particular factual information in his advertising is minimal. An advertiser's rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest in preventing deception of consumers.¹⁴

The United States Supreme Court used the *Zauderer* test to uphold disclosure requirements in *Milavetz, Gallop & Milavetz, P.A., v. U.S.* Justice Sotomayor upheld disclosure requirements placed by federal upon debt relief agents that provide bankruptcy assistance for payment because, "...the disclosures are intended to combat the problem of inherently misleading

¹² See *Central Hudson Gas.*, 447 US. 557 at pg. 565.

¹³ See *Kortum v. Sink*, 54 So.3d 1012 (Fla. 1st DCA, 2010).

¹⁴ *Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio*, 471 U.S. 626, at pg. 628 (1985).

commercial advertisements, and they entail only an accurate statement of the advertiser's legal status and the character of the assistance provided.”¹⁵

Federal Preliminary Injunction against Provisions of SB 76 Banning Prohibited Advertisements

On July 11, 2021, a federal district court enjoined the enforcement of the provisions of CS/CS/CS/SB 76 (2021) that ban contractors from making prohibited advertisements regarding property insurance roof claims.¹⁶ Within the law 1, a prohibited advertisement is any written or electronic communication that encourages, instructs, or induces a consumer to contract a public adjuster or contractor for purposes of making an insurance claim for roof damage. The preliminary injunction prevents the enforcement of specific prohibitions in newly created s. 489.147, F.S., specifically (2)(a), (3), and (4)(b), F.S. These provisions are:

- (2)(a): A contractor may not directly or indirectly solicit a residential property owner by means of a prohibited advertisement.
- (3): A contractor who violates this section is subject to a disciplinary proceeding through DBPR under s. 489.129, F.S., and is subject to a \$10,000 fine for each violation.
- (4)(b): An unlicensed person who violates s. 489.147, F.S., is subject to the penalties in s. 489.13, F.S., and is subject to a fine of up to \$10,000 for each violation.

The judge issued the injunction on the basis that these provisions of the bill violate First Amendment commercial free speech rights of contractors under the US Constitution. The injunction against (3) and (4)(b) above only apply to the prohibited advertisement provision. The prohibitions in the s. 489.147, F.S., regarding roof claims that ban offering inducements to consumers, accepting or paying referral fees, interpreting the insurance policy, or signing a contract with a consumer for roof repairs without providing a good faith estimate remain valid and enforceable.

The judge did not enjoin enforcement of the rest of the bill, thus the only provisions affected are those mentioned above that were specifically addressed by the preliminary injunction order.

Replacement Cost and Actual Cash Value Loss Settlement Provisions

There are two primary settlement options available when purchasing a homeowner’s property insurance policy: *replacement cost* and *actual cash value*. Replacement cost is usually defined in the policy as the cost to repair or replace the damaged property with materials of like kind and quality, without any deduction for depreciation.¹⁷ Replacement cost is designed to cover the difference between what the property is actually worth and what it would cost to rebuild or repair

¹⁵ *Milavetz, Gallop & Milavetz, P.A., v. U.S.*, 559 U.S. 229 at pg. 231 (2010).

¹⁶ *Gale Force Roofing & Restoration, LLC v. Julie I. Brown*, 2021 WL 3046800, Case No. 4:21CV246-MW/MAF (U.S.D.C., N.D. Fla., Tallahassee Division) (Order Granting Preliminary Injunction, July 11, 2021).

¹⁷ National Association of Insurance Commissioners, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited January 4, 2021).

that property.¹⁸ Following a covered loss, the insurer assumes the full cost of repairing or replacing the damaged property.¹⁹

By contrast, actual cash value is the cost to repair or replace the damaged property with material of like kind and quality, minus the cost of depreciation due to use, wear, obsolescence, or age.²⁰ Following a covered loss, the insured assumes the cost to cover the difference between the depreciated value of the damaged property and the cost of repairing or replacing it. Florida law currently requires insurers writing homeowner's property insurance policies to offer adjustment to the dwelling, including the roof, on the basis of replacement cost.²¹ The OIR will approve policy forms that adjust roof losses on the basis of actual cash value, or the depreciated value of the roof. The insurer must, however, also offer replacement cost adjustment on the roof before issuing the policy.

Fannie Mae and Freddie Mac Minimum Insurance Requirements

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) provide liquidity, stability, and affordability to the mortgage market by buying mortgages from lenders and either holding the mortgages in their own portfolios or packaging the mortgages into mortgage-based securities for purposes of selling in the secondary mortgage market.²² Fannie Mae and Freddie Mac, in turn, protect their interest in each mortgage by requiring minimum insurance coverages and settlement on the basis of replacement cost.²³

Fannie Mae does not accept a property insurance policy that limits or excludes coverage, in whole or in part, for windstorm, hurricane, hail damages, or any other perils that normally are included under an extended coverage endorsement.²⁴ The borrower may not obtain a property insurance policy that includes such limitation or exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.²⁵ For first-lien residential mortgages, Fannie Mae requires coverage equal to the lesser of the following:

¹⁸ See *Trinidad v. Florida Peninsula Ins. Co.*, 121 So.3d 433, 438 (Fla. 2013) (quoting *State Farm Fire & Cas. Co. v. Patrick*, 647 So.2d 983 (Fla. 3d DCA 1994))

¹⁹ Insureds that elect for adjustment on the basis of replacement cost receive greater coverage than adjustment on the basis of actual cash value because depreciation is not excluded from replacement cost, whereas it is generally excluded from actual cash value. See *Trinidad* at 438 (quoting *Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684, 689 (Fla. 2d DCA 2008))

²⁰ National Association of Insurance Commissioner, *Glossary of Insurance Terms*, https://content.naic.org/consumer_glossary.htm (last visited January 4, 2021).

²¹ Section 627.7011(1), F.S.

²² Federal House Finance Agency, *About Fannie Mae and Freddie Mac*, <https://www.fhfa.gov/about-fannie-mae-freddie-mac> (last visited January 28, 2022).

²³ Fannie Mae, *Selling Guide: Fannie Mae Single Family* (December 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited January 28, 2022); Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited January 28, 2022).

²⁴ See Fannie Mae, *Selling Guide: Fannie Mae Single Family* (December 15, 2021), <https://singlefamily.fanniemae.com/media/30286/display#page=905> (last visited January 28, 2022); Extended coverage must include, at minimum, wind, hurricane, civil commotion (including riots), smoke, hail, and damages caused by aircraft, vehicle, or explosion. Typhoon coverage is required for security properties located in Guam.

²⁵ *Id.*

- 100 percent of the insurable value of the improvements, as established by the property insurer; or
- The unpaid principal balance of the mortgage, as long as it at least equals the minimum amount (80 percent of the insurable value of the improvements) required to compensate for damage or loss on a replacement cost basis.²⁶

Freddie Mac does not accept a property insurance policy that excludes coverage for loss or damage from fire, lightning, and other perils, including windstorm, hail, explosion, riot, civil commotion, damage by aircraft, damage by vehicles, and damage by smoke, covered within the scope standard extended coverage.²⁷ The borrower may not obtain a property insurance policy that includes such exclusion unless the borrower is able to obtain a separate policy or endorsement from another insurer that provides adequate coverage for the limited or excluded peril, or from an insurance pool that the state has established to cover the limitation or exclusions.²⁸ For one-to-four unit residential properties, Freddie Mac requires coverage at least equal to the higher of the following, not to exceed the replacement cost of the insurable improvements:

- The unpaid principal balance of the mortgage; or
- 80 percent of the full replacement cost of the insurable improvements.²⁹

Roof Surface Payment Schedules

A roof surface payment schedule, sometimes referred to in residential property insurance policies as a roof surfacing loss percentage table, is a depreciation table that states upfront in either the individual policy or endorsement the cost the insurer will assume following a covered loss, expressed as a percentage of the loss amount. The depreciation rates in a roof surface payment schedule generally vary by the age of the roof and type of roof to account for differences in estimated roof lifespans based on roof surface material type.

The roof surface payment schedule example below from Nevada demonstrates the variance in depreciation rates between roof surface material type over time.

| Roof Surface Payment Schedule ³⁰ | |
|--|-----------------------------------|
| The percentages shown for the type of roofing surface are applied to all components and installation including overhead, profit, labor, taxes, and fees associated with the replacement of the roofing system. | |
| | Roof Surface Material Type |

²⁶ *Id.*

²⁷ Freddie Mac, *Minimum Property Insurance Types and Amounts* (November 4, 2020), <https://guide.freddiemac.com/app/guide/section/4703.2> (last visited January 28, 2022).

²⁸ *Id.*

²⁹ *Id.*

³⁰ Nevada Division of Insurance, *American Family Insurance Group – HO 88 02 01 14: Roof Surface Payment Schedule*, http://doi.nv.gov/uploadedFiles/doinvgov/_public-documents/Consumers/Home/American_Family/HO_88_02_01_14.pdf (last visited January 28, 2022).

| Age of Roof in Years | Class 3 or 4 Impact Resistant, Synthetic, Plastic, or Architectural Composition Shingles | All Other Composition or Solar Shingles | Wood Shingles or Shakes | Metal Shingles or Panels | Concrete Tile, Fiber Cement Tile, or Clay Tile | Slate | Built-up Tar With or Without Gravel, Rubber, Membrane, or Other Flat Roof Surface | All Other Roof Types |
|----------------------|--|---|-------------------------|--------------------------|--|-------|---|----------------------|
| 0 | 100% | 100% | 100% | 100% | 100% | 100% | 100% | 100% |
| 1 | 97% | 96% | 97% | 98% | 98% | 99% | 95% | 95% |
| 2 | 94% | 92% | 94% | 96% | 96% | 98% | 90% | 90% |
| 3 | 91% | 88% | 91% | 94% | 94% | 97% | 85% | 85% |
| 4 | 88% | 84% | 88% | 92% | 92% | 96% | 80% | 80% |
| 5 | 85% | 80% | 85% | 90% | 90% | 95% | 75% | 75% |
| 6 | 82% | 76% | 82% | 88% | 88% | 94% | 70% | 70% |
| 7 | 79% | 72% | 79% | 86% | 86% | 93% | 65% | 65% |
| 8 | 76% | 68% | 76% | 84% | 84% | 92% | 60% | 60% |
| 9 | 73% | 64% | 73% | 82% | 82% | 91% | 55% | 55% |
| 10 | 70% | 60% | 70% | 80% | 80% | 90% | 50% | 50% |
| 11 | 67% | 56% | 67% | 78% | 78% | 89% | 45% | 45% |
| 12 | 64% | 52% | 64% | 76% | 76% | 88% | 40% | 40% |
| 13 | 61% | 48% | 61% | 74% | 74% | 87% | 35% | 35% |
| 14 | 58% | 44% | 58% | 72% | 72% | 86% | 30% | 30% |
| 15 | 55% | 40% | 55% | 70% | 70% | 85% | ***** | ***** |
| 16 | 52% | 36% | 52% | 68% | 68% | 84% | | |
| 17 | 49% | 32% | 49% | 66% | 66% | 83% | | |
| 18 | 46% | 28% | 46% | 64% | 64% | 82% | | |
| 19 | 43% | ** | 43% | 62% | 62% | 81% | | |
| 20 | 40% | | 40% | 60% | 60% | 80% | | |
| 21 | 37% | | 37% | 58% | 58% | 79% | | |
| 22 | 34% | | 34% | 56% | 56% | 78% | | |
| 23 | 31% | | 31% | 54% | 54% | 77% | | |
| 24 | 28% | | 28% | 52% | 52% | 76% | | |
| 25 | * | | * | 50% | 50% | 75% | | |
| 26 | | | | 48% | 48% | 74% | | |
| 27 | | | | 46% | 46% | 73% | | |
| 28 | | | | 44% | 44% | 72% | | |
| 29 | | | | 42% | 42% | 71% | | |
| 30 | | | | *** | *** | **** | | |

* 25% payable for 25 years or over; ** 25% payable for 19 years or over; *** 40% payable for 30 years or over; **** 70% payable for 30 years or over; ***** 25% payable for 15 years or over

Valued Policy Law

Florida’s Valued Policy Law (VPL)³¹ has been in effect since 1899 and requires the insurer to set the value of the insured property in the event of a total loss.³² In the event of a total loss caused by a covered peril, where the covered peril alone would have caused the loss, an insurer’s

³¹ Section 627.702, F.S.

³² *Florida Farm Bureau Cas. Ins. Co. v. Cox*, 967 So. 2d 815, 818 (Fla. 2007).

liability under a property insurance policy equals the total coverage limit for which a premium was paid.³³ However, in the event of total loss caused in part by a covered peril and in part by a noncovered peril, the insurer's liability is limited to the amount of the loss caused by the covered peril.³⁴

Florida's VPL currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril. While it does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Citizens Property Insurance Corporation—Overview

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.³⁵ Citizens is not a private insurance company.³⁶ Citizens was statutorily created in 2002 when the Florida Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).

Citizens operates in accordance with the provisions in s. 627.351(6), F.S., and is governed by an eight member Board of Governors that administers its Plan of Operations. The Plan of Operations is reviewed and approved by the Financial Services Commission.³⁷ The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.³⁸ Citizens is subject to regulation by the Florida Office of Insurance Regulation (OIR).

Citizens has three different accounts through which it offers property insurance: a personal lines account, a commercial lines account, and a coastal account.

Citizens' Accounts

The Personal Lines Account (PLA) offers personal lines residential policies that provide comprehensive, multi-peril coverage statewide, except for those areas contained in the Coastal Account. The PLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Personal lines residential coverage consists of the types of coverage provided to homeowners, mobile home owners, dwellings, tenants, and condominium unit owner's policies.³⁹

³³ Section 627.702(1)(a), F.S.

³⁴ Section 627.702(1)(b), F.S.

³⁵ Admitted market means insurance companies licensed to transact insurance in Florida.

³⁶ Section 627.351(6)(a)1., F.S.

³⁷ Section 627.351(6)(a)2., F.S.

³⁸ Section 627.351(6)(c)4.a., F.S.

³⁹ See s. 627.351(6)(b)2.a., F.S. and *Account History and Characteristics*, Citizens Property Insurance Corporation, <https://www.citizensfla.com/documents/20702/1183352/20160315+05A+Citizens+Account+History.pdf/31f51358-7105-40e9-aa75-597f51a99563> (March 2016) (last visited Jan 22, 2022).

The Commercial Lines Account (CLA) offers commercial lines residential and non-residential policies that provide basic perils coverage statewide, except for those areas contained in the Coastal Account. The CLA also writes policies that exclude coverage for wind in areas contained within the Coastal Account. Commercial lines coverage includes commercial residential policies covering condominium associations, homeowners' associations, and apartment buildings. The coverage also includes commercial non-residential policies covering business properties.⁴⁰

The Coastal Account offers personal residential, commercial residential, and commercial non-residential policies in coastal areas of the state. Citizens must offer policies that solely cover the peril of wind (wind only policies) and may offer multi-peril policies.⁴¹

The Citizens policyholder eligibility clearinghouse program was established by the Legislature in 2013.⁴² Under the program, new and renewal policies for Citizens are placed into the clearinghouse where participating private insurers can review and decide to make offers of coverage before policies are placed or renewed with Citizens.⁴³

Current Policies

As of December 31, 2021, Citizens reports 759,305 policies in-force with a total exposure of \$232,502,323,529.⁴⁴ The chart below outlines Citizens account and product type, number of policies in-force, total exposure and premium with surcharges.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Section 10, ch. 2013-60, L.O.F.

⁴³ Section 627.3518(2)-(3), F.S.

⁴⁴ Citizens Property Insurance, *About Us, Snapshot, December 31, 2021*, <https://www.citizensfla.com/-/20211231-policies-in-force> (last visited Jan. 22, 2022).

| Account | Product Line | Policies In-Force | Total Exposure | Premium with Surcharges | |
|---------|---|-------------------|-----------------|-------------------------|---------------|
| PLA | Personal Residential Multiperil (PR-M) | 589,028 | 167,886,789,888 | 1,280,496,248 | |
| Coastal | Personal Residential Multiperil (PR-M) | 98,105 | 23,245,226,192 | 278,331,349 | |
| Coastal | Personal Residential Wind-Only (PR-W) | 67,342 | 28,784,726,623 | 178,916,825 | |
| Coastal | Commercial Residential Multiperil (CR-M) | 111 | 592,392,383 | 2,789,952 | |
| Coastal | Commercial Residential Wind-Only (CR-W) | 1,749 | 5,682,636,307 | 33,449,678 | |
| Coastal | Commercial Non-Residential Multiperil (CNR-M) | 39 | 48,588,500 | 569,765 | |
| Coastal | Commercial Non-Residential Wind-Only (CNR-W) | 2,212 | 1,837,291,826 | 23,692,614 | |
| CLA | Commercial Residential Multiperil (CR-M) | 580 | 4,289,395,010 | 17,091,136 | |
| CLA | Commercial Non-Residential Multiperil (CNR-M) | 139 | 135,276,800 | 879,248 | |
| | | Total | 759,305 | 232,502,323,529 | 1,816,216,815 |

Source: Citizens Property Insurance⁴⁵

These numbers do not reflect policies tagged for takeout via Citizens’ depopulation program but still serviced by Citizens.⁴⁶ From December, 2020 to December, 2021, Citizens’ policy count grew by nearly 40 percent, adding 216,566 total policies in force.⁴⁷ Citizens has expressed that it expects to exceed 1 million policies in force in 2022.⁴⁸

Citizens Glidepath Rates

From 2007 until 2010, Citizens’ rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a “glidepath” to impose annual rate increases up to a level that is actuarially sound. Under the originally established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows:⁴⁹

- 11 percent for 2022.
- 12 percent for 2023.

⁴⁵ *Id.* This table does not include policies tagged for takeout via the Depopulation Program but still serviced by Citizens.

⁴⁶ *Id.*

⁴⁷ Citizens Property Insurance Corporation, *Policies in Force*, <https://www.citizensfla.com/policies-in-force> (last visited Jan. 22, 2022).

⁴⁸ Citizens Property Insurance Corporation, *Press Release: Citizens Board approves 2022 rate recommendations* (December 15, 2021), available at: <https://www.citizensfla.com/-/20211215-citizens-board-approves-2022-rate-recommendations>.

⁴⁹ Section 627.351(6)(n)5., F.S.

- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

The implementation of this increase ceases when Citizens has achieved actuarially sound rates.⁵⁰ In addition to the overall glide path rate increase, Citizens can increase its rates to recover the additional reimbursement premium that it incurs as a result of the annual cash build-up factor added to the price of the mandatory layer of the Florida Hurricane Catastrophe Fund coverage, pursuant to s. 215.555(5)(b), F.S.⁵¹

Citizens Financial Resources

Citizens' financial resources include insurance premiums, investment income, and operating surplus from prior years, Florida Hurricane Catastrophe Fund (FHCF) reimbursements, private reinsurance, policyholder surcharges, and regular and emergency assessments. Non-weather water losses, reinsurance costs and litigation are currently the major determinants of insurance rates.⁵² In the event of a catastrophic storm or series of smaller storms, reserves could be exhausted, leaving Citizens unable to pay all claims.⁵³ Under Florida law, if the Citizens' Board of Directors determines that a Citizens' account has a projected deficit, Citizens is authorized to levy assessments⁵⁴ on its policyholders and on each line of property and casualty line of business other than workers' compensation insurance and medical malpractice insurance.⁵⁵ Citizens may impose three assessment tiers and their sequence is as follows:⁵⁶

Citizens Policyholder Surcharge – A surcharge of up to 15 percent of premium on all Citizens' policies, collected upon issuance or renewal. This 15 percent assessment can be levied for each of the three Citizens' accounts—the CLA, the PLA, and the Coastal Account—that project a deficit. Thus, the total maximum premium surcharge a policyholder could be assessed is 45 percent.⁵⁷

Regular Assessment – If the Citizens' surcharge is insufficient to cure the deficit for the coastal account, Citizens can require an assessment against all other insurers except medical malpractice and workers' compensation. The assessment may be recouped from policyholders through a rate

⁵⁰ Section 627.351(6)(n)7., F.S.

⁵¹ Section 627.351(6)(n)6., F.S.

⁵² Citizens Property Insurance Corporation, *2022 Rate Kit, Citizens 2021 Rates, Frequently Asked Questions*, <https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last visited Jan. 22, 2022).

⁵³ Citizens Property Insurance Corporation, *Insurance/Insurance 101/Assessments*, <https://www.citizensfla.com/assessments> (last visited Jan. 22, 2022).

⁵⁴ Assessments are charges that Citizens and non-Citizens policyholders can be required to pay, in addition to their regular policy premiums.

⁵⁵ Accident and health insurance and policies written under the National Flood Insurance Program or the Federal Crop Insurance Program are not assessable types of property and casualty insurance. Surplus lines insurers are not assessable, but their policyholders are. Section 627.351.(6)(b)3.f.-h., F.S.

⁵⁶ Citizens Property Insurance Corporation, *supra* note 53.

⁵⁷ Sections 627.351.(6)(b)3.i.(I) and 627.351.(6)(c)21., F.S. *See also*, Citizens Property Insurance Corporation, *supra* note 53.

filing process of up to two percent of premium or two percent of the deficit, whichever is greater.⁵⁸ This assessment is not levied against Citizens' policyholders.

Emergency Assessment – Requires any remaining deficit for Citizens' three accounts be funded by multi-year emergency assessments on all insurance policyholders (except medical malpractice and workers' compensation), including Citizens' policyholders. This assessment may not exceed the greater of 10 percent of the amount needed to cover the deficit, plus interest, fees, commissions, required reserves, and other costs associated with financing the original deficit, or 10 percent of the aggregate statewide direct written premium for subject lines of business and all accounts of the corporation for the prior year, plus interest, fees, commissions, required reserves, and other costs associated with financing the deficit.⁵⁹

Eligibility for Insurance in Citizens

Current law requires Citizens to provide a procedure for determining the eligibility of a potential risk for insurance in Citizens and provides specific eligibility requirements based on premium amounts, value of the property insured, and the location of the property. Risks not meeting the statutory eligibility requirements cannot be insured by Citizens. Citizens has additional eligibility requirements set out in their underwriting rules. These rules are approved by the OIR and are set out in Citizens' underwriting manuals.⁶⁰

Eligibility Based on Premium Amount

An applicant for residential insurance cannot buy insurance in Citizens if an authorized insurer in the private market offers the applicant insurance for a premium that does not exceed the Citizens premium by 20 percent or more.⁶¹ In addition, the coverage offered by the private insurer must be comparable to Citizens' coverage.

A residential policyholder cannot renew insurance in Citizens if an authorized insurer offers to insure the property at a premium equal to or less than the Citizens' renewal premium. The insurance from the private market insurer must be comparable to the insurance from Citizens in order for the eligibility requirement for renewal premium to apply.⁶²

Eligibility Based on Value of Property Insured

In addition to the eligibility restrictions based on premium amount, current law provides eligibility restrictions for homes and condominium units based on the value of the property insured.⁶³ Structures with a dwelling replacement cost of \$700,000 or more, or a single condominium unit that has a combined dwelling and contents replacement cost of \$700,000 or more, are not eligible for coverage with Citizens.⁶⁴ However, Citizens is allowed to insure structures with a dwelling replacement cost or a condominium unit with a dwelling and contents

⁵⁸ Section 627.351.(6)(b)3.a., F.S.

⁵⁹ Section 627.351(6)(b)3.d., F.S.

⁶⁰ See Citizens Property Insurance Corporation *Revised Underwriting Manuals*, <https://www.citizensfla.com/-/20160329-revised-underwriting-manuals> (last visited Jan 22, 2022).

⁶¹ Section 627.351(6)(c)5., F.S.

⁶² Section 627.351(6)(c)5., F.S.

⁶³ Section 627.351(6)(a)3., F.S.

⁶⁴ Section 627.351(6)(a)3.d., F.S.

replacement cost of one million dollars or less in Miami-Dade and Monroe counties, after the OIR determined these counties to be non-competitive.⁶⁵

Citizens Depopulation

Florida law requires Citizens to create programs to help return Citizens policies to the private market and reduce the risk of additional assessments for all Floridians.⁶⁶ In 2016, the Legislature passed requirements that Citizens, by January 1, 2017, amend its operations relating to takeout agreements.⁶⁷ As part of these updated requirements, codified under s. 627.351(6)(ii), F.S., a policy may not be taken out of Citizens unless Citizens:

- Publishes a periodic schedule of cycles during which an insurer may identify, and notify Citizens of, policies the insurer is requesting to take out;⁶⁸
- Maintains and makes available to the agent of record a consolidated list of all insurers requesting to take-out a policy; such list must include a description of the coverage offered and the estimated premium for each take-out request; and
- Provides written notice to the policyholder and the agent of record regarding all insurers requesting to take-out the policy and regarding the policyholder's option to accept a take-out offer or to reject all take-out offers and to remain with the corporation. The notice must be in a format prescribed by the corporation and include, for each take-out offer:
 - The amount of the estimated premium;
 - A description of the coverage; and
 - A comparison of the estimated premium and coverage offered by the insurer to the estimated premium and coverage provided by the corporation.

III. Effect of Proposed Changes:

Prohibition against Contractor Solicitations to Make Insurance Claims for Roof Damage

Section 1 amends s. 489.147(1)(a), F.S., to revise the definition of a prohibited advertisement, which current law prohibits. The term is currently defined as any written or electronic communication by a contractor which encourages, instructs, or induces a consumer to contact a contractor or public adjuster, for making an insurance claim for roof damage. The bill revises the foregoing the definition by providing that a prohibited advertisement means any such written or electronic communication that does not include the following disclosures:

- The consumer is responsible for payment of any insurance deductible;
- It is insurance fraud punishable as a felony of the third degree for a contractor to pay, waive, or rebate all or part of an insurance deductible applicable to payment to the contractor for repairs to property covered by a property insurance policy; and

⁶⁵ Office of Insurance Regulation, Final Order Case No: 165625-14, Dec. 22, 2014 (*available at* <https://www.floir.com/siteDocuments/Citizens165625-14-O.pdf>) (last visited Jan. 22, 2022). *See also* Section 627.351(6)(a)3.d., F.S., and Citizens Property Insurance Corporation, *Update to Maximum Coverage Limits, November 12, 2019* <https://www.citizensfla.com/-/2019-roof-permits-acceptable-for-fbc-credits>.

⁶⁶ Section 627.351(6)(q)3.a., F.S.

⁶⁷ Chapter 2016-229, L.O.F.

⁶⁸ Such requests from insurers must include a description of the coverage offered and an estimated premium and must be submitted to the corporation in a form and manner prescribed by the corporation.

- It is insurance fraud punishable as a felony of the third degree to intentionally file an insurance claim containing any false, incomplete or misleading information.

The disclosures must be stated in a font size that is at least 12 points and at least half a large as the largest font used in the solicitation.

With this change, contractors will no longer be prohibited from making such solicitations so long as the solicitation includes the aforementioned disclosures.

Citizens Property Insurance Corporation

Section 2 amends s. 627.351(6), F.S., regarding Citizens Property Insurance Corporation, the governmental entity that provides residential and commercial property insurance to applicants who are entitled, but, in good faith, are unable to procure insurance through the voluntary market.

Eligibility for Citizens Coverage – Determining Replacement Cost

The bill amends s. 627.351(6)(a), F.S., to require that Citizens use a method for valuing dwelling replacement cost, which is approved by the OIR, when enforcing the requirement that structures and single condominium units with a replacement cost above the statutory threshold are ineligible for Citizens. Currently, structures and single condominium units with a replacement cost above \$700,000 are ineligible for Citizens coverage unless the dwelling or single condominium unit is located in a county where the OIR has determined there is not a reasonable degree of competition. In a county where there is not a reasonable degree of competition, which is currently Miami-Dade County and Monroe County, structures and single condominium units are ineligible for Citizens if the replacement cost is \$1 million or more.

The bill also deletes unnecessary language related Citizens eligibility that ceased to be effective on January 1, 2017.

Eligibility for Citizens Coverage – Existing Citizens Policyholders

The bill amends s. 627.351(6)(c)5., F.S., to increase the likelihood that a current Citizens policyholder with a personal lines or commercial lines residential policy will be made ineligible for Citizens by receiving an offer of coverage from an authorized insurer at renewal. Specifically, the bill provides that whenever such an offer is received by a Citizens policyholder, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens. Thus, a current Citizens policyholder may not renew Citizens coverage if the policyholder receives an offer of comparable coverage at renewal from an authorized insurer at a premium that is not more than 20 percent higher than the Citizens renewal premium.

Section 3 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse.

Governance of Citizens – Qualifications to Serve on the Board of Governors or as Executive Director

The bill amends s. 627.351(6)(c)4., F.S., to increase the insurance expertise required of certain appointed members of the Citizens Board of Governors and to require that the Citizens executive director must have the qualifications necessary to serve in that role for an insurer that has a certificate of authority to transact insurance in Florida.

Under current law, at least one of the two members of the Board of Governors appointed by each appointing officer⁶⁹ must have “demonstrated expertise in insurance.” The bill specifies that the demonstrated expertise in insurance must be at least 10 years’ experience with property and casualty insurance as a full-time employee, officer, or owner of a licensed insurance agency, an insurer authorized to transact property insurance in Florida, or an insurance trade association.

The bill also specifies that the executive director of Citizens must have the experience, character, and qualification required under s. 624.404(3), F.S., to serve as the chief executive officer of an insurer.

Section 624.404(3), F.S., contains a number of requirements that a person must meet to the chief executive officer of an authorized insurer in Florida. The statute prohibits the OIR from authorizing an insurer to transact insurance in Florida if the management, officers, or directors are found by the OIR 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 success operation; or
- A person the OIR has good reason to believe is 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 or stockholders, or investors, or creditors or of the public, by manipulation of assets, accounts, or reinsurance or by bad faith.

The OIR is also prohibited by s. 624.404(3), F.S., from authorizing an insurer if any person who exercises or has the ability to exercise control, or who influences or has the ability to influence the transaction of the business of the insurer, does not possess the financial standing and business experience for the successful operation of the insurer.

Under s. 624.404(3), F.S., an authorized insurer must immediately remove a person who exercises, or has the ability to exercise, effective control of an insurer if such person:

- Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or crime punishable by imprisonment of 1 year or more of any state or country; or
- Was in the past affiliated directly or indirectly, through ownership interest of 10 percent or more, control, or reinsurance transactions, with any business, corporation,

⁶⁹ The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House.

or entity that has been found guilty of or plead nolo contendere to any felony or crime punishable by imprisonment for 1 year or more under the laws of any state or country.

Under the bill, the executive director of Citizens would have to be a person who meets these requirements.

Rates for Citizens Coverage – Narrowing the Scope of Application of the Citizens Glidepath

The bill amends s. 627.351(6)(n), F.S., which sets for the standards for Citizens rates. The bill limits the application of the Citizens “glidepath” to personal lines residential policies covering an insured’s *primary residence* and any commercial lines residential policy. “Glidepath” is the term commonly used to refer to the statutory limitation on rate increases that may be imposed on an individual Citizens policyholder. The maximum rate increase that may be imposed on any single policy, excluding coverage changes and surcharges, is 11 percent for 2022.⁷⁰ This limit on rate increases is notwithstanding the requirement that rates for Citizens coverage must be actuarially sound and are subject to the standards of s. 627.062, F.S., of the Rating Law.

The bill defines a primary residence as the dwelling an insured has represented as their permanent home on the insurance application or otherwise to the corporation. Thus, going forward, a personal lines residential policy that does not cover a primary residence (for instance, a second home) will have to pay an actuarially sound rate. The fiscal impact of this change on policyholders and the corporation is examined in part V of this staff analysis.

Citizens Clearinghouse

Section 3 of the bill amends s. 627.3518(5), F.S., to apply the revised eligibility criteria to policies in the Citizens clearinghouse. Accordingly, if an offer of coverage from an authorized insurer is received by a Citizens policyholder through the clearinghouse, the risk is not eligible for Citizens coverage *unless* the premium for coverage from the authorized insurer is more than 20 percent greater than the renewal premium for comparable coverage from Citizens.

Reimbursement of Roof Losses – Actual Cash Value Reimbursement

Section 4 amends s. 627.7011(5), F.S., to allow residential property insurers to offer only homeowners’ insurance policies (form HO-3) that reimburse roof losses on a depreciated value or actual cash value basis using a roof surface type reimbursement schedule, rather than on the basis of replacement costs. The bill thus creates an exception to the requirement that an insurer must offer a homeowners policy that reimburses losses to the dwelling on the basis of replacement costs and also provides law and ordinance coverage, and must also provide a replacement cost reimbursement homeowners’ policy that does not provide law and ordinance coverage. Currently, insurers may offer homeowner’s insurance policies with roof surface type reimbursement schedules approved by the OIR, but must also offer policies that provide replacement cost reimbursement.

⁷⁰ The maximum rate increase will increase by one percent for each subsequent year until it reaches 15 percent for 2026.

The bill requires that a roof surface type reimbursement schedule used to calculate the actual cash value coverage that is provided for the roof must provide reimbursement for the repair, replacement, and installation of a roof based on the annual age of the roof surface type. The annual depreciation amounts must be actuarially justified, meet the requirements of s. 627.062, F.S., (which governs homeowners' insurance rate filings) and may not exceed 4 percent unless actuarially justified. The roof surface type reimbursement schedule must be approved by the OIR.

Roof surface type reimbursement schedules must be furnished along with the personal lines residential property insurance policy at the time of issuance or renewal, and must include the following notice at the top of the schedule in no smaller than 12-point uppercase and boldfaced type:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE BELOW. BE ADVISED THIS MAY RESULT IN YOUR HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

A homeowners' policy that utilizes a roof surface replacement schedule must provide replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

The bill clarifies that an insurer offering policies that provide roof coverage using a roof covering reimbursement schedule may also offer policies that provide roof reimbursement on the basis of replacement costs.

Reimbursement of Roof Losses – Stated Value Coverage

Additionally, the bill allows an insurer to issue homeowner's policies that provide coverage to the roof on a stated value basis. For example, instead of expressing the coverage in the form of a depreciating percentage over time, the stated value clearly provides the dollar value of the coverage of the roof. An insurer may limit its offering to the stated value coverage option, but may also offer replacement cost coverage or a roof reimbursement schedule.

Notwithstanding the stated value of coverage, the homeowners' policy must provide full replacement cost reimbursement for:

- Any roof surface type less than 10 years old;
- A covered total loss to a primary structure in accordance with the valued policy law; and
- A loss to the roof caused by a storm declared to be a hurricane by the National Hurricane Center.

An insurer utilizing a stated value sublimit of coverage must include in the policy documents at issuance and at renewal, in bold type of at least 12 points, the following statement:

PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT.

The bill clarifies that an insurer offering policies that provide roof reimbursement at a stated value sublimit of coverage may also offer policies that provide roof reimbursement on the basis of replacement costs.

Other Bill Sections

Sections 5, 6, and 7 of the bill reenact certain sections of the Florida Statutes to incorporate the amendments made by this bill.

Section 8 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:

Section 1 of the bill revises the currently existing prohibition against contractors making prohibited advertisements related to insurance claims for roof damage. Under the bill, such communications are not prohibited if certain disclosures regarding insurance fraud and property insurance deductibles are included in the advertisement. As such, it could be challenged as an allegedly unconstitutional infringement on commercial free speech, the determination of which is for the courts to decide. Background on United States Supreme Court cases relevant to this topic is included on pages 4 through 6 of this Staff Analysis.

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

None.

B. Private Sector Impact:

The bill limits application of the Citizens glidepath on rates, which is the statutory provision that provides that no single residential policy insured by Citizens may incur an annual rate increase above a certain threshold – 11 percent in 2022, exclusive of coverage changes and surcharges. Under the bill, the glidepath is applied to only primary residences. Thus, Citizens will charge a premium based on an actuarially sound rate to non-primary residences (such as second homes). According to the most recent Citizens rate filing, the statewide average actuarially indicated rate for personal lines policies would require an average rate increase of 34.9 percent.⁷¹ Application of the glidepath limit resulted in Citizens proposing an average rate increase of 8.6 percent for 2022.⁷² Under the bill, an additional rate increase averaging 26.3 percent would be imposed on a non-primary residences.

C. Government Sector Impact:

The provisions of the bill intended to depopulate Citizens – making current Citizens policyholders ineligible for Citizens coverage upon receiving an offer from an authorized insurer unless the premium is more than 20 percent higher than the Citizens renewal premium, and limiting application of the Citizens glidepath – will result in Citizens having a lower number of policies and collecting more premium from some policyholders. To the extent that the bill reduces Citizens policy count or slows the growth of the policy count, it will reduce the likelihood of Citizens running a deficit and having to impose surcharges and assessments on policyholders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.147, 627.351, 627.3518, and 627.7011

⁷¹ Citizens Property Insurance Corporation, *2022 Rate Kit*, pg. 6 (December 13, 2021).
<https://www.citizensfla.com/documents/20702/15725518/20211213+2022+Rate+Kit.pdf/328181e5-1c41-a28d-76ea-b7d911462c6a?t=1639433573548> (last accessed January 29, 2022).

⁷² See *id.*

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 February 2, 2022:

The committee substitute:

- Removes the provisions related to Surplus Lines and public records exemptions in s. 627.351, F.S., of the underlying bill; and
- Makes a technical change restoring current law related to Citizens' policies removed from the corporation through an assumption agreement.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 02/03/2022 | . | |
| | . | |
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The Committee on Banking and Insurance (Boyd) recommended the following:

Senate Amendment

Delete lines 483 - 549
and insert:
subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting



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11 practices.

12 (I) If the risk accepts an offer of coverage through the
13 market assistance plan or through a mechanism established by the
14 corporation other than a plan established by s. 627.3518, before
15 a policy is issued to the risk by the corporation or during the
16 first 30 days of coverage by the corporation, and the producing
17 agent who submitted the application to the plan or to the
18 corporation is not currently appointed by the insurer, the
19 insurer shall:

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

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

30
31 If the producing agent is unwilling or unable to accept
32 appointment, the new insurer shall pay the agent in accordance
33 with sub-sub-sub-subparagraph (A).

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

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



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

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

47

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

51 b. With respect to commercial lines residential risks, for
52 a new application to the corporation for coverage, if the risk
53 is offered coverage under a policy including wind coverage from
54 an authorized insurer at its approved rate, the risk is not
55 eligible for a policy issued by the corporation unless the
56 premium for coverage from the authorized insurer is more than 20
57 ~~15~~ percent greater than the premium for comparable coverage from
58 the corporation. Whenever an offer of coverage for a commercial
59 lines residential risk is received for a policyholder of the
60 corporation at renewal from an authorized insurer, ~~if the offer~~
61 ~~is equal to or less than the corporation's renewal premium for~~
62 ~~comparable coverage,~~ the risk is not eligible for coverage with
63 the corporation unless the premium for coverage from the
64 authorized insurer is more than 20 percent greater than the
65 renewal premium for comparable coverage from the corporation. If
66 the risk is not able to obtain any such offer, the risk is
67 eligible for a policy including wind coverage issued by the
68 corporation. However, a policyholder removed from the



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69 corporation through an assumption agreement remains eligible for
70 coverage from the corporation until the end of the assumption
71 period.



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LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 02/03/2022 | . | |
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The Committee on Banking and Insurance (Boyd) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 846 - 1227.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete lines 93 - 95

and insert:

Section 2. Paragraphs (a), (c), (n), and (ii) of subsection (6) of section 627.351, Florida Statutes, are amended to read:



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12
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16

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

And the title is amended as follows:

Delete lines 16 - 35

and insert:

"primary residence"; revising the contents of

By Senator Boyd

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1 A bill to be entitled
 2 An act relating to property insurance; amending s.
 3 489.147, F.S.; revising the definition of the term
 4 "prohibited advertisement"; amending s. 627.351, F.S.;
 5 deleting obsolete provisions related to eligibility
 6 thresholds for personal lines residential coverage
 7 with the Citizens Property Insurance Corporation;
 8 requiring the corporation to use a method for valuing
 9 dwelling replacement costs which is approved by the
 10 Office of Insurance Regulation; specifying
 11 qualifications requirements for certain members of the
 12 board of governors for the corporation; revising
 13 conditions for eligibility for coverage with the
 14 corporation; providing for a required limited annual
 15 rate increase for specified policies; defining the term
 16 "primary residence"; providing that eligible surplus
 17 lines insurers may participate, in the same manner and
 18 on the same terms as an authorized insurer, in
 19 depopulation, take-out, or keepout programs relating
 20 to policies removed from Citizens Property Insurance
 21 Corporation; providing certain exceptions, conditions,
 22 and requirements relating to such participation by a
 23 surplus lines insurer in the corporation's
 24 depopulation, take-out, or keepout programs; providing
 25 thresholds for eligibility for coverage by the
 26 corporation for risks that are offered coverage from
 27 qualified surplus lines insurers; authorizing
 28 information from underwriting files and confidential
 29 claims files to be released under certain

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30 circumstances by the corporation to specified entities
 31 that consider writing or underwriting risks insured by
 32 the corporation; specifying that only the
 33 corporation's transfer of a policy file to an insurer,
 34 as opposed to the transfer of any file, changes the
 35 file's public record status; revising the contents of
 36 a specified notice provided by the corporation;
 37 amending s. 627.3518, F.S.; deleting an obsolete
 38 provision related to implementing the clearinghouse
 39 program by a specified date; deleting an obsolete
 40 reporting requirement; conforming provisions to
 41 changes made by the act; amending s. 627.7011, F.S.;
 42 providing that certain provisions relating to
 43 homeowners' policies do not prohibit insurers from
 44 providing limited coverage on personal lines
 45 residential property insurance policies by including
 46 roof surface type reimbursement schedules; providing
 47 requirements for roof surface type reimbursement
 48 schedules; authorizing the conversion of a residential
 49 property insurance policy to a roof surface type
 50 reimbursement schedule under certain circumstances;
 51 providing that certain provisions relating to
 52 homeowners' policies do not prohibit insurers from
 53 providing coverage on personal lines residential
 54 property insurance policies that limits roof coverage
 55 to a stated value sublimit of coverage; providing
 56 requirements for stated value sublimits of coverages;
 57 providing that certain provisions relating to
 58 homeowners' policies do not prohibit certain insurers

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59 from offering roof reimbursement on the basis of
60 replacement costs; reenacting ss. 624.424(10),
61 627.3517, and 627.712(1), F.S., relating to annual
62 insurer statements, consumer choice, and required
63 residential windstorm coverage, respectively, to
64 incorporate the amendments made to s. 627.351, F.S.,
65 in references thereto; providing an effective date.

66
67 Be It Enacted by the Legislature of the State of Florida:

68
69 Section 1. Paragraph (a) of subsection (1) of section
70 489.147, Florida Statutes, is amended to read:

71 489.147 Prohibited property insurance practices.—

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

73 (a) "Prohibited advertisement" means any written or
74 electronic communication by a contractor which ~~that~~ encourages,
75 instructs, or induces a consumer to contact a contractor or
76 public adjuster for the purpose of making an insurance claim for
77 roof damage, if such communication does not state in a font size
78 of at least 12 points and at least half as large as the largest
79 font size used in the communication that:

80 1. The consumer is responsible for payment of any insurance
81 deductible;

82 2. It is insurance fraud punishable as a felony of the
83 third degree for a contractor to pay, waive, or rebate all or
84 part of an insurance deductible applicable to payment to the
85 contractor for repairs to property covered by a property
86 insurance policy; and

87 3. It is insurance fraud punishable as a felony of the

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88 third degree to intentionally file an insurance claim containing
89 any false, incomplete, or misleading information.

90
91 The term includes, but is not limited to, door hangers, business
92 cards, magnets, flyers, pamphlets, and e-mails.

93 Section 2. Paragraphs (a), (c), (n), (q), (x), and (ii) of
94 subsection (6) of section 627.351, Florida Statutes, are amended
95 to read:

96 627.351 Insurance risk apportionment plans.—

97 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—

98 (a) The public purpose of this subsection is to ensure that
99 there is an orderly market for property insurance for residents
100 and businesses of this state.

101 1. The Legislature finds that private insurers are
102 unwilling or unable to provide affordable property insurance
103 coverage in this state to the extent sought and needed. The
104 absence of affordable property insurance threatens the public
105 health, safety, and welfare and likewise threatens the economic
106 health of the state. The state therefore has a compelling public
107 interest and a public purpose to assist in assuring that
108 property in this ~~the~~ state is insured and that it is insured at
109 affordable rates so as to facilitate the remediation,
110 reconstruction, and replacement of damaged or destroyed property
111 in order to reduce or avoid the negative effects otherwise
112 resulting to the public health, safety, and welfare, to the
113 economy of the state, and to the revenues of the state and local
114 governments which are needed to provide for the public welfare.
115 It is necessary, therefore, to provide affordable property
116 insurance to applicants who are in good faith entitled to

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117 procure insurance through the voluntary market but are unable to
 118 do so. The Legislature intends, therefore, that affordable
 119 property insurance be provided and that it continue to be
 120 provided, as long as necessary, through Citizens Property
 121 Insurance Corporation, a government entity that is an integral
 122 part of the state, and that is not a private insurance company.
 123 To that end, the corporation shall strive to increase the
 124 availability of affordable property insurance in this state,
 125 while achieving efficiencies and economies, and while providing
 126 service to policyholders, applicants, and agents which is no
 127 less than the quality generally provided in the voluntary
 128 market, for the achievement of the foregoing public purposes.
 129 Because it is essential for this government entity to have the
 130 maximum financial resources to pay claims following a
 131 catastrophic hurricane, it is the intent of the Legislature that
 132 the corporation continue to be an integral part of the state and
 133 that the income of the corporation be exempt from federal income
 134 taxation and that interest on the debt obligations issued by the
 135 corporation be exempt from federal income taxation.

136 2. The Residential Property and Casualty Joint Underwriting
 137 Association originally created by this statute shall be known as
 138 the Citizens Property Insurance Corporation. The corporation
 139 shall provide insurance for residential and commercial property,
 140 for applicants who are entitled, but, in good faith, are unable
 141 to procure insurance through the voluntary market. The
 142 corporation shall operate pursuant to a plan of operation
 143 approved by order of the Financial Services Commission. The plan
 144 is subject to continuous review by the commission. The
 145 commission may, by order, withdraw approval of all or part of a

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146 plan if the commission determines that conditions have changed
 147 since approval was granted and that the purposes of the plan
 148 require changes in the plan. For the purposes of this
 149 subsection, residential coverage includes both personal lines
 150 residential coverage, which consists of the type of coverage
 151 provided by homeowner, mobile home owner, dwelling, tenant,
 152 condominium unit owner, and similar policies; and commercial
 153 lines residential coverage, which consists of the type of
 154 coverage provided by condominium association, apartment
 155 building, and similar policies.

156 3. With respect to coverage for personal lines residential
 157 structures, and+

158 ~~a. Effective January 1, 2014, a structure that has a~~
 159 ~~dwelling replacement cost of \$1 million or more, or a single~~
 160 ~~condominium unit that has a combined dwelling and contents~~
 161 ~~replacement cost of \$1 million or more, is not eligible for~~
 162 ~~coverage by the corporation. Such dwellings insured by the~~
 163 ~~corporation on December 31, 2013, may continue to be covered by~~
 164 ~~the corporation until the end of the policy term. The office~~
 165 ~~shall approve the method used by the corporation for valuing the~~
 166 ~~dwelling replacement cost for the purposes of this subparagraph.~~
 167 ~~If a policyholder is insured by the corporation before being~~
 168 ~~determined to be ineligible pursuant to this subparagraph and~~
 169 ~~such policyholder files a lawsuit challenging the determination,~~
 170 ~~the policyholder may remain insured by the corporation until the~~
 171 ~~conclusion of the litigation.~~

172 ~~b. Effective January 1, 2015, a structure that has a~~
 173 ~~dwelling replacement cost of \$900,000 or more, or a single~~
 174 ~~condominium unit that has a combined dwelling and contents~~

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175 ~~replacement cost of \$900,000 or more, is not eligible for~~
 176 ~~coverage by the corporation. Such dwellings insured by the~~
 177 ~~corporation on December 31, 2014, may continue to be covered by~~
 178 ~~the corporation only until the end of the policy term.~~

179 ~~e. Effective January 1, 2016, a structure that has a~~
 180 ~~dwelling replacement cost of \$800,000 or more, or a single~~
 181 ~~condominium unit that has a combined dwelling and contents~~
 182 ~~replacement cost of \$800,000 or more, is not eligible for~~
 183 ~~coverage by the corporation. Such dwellings insured by the~~
 184 ~~corporation on December 31, 2015, may continue to be covered by~~
 185 ~~the corporation until the end of the policy term.~~

186 ~~d.~~ effective January 1, 2017, a structure that has a
 187 dwelling replacement cost of \$700,000 or more, or a single
 188 condominium unit that has a combined dwelling and contents
 189 replacement cost of \$700,000 or more, is not eligible for
 190 coverage by the corporation. The corporation must use a method
 191 for valuing the dwelling replacement cost which is approved by
 192 the office ~~Such dwellings insured by the corporation on December~~
 193 ~~31, 2016, may continue to be covered by the corporation until~~
 194 ~~the end of the policy term. The requirements of sub-~~
 195 ~~paragraphs b. d. do not apply~~ However, in counties where the
 196 office determines there is not a reasonable degree of
 197 competition, ~~In such counties a personal lines residential~~
 198 structure that has a dwelling replacement cost of less than \$1
 199 million, or a single condominium unit that has a combined
 200 dwelling and contents replacement cost of less than \$1 million,
 201 is eligible for coverage by the corporation.

202 4. It is the intent of the Legislature that policyholders,
 203 applicants, and agents of the corporation receive service and

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204 treatment of the highest possible level but never less than that
 205 generally provided in the voluntary market. It is also intended
 206 that the corporation be held to service standards no less than
 207 those applied to insurers in the voluntary market by the office
 208 with respect to responsiveness, timeliness, customer courtesy,
 209 and overall dealings with policyholders, applicants, or agents
 210 of the corporation.

211 5.a. Effective January 1, 2009, a personal lines
 212 residential structure that is located in the "wind-borne debris
 213 region," as defined in s. 1609.2, International Building Code
 214 (2006), and that has an insured value on the structure of
 215 \$750,000 or more is not eligible for coverage by the corporation
 216 unless the structure has opening protections as required under
 217 the Florida Building Code for a newly constructed residential
 218 structure in that area. A residential structure is deemed to
 219 comply with this sub-subparagraph if it has shutters or opening
 220 protections on all openings and if such opening protections
 221 complied with the Florida Building Code at the time they were
 222 installed.

223 b. Any major structure, as defined in s. 161.54(6) (a), that
 224 is newly constructed, or rebuilt, repaired, restored, or
 225 remodeled to increase the total square footage of finished area
 226 by more than 25 percent, pursuant to a permit applied for after
 227 July 1, 2015, is not eligible for coverage by the corporation if
 228 the structure is seaward of the coastal construction control
 229 line established pursuant to s. 161.053 or is within the Coastal
 230 Barrier Resources System as designated by 16 U.S.C. ss. 3501-
 231 3510.

232 6. With respect to wind-only coverage for commercial lines

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233 residential condominiums, effective July 1, 2014, a condominium
 234 shall be deemed ineligible for coverage if 50 percent or more of
 235 the units are rented more than eight times in a calendar year
 236 for a rental agreement period of less than 30 days.

237 (c) The corporation's plan of operation:

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

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

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

252 c. Commercial lines residential and nonresidential policy
 253 forms that are generally similar to the basic perils of full
 254 coverage obtainable for commercial residential structures and
 255 commercial nonresidential structures in the admitted voluntary
 256 market.

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

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

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

270 g. Effective January 1, 2013, the corporation shall offer a
 271 basic personal lines policy similar to an HO-8 policy with
 272 dwelling repair based on common construction materials and
 273 methods.

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

280 a. As used in this subsection, the term:

281 (I) "Quota share primary insurance" means an arrangement in
 282 which the primary hurricane coverage of an eligible risk is
 283 provided in specified percentages by the corporation and an
 284 authorized insurer. The corporation and authorized insurer are
 285 each solely responsible for a specified percentage of hurricane
 286 coverage of an eligible risk as set forth in a quota share
 287 primary insurance agreement between the corporation and an
 288 authorized insurer and the insurance contract. The
 289 responsibility of the corporation or authorized insurer to pay
 290 its specified percentage of hurricane losses of an eligible

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291 risk, as set forth in the agreement, may not be altered by the
 292 inability of the other party to pay its specified percentage of
 293 losses. Eligible risks that are provided hurricane coverage
 294 through a quota share primary insurance arrangement must be
 295 provided policy forms that set forth the obligations of the
 296 corporation and authorized insurer under the arrangement,
 297 clearly specify the percentages of quota share primary insurance
 298 provided by the corporation and authorized insurer, and
 299 conspicuously and clearly state that the authorized insurer and
 300 the corporation may not be held responsible beyond their
 301 specified percentage of coverage of hurricane losses.

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

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

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

316 d. Any quota share primary insurance agreement entered into
 317 between an authorized insurer and the corporation must provide
 318 for a uniform specified percentage of coverage of hurricane
 319 losses, by county or territory as set forth by the corporation

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320 board, for all eligible risks of the authorized insurer covered
 321 under the agreement.

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

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

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

344 h. The quota share primary insurance agreement between the
 345 corporation and an authorized insurer must set forth the
 346 specific terms under which coverage is provided, including, but
 347 not limited to, the sale and servicing of policies issued under
 348 the agreement by the insurance agent of the authorized insurer

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349 producing the business, the reporting of information concerning
 350 eligible risks, the payment of premium to the corporation, and
 351 arrangements for the adjustment and payment of hurricane claims
 352 incurred on eligible risks by the claims adjuster and personnel
 353 of the authorized insurer. Entering into a quota sharing
 354 insurance agreement between the corporation and an authorized
 355 insurer is voluntary and at the discretion of the authorized
 356 insurer.

357 3. May provide that the corporation may employ or otherwise
 358 contract with individuals or other entities to provide
 359 administrative or professional services that may be appropriate
 360 to effectuate the plan. The corporation may borrow funds by
 361 issuing bonds or by incurring other indebtedness, and shall have
 362 other powers reasonably necessary to effectuate the requirements
 363 of this subsection, including, without limitation, the power to
 364 issue bonds and incur other indebtedness in order to refinance
 365 outstanding bonds or other indebtedness. The corporation may
 366 seek judicial validation of its bonds or other indebtedness
 367 under chapter 75. The corporation may issue bonds or incur other
 368 indebtedness, or have bonds issued on its behalf by a unit of
 369 local government pursuant to subparagraph (q)2. in the absence
 370 of a hurricane or other weather-related event, upon a
 371 determination by the corporation, subject to approval by the
 372 office, that such action would enable it to efficiently meet the
 373 financial obligations of the corporation and that such
 374 financings are reasonably necessary to effectuate the
 375 requirements of this subsection. The corporation may take all
 376 actions needed to facilitate tax-free status for such bonds or
 377 indebtedness, including formation of trusts or other affiliated

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378 entities. The corporation may pledge assessments, projected
 379 recoveries from the Florida Hurricane Catastrophe Fund, other
 380 reinsurance recoverables, policyholder surcharges and other
 381 surcharges, and other funds available to the corporation as
 382 security for bonds or other indebtedness. In recognition of s.
 383 10, Art. I of the State Constitution, prohibiting the impairment
 384 of obligations of contracts, it is the intent of the Legislature
 385 that no action be taken whose purpose is to impair any bond
 386 indenture or financing agreement or any revenue source committed
 387 by contract to such bond or other indebtedness.

388 4. Must require that the corporation operate subject to the
 389 supervision and approval of a board of governors consisting of
 390 nine individuals who are residents of this state and who are
 391 from different geographical areas of the state, one of whom is
 392 appointed by the Governor and serves solely to advocate on
 393 behalf of the consumer. The appointment of a consumer
 394 representative by the Governor is deemed to be within the scope
 395 of the exemption provided in s. 112.313(7)(b) and is in addition
 396 to the appointments authorized under sub-subparagraph a.

397 a. The Governor, the Chief Financial Officer, the President
 398 of the Senate, and the Speaker of the House of Representatives
 399 shall each appoint two members of the board. At least one of the
 400 two members appointed by each appointing officer must have
 401 demonstrated expertise in insurance of at least 10 years'
 402 experience with property and casualty insurance as a full-time
 403 employee, officer, or owner of a licensed insurance agency, an
 404 insurer authorized to transact property insurance in this state,
 405 or an insurance trade association and be deemed to be within the
 406 scope of the exemption provided in s. 112.313(7)(b). The Chief

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407 Financial Officer shall designate one of the appointees with
 408 demonstrated expertise in insurance as chair. All board members
 409 serve at the pleasure of the appointing officer. All members of
 410 the board are subject to removal at will by the officers who
 411 appointed them. All board members, including the chair, must be
 412 appointed to serve for 3-year terms beginning annually on a date
 413 designated by the plan. However, for the first term beginning on
 414 or after July 1, 2009, each appointing officer shall appoint one
 415 member of the board for a 2-year term and one member for a 3-
 416 year term. A board vacancy shall be filled for the unexpired
 417 term by the appointing officer. The Chief Financial Officer
 418 shall appoint a technical advisory group to provide information
 419 and advice to the board in connection with the board's duties
 420 under this subsection. The executive director and senior
 421 managers of the corporation shall be engaged by the board and
 422 serve at the pleasure of the board. The executive director must
 423 have the experience, character, and qualifications required
 424 under s. 624.404(3) to serve as the chief executive officer of
 425 an insurer. Any executive director appointed on or after July 1,
 426 2006, is subject to confirmation by the Senate. The executive
 427 director is responsible for employing other staff as the
 428 corporation may require, subject to review and concurrence by
 429 the board.

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

435 (I) The members of the advisory committee consist of the

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436 following 11 persons, one of whom must be elected chair by the
 437 members of the committee: four representatives, one appointed by
 438 the Florida Association of Insurance Agents, one by the Florida
 439 Association of Insurance and Financial Advisors, one by the
 440 Professional Insurance Agents of Florida, and one by the Latin
 441 American Association of Insurance Agencies; three
 442 representatives appointed by the insurers with the three highest
 443 voluntary market share of residential property insurance
 444 business in the state; one representative from the Office of
 445 Insurance Regulation; one consumer appointed by the board who is
 446 insured by the corporation at the time of appointment to the
 447 committee; one representative appointed by the Florida
 448 Association of Realtors; and one representative appointed by the
 449 Florida Bankers Association. All members shall be appointed to
 450 3-year terms and may serve for consecutive terms.

451 (II) The committee shall report to the corporation at each
 452 board meeting on insurance market issues which may include rates
 453 and rate competition with the voluntary market; service,
 454 including policy issuance, claims processing, and general
 455 responsiveness to policyholders, applicants, and agents; and
 456 matters relating to depopulation.

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

459 a. Subject to s. 627.3517, with respect to personal lines
 460 residential risks, if the risk is offered coverage from an
 461 authorized insurer at the insurer's approved rate under a
 462 standard policy including wind coverage or, if consistent with
 463 the insurer's underwriting rules as filed with the office, a
 464 basic policy including wind coverage, for a new application to

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465 the corporation for coverage, the risk is not eligible for any
 466 policy issued by the corporation unless the premium for coverage
 467 from the authorized insurer is more than 20 percent greater than
 468 the premium for comparable coverage from the corporation.
 469 Whenever an offer of coverage for a personal lines residential
 470 risk is received for a policyholder of the corporation at
 471 renewal from an authorized insurer, ~~if the offer is equal to or~~
 472 ~~less than the corporation's renewal premium for comparable~~
 473 ~~coverage,~~ the risk is not eligible for coverage with the
 474 corporation unless the premium for coverage from the authorized
 475 insurer is more than 20 percent greater than the renewal premium
 476 for comparable coverage from the corporation. If the risk is not
 477 able to obtain such offer, the risk is eligible for a standard
 478 policy including wind coverage or a basic policy including wind
 479 coverage issued by the corporation; however, if the risk could
 480 not be insured under a standard policy including wind coverage
 481 regardless of market conditions, the risk is eligible for a
 482 basic policy including wind coverage unless rejected under
 483 subparagraph 8. ~~However,~~ A policyholder removed from the
 484 corporation through an assumption agreement is not ~~remains~~
 485 eligible for coverage from the corporation ~~until the end of the~~
 486 ~~assumption period.~~ The corporation shall determine the type of
 487 policy to be provided on the basis of objective standards
 488 specified in the underwriting manual and based on generally
 489 accepted underwriting practices.
 490 (I) If the risk accepts an offer of coverage through the
 491 market assistance plan or through a mechanism established by the
 492 corporation other than a plan established by s. 627.3518, before
 493 a policy is issued to the risk by the corporation or during the

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494 first 30 days of coverage by the corporation, and the producing
 495 agent who submitted the application to the plan or to the
 496 corporation is not currently appointed by the insurer, the
 497 insurer shall:
 498 (A) Pay to the producing agent of record of the policy for
 499 the first year, an amount that is the greater of the insurer's
 500 usual and customary commission for the type of policy written or
 501 a fee equal to the usual and customary commission of the
 502 corporation; or
 503 (B) Offer to allow the producing agent of record of the
 504 policy to continue servicing the policy for at least 1 year and
 505 offer to pay the agent the greater of the insurer's or the
 506 corporation's usual and customary commission for the type of
 507 policy written.
 508 If the producing agent is unwilling or unable to accept
 509 appointment, the new insurer shall pay the agent in accordance
 510 with sub-sub-sub-subparagraph (A).
 511 (II) If the corporation enters into a contractual agreement
 512 for a take-out plan, the producing agent of record of the
 513 corporation policy is entitled to retain any unearned commission
 514 on the policy, and the insurer shall:
 515 (A) Pay to the producing agent of record, for the first
 516 year, an amount that is the greater of the insurer's usual and
 517 customary commission for the type of policy written or a fee
 518 equal to the usual and customary commission of the corporation;
 519 or
 520 (B) Offer to allow the producing agent of record to
 521 continue servicing the policy for at least 1 year and offer to
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523 pay the agent the greater of the insurer's or the corporation's
 524 usual and customary commission for the type of policy written.
 525

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

529 b. With respect to commercial lines residential risks, for
 530 a new application to the corporation for coverage, if the risk
 531 is offered coverage under a policy including wind coverage from
 532 an authorized insurer at its approved rate, the risk is not
 533 eligible for a policy issued by the corporation unless the
 534 premium for coverage from the authorized insurer is more than 20
 535 ~~15~~ percent greater than the premium for comparable coverage from
 536 the corporation. Whenever an offer of coverage for a commercial
 537 lines residential risk is received for a policyholder of the
 538 corporation at renewal from an authorized insurer, ~~if the offer~~
 539 ~~is equal to or less than the corporation's renewal premium for~~
 540 ~~comparable coverage,~~ the risk is not eligible for coverage with
 541 the corporation unless the premium for coverage from the
 542 authorized insurer is more than 20 percent greater than the
 543 renewal premium for comparable coverage from the corporation. If
 544 the risk is not able to obtain any such offer, the risk is
 545 eligible for a policy including wind coverage issued by the
 546 corporation. ~~However,~~ A policyholder removed from the
 547 corporation through an assumption agreement is not ~~remains~~
 548 eligible for coverage from the corporation ~~until the end of the~~
 549 ~~assumption period.~~

550 (I) If the risk accepts an offer of coverage through the
 551 market assistance plan or through a mechanism established by the

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552 corporation other than a plan established by s. 627.3518, before
 553 a policy is issued to the risk by the corporation or during the
 554 first 30 days of coverage by the corporation, and the producing
 555 agent who submitted the application to the plan or the
 556 corporation is not currently appointed by the insurer, the
 557 insurer shall:

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

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

568

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

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

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

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581 (B) Offer to allow the producing agent of record to
 582 continue servicing the policy for at least 1 year and offer to
 583 pay the agent the greater of the insurer's or the corporation's
 584 usual and customary commission for the type of policy written.
 585

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

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

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610 corporation for wind-only coverage in the coastal account, the
 611 premium for the corporation's wind-only policy plus the premium
 612 for the ex-wind policy ~~that is~~ offered by an authorized insurer
 613 to the applicant must be compared to the premium for multiperil
 614 coverage offered by an authorized insurer, subject to the
 615 standards for comparison specified in this subparagraph. If the
 616 corporation or the applicant requests from the authorized
 617 insurer a breakdown of the premium of the offer by types of
 618 coverage so that a comparison may be made by the corporation or
 619 its agent and the authorized insurer refuses or is unable to
 620 provide such information, the corporation may treat the offer as
 621 not being an offer of coverage from an authorized insurer at the
 622 insurer's approved rate.

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

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

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

638 a. Whether the likelihood of a loss for the individual risk

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639 is substantially higher than for other risks of the same class;
640 and

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

643
644 The acceptance or rejection of a risk by the corporation shall
645 be construed as the private placement of insurance, and the
646 provisions of chapter 120 do not apply.

647 9. Must provide that the corporation make its best efforts
648 to procure catastrophe reinsurance at reasonable rates, to cover
649 its projected 100-year probable maximum loss as determined by
650 the board of governors. If catastrophe reinsurance is not
651 available at reasonable rates, the corporation need not purchase
652 it, but the corporation shall include the costs of reinsurance
653 to cover its projected 100-year probable maximum loss in its
654 rate calculations even if it does not purchase catastrophe
655 reinsurance.

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

662 11. Corporation policies and applications must include a
663 notice that the corporation policy could, under this section, be
664 replaced with a policy issued by an authorized insurer which
665 does not provide coverage identical to the coverage provided by
666 the corporation. The notice must also specify that acceptance of
667 corporation coverage creates a conclusive presumption that the

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668 applicant or policyholder is aware of this potential.

669 12. May establish, subject to approval by the office,
670 different eligibility requirements and operational procedures
671 for any line or type of coverage for any specified county or
672 area if the board determines that such changes are justified due
673 to the voluntary market being sufficiently stable and
674 competitive in such area or for such line or type of coverage
675 and that consumers who, in good faith, are unable to obtain
676 insurance through the voluntary market through ordinary methods
677 continue to have access to coverage from the corporation. If
678 coverage is sought in connection with a real property transfer,
679 the requirements and procedures may not provide an effective
680 date of coverage later than the date of the closing of the
681 transfer as established by the transferor, the transferee, and,
682 if applicable, the lender.

683 13. Must provide that, with respect to the coastal account,
684 any assessable insurer with a surplus as to policyholders of \$25
685 million or less writing 25 percent or more of its total
686 countrywide property insurance premiums in this state may
687 petition the office, within the first 90 days of each calendar
688 year, to qualify as a limited apportionment company. A regular
689 assessment levied by the corporation on a limited apportionment
690 company for a deficit incurred by the corporation for the
691 coastal account may be paid to the corporation on a monthly
692 basis as the assessments are collected by the limited
693 apportionment company from its insureds, but a limited
694 apportionment company must begin collecting the regular
695 assessments not later than 90 days after the regular assessments
696 are levied by the corporation, and the regular assessments must

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697 be paid in full within 15 months after being levied by the
698 corporation. A limited apportionment company shall collect from
699 its policyholders any emergency assessment imposed under sub-
700 subparagraph (b)3.d. The plan must provide that, if the office
701 determines that any regular assessment will result in an
702 impairment of the surplus of a limited apportionment company,
703 the office may direct that all or part of such assessment be
704 deferred as provided in subparagraph (q)4. However, an emergency
705 assessment to be collected from policyholders under sub-
706 subparagraph (b)3.d. may not be limited or deferred.

707 14. Must provide that the corporation appoint as its
708 licensed agents only those agents who throughout such
709 appointments also hold an appointment as defined in s. 626.015
710 by an insurer who is authorized to write and is actually writing
711 or renewing personal lines residential property coverage,
712 commercial residential property coverage, or commercial
713 nonresidential property coverage within the state.

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

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

721 17. Must provide coverage for manufactured or mobile home
722 dwellings. Such coverage must also include the following
723 attached structures:

724 a. Screened enclosures that are aluminum framed or screened
725 enclosures that are not covered by the same or substantially the

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726 same materials as those of the primary dwelling;

727 b. Carports that are aluminum or carports that are not
728 covered by the same or substantially the same materials as those
729 of the primary dwelling; and

730 c. Patios that have a roof covering ~~that is~~ constructed of
731 materials that are not the same or substantially the same
732 materials as those of the primary dwelling.

733
734 The corporation shall make available a policy for mobile homes
735 or manufactured homes for a minimum insured value of at least
736 \$3,000.

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

739 19. May require commercial property to meet specified
740 hurricane mitigation construction features as a condition of
741 eligibility for coverage.

742 20. Must provide that new or renewal policies issued by the
743 corporation on or after January 1, 2012, which cover sinkhole
744 loss do not include coverage for any loss to appurtenant
745 structures, driveways, sidewalks, decks, or patios that are
746 directly or indirectly caused by sinkhole activity. The
747 corporation shall exclude such coverage using a notice of
748 coverage change, which may be included with the policy renewal,
749 and not by issuance of a notice of nonrenewal of the excluded
750 coverage upon renewal of the current policy.

751 21. As of January 1, 2012, must require that the agent
752 obtain from an applicant for coverage from the corporation an
753 acknowledgment signed by the applicant, which includes, at a
754 minimum, the following statement:

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ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

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

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

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

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

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

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

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

(n)1. Rates for coverage provided by the corporation must be actuarially sound and subject to s. 627.062, except as otherwise provided in this paragraph. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow

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813 the corporation to adopt rates lower than the rates otherwise
814 required or allowed by this paragraph.

815 4. The corporation must make a recommended actuarially
816 sound rate filing for each personal and commercial line of
817 business it writes.

818 5. Notwithstanding the board's recommended rates and the
819 office's final order regarding the corporation's filed rates
820 under subparagraph 1., the corporation shall annually implement
821 a rate increase which, except for sinkhole coverage, does not
822 exceed the following for any single personal lines residential
823 policy issued by the corporation that covers an insured's
824 primary residence, and any single commercial lines residential
825 policy issued by the corporation, excluding coverage changes and
826 surcharges:

827 a. Eleven percent for 2022.

828 b. Twelve percent for 2023.

829 c. Thirteen percent for 2024.

830 d. Fourteen percent for 2025.

831 e. Fifteen percent for 2026 and all subsequent years.

832 6. The corporation may also implement an increase to
833 reflect the effect on the corporation of the cash buildup factor
834 pursuant to s. 215.555(5)(b).

835 7. The corporation's implementation of rates as prescribed
836 in subparagraph 5. shall cease for any line of business written
837 by the corporation upon the corporation's implementation of
838 actuarially sound rates. Thereafter, the corporation shall
839 annually make a recommended actuarially sound rate filing for
840 each commercial and personal line of business the corporation
841 writes.

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842 8. As used in this paragraph, "primary residence" means the
843 dwelling that the insured has represented as their permanent
844 home on the insurance application or otherwise to the
845 corporation.

846 (q)1. The corporation shall certify to the office its needs
847 for annual assessments as to a particular calendar year, and for
848 any interim assessments that it deems to be necessary to sustain
849 operations as to a particular year pending the receipt of annual
850 assessments. Upon verification, the office shall approve such
851 certification, and the corporation shall levy such annual or
852 interim assessments. Such assessments shall be prorated as
853 provided in paragraph (b). The corporation shall take all
854 reasonable and prudent steps necessary to collect the amount of
855 assessments due from each assessable insurer, including, if
856 prudent, filing suit to collect the assessments, and the office
857 may provide such assistance to the corporation it deems
858 appropriate. If the corporation is unable to collect an
859 assessment from any assessable insurer, the uncollected
860 assessments shall be levied as an additional assessment against
861 the assessable insurers and any assessable insurer required to
862 pay an additional assessment as a result of such failure to pay
863 shall have a cause of action against such nonpaying assessable
864 insurer. Assessments shall be included as an appropriate factor
865 in the making of rates. The failure of a surplus lines agent to
866 collect and remit any regular or emergency assessment levied by
867 the corporation is considered to be a violation of s. 626.936
868 and subjects the surplus lines agent to the penalties provided
869 in that section.

870 2. The governing body of any unit of local government, any

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871 residents of which are insured by the corporation, may issue
 872 bonds as defined in s. 125.013 or s. 166.101 from time to time
 873 to fund an assistance program, in conjunction with the
 874 corporation, for the purpose of defraying deficits of the
 875 corporation. In order to avoid needless and indiscriminate
 876 proliferation, duplication, and fragmentation of such assistance
 877 programs, any unit of local government, any residents of which
 878 are insured by the corporation, may provide for the payment of
 879 losses, regardless of whether or not the losses occurred within
 880 or outside of the territorial jurisdiction of the local
 881 government. Revenue bonds under this subparagraph may not be
 882 issued until validated pursuant to chapter 75, unless a state of
 883 emergency is declared by executive order or proclamation of the
 884 Governor pursuant to s. 252.36 making such findings as are
 885 necessary to determine that it is in the best interests of, and
 886 necessary for, the protection of the public health, safety, and
 887 general welfare of residents of this state and declaring it an
 888 essential public purpose to permit certain municipalities or
 889 counties to issue such bonds as will permit relief to claimants
 890 and policyholders of the corporation. Any such unit of local
 891 government may enter into such contracts with the corporation
 892 and with any other entity created pursuant to this subsection as
 893 are necessary to carry out this paragraph. Any bonds issued
 894 under this subparagraph shall be payable from and secured by
 895 moneys received by the corporation from emergency assessments
 896 under sub-subparagraph (b)3.d., and assigned and pledged to or
 897 on behalf of the unit of local government for the benefit of the
 898 holders of such bonds. The funds, credit, property, and taxing
 899 power of the state or of the unit of local government shall not

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900 be pledged for the payment of such bonds.
 901 3.a. The corporation shall adopt one or more programs
 902 subject to approval by the office for the reduction of both new
 903 and renewal writings in the corporation. Beginning January 1,
 904 2008, any program the corporation adopts for the payment of
 905 bonuses to an insurer for each risk the insurer removes from the
 906 corporation shall comply with s. 627.3511(2) and may not exceed
 907 the amount referenced in s. 627.3511(2) for each risk removed.
 908 The corporation may consider any prudent and not unfairly
 909 discriminatory approach to reducing corporation writings, and
 910 may adopt a credit against assessment liability or other
 911 liability that provides an incentive for insurers to take risks
 912 out of the corporation and to keep risks out of the corporation
 913 by maintaining or increasing voluntary writings in counties or
 914 areas in which corporation risks are highly concentrated and a
 915 program to provide a formula under which an insurer voluntarily
 916 taking risks out of the corporation by maintaining or increasing
 917 voluntary writings will be relieved wholly or partially from
 918 assessments under sub-subparagraph (b)3.a. However, any "take-
 919 out bonus" or payment to an insurer must be conditioned on the
 920 property being insured for at least 5 years by the insurer,
 921 unless canceled or nonrenewed by the policyholder. If the policy
 922 is canceled or nonrenewed by the policyholder before the end of
 923 the 5-year period, the amount of the take-out bonus must be
 924 prorated for the time period the policy was insured. When the
 925 corporation enters into a contractual agreement for a take-out
 926 plan, the producing agent of record of the corporation policy is
 927 entitled to retain any unearned commission on such policy, and
 928 the insurer shall either:

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929 (I) Pay to the producing agent of record of the policy, for
 930 the first year, an amount which is the greater of the insurer's
 931 usual and customary commission for the type of policy written or
 932 a policy fee equal to the usual and customary commission of the
 933 corporation; or

934 (II) Offer to allow the producing agent of record of the
 935 policy to continue servicing the policy for a period of not less
 936 than 1 year and offer to pay the agent the insurer's usual and
 937 customary commission for the type of policy written. If the
 938 producing agent is unwilling or unable to accept appointment by
 939 the new insurer, the new insurer shall pay the agent in
 940 accordance with sub-sub-subparagraph (I).

941 b. Any credit or exemption from regular assessments adopted
 942 under this subparagraph shall last no longer than the 3 years
 943 following the cancellation or expiration of the policy by the
 944 corporation. With the approval of the office, the board may
 945 extend such credits for an additional year if the insurer
 946 guarantees an additional year of renewability for all policies
 947 removed from the corporation, or for 2 additional years if the
 948 insurer guarantees 2 additional years of renewability for all
 949 policies so removed.

950 c. There shall be no credit, limitation, exemption, or
 951 deferment from emergency assessments to be collected from
 952 policyholders pursuant to sub-subparagraph (b)3.d.

953 d. Notwithstanding any other law, for purposes of a
 954 depopulation, take-out, or keepout program adopted by the
 955 corporation, including an initial or renewal offer of coverage
 956 made to a policyholder removed from the corporation pursuant to
 957 such program, an eligible surplus lines insurer may participate

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958 in the program in the same manner and on the same terms as an
 959 authorized insurer, except as provided under this sub-
 960 subparagraph.

961 (I) To qualify for participation, the surplus lines insurer
 962 must first obtain approval from the office for its depopulation,
 963 take-out, or keepout plan and then comply with all of the
 964 corporation's requirements for the plan applicable to admitted
 965 insurers and with all statutory provisions applicable to the
 966 removal of policies from the corporation.

967 (II) In considering a surplus lines insurer's request for
 968 approval for its plan, the office shall determine whether the
 969 surplus lines insurer meets the following requirements:

970 (A) Maintains a surplus of \$50 million on a company or
 971 pooled basis;

972 (B) Has a superior, excellent, exceptional, or equally
 973 comparable financial strength rating by a rating agency
 974 acceptable to the office;

975 (C) Maintains reserves, surplus, reinsurance, and
 976 reinsurance equivalents sufficient to cover the insurer's 100-
 977 year probable maximum hurricane loss at least twice in a single
 978 hurricane season and submits such reinsurance to the office to
 979 review for purposes of the take-out;

980 (D) Provides prominent notice to the policyholder before
 981 the assumption of the policy that surplus lines policies are not
 982 provided coverage by the Florida Insurance Guaranty Association
 983 and provides an outline of any substantial differences in
 984 coverage between the existing policy and the policy being
 985 offered to the insured; and

986 (E) Provides policy coverage similar to that provided by

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987 the corporation.

988 (III) To obtain approval for a plan, the surplus lines
 989 insurer must file the following with the office:

990 (A) Information requested by the office to demonstrate
 991 compliance with s. 624.404(3), including biographical
 992 affidavits, fingerprints processed pursuant to s. 624.34, and
 993 the results of criminal history records checks for officers and
 994 directors of the insurer and its parent or holding company;

995 (B) A service-of-process consent and agreement form
 996 executed by the insurer;

997 (C) Proof that the insurer has been an eligible or
 998 authorized insurer for at least 3 years;

999 (D) A duly authenticated copy of the insurer's current
 1000 audited financial statement, in English, which, in the case of
 1001 statements originally made in the currencies of other countries,
 1002 expresses all monetary values in United States dollars, at an
 1003 exchange rate then current and shown in the statement, and
 1004 including any additional information relative to the insurer as
 1005 the office may request;

1006 (E) A complete certified copy of the latest official
 1007 financial statement required by the insurer's domiciliary state,
 1008 if different from the statement required by sub-sub-
 1009 subparagraph (D); and

1010 (F) If applicable, a copy of the United States trust
 1011 account agreement.

1012
 1013 This sub-sub-subparagraph does not subject any surplus lines
 1014 insurer to requirements in addition to part VIII of chapter 626.
 1015 Surplus lines brokers making an offer of coverage under this

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1016 sub-subparagraph are not required to comply with s.
 1017 626.916(1) (a), (b), (c), or (e).

1018 (IV) Within 10 days after the date of assumption, the
 1019 surplus lines insurer assuming policies from the corporation
 1020 shall remit to the Bureau of Collateral Management within the
 1021 Department of Financial Services a special deposit equal to the
 1022 unearned premium net of unearned commissions on the assumed
 1023 block of business. The surplus lines insurer shall submit to the
 1024 office, along with the special deposit, an accounting of the
 1025 policies assumed and the amount of unearned premium for such
 1026 policies and a sworn affidavit attesting to the accuracy of the
 1027 accounting by an officer of the surplus lines insurer.

1028 Thereafter, the surplus lines insurer shall make a filing within
 1029 10 days after the end of each calendar quarter attesting to the
 1030 unearned premium in force for the previous quarter on policies
 1031 assumed from the corporation and shall submit additional funds
 1032 with that filing if the special deposit is insufficient to cover
 1033 the unearned premium on assumed policies, or shall receive a
 1034 return of funds within 60 days if the special deposit exceeds
 1035 the amount of unearned premium required for assumed policies.
 1036 The special deposit is an asset of the surplus lines insurer
 1037 which is held by the department for the benefit of state
 1038 policyholders of the surplus lines insurer in the event of the
 1039 insolvency of the surplus lines insurer. If an order of
 1040 liquidation is entered in any state against the surplus lines
 1041 insurer, the department may use the special deposit for payment
 1042 of unearned premium or policy claims, return all or part of the
 1043 deposit to the domiciliary receiver, or use the funds in
 1044 accordance with any action authorized under part I of chapter

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1045 631 or in compliance with any order of a court having
 1046 jurisdiction over the insolvency.

1047 (V) In advance of a surplus lines insurer assuming a
 1048 policy, surplus lines brokers representing a surplus lines
 1049 insurer on a take-out program shall obtain confirmation, in
 1050 written or e-mail form, from each producing agent stating that
 1051 the agent is willing to participate in the take-out program with
 1052 the surplus lines insurer engaging in the take-out program. The
 1053 take-out program is also subject to s. 627.3517. If a
 1054 policyholder is selected for removal from the corporation by a
 1055 surplus lines insurer and an authorized insurer, the corporation
 1056 must give priority to the offer of coverage from the authorized
 1057 insurer.

1058 (VI) (A) A risk that has a dwelling replacement cost of
 1059 \$700,000 or more or a single condominium unit that has a
 1060 combined dwelling and contents replacement cost of \$700,000 or
 1061 more is not eligible for coverage by the corporation if it is
 1062 offered comparable coverage from a qualified surplus lines
 1063 insurer at a premium no greater than 20 percent above the
 1064 premium charged by the corporation.

1065 (B) A risk that has a dwelling replacement cost below
 1066 \$700,000 or a single condominium unit that has a combined
 1067 dwelling and contents replacement cost below \$700,000 remains
 1068 eligible for coverage by the corporation if it is offered
 1069 coverage from a qualified surplus lines insurer.

1070 4. The plan shall provide for the deferment, in whole or in
 1071 part, of the assessment of an assessable insurer, other than an
 1072 emergency assessment collected from policyholders pursuant to
 1073 sub-subparagraph (b)3.d., if the office finds that payment of

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1074 the assessment would endanger or impair the solvency of the
 1075 insurer. In the event an assessment against an assessable
 1076 insurer is deferred in whole or in part, the amount by which
 1077 such assessment is deferred may be assessed against the other
 1078 assessable insurers in a manner consistent with the basis for
 1079 assessments set forth in paragraph (b).

1080 5. Effective July 1, 2007, in order to evaluate the costs
 1081 and benefits of approved take-out plans, if the corporation pays
 1082 a bonus or other payment to an insurer for an approved take-out
 1083 plan, it shall maintain a record of the address or such other
 1084 identifying information on the property or risk removed in order
 1085 to track if and when the property or risk is later insured by
 1086 the corporation.

1087 6. Any policy taken out, assumed, or removed from the
 1088 corporation is, as of the effective date of the take-out,
 1089 assumption, or removal, direct insurance issued by the insurer
 1090 and not by the corporation, even if the corporation continues to
 1091 service the policies. This subparagraph applies to policies of
 1092 the corporation and not policies taken out, assumed, or removed
 1093 from any other entity.

1094 7. For a policy taken out, assumed, or removed from the
 1095 corporation, the insurer may, for a period of no more than 3
 1096 years, continue to use any of the corporation's policy forms or
 1097 endorsements that apply to the policy taken out, removed, or
 1098 assumed without obtaining approval from the office for use of
 1099 such policy form or endorsement.

1100 (x)1. The following records of the corporation are
 1101 confidential and exempt from ~~the provisions of~~ s. 119.07(1) and
 1102 s. 24(a), Art. I of the State Constitution:

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- 1103 a. Underwriting files, except that a policyholder or an
 1104 applicant shall have access to his or her own underwriting
 1105 files. Confidential and exempt underwriting file records may
 1106 also be released to other governmental agencies upon written
 1107 request and demonstration of need; such records held by the
 1108 receiving agency remain confidential and exempt as provided
 1109 herein.
- 1110 b. Claims files, until termination of all litigation and
 1111 settlement of all claims arising out of the same incident,
 1112 although portions of the claims files may remain exempt, as
 1113 otherwise provided by law. Confidential and exempt claims file
 1114 records may be released to other governmental agencies upon
 1115 written request and demonstration of need; such records held by
 1116 the receiving agency remain confidential and exempt as provided
 1117 herein.
- 1118 c. Records obtained or generated by an internal auditor
 1119 pursuant to a routine audit, until the audit is completed, or if
 1120 the audit is conducted as part of an investigation, until the
 1121 investigation is closed or ceases to be active. An investigation
 1122 is considered "active" while the investigation is being
 1123 conducted with a reasonable, good faith belief that it could
 1124 lead to the filing of administrative, civil, or criminal
 1125 proceedings.
- 1126 d. Matters reasonably encompassed in privileged attorney-
 1127 client communications.
- 1128 e. Proprietary information licensed to the corporation
 1129 under contract and the contract provides for the confidentiality
 1130 of such proprietary information.
- 1131 f. All information relating to the medical condition or

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- 1132 medical status of a corporation employee which is not relevant
 1133 to the employee's capacity to perform his or her duties, except
 1134 as otherwise provided in this paragraph. Information that is
 1135 exempt ~~includes shall include~~, but is not limited to,
 1136 information relating to workers' compensation, insurance
 1137 benefits, and retirement or disability benefits.
- 1138 g. Upon an employee's entrance into the employee assistance
 1139 program, a program to assist any employee who has a behavioral
 1140 or medical disorder, substance abuse problem, or emotional
 1141 difficulty that affects the employee's job performance, all
 1142 records relative to that participation are ~~shall be~~ confidential
 1143 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),
 1144 Art. I of the State Constitution, except as otherwise provided
 1145 in s. 112.0455(11).
- 1146 h. Information relating to negotiations for financing,
 1147 reinsurance, depopulation, or contractual services, until the
 1148 conclusion of the negotiations.
- 1149 i. Minutes of closed meetings regarding underwriting files,
 1150 and minutes of closed meetings regarding an open claims file
 1151 until termination of all litigation and settlement of all claims
 1152 with regard to that claim, except that information otherwise
 1153 confidential or exempt by law must ~~shall~~ be redacted.
- 1154 2. If an authorized insurer, a reinsurance intermediary, an
 1155 eligible surplus lines insurer, or an entity that has filed an
 1156 application with the office for licensure as a property and
 1157 casualty insurer in this state is considering writing or
 1158 assisting in the underwriting of a risk insured by the
 1159 corporation, relevant information from both the underwriting
 1160 files and confidential claims files may be released to the

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1161 insurer, reinsurance intermediary, eligible surplus lines
 1162 insurer, or entity that has been created to seek authority to
 1163 write property insurance in this state, provided that the
 1164 recipient insurer agrees in writing, notarized and under oath,
 1165 to maintain the confidentiality of such files. If a policy file
 1166 is transferred to an insurer, that policy file is no longer a
 1167 public record because it is not held by an agency subject to ~~the~~
 1168 ~~provisions of~~ the public records law. Underwriting files and
 1169 confidential claims files may also be released to staff and the
 1170 board of governors of the market assistance plan established
 1171 pursuant to s. 627.3515, who must retain the confidentiality of
 1172 such files, except such files may be released to authorized
 1173 insurers that are considering assuming the risks to which the
 1174 files apply, provided the insurer agrees in writing, notarized
 1175 and under oath, to maintain the confidentiality of such files.
 1176 Finally, the corporation or the board or staff of the market
 1177 assistance plan may make the following information obtained from
 1178 underwriting files and confidential claims files available to an
 1179 entity that has obtained a permit to become an authorized
 1180 insurer, a reinsurer that may provide reinsurance under s.
 1181 624.610, a licensed reinsurance broker, a licensed rating
 1182 organization, a modeling company, or a licensed general lines
 1183 insurance agent: name, address, and telephone number of the
 1184 residential property owner or insured; location of the risk;
 1185 rating information; loss history; and policy type. The receiving
 1186 person must retain the confidentiality of the information
 1187 received and may use the information only for the purposes of
 1188 developing a take-out plan or a rating plan to be submitted to
 1189 the office for approval or otherwise analyzing the underwriting

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1190 of a risk or risks insured by the corporation on behalf of the
 1191 private insurance market. A licensed general lines insurance
 1192 agent may not use such information for the direct solicitation
 1193 of policyholders.

1194 3. A policyholder who has filed suit against the
 1195 corporation has the right to discover the contents of his or her
 1196 own claims file to the same extent that discovery of such
 1197 contents would be available from a private insurer in litigation
 1198 as provided by the Florida Rules of Civil Procedure, the Florida
 1199 Evidence Code, and other applicable law. Pursuant to subpoena, a
 1200 third party has the right to discover the contents of an
 1201 insured's or applicant's underwriting or claims file to the same
 1202 extent that discovery of such contents would be available from a
 1203 private insurer by subpoena as provided by the Florida Rules of
 1204 Civil Procedure, the Florida Evidence Code, and other applicable
 1205 law, and subject to any confidentiality protections requested by
 1206 the corporation and agreed to by the seeking party or ordered by
 1207 the court. The corporation may release confidential underwriting
 1208 and claims file contents and information as it deems necessary
 1209 and appropriate to underwrite or service insurance policies and
 1210 claims, subject to any confidentiality protections deemed
 1211 necessary and appropriate by the corporation.

1212 4. Portions of meetings of the corporation are exempt from
 1213 ~~the provisions of~~ s. 286.011 and s. 24(b), Art. I of the State
 1214 Constitution wherein confidential underwriting files or
 1215 confidential open claims files are discussed. All portions of
 1216 corporation meetings which are closed to the public shall be
 1217 recorded by a court reporter. The court reporter shall record
 1218 the times of commencement and termination of the meeting, all

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1219 discussion and proceedings, the names of all persons present at
 1220 any time, and the names of all persons speaking. No portion of
 1221 any closed meeting shall be off the record. Subject to the
 1222 provisions hereof and s. 119.07(1)(d)-(f), the court reporter's
 1223 notes of any closed meeting shall be retained by the corporation
 1224 for a minimum of 5 years. A copy of the transcript, less any
 1225 exempt matters, of any closed meeting wherein claims are
 1226 discussed shall become public as to individual claims after
 1227 settlement of the claim.

1228 (ii) The corporation shall revise the programs adopted
 1229 pursuant to sub-subparagraph (q)3.a. for personal lines
 1230 residential policies to maximize policyholder options and
 1231 encourage increased participation by insurers and agents. After
 1232 January 1, 2017, a policy may not be taken out of the
 1233 corporation unless the provisions of this paragraph are met.

1234 1. The corporation must publish a periodic schedule of
 1235 cycles during which an insurer may identify, and notify the
 1236 corporation of, policies that the insurer is requesting to take
 1237 out. A request must include a description of the coverage
 1238 offered and an estimated premium and must be submitted to the
 1239 corporation in a form and manner prescribed by the corporation.

1240 2. The corporation must maintain and make available to the
 1241 agent of record a consolidated list of all insurers requesting
 1242 to take out a policy. The list must include a description of the
 1243 coverage offered and the estimated premium for each take-out
 1244 request.

1245 3. The corporation must provide written notice to the
 1246 policyholder and the agent of record regarding all insurers
 1247 requesting to take out the policy, which notice must inform that

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1248 a take-out offer that is not more than 20 percent greater than
 1249 the corporation's premium renders the risk ineligible for
 1250 coverage from and regarding the policyholder's option to accept
 1251 a take out offer or to reject all take out offers and to remain
 1252 with the corporation. The notice must be in a format prescribed
 1253 by the corporation and include, for each take-out offer:

- 1254 a. The amount of the estimated premium;
- 1255 b. A description of the coverage; and
- 1256 c. A comparison of the estimated premium and coverage
 1257 offered by the insurer to the estimated premium and coverage
 1258 provided by the corporation.

1259 Section 3. Section 627.3518, Florida Statutes, is amended
 1260 to read:

1261 627.3518 Citizens Property Insurance Corporation
 1262 policyholder eligibility clearinghouse program. ~~The purpose of~~
 1263 ~~this section is to provide a framework for the corporation to~~
 1264 ~~implement a clearinghouse program by January 1, 2014.~~

1265 (1) As used in this section, the term:

- 1266 (a) "Corporation" means Citizens Property Insurance
 1267 Corporation.
- 1268 (b) "Exclusive agent" means any licensed insurance agent
 1269 that has, by contract, agreed to act exclusively for one company
 1270 or group of affiliated insurance companies and is disallowed by
 1271 the provisions of that contract to directly write for any other
 1272 unaffiliated insurer absent express consent from the company or
 1273 group of affiliated insurance companies.
- 1274 (c) "Independent agent" means any licensed insurance agent
 1275 not described in paragraph (b).
- 1276 (d) "Program" means the clearinghouse created under this

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section.

(2) In order to confirm eligibility with the corporation and to enhance access of new applicants for coverage and existing policyholders of the corporation to offers of coverage from authorized insurers, the corporation shall establish a program for personal residential risks in order to facilitate the diversion of ineligible applicants and existing policyholders from the corporation into the voluntary insurance market. The corporation shall also develop appropriate procedures for facilitating the diversion of ineligible applicants and existing policyholders for commercial residential coverage into the private insurance market ~~and shall report such procedures to the President of the Senate and the Speaker of the House of Representatives by January 1, 2014.~~

(3) The corporation board shall establish the clearinghouse program as an organizational unit within the corporation. The program shall have all the rights and responsibilities in carrying out its duties as a licensed general lines agent, but may not be required to employ or engage a licensed general lines agent or to maintain an insurance agency license to carry out its activities in the solicitation and placement of insurance coverage. In establishing the program, the corporation may:

(a) Require all new applications, and all policies due for renewal, to be submitted for coverage to the program in order to facilitate obtaining an offer of coverage from an authorized insurer before binding or renewing coverage by the corporation.

(b) Employ or otherwise contract with individuals or other entities for appropriate administrative or professional services to effectuate the plan within the corporation in accordance with

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the applicable purchasing requirements under s. 627.351.

(c) Enter into contracts with any authorized insurer to participate in the program and accept an appointment by such insurer.

(d) Provide funds to operate the program. Insurers and agents participating in the program are not required to pay a fee to offset or partially offset the cost of the program or use the program for renewal of policies initially written through the clearinghouse.

(e) Develop an enhanced application that includes information to assist private insurers in determining whether to make an offer of coverage through the program.

(f) For personal lines residential risks, require, before approving all new applications for coverage by the corporation, that every application be subject to a period of 2 business days when any insurer participating in the program may select the application for coverage. The insurer may issue a binder on any policy selected for coverage for a period of at least 30 days but not more than 60 days.

(4) Any authorized insurer may participate in the program; however, participation is not mandatory for any insurer. Insurers making offers of coverage to new applicants or renewal policyholders through the program:

(a) May not be required to individually appoint any agent whose customer is underwritten and bound through the program. Notwithstanding s. 626.112, insurers are not required to appoint any agent on a policy underwritten through the program for as long as that policy remains with the insurer. Insurers may, at their election, appoint any agent whose customer is initially

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1335 underwritten and bound through the program. In the event an
 1336 insurer accepts a policy from an agent who is not appointed
 1337 pursuant to this paragraph, and thereafter elects to accept a
 1338 policy from such agent, the provisions of s. 626.112 requiring
 1339 appointment apply to the agent.

1340 (b) Must enter into a limited agency agreement with each
 1341 agent that is not appointed in accordance with paragraph (a) and
 1342 whose customer is underwritten and bound through the program.

1343 (c) Must enter into its standard agency agreement with each
 1344 agent whose customer is underwritten and bound through the
 1345 program when that agent has been appointed by the insurer
 1346 pursuant to s. 626.112.

1347 (d) Must comply with s. 627.4133(2).

1348 (e) May participate through their single-designated
 1349 managing general agent or broker; however, the provisions of
 1350 paragraph (6) (a) regarding ownership, control, and use of the
 1351 expirations continue to apply.

1352 (f) Must pay to the producing agent a commission equal to
 1353 that paid by the corporation or the usual and customary
 1354 commission paid by the insurer for that line of business,
 1355 whichever is greater.

1356 (5) Notwithstanding s. 627.3517, any applicant for new
 1357 coverage from the corporation is not eligible for coverage from
 1358 the corporation if provided an offer of coverage from an
 1359 authorized insurer through the program at a premium that is at
 1360 or below the eligibility threshold established in s.
 1361 627.351(6)(c)5.a. Whenever an offer of coverage for a personal
 1362 lines risk is received for a policyholder of the corporation at
 1363 renewal from an authorized insurer through the program, if the

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1364 offer is at or below the eligibility threshold established in s.
 1365 ~~627.351(6)(c)5.a. equal to or less than the corporation's~~
 1366 ~~renewal premium for comparable coverage~~, the risk is not
 1367 eligible for coverage with the corporation. In the event an
 1368 offer of coverage for a new applicant is received from an
 1369 authorized insurer through the program, and the premium offered
 1370 exceeds the eligibility threshold contained in s.
 1371 627.351(6)(c)5.a., the applicant or insured may elect to accept
 1372 such coverage, or may elect to accept or continue coverage with
 1373 the corporation. In the event an offer of coverage for a
 1374 personal lines risk is received from an authorized insurer at
 1375 renewal through the program, and the premium offered is at or
 1376 below the eligibility threshold established in s.
 1377 ~~627.351(6)(c)5.a. more than the corporation's renewal premium~~
 1378 ~~for comparable coverage~~, the insured is not eligible to may
 1379 ~~elect to accept such coverage, or may elect to accept or~~
 1380 continue coverage with the corporation. Section
 1381 627.351(6)(c)5.a.(I) does not apply to an offer of coverage from
 1382 an authorized insurer obtained through the program. An applicant
 1383 for coverage from the corporation who was declared ineligible
 1384 for coverage at renewal by the corporation in the previous 36
 1385 months due to an offer of coverage pursuant to this subsection
 1386 shall be considered a renewal under this section if the
 1387 corporation determines that the authorized insurer making the
 1388 offer of coverage pursuant to this subsection continues to
 1389 insure the applicant and increased the rate on the policy in
 1390 excess of the increase allowed for the corporation under s.
 1391 627.351(6)(n)5.

1392 (6) Independent insurance agents submitting new

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1393 applications for coverage or that are the agent of record on a
 1394 renewal policy submitted to the program:

1395 (a) Are granted and must maintain ownership and the
 1396 exclusive use of expirations, records, or other written or
 1397 electronic information directly related to such applications or
 1398 renewals written through the corporation or through an insurer
 1399 participating in the program, notwithstanding s.
 1400 627.351(6)(c)5.a.(I)(B) and (II)(B). Such ownership is granted
 1401 for as long as the insured remains with the agency or until sold
 1402 or surrendered in writing by the agent. Contracts with the
 1403 corporation or required by the corporation must not amend,
 1404 modify, interfere with, or limit such rights of ownership. Such
 1405 expirations, records, or other written or electronic information
 1406 may be used to review an application, issue a policy, or for any
 1407 other purpose necessary for placing such business through the
 1408 program.

1409 (b) May not be required to be appointed by any insurer
 1410 participating in the program for policies written solely through
 1411 the program, notwithstanding the provisions of s. 626.112.

1412 (c) May accept an appointment from any insurer
 1413 participating in the program.

1414 (d) May enter into either a standard or limited agency
 1415 agreement with the insurer, at the insurer's option.

1416

1417 Applicants ineligible for coverage in accordance with subsection
 1418 (5) remain ineligible if their independent agent is unwilling or
 1419 unable to enter into a standard or limited agency agreement with
 1420 an insurer participating in the program.

1421 (7) Exclusive agents submitting new applications for

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1422 coverage or that are the agent of record on a renewal policy
 1423 submitted to the program:

1424 (a) Must maintain ownership and the exclusive use of
 1425 expirations, records, or other written or electronic information
 1426 directly related to such applications or renewals written
 1427 through the corporation or through an insurer participating in
 1428 the program, notwithstanding s. 627.351(6)(c)5.a.(I)(B) and
 1429 (II)(B). Contracts with the corporation or required by the
 1430 corporation must not amend, modify, interfere with, or limit
 1431 such rights of ownership. Such expirations, records, or other
 1432 written or electronic information may be used to review an
 1433 application, issue a policy, or for any other purpose necessary
 1434 for placing such business through the program.

1435 (b) May not be required to be appointed by any insurer
 1436 participating in the program for policies written solely through
 1437 the program, notwithstanding the provisions of s. 626.112.

1438 (c) Must only facilitate the placement of an offer of
 1439 coverage from an insurer whose limited servicing agreement is
 1440 approved by that exclusive agent's exclusive insurer.

1441 (d) May enter into a limited servicing agreement with the
 1442 insurer making an offer of coverage, and only after the
 1443 exclusive agent's insurer has approved the limited servicing
 1444 agreement terms. The exclusive agent's insurer must approve a
 1445 limited service agreement for the program for any insurer for
 1446 which it has approved a service agreement for other purposes.

1447

1448 Applicants ineligible for coverage in accordance with subsection
 1449 (5) remain ineligible if their exclusive agent is unwilling or
 1450 unable to enter into a standard or limited agency agreement with

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1451 an insurer making an offer of coverage to that applicant.

1452 (8) Submission of an application for coverage by the
1453 corporation to the program does not constitute the binding of
1454 coverage by the corporation, and failure of the program to
1455 obtain an offer of coverage by an insurer may not be considered
1456 acceptance of coverage of the risk by the corporation.

1457 (9) The 45-day notice of nonrenewal requirement set forth
1458 in s. 627.4133(2)(b)5. applies when a policy is nonrenewed by
1459 the corporation because the risk has received an offer of
1460 coverage pursuant to this section which renders the risk
1461 ineligible for coverage by the corporation.

1462 (10) The program may not include commercial nonresidential
1463 policies.

1464 (11) Proprietary business information provided to the
1465 corporation's clearinghouse by insurers with respect to
1466 identifying and selecting risks for an offer of coverage is
1467 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
1468 of the State Constitution.

1469 (a) As used in this subsection, the term "proprietary
1470 business information" means information, regardless of form or
1471 characteristics, which is owned or controlled by an insurer and:

1472 1. Is identified by the insurer as proprietary business
1473 information and is intended to be and is treated by the insurer
1474 as private in that the disclosure of the information would cause
1475 harm to the insurer, an individual, or the company's business
1476 operations and has not been disclosed unless disclosed pursuant
1477 to a statutory requirement, an order of a court or
1478 administrative body, or a private agreement that provides that
1479 the information will not be released to the public;

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1480 2. Is not otherwise readily ascertainable or publicly
1481 available by proper means by other persons from another source
1482 in the same configuration as provided to the clearinghouse; and

1483 3. Includes:

1484 a. Trade secrets, as defined in s. 688.002.

1485 b. Information relating to competitive interests, the
1486 disclosure of which would impair the competitive business of the
1487 provider of the information.

1488
1489 Proprietary business information may be found in underwriting
1490 criteria or instructions which are used to identify and select
1491 risks through the program for an offer of coverage and are
1492 shared with the clearinghouse to facilitate the shopping of
1493 risks with the insurer.

1494 (b) The clearinghouse may disclose confidential and exempt
1495 proprietary business information:

1496 1. If the insurer to which it pertains gives prior written
1497 consent;

1498 2. Pursuant to a court order; or

1499 3. To another state agency in this or another state or to a
1500 federal agency if the recipient agrees in writing to maintain
1501 the confidential and exempt status of the document, material, or
1502 other information and has verified in writing its legal
1503 authority to maintain such confidentiality.

1504 Section 4. Paragraphs (f), (g), and (h) are added to
1505 subsection (5) of section 627.7011, Florida Statutes, to read:

1506 627.7011 Homeowners' policies; offer of replacement cost
1507 coverage and law and ordinance coverage.—

1508 (5) This section does not:

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1509 (f)1. Prohibit an insurer, notwithstanding paragraph
 1510 (1) (a), from providing limited coverage on a personal lines
 1511 residential property insurance policy by including a roof
 1512 surface type reimbursement schedule. If included in the policy,
 1513 a roof surface type reimbursement schedule must do all of the
 1514 following:
 1515 a. Provide reimbursement for repair, replacement, and
 1516 installation based on the annual age of a roof surface type.
 1517 b. Provide full replacement coverage for:
 1518 (I) Any roof surface type less than 10 years old;
 1519 (II) A total loss to a primary structure in accordance with
 1520 the valued policy law under s. 627.702 which is caused by a
 1521 covered peril; and
 1522 (III) A loss to the roof caused by a storm declared to be a
 1523 hurricane by the National Hurricane Center.
 1524 c. Use annual depreciation amounts that:
 1525 (I) Are actuarially justified and meet the requirements of
 1526 s. 627.062; and
 1527 (II) Do not exceed 4 percent unless actuarially justified.
 1528 d. Be approved by the office.
 1529 e. Include at the top of the roof surface type schedule, in
 1530 bold type no smaller than 12 points, the following statement:
 1531
 1532 "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE
 1533 ELECTING TO PURCHASE COVERAGE ON YOUR ROOF ACCORDING
 1534 TO A ROOF SURFACE TYPE REIMBURSEMENT SCHEDULE. IF YOUR
 1535 ROOF IS DAMAGED BY A COVERED PERIL, YOU WILL RECEIVE A
 1536 PAYMENT AMOUNT FOR YOUR ROOF ACCORDING TO THE SCHEDULE
 1537 BELOW. BE ADVISED THAT THIS MAY RESULT IN YOU HAVING

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1538 TO PAY SIGNIFICANT COSTS TO REPAIR OR REPLACE YOUR
 1539 ROOF. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."
 1540
 1541 f. Be provided to the insured with the policy documents at
 1542 issuance and renewal.
 1543 2. A residential property insurance policy may convert to a
 1544 roof surface type reimbursement schedule at renewal if the roof
 1545 is at least 10 years old and the policyholder:
 1546 a. Receives a Notice of Change in Policy Terms pursuant to
 1547 s. 627.43141; and
 1548 b. Accepts the written notice of renewal premium required
 1549 under s. 627.4133, by paying the premium.
 1550 (g) Prohibit an insurer, notwithstanding paragraph (1) (a),
 1551 from providing coverage on a personal lines residential property
 1552 insurance policy that limits coverage for a roof to a stated
 1553 value sublimit of coverage. If included in a policy, a stated
 1554 value sublimit of coverage must do all of the following:
 1555 1. Provide full replacement coverage for:
 1556 a. Any roof surface type less than 10 years old;
 1557 b. A total loss to a primary structure in accordance with
 1558 the valued policy law under s. 627.702 which is caused by a
 1559 covered peril; and
 1560 c. A loss to the roof caused by a storm declared to be a
 1561 hurricane by the National Hurricane Center.
 1562 2. Include in the policy documents at issuance and at
 1563 renewal, in bold type no smaller than 12 points, the following
 1564 statement:
 1565
 1566 "PLEASE DISCUSS WITH YOUR INSURANCE AGENT. YOU ARE

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1567 ELECTING TO PURCHASE A STATED VALUE SUBLIMIT OF
 1568 COVERAGE ON YOUR ROOF. BE ADVISED THAT THIS MAY RESULT
 1569 IN YOU HAVING TO PAY SIGNIFICANT COSTS TO REPAIR OR
 1570 REPLACE YOUR ROOF. PLEASE DISCUSS WITH YOUR INSURANCE
 1571 AGENT."

1572
 1573 (h) Prohibit an insurer that provides roof reimbursement on
 1574 the basis of a roof surface type reimbursement schedule or that
 1575 limits coverage for a roof to a stated value sublimit of
 1576 coverage from also offering roof reimbursement on the basis of
 1577 replacement costs.

1578 Section 5. For the purpose of incorporating the amendments
 1579 made by this act to section 627.351, Florida Statutes, in a
 1580 reference thereto, subsection (10) of section 624.424, Florida
 1581 Statutes, is reenacted to read:

1582 624.424 Annual statement and other information.—

1583 (10) Each insurer or insurer group doing business in this
 1584 state shall file on a quarterly basis in conjunction with
 1585 financial reports required by paragraph (1)(a) a supplemental
 1586 report on an individual and group basis on a form prescribed by
 1587 the commission with information on personal lines and commercial
 1588 lines residential property insurance policies in this state. The
 1589 supplemental report shall include separate information for
 1590 personal lines property policies and for commercial lines
 1591 property policies and totals for each item specified, including
 1592 premiums written for each of the property lines of business as
 1593 described in ss. 215.555(2)(c) and 627.351(6)(a). The report
 1594 shall include the following information for each county on a
 1595 monthly basis:

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1596 (a) Total number of policies in force at the end of each
 1597 month.
 1598 (b) Total number of policies canceled.
 1599 (c) Total number of policies nonrenewed.
 1600 (d) Number of policies canceled due to hurricane risk.
 1601 (e) Number of policies nonrenewed due to hurricane risk.
 1602 (f) Number of new policies written.
 1603 (g) Total dollar value of structure exposure under policies
 1604 that include wind coverage.
 1605 (h) Number of policies that exclude wind coverage.
 1606 Section 6. For the purpose of incorporating the amendments
 1607 made by this act to section 627.351, Florida Statutes, in a
 1608 reference thereto, section 627.3517, Florida Statutes, is
 1609 reenacted to read:
 1610 627.3517 Consumer choice.—No provision of s. 627.351, s.
 1611 627.3511, or s. 627.3515 shall be construed to impair the right
 1612 of any insurance risk apportionment plan policyholder, upon
 1613 receipt of any keepout or take-out offer, to retain his or her
 1614 current agent, so long as that agent is duly licensed and
 1615 appointed by the insurance risk apportionment plan or otherwise
 1616 authorized to place business with the insurance risk
 1617 apportionment plan. This right shall not be canceled, suspended,
 1618 impeded, abridged, or otherwise compromised by any rule, plan of
 1619 operation, or depopulation plan, whether through keepout, take-
 1620 out, midterm assumption, or any other means, of any insurance
 1621 risk apportionment plan or depopulation plan, including, but not
 1622 limited to, those described in s. 627.351, s. 627.3511, or s.
 1623 627.3515. The commission shall adopt any rules necessary to
 1624 cause any insurance risk apportionment plan or market assistance

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1625 plan under such sections to demonstrate that the operations of
 1626 the plan do not interfere with, promote, or allow interference
 1627 with the rights created under this section. If the
 1628 policyholder's current agent is unable or unwilling to be
 1629 appointed with the insurer making the take-out or keepout offer,
 1630 the policyholder shall not be disqualified from participation in
 1631 the appropriate insurance risk apportionment plan because of an
 1632 offer of coverage in the voluntary market. An offer of full
 1633 property insurance coverage by the insurer currently insuring
 1634 either the ex-wind or wind-only coverage on the policy to which
 1635 the offer applies shall not be considered a take-out or keepout
 1636 offer. Any rule, plan of operation, or plan of depopulation,
 1637 through keepout, take-out, midterm assumption, or any other
 1638 means, of any property insurance risk apportionment plan under
 1639 s. 627.351(2) or (6) is subject to ss. 627.351(2)(b) and (6)(c)
 1640 and 627.3511(4).

1641 Section 7. For the purpose of incorporating the amendments
 1642 made by this act to section 627.351, Florida Statutes, in a
 1643 reference thereto, subsection (1) of section 627.712, Florida
 1644 Statutes, is reenacted to read:

1645 627.712 Residential windstorm coverage required;
 1646 availability of exclusions for windstorm or contents.—

1647 (1) An insurer issuing a residential property insurance
 1648 policy must provide windstorm coverage. Except as provided in
 1649 paragraph (2)(c), this section does not apply to risks that are
 1650 eligible for wind-only coverage from Citizens Property Insurance
 1651 Corporation under s. 627.351(6), and risks that are not eligible
 1652 for coverage from Citizens Property Insurance Corporation under
 1653 s. 627.351(6)(a)3. or 5. A risk ineligible for coverage by the

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1654 corporation under s. 627.351(6)(a)3. or 5. is exempt from this
 1655 section only if the risk is located within the boundaries of the
 1656 coastal account of the corporation.

1657 Section 8. This act shall take effect July 1, 2022.

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APPEARANCE RECORD

SB 1728

Feb. 2, 2022

Meeting Date

Bill Number or Topic

Banking & Insurance

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

Committee

Amendment Barcode (if applicable)

Name **Amy Boggs**

Phone **727-954-8833**

Address **4554 Central Ave., Suite L**

Email **aboggs@boggslawgroup.com**

Street

St. Petersburg

FL

33711

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:

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 \(flsenate.gov\)](#)

2-2-22

Meeting Date

BI

Committee

The Florida Senate APPEARANCE RECORD

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1728

Bill Number or Topic

Amendment Barcode (if applicable)

Name

MICHAEL CARLSON

Phone

850 544 9576

Address

215 S. Monroe St. Ste 835

Email

Michael.carlson@piff.net

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:

Personal Insurance Federation

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

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2/2/22

Meeting Date

1728

Bill Number or Topic

B&I

Committee

Amendment Barcode (if applicable)

Name Doug Bell

Phone 850 205 9000

Address 119 S. Monroe

Email doug.bell@midflor.com

Street

TLH

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:

Progressive Insurance

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 \(flsenate.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/2/22

Meeting Date

1728

Bill Number or Topic

B & I

Committee

Amendment Barcode (if applicable)

Name Kevin Comerer

Phone 813 - 830 - 2799

Address

Email kcomerer@qii.florida.com

Street

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:

American Integrity Insurance

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 \(flsenote.gov\)](#)

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S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

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2/2/22

Meeting Date

1728

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Katie Webb / APCIA

Phone

Address

Email

Street

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:

APCIA

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

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2/2/22
Meeting Date

1728

Bill Number or Topic

B + T

Committee

Amendment Barcode (if applicable)

Name Katie Webb / FPCA

Phone _____

Address 119 E Park Av
Street

Email _____

Tall 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:

FPCA

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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2/2/22

Meeting Date

Banking & Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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1728

Bill Number or Topic

Amendment Barcode (if applicable)

Name **George Feijoo ("Fay-Jew")**

Phone **8506810024**

Address **108 S. Monroe St.**

Street

Email **grfeijoo@flapartners.com**

Tallahassee

City

FL

State

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:

Florida Insurance Council

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/jointrules.pdf \(flsenate.gov\)](#)

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The Florida Senate

APPEARANCE RECORD

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02/02/22

Meeting Date

1728

Bill Number or Topic

Banking + Insurance

Committee

Amendment Barcode (if applicable)

Name Christine Ashburn

Phone 850 513 3757

Address 2101 Maryland Circle

Email christine.ashburn@citizenofla.com

Street

Tallahassee FL

32303

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:

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

1728

2/2/22

Meeting Date

Bill Number or Topic

Banking & Insurance
Committee

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Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name B.G. Murphy

Phone 863-698-8820

Address 3159 Shamrock St. S.
Street

Email bmurphy@faia.com

Tallahassee
City

FL
State

32312
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 Association of Insurance Agents

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

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2/2/22 Meeting Date

1728 Bill Number or Topic

Banking & Insurance Committee

Amendment Barcode (if applicable)

Name Adam Basford

Phone 224-7173

Address 516 N Adams St Street

Email abasford@aif.com

Tallahassee FL 32301 City State Zip

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

PLEASE CHECK ONE OF THE FOLLOWING:

[] I am appearing without compensation or sponsorship.

[x] 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:

Associated Industries of FL

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)

2/2/22

Meeting Date

Banking & Insurance

Committee

The Florida Senate

APPEARANCE RECORD

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SB 1728

Bill Number or Topic

Amendment Barcode (if applicable)

Name Carolyn Johnson

Phone 521-1200

Address 136 S Bronough St

Email cjohnson@flchamber.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:

FL Chamber of Commerce

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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Feb. 2, 2022

Meeting Date

The Florida Senate APPEARANCE RECORD

SB 1728

Bill Number or Topic

Banking & Insurance

Committee

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Amendment Barcode (if applicable)

Name W. Clint Moore

Phone 407-212-7598

Address 205 E. Marks St.

Email clint@clintco.legal

Orlando

FL

32803

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:

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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2/2/22

Meeting Date

The Florida Senate

APPEARANCE RECORD

1728

Bill Number or Topic

Banking & Insurance

Committee

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Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name **Greg Black**

Phone **509-8022**

Address **PO Box 838**

Email **greg@waypointstrat.com**

Street

TLH

City

FL

State

32302

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:

R Street Institute

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, p.11 \(flsenate.gov\)](#)

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

The Florida Senate

APPEARANCE RECORD

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

02/02/22

Meeting Date

1728

Bill Number or Topic

Banking and Insurance

Committee

486560

Amendment Barcode (if applicable)

Name

Christine Ashburn

Phone

850 287 5133 757

Address

2101 Maryland Circle

Email

christine.ashburn@citizensfla.com

Street

Tallahassee

FL

32303

City

State

Zip

Speaking:

For

Against

Information

OR

Waive Speaking:

In Support

Against

PLEASE CHECK ONE OF THE FOLLOWING:

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S-001 (08/10/2021)

CourtSmart Tag Report

Room: KB 412 Case No.: -
Caption: Senate Banking and Insurance Committee

Type:
Judge:

Started: 2/2/2022 8:33:46 AM

Ends: 2/2/2022 10:23:37 AM

Length: 01:49:52

8:33:45 AM Meeting called to order, roll call
8:34:20 AM Pre-meeting comments by Chair Boyd
8:34:31 AM Tab 9 - SB 1476, Prescription Drug Coverage by Senator Wright
8:34:47 AM Senator Wright to explain the bill
8:36:00 AM Appearance cards
8:36:10 AM Larry Williams, American Pharmacy Cooperative, Inc. waives in support
8:36:17 AM Joni Hunt, Halifax Health waives in support
8:36:25 AM Greg Black, National Assoc. of Chain Drug Stores waives in support
8:36:37 AM Lauren Whritenour, EPIC Pharmacy waives in support
8:36:49 AM Claudia Davant waives in support
8:37:05 AM Michael Jackson, Florida Pharmacy Assoc. in support
8:37:12 AM Andy Behrman, Florida Assoc. of Community Health Centers waives in support
8:37:22 AM Kelly Mallette, Small Business Pharmacies Aligned for Reform waives in support
8:37:34 AM Senator Rodrigues in debate
8:37:54 AM Senator Wright waives close on the bill
8:38:05 AM Roll call on SB 1476
8:38:10 AM SB 1476 is reported favorably
8:38:31 AM Tab 4 - SB 1066, Workers' Compensation Benefits for First Responders by Senator Burgess
8:38:33 AM Senator Burgess to explain the bill
8:40:35 AM Amendment Barcode 815504 by Senator Burgess
8:40:48 AM Amendment Barcode 815504 is adopted
8:41:22 AM Back on the bill as amended
8:41:27 AM Appearance Cards
8:41:32 AM Matt Puckett, Florida Police Benevolent Assoc. waives in support
8:41:39 AM Jennifer Pritt, Florida Police Chiefs Assoc. waives in support
8:41:46 AM Robert Bage speaking in support of the bill
8:44:40 AM Chief Lawrence Revell, Tallahassee Police Dept. speaking for the bill
8:47:08 AM Chief Roy Colburn, Florida Fire Chiefs Assoc. waives in support
8:47:26 AM Wayne "Bernie" Bernoska waives in support
8:47:51 AM Senator Burgess closes on the bill
8:48:41 AM Roll call on CS/SB 1066
8:48:51 AM CS/SB 1066 is reported favorably
8:49:18 AM Tab 2 - SB 664, Posttraumatic Stress Disorder Workers' Compensation for Law Enforcement, Correctional, and Correctional Probation Officers by Senator Bradley
8:49:20 AM Senator Bradley to explain the bill
8:50:31 AM Amendment Barcode 976104
8:50:45 AM Amendment Barcode 976104 is adopted
8:51:20 AM Back on the bill as amended
8:51:26 AM Appearance cards
8:51:29 AM Steve Zona waives in support
8:51:36 AM Mick McHale, Florida Police Benevolent Assoc. waives in support
8:51:40 AM Richard Pinsky, 911 Emergency Dispatchers speaking on the bill
8:52:46 AM Lisa Henning, Fraternal Order of Police waives in support
8:53:02 AM Senator Bradley closes on the bill
8:53:08 AM Roll call on CS/SB 664
8:53:19 AM CS/SB 664 is reported favorably
8:53:44 AM Tab 8 - SB 1272, Liens and Bonds by Senator Bradley
8:53:49 AM Senator Bradley to explain the bill
8:53:56 AM Amendment Barcode 953032 - Delete-All amendment
8:55:56 AM Amendment Barcode 953032 is adopted
8:56:06 AM Appearance Cards
8:56:12 AM Doug Bell, Associated General Contractors speaking on the bill

8:57:46 AM Senator Brandes for a question
8:57:51 AM Response by Doug Bell
8:58:25 AM French Brown, Real Property, Probate, and Trust Law Section of The Fla. Bar speaking on the bill
8:59:12 AM Melissa Ramba, National Assoc. Credit Managers waives in support
8:59:22 AM Kari Hebrank speaking against the bill
9:01:18 AM Senator Bradley closes on the bill
9:01:26 AM Roll call on CS/SB 1272
9:01:50 AM CS/SB 1272 is reported favorably
9:02:09 AM Senator Boyd passes gavel to Senator Passidomo
9:02:22 AM Tab 6 - SB 1190, Two-way Radio Communication Enhancement Systems by Senator Boyd
9:02:28 AM Senator Boyd to explain the bill
9:03:16 AM Appearance cards
9:03:19 AM Chief Ray Colburn, Florida Fire Chiefs Assoc. speaking on the bill
9:04:12 AM John Pasqualone, Florida Fire Marshals waives speaking time
9:04:34 AM Richard Pinsky, Emergency Communications Industry of Florida waives against the bill
9:04:45 AM Will Rogers, American Fire Alarm, Inc. speaking on the bill
9:06:48 AM Rob Olson, Fire Central speaking on the bill
9:08:19 AM Senator Boyd closes on SB 1190
9:08:39 AM Roll call on SB 1190
9:08:45 AM SB 1190 is reported favorably
9:09:09 AM Senator Passidomo passes gavel back to Chair Boyd
9:09:20 AM Tab 7 - SB 1246, Benchmark Replacements for London Interbank Offered Rate by Senator Gruters
9:09:23 AM Senator Gruters explains the bill
9:10:16 AM Appearance cards
9:10:20 AM Anthony DiMarco, Florida Bankers Association
9:10:35 AM Senaor Gruters closes on the bill
9:10:40 AM Roll call on SB 1246
9:10:45 AM SB 1246 is reported favorably
9:11:10 AM Tab 5 - SB 1140, Alarm Systems by Senator Perry
9:11:13 AM Senator Gruters presenting for Senator Perry
9:11:34 AM Amendment Barcode 126314 by Senator Perry explained by Senator Gruters
9:11:55 AM Amendment Barcode 126314 is adopted
9:12:25 AM Diana Ferguson, ADT waives in support
9:12:36 AM Michael Sudheimer, Alsrn Assoc. of Florida waives in support
9:12:50 AM Phillip Sudermann, Americans for Prosperity waives in support
9:12:59 AM David Shepp, Florida Automatic Fire Alarm Assoc. waives in support
9:13:17 AM Senator Gruters waives close
9:13:22 AM Roll call on CS/SB 1140
9:13:27 AM CS/SB 1140 is reported favorably
9:14:02 AM Chair Boyd turns gavel to Sen. Broxson
9:14:51 AM Tab 10 - SB 1728, Property Insurance by Senator Boyd
9:14:53 AM Amendment Barcode 486560
9:15:01 AM Christine Ashburn waiving in support
9:15:16 AM Amendment Barcode 486560 is adopted
9:15:23 AM Amendment Barcode 214450
9:15:49 AM Amendment Barcode 214450 is adopted
9:16:08 AM Back on the bill as amended
9:16:14 AM Senator Boyd explains the amended bill
9:24:49 AM Senator Rouson for a question
9:25:39 AM Senator Boyd responds
9:27:07 AM Senator Rouson for a question
9:27:35 AM Response by Senator Boyd
9:28:19 AM Senator Rouson for a question
9:29:21 AM Response by Senator Boyd
9:30:55 AM Question by Senator Rouson
9:31:07 AM Response by Senator Boyd
9:32:02 AM Senator Stewart for a question
9:32:49 AM Response by Senator Boyd
9:34:02 AM Senator Taddeo for a question
9:34:23 AM Response by Senator Boyd
9:35:11 AM Question by Senator Taddeo
9:35:23 AM Response by Senator Boyd

9:36:44 AM Question by Senator Taddeo
9:36:49 AM Response by Senator Boyd
9:37:35 AM Question by Senator Taddeo
9:37:40 AM Response by Senator Boyd
9:38:48 AM Question by Senator Taddeo
9:38:53 AM Response by Senator Boyd
9:41:07 AM Question by Senator Taddeo
9:41:13 AM Response by Senator Boyd
9:43:05 AM Senator Rodrigues for a question
9:43:09 AM Response by Senator Boyd
9:44:50 AM Senator Rodrigues for a question
9:45:01 AM Response by Senator Boyd
9:46:59 AM Senator Brandes for a question
9:47:29 AM Response by Senator Boyd
9:47:35 AM Senator Brandes for a question
9:47:39 AM Response by Senator Boyd
9:48:58 AM Question by Senator Brandes
9:49:04 AM Response by Senator Boyd
9:49:26 AM Question by Senator Broxson
9:50:25 AM Response by Senator Boyd
9:52:15 AM Appearance Cards
9:52:30 AM Greg Black, R Street Institute waives in support
9:52:39 AM W. Clint Moore speaks against the bill
9:54:40 AM Question by Senator Brandes
9:54:48 AM Response by Clint Moore
9:54:54 AM Carolyn Johnson, Florida Chamber of Commerce waives in support
9:55:04 AM Adam Basford, Assoc. Industries of Florida waives in support
9:55:11 AM B.G. Murphy, Florida Association of Insurance Agents waives in support
9:55:18 AM Christine Ashburn waives in support
9:55:25 AM Amy Boggs speaking against the bill
9:57:07 AM George Feijoo, Florida Insurance Council waives in support
9:57:17 AM Katie Webb, FPCA waives in support
9:57:23 AM Kevin Comerer, American Integrity Insurance waives in support
9:57:29 AM Doug Bell, Progressive Insurance waives in support
9:57:33 AM Michael Carlson, Personal Insurance Federation waives in support
9:57:43 AM Senator Rodrigues in debate
9:58:35 AM Senator Rouson in debate
9:59:28 AM Senator Taddeo in debate
10:01:31 AM Senator Starges in debate
10:02:38 AM Senator Brandes in debate
10:06:21 AM Senator Burgess in debate
10:07:29 AM Senator Stewart in debate
10:08:43 AM Senator Broxson in debate
10:09:41 AM Senator Boyd closes on the bill
10:09:54 AM Roll call on CS/SB 1728
10:10:01 AM CS/SB 1728 is reported favorably
10:10:29 AM Senator Broxson turns chair back over to Chair Boyd
10:10:36 AM Tab 1 - SB 150, Motor Vehicle Insurance by Senator Burgess
10:10:42 AM Senator Burgess to explain the bill
10:12:59 AM Motion by Senator Gruters to vote time certain at 10:25
10:13:09 AM Question by Senator Brandes
10:13:20 AM Response by Senator Burgess
10:13:44 AM Question by Senator Brandes
10:14:17 AM Response by Senator Burgess
10:15:33 AM Question by Senator Brandes
10:15:38 AM Response by Senator Burgess
10:17:02 AM Appearance Cards will be included in the record
10:17:23 AM Senator Brandes in debate
10:19:34 AM Senator Burgess closes on the bill
10:19:43 AM Roll call on SB 150
10:20:42 AM SB 150 is reported favorably
10:20:49 AM Tab 3 - SB 730, Step-Therapy Protocols by Senator Harrell

10:20:50 AM Senator Harrell to explain the bill
10:21:57 AM Appearance Cards
10:22:01 AM Jeff Scott, Florida Medical Assoc. waives in support
10:22:06 AM Ivonne Fernandez, AARP waives in support
10:22:12 AM Amanda Frazer, American Diabetes Assoc. waives in support
10:22:16 AM Jared Willis waives in support
10:22:26 AM Senator Harrell waives close
10:22:33 AM Roll call on SB 730
10:22:36 AM SB 730 is reported favorably
10:22:55 AM Senter Gruters moves to be shown favorable on tabs 2, 4, 8, and 9
10:23:13 AM Senator Broxson moves to be shown favorable on tabs 2, 4, 8, and 9
10:23:19 AM Senator Burgess moves to be shown favorable on all the tabs
10:23:25 AM Senator Stewart moves to adjourn