

Tab 1 SB 822 by Stargel; (Identical to CS/H 0431) Firesafety							
296588	A	S	RCS	BI, Negron	Delete L.44:		01/11 05:04 PM
872554	A	S	RCS	BI, Negron	Delete L.59 - 60:		01/11 05:04 PM
Tab 2 SB 828 by Bean; (Similar to CS/H 0467) Insurance Guaranty Association Assessments							
909062	A	S	L RCS	BI, Hukill	Delete L.50 - 143:		01/11 05:04 PM
Tab 3 SB 260 by Smith (CO-INTRODUCERS) Richter; (Similar to CS/H 0145) Financial Transactions							
878296	A	S	RCS	BI, Smith	Delete L.37 - 46:		01/11 05:04 PM
Tab 4 SB 908 by Lee; (Similar to H 0879) Organization of the Department of Financial Services							
Tab 5 SB 774 by Montford; (Similar to CS/H 0577) Liability Insurance Coverage							
572854	A	S		BI, Montford	Delete L.19:		01/08 02:06 PM
Tab 6 SB 966 by Benacquisto; (Identical to H 1041) Unclaimed Property							
Tab 7 SB 854 by Hukill; (Similar to CS/H 0473) Funeral, Cemetery, and Consumer Services							
953794	A	S	RCS	BI, Hukill	Delete L.112 - 861:		01/11 05:04 PM
Tab 8 SB 940 by Bradley; (Identical to H 0695) Title Insurance							
583332	A	S	RCS	BI, Lee	Delete L.39 - 76:		01/11 05:04 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

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

MEETING DATE: Monday, January 11, 2016
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Benacquisto, Chair; Senator Richter, Vice Chair; Senators Clemens, Detert, Hukill, Lee, Margolis, Montford, Negron, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 822 Stargel (Identical CS/H 431, Compare CS/H 535, S 704)	Firesafety; Revising provisions relating to certain structures located on agricultural property which are exempt from the Florida Fire Prevention Code; requiring that certain structures used for assembly, business, or mercantile activity be classified; specifying that certain structures are subject to annual inspection for classification; revising certain dimensions of a tent that is exempt from the code; authorizing a local fire official to consider a specified publication when identifying an alternative to a firesafety code, etc. BI 01/11/2016 Fav/CS AGG AP	Fav/CS Yeas 8 Nays 0
2	SB 828 Bean (Similar CS/H 467)	Insurance Guaranty Association Assessments; Requiring the Office of Insurance Regulation to levy assessments for certain purposes; revising and providing requirements for the levy of assessments; requiring insurers and self-insurance funds to report certain premiums; requiring insurers to collect policy surcharges and pay assessments to the association; revising requirements for reporting premium for assessment calculations; revising and providing requirements and limitations for remittance of assessments to the association, etc. BI 01/11/2016 Fav/CS FT FP	Fav/CS Yeas 8 Nays 0
3	SB 260 Smith (Similar CS/H 145)	Financial Transactions; Providing that certain provisions govern certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer made under the federal act and a funds transfer made under certain provisions; requiring that an open-end mortgage be cancelled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-end mortgage, etc. BI 01/11/2016 Fav/CS JU RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, January 11, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 908 Lee (Similar H 879)	Organization of the Department of Financial Services; Authorizing the Chief Financial Officer, rather than the Division of Accounting and Auditing, to audit and adjust accounts of officers and those indebted to the state; revising the divisions and the location of bureaus within the divisions; amending provisions relating to the transfer of certain functions to the Division of Investigative and Forensic Services; amending provisions relating to the renaming of the Bureau of Unclaimed Property, etc. BI 01/11/2016 Favorable AGG AP	Favorable Yeas 8 Nays 0
5	SB 774 Montford (Similar CS/H 577)	Liability Insurance Coverage; Adding licensed company adjusters to the list of persons who may respond to a claimant's written request for information relating to liability insurance coverage, etc. BI 01/11/2016 Temporarily Postponed RC	Temporarily Postponed
6	SB 966 Benacquisto (Identical H 1041)	Unclaimed Property; Revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; requiring an insurer to perform a comparison of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File to determine if a death is indicated; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities, etc. BI 01/11/2016 Temporarily Postponed AGG AP	Temporarily Postponed
7	SB 854 Hukill (Similar CS/H 473)	Funeral, Cemetery, and Consumer Services; Revising required information for licensure to include e-mail addresses; revising the prohibition against withdrawal or transfer of assets within the care and maintenance trust fund to include an exception; requiring a licensed cemetery company to request a method for withdrawal from the cemetery company's care and maintenance trust fund; providing that an applicant for the embalmer apprentice program may not be licensed without a determination of character by the licensing authority, etc. BI 01/11/2016 Fav/CS RI FP	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Banking and Insurance

Monday, January 11, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 940 Bradley (Identical H 695, Compare H 831, S 622)	Title Insurance; Revising the reserves that certain title insurers must set aside after a certain date; revising reserve requirements for a title insurer who transfers domicile to this state, etc. BI 01/11/2016 Fav/CS CM FP	Fav/CS Yeas 8 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 822

INTRODUCER: Banking and Insurance Committee and Senator Stargel

SUBJECT: Firesafety

DATE: January 11, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	FAV/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 822 makes the following changes with regards to the regulation by the Fire Prevention Code on agricultural property:

- Defines “Agricultural pole barn” and exempts such barns from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Defines a “nonresidential farm building” and specifies certain uses allowing such buildings to be exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Clarifies that a tent up to 900 square feet is exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code.
- Authorizes a local fire official to consider the fire safety evaluation systems when trying to identify low-cost, reasonable alternatives.

II. Present Situation:

State Fire Prevention – State Fire Marshal

Florida’s fire prevention and control law, ch. 633, F.S., designates the state’s Chief Financial Officer (CFO) as the State Fire Marshal. The State Fire Marshal, through the Division of State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety and has the

responsibility to minimize the loss of life and property in this state due to fire.¹ Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

In addition to these duties, the State Fire Marshal adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety 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 fire safety laws and rules, at ch. 69A-60, F.A.C. The State Fire Marshal adopts a new edition of the FFPC every three years.² The FFPC includes national firesafety and life safety standards set forth by the National Fire Protection Association (NFPA)³, including the NFPA's Fire Code (1), Life Safety Code (101) and Guide on Alternative Approaches to Life Safety (101A).

The FFPC and national codes provide that events held in any location, whether agricultural or not, that are considered assembly, mercantile, or business in nature, require the building where such an event is held to be classified according to the proper occupancy type. When this occurs, the property owner must bring the building up to the new fire prevention code standards for that occupancy type. This may require the installation of several fire protection features such as fire sprinklers, fire alarm systems, or egress capacity.⁴

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with firesafety responsibilities to enforce the FFPC as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.⁵ These local enforcing authorities may adopt more stringent fire safety standards, subject to certain requirements in s. 633.208, F.S.,⁶ but may not enact fire safety ordinances which conflict with ch. 633, F.S., or any other state law.⁷

¹ s. 633.104, F.S.

² s. 633.202, F.S.

³ Founded in 1895, the NFPA is a global, nonprofit organization devoted to eliminating death, injury, property and economic loss due to fire, electrical and related hazards. It has developed over 300 voluntary consensus codes and standards in the areas of fire, electrical, and building safety which are widely used by state and local officials. NATIONAL FIRE PROTECTION ASSOCIATION, *About NFPA*, at <http://www.nfpa.org/about-nfpa> (last viewed Dec. 29, 2015). The NFPA states that the Guide on Alternative Approaches to Life Safety “is intended to be used in conjunction with the Life Safety Code (101), not as a substitute.” NATIONAL FIRE PROTECTION ASSOCIATION, *NFPA 101A: Guide on Alternative Approaches to Life Safety*, at <http://www.nfpa.org/codes-and-standards/document-information-pages?mode=code&code=101a> (last viewed Dec. 29, 2015).

⁴ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 822 (Nov. 18, 2015). The FFPC and national codes define *assembly occupancy* as an occupancy used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load (e.g., dance halls, museums, skating rinks). *Mercantile occupancy* means an occupancy used for the display and sale of merchandise (e.g., drugstores and supermarkets). *Business occupancy* means an occupancy used for the transaction of business other than mercantile (e.g., city and town halls, doctors' offices).

⁵ ss. 633.108 and 633.208, F.S.

⁶ s. 633.208, F.S.; *see also* s. 633.102(21), F.S., for the definition of “minimum firesafety standard” and Rule 69A-60.002, F.A.C.

⁷ s. 633.214(4), F.S. A list of local amendments to the FFPC is available at DIVISION OF STATE FIRE MARSHAL, *Local Amendments*: <http://www.myfloridacfo.com/division/sfm/BFP/LocalAmendments.htm> (last viewed Dec. 29, 2015).

The chiefs of local government fire service providers (or their designees) are authorized to enforce ch. 633, F.S., and rules within their respective jurisdictions as agents of those jurisdictions, not agents of the State Fire Marshal.⁸ Each county, municipality, and special district with firesafety enforcement responsibilities is also required to employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.⁹

The Legislature has recognized that it is not always practical to apply any or all of the provisions of the FFPC, under the minimum fire safety standards, the local fire officials shall apply the applicable fire safety code for existing buildings to the extent practical to ensure a reasonable degree of life safety and safety of property. The local fire officials are also required to fashion reasonable alternatives that afford an equivalent degree of life safety and safety of property.¹⁰

Current Exemptions from the FFPC

Currently, s. 633.202(16), F.S., exempts two types of structures from the FFPC and national codes incorporated by reference:

- A structure located on property that is classified as agricultural for ad valorem purposes and which is part of a farming or ranching operation, if the occupancy is limited by the property owner to no more than 35 persons and is not used by the public for direct sales or as an educational outreach facility. Structures used for residential or assembly purposes (as defined in the FFPC) are not included in this exemption.¹¹
- Tents up to 30 feet by 30 feet.

“Nonresidential farm buildings” are currently not exempt from the FFPC, but are exempt from the Florida Building Code and any county or municipal code or fee, except for code provisions implementing local, state, or federal floodplain management regulations.¹² These structures are defined under s. 604.50, F.S., as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm for the purposes of the Florida Building Code, or that is classified as agricultural land for assessment purposes, is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation and is not intended to be used as a residential dwelling. The term may include, but is not limited to, a barn, greenhouse, shade house, farm office, storage building, or poultry house.

⁸ s. 633.118, F.S.

⁹ s. 633.216(1), F.S.

¹⁰ s. 633.208, F.S.

¹¹ Chapter 6 of the FFPC defines “residential occupancy” as “an occupancy that provides sleeping accommodations for purposes other than health care or detention and correctional,” and defines “assembly occupancy” as “an occupancy (1) used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, awaiting transportation, or similar uses; or (2) used as a special amusement building, regardless of occupant load.” See NFPA, *Classification of Occupancy and Hazard of Contents*, <http://codesonline.nfpa.org/a/c.ref/ID020101110939/chapter> (last viewed Dec. 29, 2015).

¹² s. 604.50(1), F.S.

III. Effect of Proposed Changes:

The bill defines an “Agricultural pole barn” as a nonresidential farm building in which 70 percent or more of the perimeter walls are permanently open and allow free ingress and egress. Furthermore, the bill exempts such pole barns from the Florida Fire Prevention Code, National Codes and the Life Safety Code.

The bill defines a nonresidential farm building for purposes of the Florida Fire Prevention Code as having the same meaning as provided in s. 604.50, F.S. The bill establishes classes for use in which such buildings can be exempt from the Florida Fire Prevention Code, National Codes and the Life Safety Code:

Class 1: A nonresidential farm building that is used by the owner 12 times per year or fewer for assembly, business, or mercantile activity with up to 100 persons occupying the structure at one time. This class is not subject to inspection or the Florida Fire Prevention Code.

Class 2: A nonresidential farm building that is used by the owner for assembly, business, or mercantile activity with up to 300 persons occupying the structure at one time. A structure in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is not subject to the Florida Fire Prevention Code.

Class 3: A new or an additional structure or facility constructed, or an existing structure, which is used primarily for housing, sheltering, or otherwise accommodating members of the general public. A structure or facility in this class is subject to annual inspection for classification by the local authority having jurisdiction. This class is subject to the Florida Fire Prevention Code.

The bill requires the State Fire Marshal to adopt rules to administer this section, including;

- The use of alternative lifesafety and fire prevention standards Classes 1 and 2 structures;
- Notification and inspection requirements for structures in Class 2;
- The application of the Florida Fire Prevention Code for structures in Class 3; and
- Any other standards or rules deemed necessary in order to facilitate the use of structures for assembly, business, or mercantile activities.

Lastly, the bill allows for a local fire official to consider the fire safety evaluation systems found in NFPA 101A: Guide on Alternative Approaches to Life Safety, adopted by the State Fire Marshal, as acceptable systems for the identification of low-cost, reasonable alternatives to firesafety.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Farm owners will be allowed to lease to the public the use of non-residential agricultural buildings for certain events without having to make costly retrofitting improvements to meet the requirements of the Florida Fire Prevention Code, National Codes, and the Life Safety Code.

C. Government Sector Impact:

The Department of Financial Services will need to adopt rules to administer these changes including the use of alternative standards, the inspection requirements for Class 2 and the application process for Class 3.

VI. Technical Deficiencies:

Lines 40 and 44 appear to conflict. A technical amendment is needed to clarify that pole barns are always exempt from the Florida Fire Prevention Code, National Codes, and the Life Safety Code regardless of use.

VII. Related Issues:

The Division of the State Fire Marshal would like to annually inspect buildings in Class 1 to insure they are suitable to house up to 100 people while being exempt from the fire code. Additionally, the Division would like all Classes to be subject to any rules promulgated by the State Fire Marshal pursuant to this section.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 633.202 and 633.208.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Banking and Insurance on January 11, 2016:

The CS provides technical changes related to drafting.

B. Amendments:

None.

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



296588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 44

and insert:

(d) Notwithstanding any other provision of law, and except for an agricultural pole barn, a structure



872554

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 59 - 60

and insert:

3. Class 3: A structure or facility that is used primarily

By Senator Stargel

15-00278C-16

2016822__

1 A bill to be entitled
 2 An act relating to firesafety; amending s. 633.202,
 3 F.S.; defining terms; revising provisions relating to
 4 certain structures located on agricultural property
 5 which are exempt from the Florida Fire Prevention
 6 Code; requiring that certain structures used for
 7 assembly, business, or mercantile activity be
 8 classified; specifying that certain structures are
 9 subject to annual inspection for classification;
 10 providing classifications; revising certain dimensions
 11 of a tent that is exempt from the code; requiring that
 12 the State Fire Marshal adopt rules; amending s.
 13 633.208, F.S.; authorizing a local fire official to
 14 consider a specified publication when identifying an
 15 alternative to a firesafety code; providing an
 16 effective date.

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

20 Section 1. Subsection (16) of section 633.202, Florida
 21 Statutes, is amended to read:

22 633.202 Florida Fire Prevention Code.—

23 (16) (a) As used in this subsection, the term:

24 1. "Agricultural pole barn" means a nonresidential farm
 25 building in which 70 percent or more of the perimeter walls are
 26 permanently open and allow free ingress and egress.

27 2. "Nonresidential farm building" has the same meaning as
 28 provided in s. 604.50.

29 (b) Notwithstanding any other provision of law, a

Page 1 of 4

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

15-00278C-16

2016822__

30 ~~nonresidential farm building A structure, located on property~~
 31 ~~that is classified for ad valorem purposes as agricultural,~~
 32 ~~which is part of a farming or ranching operation, in which the~~
 33 ~~occupancy is limited by the property owner to no more than 35~~
 34 ~~persons, and which is not used by the public for direct sales or~~
 35 ~~as an educational outreach facility, is exempt from the Florida~~
 36 ~~Fire Prevention Code, including the national codes and Life~~
 37 ~~Safety Code incorporated by reference. This paragraph does not~~
 38 ~~include structures used for residential or assembly occupancies,~~
 39 ~~as defined in the Florida Fire Prevention Code.~~

40 (c) Notwithstanding any other provision of law, an
 41 agricultural pole barn is exempt from the Florida Fire
 42 Prevention Code, including the national codes and the Life
 43 Safety Code incorporated by reference.

44 (d) Notwithstanding any other provision of law, a structure
 45 on a farm as defined in s. 823.14(3) (a) which is used by an
 46 owner for assembly, business, or mercantile activity must be
 47 classified in one of the following classes:

48 1. Class 1: A nonresidential farm building that is used by
 49 the owner 12 times per year or fewer for assembly, business, or
 50 mercantile activity with up to 100 persons occupying the
 51 structure at one time. This class is not subject to the Florida
 52 Fire Prevention Code.

53 2. Class 2: A nonresidential farm building that is used by
 54 the owner for assembly, business, or mercantile activity with up
 55 to 300 persons occupying the structure at one time. A structure
 56 in this class is subject to annual inspection for classification
 57 by the local authority having jurisdiction. This class is not
 58 subject to the Florida Fire Prevention Code.

Page 2 of 4

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

15-00278C-16

2016822__

59 3. Class 3: A new or an additional structure or facility
 60 constructed, or an existing structure, which is used primarily
 61 for housing, sheltering, or otherwise accommodating members of
 62 the general public. A structure or facility in this class is
 63 subject to annual inspection for classification by the local
 64 authority having jurisdiction. This class is subject to the
 65 Florida Fire Prevention Code.

66 (e) The State Fire Marshal shall adopt rules to administer
 67 this section, including, but not limited to:

68 1. The use of alternative lifesafety and fire prevention
 69 standards for structures in Classes 1 and 2;

70 2. Notification and inspection requirements for structures
 71 in Class 2;

72 3. The application of the Florida Fire Prevention Code for
 73 structures in Class 3; and

74 4. Any other standards or rules deemed necessary in order
 75 to facilitate the use of structures for assembly, business, or
 76 mercantile activities.

77 (17)(b) A tent up to 900 square 30 feet by 30 feet is
 78 exempt from the Florida Fire Prevention Code, including the
 79 national codes incorporated by reference.

80 Section 2. Subsection (5) of section 633.208, Florida
 81 Statutes, is amended to read:

82 633.208 Minimum firesafety standards.—

83 (5) With regard to existing buildings, the Legislature
 84 recognizes that it is not always practical to apply any or all
 85 of the provisions of the Florida Fire Prevention Code and that
 86 physical limitations may require disproportionate effort or
 87 expense with little increase in fire or life safety. Before

15-00278C-16

2016822__

88 ~~Prior to~~ applying the minimum firesafety code to an existing
 89 building, the local fire official shall determine whether ~~that~~ a
 90 threat to lifesafety or property exists. If a threat to
 91 lifesafety or property exists, the fire official shall apply the
 92 applicable firesafety code for existing buildings to the extent
 93 practical to ~~ensure~~ assure a reasonable degree of lifesafety and
 94 safety of property or the fire official shall fashion a
 95 reasonable alternative ~~that which~~ affords an equivalent degree
 96 of lifesafety and safety of property. The local fire official
 97 may consider the fire safety evaluation systems found in NFPA
 98 101A: Guide on Alternative Approaches to Life Safety, adopted by
 99 the State Fire Marshal, as acceptable systems for the
 100 identification of low-cost, reasonable alternatives. The
 101 decision of the local fire official may be appealed to the local
 102 administrative board described in s. 553.73.

103 Section 3. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/16
Meeting Date

SB 822
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Jonathan Rees

Job Title Deputy Director, Legislative Affairs

Address 400 S. Monroe St.

Phone (850) 617-7700

Tallahassee FL 32399
City State Zip

Email Jonathan.Rees@freshfromflorida.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/11/2015
Meeting Date

822
Bill Number (if applicable)

Topic Fire Safety

Amendment Barcode (if applicable)

Name Adam Basford

Job Title Director of Legislative Affairs

Address 315 Scallan St. #850

Phone 222-2557

Tallahassee FL 32301
City State Zip

Email adam.basford@FFA.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Farm Bureau

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 828

INTRODUCER: Banking and Insurance Committee and Senator Bean

SUBJECT: Insurance Guaranty Association Assessments

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.			FT	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 828 substantially revises the assessment process of the Florida Workers Compensation Insurance Guaranty Association (FWCIGA). The FWCIGA is a mechanism to provide payment of workers' compensation claims of insolvent insurers and group self-insurance funds to avoid excessive delay in payment and to avoid financial loss to claimants in the event of the insolvency of a member insurer.

Distributions from the estates of insolvent insurers, investment income, and assessments of member insurers provides funding for the FWCIGA. The FWCIGA determines whether an assessment against its members is necessary to pay covered claims or to reimburse FWCIGA for expenses. Upon certification by the FWCIGA, the Department of Financial Services (DFS) orders an assessment to collect necessary funds. Initial assessments are capped at a rate of 1.5 percent for self-insurance funds and 2 percent for all other insurers, and are levied on the annual net written workers' compensation insurance premiums of the insurers or self-insurance funds in Florida for the preceding calendar year.

When the DFS issues an assessment order, insurers must pay assessments to the FWCIGA. The assessment is a factor built into rates filed with the Office of Insurance Regulation (OIR) by the National Council on Compensation Insurance (NCCI) on behalf of insurers, which allows the insurers to recoup the assessment. The assessment is subject to the state's insurance premium tax.

The bill provides the following changes to the FWCIGA assessment process:

- Increases the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers' compensation insurance, which is consistent with the cap for insurers;
- Revises the assessment recoupment method from being recouped as part of the premium in a rate filing to a policy surcharge that is collected by the insurer, which would not be subject to the insurance premium tax;
- Authorizes two assessment options for the FWCIGA, namely, an immediate single assessment payment by insurers with recoupment through policy surcharges; and an installment payment, which requires insurers to collect and remit policy surcharges quarterly to the FWCIGA;
- Revises the insurer's premium subject to an assessment from being based on the prior year's net direct written premium to the net direct written premium of the calendar year of the assessment; and
- Transfers order authority for assessments and other FWCIGA reporting related to insurer financial condition from the DFS to the OIR.

II. Present Situation:

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law exempts insurance companies from federal bankruptcy jurisdiction. Insurers are instead subject to state laws regarding receivership.¹ Insurers are "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation in the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.²

Florida Workers' Compensation Insurance Guaranty Association

As a condition of their authority to offer workers' compensation insurance coverage in Florida, all insurers and group self-insurance funds, authorized under s. 624.4621, F.S., are required to be members of the Florida Workers' Compensation Insurance Guaranty Association, Inc. (FWCIGA).³ The FWCIGA, a not-for-profit corporation, was established pursuant to Part V of ch. 631, F.S., as a mechanism for the payment of workers' compensation covered claims and to assist in the detection and prevention of insurer insolvencies.⁴ The FWCIGA operates under the supervision and approval of a board of directors, which is comprised of eleven appointed members.⁵ The FWCIGA evaluates workers' compensation claims made by insureds against insolvent member companies or funds and determines if such claims are covered claims subject to payment by FWCIGA.

The funding of the FWCIGA is provided by distributions from the estates of insolvent insurers, investment income, and assessments of member insurers. The FWCIGA determines whether an assessment against its members is necessary to pay covered claims of an insolvent insurer or to

¹ 11 U.S.C. s. 109(b)2.

² The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay off the debts of a company and outstanding insurance claims.

³ Section 631.911, F.S.

⁴ Section 631.902, F.S.

⁵ Section 631.912, F.S.

reimburse the FWCIGA for expenses associated with administering its statutory functions. The assessments are levied on each insurer in the proportion of the insurer's net direct written premium in Florida bears to the total of all such insurers writing workers' compensation coverages in Florida for the preceding calendar year. The maximum assessment rate is 2 percent and 1.5 percent for insurers and self-insurance funds, respectively. If these assessments are insufficient to satisfy claims and administration costs, then an additional assessment of 1.5 percent can be levied.⁶ The last assessment occurred in 2005.⁷ Currently, insurers pay the assessment upfront. However, the FWCIGA has the discretion to allow an insurer to pay an assessment on a quarterly basis.⁸

Assessments are included in the rate charged for coverage as part of the premium and are recouped through the rate filing process. Section 631.914(1)(b), F.S., provides that assessments "shall be included as an appropriate factor in the making of rates" that the OIR will take into consideration when ordering rates. Therefore, such assessment may be included in the rate filing of an insurer or a rating organization (the National Council on Compensation Insurance or NCCI) that files rates on behalf of all workers' compensation insurers in the state. The recoupment of FWCIGA's assessment by insurers generally begins in January each year when the NCCI rate filing becomes effective. However, the NCCI may make a filing at any time if necessary, if insurers want to recoup the assessment when levied, rather than at the beginning of the calendar year.

According to the FWCIGA, the timing of the NCCI rate filing with the OIR requires the FWCIGA board to determine the need for an assessment in June of each year. However, insolvencies do not occur with any predictability and the board must estimate the future cash needs over the next 18 months if the assessment is to be recouped in the upcoming year's rates.⁹

Since the assessment is included in the rate filing as part of the premium, the assessment is subject to the state's insurance premium tax.¹⁰ Section 624.509, F.S., requires insurers to pay a premium tax of 1.75 percent on property and casualty premiums, which includes workers' compensation,¹¹ received during the preceding calendar year. For group self-insurance funds, the tax is 1.6 percent of the gross amount of premium.^{12 13} Section 624.509, F.S., provide various tax credits and deductions that reduce the premium tax liability.

⁶ Section 631.914(1)(c), F.S.

⁷ A 2 percent assessment and a 1 percent assessment were levied in 2004 against insurance companies and self-insurance funds, respectively, for inclusion in the 2005 premium rates. See <http://fwciga.org/index.php?q=assessments>, last visited January 3, 2016.

⁸ Section 631.914(2)(c), F.S.

⁹ FWCIGA Proposed Change to the FWCIGA Assessment Summary (August 28, 2015) (on file with the Senate Committee on Banking and Insurance).

¹⁰ Section 631.914(1)(b) and (c), F.S.

¹¹ Section 624.605(1)(c), F.S.

¹² Section 624.475, F.S.

¹³ For purposes of the FWCIGA assessments, under s. 631.904(6), F.S., a self-insurance fund means a group self-insurance fund authorized under 624.4621, F.S., a commercial self-insurance fund writing worker' compensation insurance authorized under 624.462, F.S., or an assessable mutual insurer authorized under s. 628.6011, F.S.

III. Effect of Proposed Changes:

The bill substantially revises the FWCIGA assessment process. The bill increases the assessment cap for self-insurance funds from 1.5 to 2 percent of net direct written premiums in Florida for workers' compensation insurance, which is consistent with the assessment cap for insurers. The bill also revises the assessment base from the net direct written premiums for the previous year to the calendar year of assessment. The bill provides that FWCIGA assessments are not premium and are not subject to any premium tax, fees, or commissions.

The bill transfers the authority to order assessments from the DFS to the OIR. The bill provides that the failure of an insured to pay the surcharge or the recoupment of an assessment is considered as the nonpayment of premium, which could result in the cancellation of a policy. The bill provides that an insurer is not liable for any uncollectible assessments. The bill also provides that only insurers are subject to assessments by the FWCIGA and the provisions do not give a policyholder a cause of action regarding the FWCIGA assessments.

Assessment Methods

The bill eliminates the recoupment of assessments through the rate filing process and institutes a recoupment through policy surcharges. The bill allows the FWCIGA to have the option of using an immediate single assessment method (advance payment) before the collection of the surcharge or an installment method, which allows the insurer to collect and remit assessments. Under both methods, the member insurers would collect surcharges at a uniform percentage rate for 12 months, as specified in the OIR order. The collection of such surcharges begins 90 days after the FWCIGA certifies the need for an assessment to the OIR.

Immediate Method. Under the immediate method, the FWCIGA would certify the need for an assessment, and the OIR would order the assessment on member insurers. The assessment is due and payable no earlier than 30 days following the written notice of the assessment order to the insurers. The certification and levy would require insurers to collect a uniform percentage and a specific four-quarter assessment year for the recoupment of the assessment through policy surcharges.

For purposes of statutory accounting, the bill provides that billed policy surcharges are recognized as a receivable and an admissible asset under the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4, to the extent the receivable is likely to be realized. However, if the insurer is unable to recoup the amount of the assessment, the amount recognized as an asset must be reduced to the amount reasonably expected to be recouped.

Installment Method. Like the immediate method, the FWCIGA board would certify the need for an assessment and the OIR would issue an order levying the assessment on member companies. Insurers would be required to collect surcharges at a uniform percentage rate for a specified four-quarter assessment year and remit the surcharges to the FWCIGA quarterly. The bill provides that the recognition of assets is based on actual premium written offset by the obligation to the FWCIGA.

Under both assessment methods, insurers are be required to submit a reconciliation report to the FWCIGA within 120 days after the end of the 12-month assessment period. If the insurer's reconciled assessment obligation were more than the amount paid to the FWCIGA, the insurer would be required to pay the difference to the FWCIGA. If the insurer's reconciled assessment obligation were less than the amount paid to the FWCIGA, then the FWCIGA would apply the overpayment as a credit against the insurer's future assessments.

The bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill may have an indeterminate, negative impact on insurance premium tax revenues.

B. Private Sector Impact:

The bill provides the FWCIGA the discretion to use the immediate single payment method or an installment method, which would not require insurers to advance funds to the FWCIGA.

For purposes of the immediate assessment method, the clarification of the statutory accounting treatment of a "receivable for policy surcharges to be billed" as an admissible asset should mitigate the impact of such assessments on an insurer's financial statements.

According to the OIR, workers' compensation insurers would be required to file new forms with the OIR to incorporate the changes in the assessment process. For example, the forms would need to disclose the surcharge as a separate line item on the declaration page of the policy, and include a provision that coverage is subject to cancellation if the insured fails to pay the policy surcharge. Finally, if the assessment becomes a surcharge, the OIR will require the filing and review of all large deductible programs.¹⁴

¹⁴ Office of Insurance Regulation, Senate Bill 828 Fiscal Analysis (Nov. 17, 2015) (on file with the Senate Committee on Banking and Insurance).

C. **Government Sector Impact:**

Indeterminate. As noted above, the OIR indicates that insurers will be required to file forms and large deductible plans with the OIR. However, the OIR has not provided an estimate of the fiscal impact of these requirements.

VI. **Technical Deficiencies:**

The bill does not include the FWCIGA assessments pursuant to s. 631.914, F.S., in the definition of an admissible asset in s. 625.012, F.S. – Assets defined. According to the OIR, by not including the assessments under s. 631.914, F.S., as an admissible asset under s. 625.012, F.S., it is not consistent with s. 625.012(15) (a) and (b), F.S., that allow for the assessments levied pursuant to s. 631.57(3)(a) and (e), F.S., for the Florida Insurance Guaranty Association.¹⁵

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 631.914 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 January 11, 2016:

The CS provides technical, clarifying amendments relating to the assessment process.

- B. **Amendments:**

None.

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

¹⁵ *Id.*



909062

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 50 - 143
and insert:
percentage rate on new and renewal policies issued and effective during the period of 12 months beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office directing insurers to pay an assessment to the association. The surcharge may not begin until 90 days after the



909062

11 board of directors certifies the assessment.

12 ~~2. Beginning July 1, 1997, assessments levied against self-~~
13 ~~insurance funds shall not exceed in any calendar year more than~~
14 ~~1.50 percent of that self insurance fund's net direct written~~
15 ~~premiums in this state for workers' compensation insurance~~
16 ~~during the calendar year next preceding the date of such~~
17 ~~assessments.~~

18 ~~3. Beginning July 1, 2003, assessments levied against~~
19 ~~insurers and self-insurance funds pursuant to this paragraph are~~
20 ~~computed and levied on the basis of the full policy premium~~
21 ~~value on the net direct premiums written in the state for~~
22 ~~workers' compensation insurance during the calendar year next~~
23 ~~preceding the date of the assessment without taking into account~~
24 ~~any applicable discount or credit for deductibles. Insurers and~~
25 ~~self-insurance funds must report premiums in compliance with~~
26 ~~this subparagraph.~~

27 ~~(b) Assessments shall be included as an appropriate factor~~
28 ~~in the making of rates.~~

29 ~~(c)1. Effective July 1, 1999, If assessments otherwise~~
30 ~~authorized in paragraph (a) are insufficient to make all~~
31 ~~payments on reimbursements then owing to claimants in a calendar~~
32 ~~year, then upon certification by the board, the office~~
33 ~~department shall levy additional assessments of up to 1.5~~
34 ~~percent of the insurer's net direct written premiums in this~~
35 ~~state during the calendar year next preceding the date of such~~
36 ~~assessments against insurers to secure the necessary funds.~~

37 (d) The association may use an installment method to
38 require the insurer to remit the assessment as premium is
39 written or may require the insurer to remit the assessment to



909062

40 the association before collecting the policyholder surcharge. If
41 the assessment is remitted before the surcharge is collected,
42 the assessment remitted must be based on an estimate of the
43 assessment due based on the proportion of each insurer's net
44 direct written premium in this state for the preceding calendar
45 year as described in paragraph (a) and adjusted following the
46 end of the 12-month period during which the assessment is
47 levied.

48 1. If the association elects to use the installment method,
49 the office may, in the order levying the assessment on insurers,
50 specify that the assessment is due and payable quarterly as
51 premium is written throughout the assessment year. Insurers
52 shall collect surcharges at a uniform percentage rate specified
53 by order as described in paragraph (b). Insurers are not
54 required to advance funds if the association and the office
55 elect to use the installment option. Assessments levied under
56 this subparagraph are paid after policy surcharges are
57 collected, and the recognition of assets is based on actual
58 premium written offset by the obligation to the association.

59 2. If the association elects to require insurers to remit
60 the assessment before surcharging the policyholder, the
61 following shall apply:

62 a. The levy order shall provide each insurer so assessed at
63 least 30 days written notice of the date the initial assessment
64 payment is due and payable by the insurer.

65 b. Insurers shall collect surcharges at a uniform
66 percentage rate specified by the order, as described in
67 paragraph (b).

68 c. Assessments levied under this subparagraph are paid



909062

69 before policy surcharges are billed and result in a receivable
70 for policy surcharges to be billed in the future. The amount of
71 billed surcharges, to the extent it is likely that it will be
72 realized, meets the definition of an admissible asset as
73 specified in the National Association of Insurance
74 Commissioners' Statement of Statutory Accounting Principles No.
75 4. The asset shall be established and recorded separately from
76 the liability. If an insurer is unable to fully recoup the
77 amount of the assessment, the amount recorded as an asset shall
78 be reduced to the amount reasonably expected to be recouped.

79 3. Insurers must submit a reconciliation report to the
80 association within 120 days after the end of the 12-month
81 assessment period and annually thereafter for a period of three
82 years. The report must indicate the amount of the initial
83 payment or installment payments made to the association and the
84 amount of written premium pursuant to paragraph (a) for the
85 assessment year. If the insurer's reconciled assessment
86 obligation is more than the amount paid to the association, the
87 insurer shall pay the excess surcharges collected to the
88 association. If the insurer's reconciled assessment obligation
89 is less than the initial amount paid to the association, the
90 association shall credit the insurer that amount against future
91 assessments.

92 (2) Assessments levied under this section are not premium
93 and are not subject to any premium tax, fees, or commissions.
94 Insurers shall treat the failure of an insured to pay
95 assessment-related surcharges as a failure to pay premium. An
96 insurer is not liable for any uncollectible assessment-related
97 surcharges.



909062

98 (3) Assessments levied under this section may be levied
99 only upon insurers. This section does not create a cause of
100 action by a policyholder with respect to the levying of an
101 assessment or a policyholder's duty to pay assessment-related
102 surcharges.

By Senator Bean

4-00944-16

2016828__

A bill to be entitled

An act relating to insurance guaranty association assessments; amending s. 631.914, F.S.; requiring the Office of Insurance Regulation to levy assessments for certain purposes; revising and providing requirements for the levy of assessments; requiring insurers and self-insurance funds to report certain premiums; requiring insurers to collect policy surcharges and pay assessments to the association; revising requirements for reporting premium for assessment calculations; revising and providing requirements and limitations for remittance of assessments to the association; providing an effective date.

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

Section 1. Section 631.914, Florida Statutes, is amended to read:

631.914 Assessments.-

(1) (a) To the extent necessary to secure the funds for the payment of covered claims, and also to pay the reasonable costs to administer the same, the Office of Insurance Regulation ~~department~~, upon certification by the board, shall levy assessments on each insurer initially estimated in the proportion that the insurer's net direct written premiums in this state bears to the total of said net direct written premiums received in this state by all such workers' compensation insurers for the preceding calendar year. Assessments levied against insurers and self-insurance funds

Page 1 of 6

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

4-00944-16

2016828__

pursuant to this paragraph must be computed and levied on the basis of the full policy premium value on the net direct written premium amount as set forth in the state for workers' compensation insurance without consideration of any applicable discount or credit for deductibles. Insurers and self-insurance funds must report premiums in compliance with this paragraph. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan of operation and paragraph (d). ~~The board shall give each insurer so assessed at least 30 days' written notice of the date the assessment is due and payable.~~ Each assessment shall be a uniform percentage applicable to the net direct written premiums of each insurer writing workers' compensation insurance.

~~1. Beginning July 1, 1997, Assessments levied against insurers and, other than self-insurance funds, shall not exceed in any calendar year more than 2 percent of that insurer's net direct written premiums in this state for workers' compensation insurance during the calendar year next preceding the date of such assessments.~~

(b) Member insurers shall collect surcharges at a uniform percentage rate for a period of 12 months beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office directing insurers to pay an assessment to the association. The surcharge may not begin until 90 days after the board of directors certifies the assessment.

~~2. Beginning July 1, 1997, assessments levied against self-insurance funds shall not exceed in any calendar year more than 1.50 percent of that self-insurance fund's net direct written~~

Page 2 of 6

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

4-00944-16

2016828__

59 ~~premiums in this state for workers' compensation insurance~~
 60 ~~during the calendar year next preceding the date of such~~
 61 ~~assessments.~~

62 ~~3. Beginning July 1, 2003, assessments levied against~~
 63 ~~insurers and self insurance funds pursuant to this paragraph are~~
 64 ~~computed and levied on the basis of the full policy premium~~
 65 ~~value on the net direct premiums written in the state for~~
 66 ~~workers' compensation insurance during the calendar year next~~
 67 ~~preceding the date of the assessment without taking into account~~
 68 ~~any applicable discount or credit for deductibles. Insurers and~~
 69 ~~self insurance funds must report premiums in compliance with~~
 70 ~~this subparagraph.~~

71 ~~(b) Assessments shall be included as an appropriate factor~~
 72 ~~in the making of rates.~~

73 ~~(c)1. Effective July 1, 1999, If assessments otherwise~~
 74 ~~authorized in paragraph (a) are insufficient to make all~~
 75 ~~payments on reimbursements then owing to claimants in a calendar~~
 76 ~~year, then upon certification by the board, the office~~
 77 ~~department shall levy additional assessments of up to 1.5~~
 78 ~~percent of the insurer's net direct written premiums in this~~
 79 ~~state during the calendar year next preceding the date of such~~
 80 ~~assessments against insurers to secure the necessary funds.~~

81 ~~(d) The association may use an installment method to~~
 82 ~~require the insurer to remit the assessment as written or may~~
 83 ~~require the insurer to remit the assessment to the association~~
 84 ~~before collecting the policyholder surcharge. If the assessment~~
 85 ~~is remitted before the surcharge is collected, the assessment~~
 86 ~~remitted must be based on an estimate of the assessment due~~
 87 ~~based on the proportion of each insurer's net direct written~~

4-00944-16

2016828__

88 ~~premium in this state for the preceding calendar year as~~
 89 ~~described in paragraph (a) and adjusted following the end of the~~
 90 ~~12-month period during which the assessment is levied.~~

91 1. If the association elects to use the installment method,
 92 the office may, in the order levying the assessment on insurers,
 93 specify that the assessment is due and payable quarterly as
 94 premium is written throughout the assessment year. Insurers
 95 shall collect surcharges at a uniform percentage rate specified
 96 by order as described in paragraph (b). Insurers are not
 97 required to advance funds if the association and the office
 98 elect to use the installment option. Assessments levied under
 99 this subparagraph are paid after policy surcharges are billed,
 100 and the recognition of assets is based on actual premium written
 101 offset by the obligation to the association.

102 2. If the association elects to require insurers to remit
 103 the assessment prior to surcharging the policyholder, the
 104 following shall apply:

105 a. The levy order shall provide each insurer so assessed at
 106 least 30 days written notice of the date the initial assessment
 107 payment is due and payable by the insurer.

108 b. Insurers shall collect surcharges at a uniform
 109 percentage rate specified by the order, as described in
 110 paragraph (b).

111 c. Insurers must submit a reconciliation report to the
 112 association within 120 days after the end of the 12-month
 113 assessment period. The report must indicate the amount of the
 114 initial payment made to the association and the amount of
 115 written premium pursuant to paragraph (a) for the assessment
 116 year. If the insurer's calculated assessment is more than the

4-00944-16 2016828__

117 amount initially paid to the association, the insurer shall pay
 118 the excess amount to the association. If the insurer's
 119 calculated assessment is less than the initial amount paid to
 120 the association, the association shall credit the insurer that
 121 amount against future assessments.

122 d. An insurer is not liable for any uncollectible
 123 assessments.

124 e. Assessments levied under this subparagraph are paid
 125 before policy surcharges are billed and result in a receivable
 126 for policy surcharges to be billed in the future. This amount,
 127 to the extent it is likely that it will be realized, meets the
 128 definition of an admissible asset as specified in the National
 129 Association of Insurance Commissioners' Statement of Statutory
 130 Accounting Principles No. 4. The asset shall be established and
 131 recorded separately from the liability. If an insurer is unable
 132 to fully recoup the amount of the assessment, the amount
 133 recorded as an asset shall be reduced to the amount reasonably
 134 expected to be recouped.

135 (2) Assessments levied under this section are not premium
 136 and are not subject to any premium tax, fees, or commissions.
 137 Insurers shall treat the failure of an insured to pay an
 138 assessment surcharge or the recoupment of an assessment
 139 surcharge as a failure to pay the premium.

140 (3) Assessments levied under this section may only be
 141 levied upon insurers. This section does not create a cause of
 142 action by a policyholder with respect to the levying of, or a
 143 policyholder's duty to pay, assessments.

144 ~~2. To assure that insurers paying assessments levied under~~
 145 ~~this paragraph continue to charge rates that are neither~~

4-00944-16 2016828__

146 ~~inadequate nor excessive, each insurer that is to be assessed~~
 147 ~~pursuant to this paragraph, or a licensed rating organization to~~
 148 ~~which the insurer subscribes, may make, within 90 days after~~
 149 ~~being notified of such assessments, a rate filing for workers'~~
 150 ~~compensation coverage pursuant to ss. 627.072 and 627.091. If~~
 151 ~~the filing reflects a percentage rate change equal to the~~
 152 ~~difference between the rate of such assessment and the rate of~~
 153 ~~the previous year's assessment under this paragraph, the filing~~
 154 ~~shall consist of a certification so stating and shall be deemed~~
 155 ~~approved when made. Any rate change of a different percentage~~
 156 ~~shall be subject to the standards and procedures of ss. 627.072~~
 157 ~~and 627.091.~~

158 ~~(4)(2)~~(a) The board may exempt any insurer from an
 159 assessment if, in the opinion of the office department, an
 160 assessment would result in such insurer's financial statement
 161 reflecting an amount of capital or surplus less than the minimum
 162 amount required by any jurisdiction in which the insurer is
 163 authorized to transact insurance.

164 (b) The board may temporarily defer, in whole or in part,
 165 assessments against an insurer if, in the opinion of the office
 166 department, payment of the assessment would endanger the ability
 167 of the insurer to fulfill its contractual obligations. In the
 168 case of a self-insurance fund, the trustees of the fund
 169 determined to be endangered must immediately levy an assessment
 170 upon the members of that self-insurance fund in an amount
 171 sufficient to pay the assessments to the corporation.

172 (c) The board may allow an insurer to pay an assessment on
 173 a quarterly basis.

174 Section 2. This act shall take effect July 1, 2016.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/15

Meeting Date

828

*Bill Number (if applicable)*Topic Insurance Guarantee Association*Amendment Barcode (if applicable)*Name Carolyn JohnsonJob Title Policy DirectorAddress 136 S Bronough StPhone 850-521-1235*Street*TallahasseeFL32311Email cjohnson@flchamber.com*City**State**Zip*Speaking: For Against InformationWaive Speaking: In Support Against
*(The Chair will read this information into the record.)*Representing Florida Chamber of CommerceAppearing at request of Chair: Yes NoLobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/16

Meeting Date

828

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Reyes

Job Title _____

Address 325 W College Ave

Phone 850 509 1802

Street

TALL

City

FL

State

32301

Zip

Email RReyes@Capitol.gov

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Workers Compensation Guaranty Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 260

INTRODUCER: Banking and Insurance Committee and Senator Smith

SUBJECT: Financial Transactions

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Knudson	BI	Fav/CS
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

Remittance Transfers

CS/SB 260 clarifies that ch. 670, F.S., applies to funds transfer that are remittance transfers under the federal Electronic Funds Transfer Act (EFTA), unless the remittance transfer is also an electronic funds transfer under the EFTA. The bill also provides that the federal EFTA will preempt ch. 670, F.S., in the event any inconsistency exists between ch. 670, F.S., and the EFTA regarding a funds transfer.

Funds transfers are generally large, rapid money transfers between commercial entities involving a series of transactions. The rights and obligations of the commercial parties involved in a funds transfer are governed primarily by ch. 670, F.S. (act), which is Florida's codification of the Uniform Commercial Code (UCC) Article 4A. On the other hand, the federal Electronic Funds Transfer Act (EFTA) governs electronic funds transfers, which are initiated through certain electronic means, such as direct deposits and telephone transfers, to authorize a financial institution to debit or credit a consumer's account. The primary purpose of the EFTA is to provide individual consumer rights. Both the act and the EFTA may apply to a transfer, depending on how the transaction is structured. Effective 2013, the EFTA was amended to add consumer protections for transfers of funds sent from U.S. consumers to individuals or businesses in other countries, known as remittance transfers. Currently, there is uncertainty as to the act's applicability to certain types of remittance transfers.

Cancellation of Mortgages

The bill 260 also clarifies the process for cancelling a mortgage. Once a borrower fully repays a mortgage securing his or her property, the lender must cancel the mortgage within 45 days, rather 60 days. The bill also provides that a lender must cancel an open-end mortgage within 45 days of receipt of the borrower's written notice of intent to close the open-end mortgage and full payment of the mortgage. This would allow an open-end mortgage to remain open after the payoff of the mortgage securing the property. Currently, once a borrower fully repays his or her mortgage securing property in Florida, the lender is required to cancel the mortgage within 60 days of payment. This is required regardless of whether the mortgage is open-end, which allows a borrower to borrow new sums of money on the same loan up to a certain limit. The current cancellation restriction can be burdensome on consumers and lending institutions, as a new line of credit must be established each time the consumer seeks additional access to credit.

Consumer Finance Loans and Referral Fees

The bill 260 would permit a licensed consumer finance lender to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower. Currently the payment of such compensation is grounds for the Office of Financial Regulation to take disciplinary action against a licensee.

II. Present Situation:

Federal Electronic Funds Transfer Act

In 1978, Congress enacted the federal Electronic Funds Transfers Act (EFTA) to protect individual consumers who are parties to electronic funds transfers.¹ Under the EFTA, electronic funds transfers mean any transfer of funds initiated through certain electronic means that authorize a financial institution to debit or credit a consumer's account.² Electronic funds transfers include:

- Transfers through automated teller machines (ATMs);
- Point-of-sale (POS) terminals;
- Automated clearinghouse (ACH) systems;
- Telephone bill-payment plans in which periodic or recurring transfers are contemplated;
- Remote banking programs; and
- Remittance transfers.

However, electronic funds transfers do not include transactions originated by paper instruments, such as checks, and certain other transfers set forth in the EFTA. The EFTA covers topics such as disclosure of fees and limits, error resolution procedures, liability, preauthorized transfers, and receipts.

¹ The EFTA is codified at 15 U.S.C. s. 1693 et seq. The EFTA is implemented in Regulation E at 12 C.F.R. pt. 1005.

² 15 U.S.C. s. 1693a(7).

Uniform Commercial Code Article 4A and Chapter 670, F.S.

In 1989, the Uniform Law Commission adopted Uniform Commercial Code (UCC) Article 4A for the states' enactment, and described it as an essential statutory backdrop to promote uniformity, efficiency, and certainty by governing the rights and obligations among the commercial participants in funds transfers and allocating the risk of loss for unauthorized or improperly executed payment orders. At the time the original UCC Article 4A was drafted, the intent was to govern large, rapid money transfers, such as wire transfers, between the commercial parties to a funds transfer, keeping in mind that the primary objective of the EFTA is the provision of individual consumer rights.³

A majority of the states have adopted UCC Article 4A. In 1991, the Florida Legislature adopted the UCC Article 4A through the enactment of ch. 670, F.S. (act), relating to funds transfers.⁴ The act defines "funds transfers" as a series of transactions that begin with the originator's payment order (an unconditional instruction to a bank to pay a fixed amount), made for making payment to the beneficiary of the order.⁵ The funds transfer transaction includes the relationship between intermediary banks that execute and settle the payment order, and concludes upon the ultimate, actual payment to the beneficiary.

Frequently, the EFTA may partially apply to a funds transfer because the transfer is intended to credit a consumer's account in a financial institution. In these cases, the act does not apply to the funds transfer to the extent it is governed by the EFTA.⁶

Remittance Transfers

Consumers transfer tens of billions of dollars from the United States each year.⁷ In the United States, remittance transfers sent by nondepository money transmitters, depository institutions, and credit unions are generally subject to federal anti-money laundering laws and restrictions on transfers to or from certain persons. Although remittances can be sent through depository institutions (such as an ACH transaction or a wire transfer), a large number of U.S. remittance transfers are sent through money transmitters, which are regulated primarily by state regulators. Chapter 560, F.S., governs nondepository money services businesses, which include "money transmitters" who receive and transmit currency or monetary value through a broad range of means within the U.S. or to or from the U.S.⁸ However, ch. 560, F.S., is a regulatory statute administered by the Office of Financial Regulation, and does not contain specific consumer protections or private remedies.⁹

³ 15 U.S.C. s.1693(b). See also UNIFORM LAW COMMISSION, *Why States Should Adopt UCC Article 4A*, at <http://www.uniformlaws.org/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UCC%20Article%204A> (last visited Jan. 7, 2016).

⁴ Ch. 91-70, Laws of Fla.

⁵ Sections 670.103(1)(c) and 670.104(1), F.S.

⁶ Section 670.108, F.S., Business Law Section of the Florida Bar, *White Paper in Support of the Proposed Amendment to UCC Section 670.108* (on file with the Florida Senate Committee on Banking and Insurance).

⁷ 77 FR 6194 (Feb. 11, 2012).

⁸ Section 560.103(23), F.S.

⁹ Ch. 560, F.S., does require money transmitter licensees to maintain a corporate surety bond or a collateral deposit to ensure a source of recovery for aggrieved claimants. Section 560.209, F.S.

On the federal level, wire transfers and transfers sent by money transmitters have generally fallen outside of the scope of the EFTA and its implementing rule, Regulation E. Until 2010, no federal consumer protection law directly regulated foreign remittance transfers, which can be sent through depository institutions as well as money transmitters. In 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act¹⁰ was signed into law. Among many changes, Dodd-Frank amended the EFTA to create new compliance requirements for remittance transfers.¹¹ The rule defines a “remittance transfer” to mean the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is an electronic fund transfer.¹² Similar to the other consumer protections in the EFTA, these new remittance regulations require certain protections for the sending consumer, including disclosures, error resolution procedures, cancellation and refund policies, and a remittance transfer provider’s liability for the acts of its agents.

Under the EFTA, not all remittance transfers qualify as an “electronic funds transfer,” raising questions about the applicability of the EFTA. This could occur, for example, if the transfer permits payment in cash and does not instruct nor authorize a financial institution to credit a consumer account in a financial institution. The Uniform Law Commission expressed concern that absent a change to UCC Article 4A, there could be legal uncertainty for some remittance transfers currently governed by Article 4A, particularly for industry participants.¹³ The Consumer Financial Protection Bureau, in its proposed remittance transfer rules (Regulation E), also noted the uncertainty raised for traditional cash-based remittances sent through money transmitters (which have not been covered by the EFTA) and international wire transfers, which are not electronic funds transfers.¹⁴

In 2012, the Uniform Law Commission proposed an amendment to UCC Article 4. A majority of states have adopted this amendment.¹⁵ The amendment provides an affirmative statement of the act’s applicability to remittance transfers that are not electronic funds transfers under the EFTA. Without this amendment, neither the federal EFTA nor UCC Article 4A (as codified in the act) will apply to some aspects of remittance transfers, and the result would be no statutory rules for remittance transfers that may involve mistaken addresses or payees, duties of intermediaries, and other issues beyond the initial sending of the transfer.¹⁶

¹⁰ Pub. L. 111-203, H.R. 4173, commonly referred to as “Dodd-Frank.”

¹¹ Section 1073 of Dodd-Frank created Section 919 of the EFTA, relating to remittance transfers. Section 919 is codified at 15 U.S.C. s. 1693o-1. Dodd-Frank transferred EFTA rulemaking authority from the Board of Governors of the Federal Reserve System to the Consumer Financial Protection Bureau (CFPB). The CFPB’s remittance transfer rule became effective on October 28, 2013. The CFPB’s final remittance transfer rule was codified as new subpart B to Regulation E, 12 C.F.R. ss. 1005.30-1005.36.

¹² 12 CFR s. 1005.30(e).

¹³ Uniform Law Commission, *UCC Article 4A Amendments (2012) Summary*, at [http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20\(2012\)](http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%204A%20Amendments%20(2012)) (last visited Jan. 7, 2016).

¹⁴ Electronic Fund Transfers (Regulation E), Final Rule and Proposed Rule, 77 FR 6211-6212 (Feb. 7, 2012) (codified at 12 C.F.R. pt. 1005).

¹⁵ Uniform Law Commission, *UCC Article 4A Amendments (2012): Enactment Status Map*, at [http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments \(2012\)](http://www.uniformlaws.org/Act.aspx?title=UCC Article 4A Amendments (2012)) (last visited Jan. 7, 2016).

¹⁶ See *supra* note 13.

Cancellation of Mortgages

Under current law, a lender must cancel a mortgage within 60 days after it has been paid in full.¹⁷ The statute does not distinguish as to different types of mortgages, such as open-end mortgages and home equity lines of credit, and does not provide any exceptions. The Florida Statutes do not define the term, “open-end mortgages. In the context of the financial services industry, these products generally allow borrowers to draw cash, up to the maximum credit limit, and then as the borrower pays down the balance of the loan, the borrower can draw cash again up to the limit. A home equity line of credit is a form of revolving credit in which the home serves as collateral. In contrast, “closed-end mortgages” disburse the entire loan amount upfront to or on behalf of the borrower and do not allow future redraws of credit.¹⁸

According to the Florida Bankers Association, open-end lines of credit provide flexibility to consumers by allowing continual access to their home equity by paying the mortgage in full and then having the ability to access the equity when and if it is needed again by the consumer. Under current law, lenders must cancel “any mortgage” upon payoff and must release the lien without exception. This undermines the purpose of open-end mortgages and creates costly and burdensome work for both the consumer and the lender each time the consumer seeks new access to credit secured by the home.¹⁹ Surrounding states such as Alabama, Georgia, Mississippi, and North Carolina have laws requiring that open-end mortgages and similar lines of credit be cancelled only upon the borrower’s full payment and written notice to the lender requesting termination of the open-end mortgage.²⁰

Consumer Finance Loans

The Division of Consumer Finance of the Florida Office of Financial Regulation (OFR) is responsible for the licensure and regulation of nondepository financial service entities and individuals. One of the regulatory programs, administered by OFR, is the Florida Consumer Finance Act (act),²¹ which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The act sets forth maximum interest rates for a consumer finance loan, which is a loan of money, credit, goods, or a provision of a line of credit, in an amount or to a value of \$25,000 or less at an interest rate greater than 18 percent per annum.²²

¹⁷ Section 701.03, F.S.

¹⁸ Consumer Financial Protection Bureau, *Ask CFPB: What is a second mortgage loan or “junior-lien”?* Available at <http://www.consumerfinance.gov/askcfpb/105/what-is-a-second-mortgage-loan-or-junior-lien.html> (last visited Jan. 6, 2016). Additionally, Regulation Z, which implements the federal Truth in Lending Act, defines “open-end credit” as “consumer credit extended by a credit under a plan in which: (1) The creditor reasonably contemplates repeated transactions; (2) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and (3) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid. 12 C.F.R. s. 226.2(20).

¹⁹ E-mail from the Florida Bankers Association, SB 260, Financial Transactions (Sept. 28, 2015) (on file with Senate Committee on Banking and Insurance).

²⁰ Ala. Code 1975 s. 35-10-26; Ga. Code Ann. s. 44-14-3; Miss. Code Ann. s. 89-5-21; N.C.G.S.A. s. 45-36.9.

²¹ Ch. 516, F.S.

²² Section 516.01(2), F.S.

The act provides the grounds for denial of a license or other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S., provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender.

III. Effect of Proposed Changes:

Section 1 amends s. 670.108, F.S., and adopts the Uniform Law Commission's 2012 amendment, which clarifies that the act applies to funds transfers that are remittance transfers as defined in the EFTA, unless the remittance transfer is an electronic funds transfer, which would be covered by EFTA. The bill provides that if there is any inconsistency between a funds transfer under the act and the EFTA, the EFTA will govern the inconsistency. This provision is consistent with language in the EFTA providing that state law is preempted only if it is inconsistent with the EFTA or Regulation E, and then only to the extent of the inconsistency.²³

Section 2 amends s. 701.03, F.S., to clarify that a mortgagee or assignee's duty to cancel a mortgage is triggered 45 days after full payment of the amount due under a promissory note secured by a mortgage. The bill also provides that this section does not apply to any existing or future open-end mortgages, unless otherwise stated in the loan agreement. After satisfying the mortgage, the borrower may close the open-end mortgage if he or she provides written notice to the mortgagee or assignee of the intent to close the open-end mortgage. If these conditions are met, the mortgagee or assignee must cancel the open-end mortgage within 45 days after receipt of the notice.

Section 3 amends s. 516.07, F.S., to permit a licensed consumer finance lender to pay money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower. Currently the payment of such compensation is grounds for the Office of Financial Regulation to take disciplinary action against a licensee.

Section 4 provides this act applies to remittance transfers initiated on or after July 1, 2016.

Section 5 provides the act is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ 15 U.S.C. s. 1693q.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill's clarification of the coverage of ch. 670, F.S., to remittance transfers may provide greater operational efficiency for remittance transfer providers and intermediary institutions. In addition, the bill's provision to allow an open-end mortgage to remain open after a borrower pays off the amount due under a promissory note secured by a mortgage may reduce administrative costs for lenders and borrowers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 516.07, 670.108, and 701.03.

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 January 11, 2015:

The CS:

- Allows a licensed consumer finance lender to pay compensation to any person for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower.
- Requires a lender to cancel a mortgage within 45 days instead of 60 days if certain conditions are met.

- Provides that s. 701.03, F.S., relating to the cancellation of mortgages, does not apply to any existing or future open-end mortgage unless otherwise stated in the loan agreement.
- Clarifies that the act applies to remittance transfers made on or after July 1, 2016, the effective date of the bill.

B. Amendments:

None.

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



878296

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 37 - 46

and insert:

701.03 Cancellation.—When ~~Whenever~~ the amount ~~of money~~ due under a promissory note secured by ~~on~~ any mortgage ~~is shall be~~ fully paid, the mortgagee or assignee shall, within 45 ~~60~~ days after satisfaction of the mortgage, ~~thereafter~~ cancel the mortgage ~~same~~ in the manner provided by law. This section does not apply to any existing or future open-ended mortgage unless



878296

11 otherwise stated in the loan agreement. If, after fully
12 satisfying the mortgage, the borrower provides written notice of
13 his or her intent to close the open-ended mortgage, the
14 mortgagee or assignee shall cancel the open-ended mortgage
15 within 45 days after receiving the notice.

16 Section 3. Paragraph (k) of subsection (1) of section
17 516.07, Florida Statutes, is amended to read:

18 516.07 Grounds for denial of license or for disciplinary
19 action.—

20 (1) The following acts are violations of this chapter and
21 constitute grounds for denial of an application for a license to
22 make consumer finance loans and grounds for any of the
23 disciplinary actions specified in subsection (2):

24 (k) Paying money or anything else of value, directly or
25 indirectly, to any person as compensation, inducement, or reward
26 for referring loan applicants to a licensee, if such amount is
27 charged directly or indirectly to the borrower.

28 Section 4. This act applies to remittance transfers
29 initiated on or after July 1, 2016.

30 Section 5. This act shall take effect July 1, 2016.

31
32 ===== T I T L E A M E N D M E N T =====

33 And the title is amended as follows:

34 Delete lines 9 - 13

35 and insert:

36 amending s. 701.03, F.S.; providing that a requirement
37 that certain mortgages be cancelled within a specified
38 timeframe of satisfaction does not apply to existing
39 or future open-ended mortgages unless the requirement



878296

40 is specified in the loan agreement; requiring that an
41 open-ended mortgage be cancelled within a specified
42 timeframe if the borrower provides written notice of
43 his or her intent to close the open-ended mortgage;
44 amending s. 516.07, F.S.; revising the grounds for
45 denial of an application for a license to make
46 consumer finance loans; providing applicability;
47 providing an effective date.

By Senator Smith

31-00235-16

2016260__

A bill to be entitled

An act relating to financial transactions; amending s. 670.108, F.S.; revising applicability; providing that ch. 670, F.S., governs certain funds transfers that are remittance transfers; providing that the federal Electronic Fund Transfer Act governs any inconsistency between a funds transfer made under the federal act and a funds transfer made under ch. 670, F.S.; amending s. 701.03, F.S.; requiring that an open-end mortgage be cancelled within a specified timeframe if the borrower provides written notice of his or her intent to close the open-end mortgage; providing an effective date.

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

Section 1. Section 670.108, Florida Statutes, is amended to read:

670.108 Relationship to Electronic Fund Transfer Act
~~Exclusion of consumer transactions governed by federal law.-~~

(1) Except as provided in subsection (2), this chapter does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. No. 95-630, 92 Stat. 3728, 15 U.S.C. ss. 1693 et seq.) as amended from time to time.

(2) This chapter applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act, 15 U.S.C. s. 1693o-1, as amended from time to time, unless the remittance transfer is an electronic funds transfer as

Page 1 of 2

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

31-00235-16

2016260__

defined in the Electronic Fund Transfer Act, 15 U.S.C s. 1693a,
as amended from time to time.

(3) If there is an inconsistency between a funds transfer under this chapter and the Electronic Fund Transfer Act, the Electronic Fund Transfer Act governs the inconsistency.

Section 2. Section 701.03, Florida Statutes, is amended to read:

701.03 Cancellation.-~~When~~ ~~Whenever~~ the amount of money due on any mortgage is ~~shall be~~ fully paid, the mortgagee or assignee shall, within 60 days of full payment, ~~thereafter~~ cancel the ~~mortgage same~~ in the manner provided by law. This section does not apply to an open-end mortgage unless, after fully paying the mortgage, the borrower provides written notice of his or her intent to close the open-end mortgage. If such notice is given, the mortgagee or assignee shall cancel the open-ended mortgage within 60 days after receiving the notice.

Section 3. This act shall take effect July 1, 2016.

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 the Senator or Senate Professional Staff conducting the meeting)

1/11/16

Meeting Date

260

Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Greg Black

Job Title Attorney

Address 119 S. Monroe Street, Suite 200

Phone (850)205-9000

Street

Tallahassee

FL

32312

Email greg.black@mhdfirm.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Business Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-16

Meeting Date

SB260

Bill Number (if applicable)

Topic FINANCIAL TRANSACTIONS

Amendment Barcode (if applicable)

Name STEVE DYAL

Job Title _____

Address 123 S. CACTHOUW ST

Phone 850-510-6286

Street

TALL

City

FL

State

32301

Zip

Email SDYAL@dyaiconsulting.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA FINANCIAL SERVICES ASSOC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

Jan 11 2016

Meeting Date

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

260

Bill Number (if applicable)

Topic Financial Transactions

Amendment Barcode (if applicable)

Name Kim Siomkos (see - om - cos)

Job Title VP Gov. Relations

Address 1001 Thomasville Road

Phone 561 - 317 - 4704

Tallahassee

FL

32308

Email KSIOMKOS@florida
bankers.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Bankers Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

Jan. 11 AM 2016
Meeting Date

A
260
Bill Number (if applicable)
878296
Amendment Barcode (if applicable)

Topic Financial Transactions

Name KIM SIOMKOS

Job Title VP of Gov. Relations

Address 1001 Thomasville Rd. Suite 201
Street
Tallahassee FL 32308
City State Zip

Phone 904-317-4707

Email ksiomkos@floridabankers.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Bankers Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 908

INTRODUCER: Senator Lee

SUBJECT: Organization of the Department of Financial Services

DATE: January 11, 2016

REVISED: _____

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

I. Summary:

SB 908 changes the organization of the Department of Financial Services (“DFS”). The bill gives the Chief Financial Officer (“CFO”) the authority to establish any division, bureau, or office of the department that the CFO deems necessary to promote the effective and efficient operation of the DFS. The bill does not change the review and approval process of the Department of Management Services and the Executive Office of the Governor.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions but the CFO will have the authority to determine the organizational placement of those functions within the DFS.

The bill renames the Division of Insurance Fraud as the Division of Investigative and Forensic Services. The new division will perform the investigative functions currently performed by the Division of Insurance Fraud, the Office of Fiscal Integrity, and the Division of State Fire Marshal. The bill repeals the Strategic Markets Research and Assessment Unit, which is currently neither active nor funded.

This bill allows the DFS to use funds in the Anti-Fraud Reward Program, which provides rewards to persons who report insurance fraud, to provide rewards for the reporting of arson-related crimes and other crimes investigated by the State Fire Marshal.

The bill provides that the DFS rulemaking authority relating to unclaimed property includes property reported to the CFO pursuant statutes relating to unclaimed funds from certain judicial, probate, and guardianship proceedings.

II. Present Situation:

The CFO is a member of the Cabinet¹ and serves as the chief fiscal officer of the state. The CFO is agency head of the DFS.² The DFS is organized in fourteen divisions and some specialized offices. The divisions are:

- The Division of Accounting and Auditing, which includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity;
- The Division of State Fire Marshal;
- The Division of Risk Management;
- The Division of Treasury;
- The Division of Insurance Fraud;
- The Division of Rehabilitation and Liquidation;
- The Division of Insurance Agent and Agency Services;
- The Division of Consumer Services;
- The Division of Workers' Compensation;
- The Division of Administration;
- The Division of Legal Services;
- The Division of Information Systems;
- The Division of Funeral, Cemetery, and Consumer Services;
- The Division of Public Assistance Fraud.³

Section 20.04, F.S., provides for the establishment of divisions, bureaus, sections, or subsections within a state department. A department head may recommend the establishment of additional divisions, bureaus, sections, and subsections to promote efficient and effective operation of the department.⁴ The Department of Management Services and the Executive Office of the Governor review and approve reorganization requests.⁵

Bureau of Unclaimed Property

Chapter 717, Florida Statutes, governs the disposition of unclaimed property and requires the DFS to administer the statute. Currently, the DFS holds unclaimed property accounts valued at more than \$1 billion from dormant accounts in financial institutions, insurance and utility companies, securities, trust holdings, and unclaimed safe deposit boxes. The Bureau of Unclaimed Property within the DFS is the division responsible for administering ch. 717, F.S.⁶

¹ See Art. IV, s. 4, Fla. Const.

² See s. 20.121(1), F.S.

³ See s. 20.121(2), F.S.

⁴ See s. 20.04(7)(b), F.S.

⁵ See s. 20.04(7)(c), F.S.

⁶ See <https://www.fltreasurehunt.org/> (discussing the Bureau of Unclaimed Property)(last accessed January 4, 2016).

The Office of Fiscal Integrity

The Office of Fiscal Integrity is a criminal justice agency within the DFS whose mission is to detect and investigate the misappropriation or misuse of state assets. The office performs functions related to the duty of the CFO to examine, audit, adjust, and settle the accounts of all state officers and any other person who has received state funds or moneys.⁷ The Office of Fiscal Integrity has sworn law enforcement officers on staff to conduct investigations or provide investigative assistance to other law enforcement agencies.⁸

Division of Insurance Fraud

The Division of Insurance Fraud investigates various types of insurance fraud including PIP fraud, workers' compensation fraud, vehicle fraud, application fraud, licensee fraud, homeowner's insurance fraud, and healthcare fraud.⁹ The Division is directed by statute to investigate fraudulent insurance acts, violations of the Unfair Insurance Trade Practices Act,¹⁰ false and fraudulent insurance claims,¹¹ and willful violations of the Florida Insurance Code and rules adopted pursuant to the code.¹² The Division employs sworn law enforcement officers to investigate insurance fraud. In fiscal year 2014/2015, the division received 17,392 referrals.¹³

Division of Consumer Services

The Division of Consumer Services within DFS is created by s. 20.121, F.S., and deals with consumer issues and complaints related to the jurisdiction of the DFS and the Office of Insurance Regulation ("OIR"). The Division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as the DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by the DFS or the OIR to appropriate division within DFS or the OIR, as appropriate.¹⁴

Strategic Markets Research and Assistance Unit

Section 20.121, F.S., creates the Strategic Markets Research and Assessment Unit within the DFS. It requires the CFO or his or her designee to report quarterly to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on the status of the state's financial services markets. The CFO must also provide findings and recommendations regarding

⁷ Section 17.04, F.S.

⁸ See <http://www.myfloridacfo.com/Division/AA/StateAgencies/OfficeofFiscalIntegrity.htm#.VQCOFPnF8eE> (last accessed January 4, 2016).

⁹ See <http://www.myfloridacfo.com/Division/Fraud/#.VQDPuPnF8eE> (last accessed January 4, 2016).

¹⁰ Section 626.9541, F.S.

¹¹ Section 817.234, F.S.

¹² Section 624.15, F.S.

¹³ See

Division of Insurance Fraud Annual Report Fiscal Year 2014-2015 at p. 4 (on file with Committee on Banking and Insurance).

¹⁴ See s. 20.121(2)(h), F.S.

regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives. According to the DFS, the unit has not functioned since before 2010 and funding was discontinued in 2009.¹⁵

Anti-Fraud Reward Program

Section 626.9892, F.S., creates the Anti-Fraud Reward Program within the DFS. The program is funded from the Insurance Regulatory Trust Fund. The program allows the DFS to provide rewards of up to \$25,000 to persons providing information leading to the arrest and conviction of persons convicted of crimes investigated by the Division of Insurance Fraud.¹⁶ The program was established in 1999 and has paid over \$365,000 in rewards.¹⁷

Division of the State Fire Marshal

State law on fire prevention and control is provided in Chapter 633, F.S. Section 633.104, F.S., designates the CFO as the State Fire Marshal, operating through the Division of the State Fire Marshal. Pursuant to this authority, the State Fire Marshal regulates, trains, and certifies fire service personnel, investigates the causes of fires, enforces arson laws, regulates the installation of fire equipment, conducts firesafety inspections of state property, develops firesafety standards, provides facilities for the analysis of fire debris, and operates the Florida State Fire College.

III. Effect of Proposed Changes:

Reorganization of the DFS

Sections 1 and 2 of this bill allow the CFO, rather than the Division of Accounting and Auditing, to conduct investigations and refer information that shows a potential violation of statute to appropriate enforcement agencies and allows the CFO to keep information related to an investigation confidential.¹⁸ These changes are being made because investigation functions currently in the Division of Accounting and Auditing are being transferred to the Division of Investigative and Forensic Services.¹⁹

Section 3 makes various changes to the organization of the DFS. The bill gives the CFO the authority to establish any division, bureau, or office of the department as the CFO deems necessary to promote the effective and efficient operation of the DFS pursuant to s. 20.04, F.S. The bill does not change the review and approval process of s. 20.04, F.S.

The bill repeals the statutory requirement to establish the following divisions, offices, and bureaus:

- The Division of Administration;
- The Division of Legal Services;

¹⁵ See Department of Financial Services, *SB 908 Analysis* (December 8, 2015)(on file with the Senate Committee on Banking and Insurance).

¹⁶ Crimes include workers compensation fraud, violations of the Florida Insurance Code, and insurance fraud.

¹⁷ See <http://www.myfloridacfo.com/sitePages/agency/dfs.aspx> (last accessed on January 5, 2016).

¹⁸ The bill does not create a new public records exemption.

¹⁹ See Department of Financial Services, *SB 908 Analysis* (December 8, 2015).

- The Division of Information Systems;
- The Division of Insurance Fraud;
- The Bureau of Unclaimed Property;
- The Office of Fiscal Integrity.

The DFS will continue to perform the functions currently performed by the Divisions of Administration, Legal Services, and Information Services. The CFO will have the authority to determine the organizational placement of those functions within the DFS.

The bill requires the creation of two new divisions. The bill requires the DFS to create a Division of Investigative and Forensic Services and Division of Unclaimed Property. The Division of Investigative and Forensic Services is created, replacing the Division of Insurance Fraud. The new division will perform the investigative functions currently performed by the Division of Insurance Fraud, the Office of Fiscal Integrity, and the Division of State Fire Marshal. The Division of Unclaimed Property will perform the functions currently performed by the Bureau of Unclaimed Property.

Sections 6 through 24 and 44 amend various statutes to reflect the name change from the Division of Insurance Fraud to the Division of Investigative and Forensic Services.

Sections 37-42 amend various statutes to replace references to the Bureau of Unclaimed Property with the Division of Unclaimed Property.

Section 26-36 transfer many investigatory, enforcement, and rulemaking functions currently performed by the State Fire Marshal to the Division of Investigative and Forensic Services.

The Strategic Markets Research and Assessment Unit, which is currently neither active nor funded, is repealed.

Division of Consumer Services Statute

Sections 4 and 5 of this bill move statutory references to the duties of the Division of Consumer Services from s. 20.121, F.S., to the Insurance Code at s. 624.307, F.S., and provide conforming changes.

State Fire Marshal

Section 15 of this bill allows the DFS to give rewards under the Anti-Fraud Reward Program to persons who provide information leading to the arrest and conviction of persons who violate statutes currently investigated by the State Fire Marshal. Crimes include making false reports regarding explosives or arson (s. 790.164, F.S.), planting a “hoax” bomb (s. 790.165, F.S.), crimes related to weapons of mass destruction (s. 790.166, F.S.), arson resulting in injury to a firefighter (s. 806.031, F.S.), preventing extinguishment of a fire (s. 806.10, F.S.), crimes relating to fire bombs (s. 806.111), and burning to defraud an insurer (s. 817.233, F.S.).

Currently, section 282.709, F.S., creates the Joint Task Force on State Agency Law Enforcement Communications (task force) to advise the Department of Management Services of member

agency needs relating to the planning, designing, and establishment of the statewide communication system.²⁰ One of the members of the task force is a representative of the State Fire Marshal appointed by the State Fire Marshal.

Section 25 of the bill provides that the representative will be a representative of the Division of the Investigative and Forensic Services and will be appointed by the CFO.

Rulemaking

Section 43 provides that the DFS rulemaking authority relating to unclaimed property includes property reported to the CFO pursuant to s. 43.19, F.S., relating to unclaimed funds paid to the court, s. 45.032, F.S., relating to the disposition of surplus funds after a judicial sale, s. 732.107, F.S., relating to unclaimed funds in intestate probate proceedings, s. 733.816, F.S., relating to unclaimed funds held by personal representatives in probate proceedings, and s. 744.534, F.S., relating to unclaimed funds in guardianship proceedings.

Effective Date

Section 45 of this bill provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

²⁰ See s. 282.709(2), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 17.04, 17.0401, 20.121, 624.26, 624.307, 16.59, 400.9935, 409.91212, 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989, 626.9892, 626.9893, 626.9894, 626.99278, 627.351, 627.711, 627.736, 627.7401, 631.156, 641.30, 282.709, 552.113, 552.21, 633.112, 633.114, 633.122, 633.126, 633.422, 633.508, 633.512, 633.518, 791.013, 538.32, 717.1241, 717.1323, 717.135, 717.1351, 717.1400, 717.138, and 932.7055.

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

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

None.

B. Amendments:

None.

By Senator Lee

24-00960C-16

2016908__

1 A bill to be entitled
 2 An act relating to organization of the Department of
 3 Financial Services; amending ss. 17.04 and 17.0401,
 4 F.S.; authorizing the Chief Financial Officer, rather
 5 than the Division of Accounting and Auditing, to audit
 6 and adjust accounts of officers and those indebted to
 7 the state; making conforming changes; reordering and
 8 amending s. 20.121, F.S.; revising the divisions and
 9 the location of bureaus within the divisions; revising
 10 the functions of the department; providing duties for
 11 the Division of Investigative and Forensic Services;
 12 authorizing the Chief Financial Officer to establish
 13 divisions, bureaus, and offices of the department;
 14 amending s. 624.26, F.S.; conforming a provision to
 15 changes made by the act; amending s. 624.307, F.S.;
 16 providing powers and duties of the Division of
 17 Consumer Services; authorizing the division to impose
 18 certain penalties; authorizing the department to adopt
 19 rules relating to the division; providing for
 20 construction; amending ss. 16.59, 400.9935, 409.91212,
 21 440.105, 440.1051, 440.12, 624.521, 626.016, 626.989,
 22 626.9892, 626.9893, 626.9894, 626.99278, 627.351,
 23 627.711, 627.736, 627.7401, 631.156, and 641.30, F.S.,
 24 relating to the renaming of the Division of Insurance
 25 Fraud; conforming provisions to changes made by the
 26 act; making technical changes; amending ss. 282.709,
 27 552.113, 552.21, 633.112, 633.114, 633.122, 633.126,
 28 633.422, 633.508, 633.512, 633.518, and 791.013, F.S.,
 29 relating to the transfer of certain functions to the

Page 1 of 48

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

24-00960C-16

2016908__

30 Division of Investigative and Forensic Services;
 31 conforming provisions to changes made by the act;
 32 amending ss. 538.32, 717.1241, 717.1323, 717.135,
 33 717.1351, and 717.1400, F.S., relating to the renaming
 34 of the Bureau of Unclaimed Property; conforming
 35 provisions to changes made by the act; making
 36 technical changes; amending s. 717.138, F.S.;
 37 specifying rulemaking authority of the department;
 38 amending s. 932.7055, F.S.; conforming provisions to
 39 changes made by the act; providing an effective date.
 40
 41 Be It Enacted by the Legislature of the State of Florida:
 42
 43 Section 1. Section 17.04, Florida Statutes, is amended to
 44 read:
 45 17.04 To audit and adjust accounts of officers and those
 46 indebted to the state.—The Chief Financial Officer, using
 47 generally accepted auditing procedures for testing or sampling,
 48 shall examine, audit, adjust, and settle the accounts of all the
 49 officers of this state, and any other person in anywise
 50 entrusted with, or who may have received any property, funds, or
 51 moneys of this state, or who may be in anywise indebted or
 52 accountable to this state for any property, funds, or moneys,
 53 and require such officer or persons to render full accounts
 54 thereof, and to yield up such property or funds according to
 55 law, or pay such moneys into the treasury of this state, or to
 56 such officer or agent of the state as may be appointed to
 57 receive the same, and on failure so to do, to cause to be
 58 instituted and prosecuted proceedings, criminal or civil, at law

Page 2 of 48

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

24-00960C-16

2016908

59 or in equity, against such persons, according to law. The Chief
 60 Financial Officer ~~Division of Accounting and Auditing~~ may
 61 conduct investigations within or outside of this state as it
 62 deems necessary to aid in the enforcement of this section. If
 63 during an investigation the Chief Financial Officer ~~division~~ has
 64 reason to believe that any criminal statute of this state has or
 65 may have been violated, the Chief Financial Officer ~~division~~
 66 shall refer any records tending to show such violation to state
 67 or federal law enforcement or prosecutorial agencies and shall
 68 provide investigative assistance to those agencies as required.

69 Section 2. Section 17.0401, Florida Statutes, is amended to
 70 read:

71 17.0401 Confidentiality of information relating to
 72 financial investigations.—Except as otherwise provided by this
 73 section, information relative to an investigation conducted by
 74 the Chief Financial Officer ~~Division of Accounting and Auditing~~
 75 pursuant to s. 17.04, including any consumer complaint, is
 76 confidential and exempt from the provisions of s. 119.07(1) and
 77 s. 24(a), Art. I of the State Constitution until the
 78 investigation is completed or ceases to be active. Any
 79 information relating to an investigation conducted ~~by the~~
 80 ~~division~~ pursuant to s. 17.04 shall remain confidential and
 81 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 82 of the State Constitution after the ~~division's~~ investigation is
 83 completed or ceases to be active if the Chief Financial Officer
 84 ~~division~~ submits the information to any law enforcement or
 85 prosecutorial agency for further investigation. Such information
 86 shall remain confidential and exempt from the provisions of s.
 87 119.07(1) and s. 24(a), Art. I of the State Constitution until

Page 3 of 48

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

24-00960C-16

2016908

88 that agency's investigation is completed or ceases to be active.
 89 For purposes of this section, an investigation shall be
 90 considered "active" so long as the Chief Financial Officer
 91 ~~division~~ or any law enforcement or prosecutorial agency is
 92 proceeding with reasonable dispatch and has a reasonable good
 93 faith belief that the investigation may lead to the filing of an
 94 administrative, civil, or criminal proceeding. This section
 95 shall not be construed to prohibit disclosure of information
 96 that is required by law to be filed with the Department of
 97 Financial Services or the Office of Financial Regulation and
 98 that, but for the investigation, would otherwise be subject to
 99 public disclosure. Nothing in this section shall be construed to
 100 prohibit the Chief Financial Officer ~~division~~ from providing
 101 information to any law enforcement or prosecutorial agency. Any
 102 law enforcement or prosecutorial agency receiving confidential
 103 information from the Chief Financial Officer ~~division~~ in
 104 connection with its official duties shall maintain the
 105 confidentiality of the information as provided for in this
 106 section.

107 Section 3. Subsection (2) of section 20.121, Florida
 108 Statutes, is reordered and amended, and subsection (6) of that
 109 section is amended, to read:

110 20.121 Department of Financial Services.—There is created a
 111 Department of Financial Services.

112 (2) DIVISIONS.—The Department of Financial Services shall
 113 consist of the following divisions and office:

114 (a) The Division of Accounting and Auditing, ~~which shall~~
 115 ~~include the following bureau and office:~~

116 ~~1. The Bureau of Unclaimed Property.~~

Page 4 of 48

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

24-00960C-16

2016908__

117 ~~2. The Office of Fiscal Integrity which shall function as a~~
 118 ~~criminal justice agency for purposes of ss. 943.045-943.08 and~~
 119 ~~shall have a separate budget. The office may conduct~~
 120 ~~investigations within or outside this state as the bureau deems~~
 121 ~~necessary to aid in the enforcement of this section. If during~~
 122 ~~an investigation the office has reason to believe that any~~
 123 ~~criminal law of this state has or may have been violated, the~~
 124 ~~office shall refer any records tending to show such violation to~~
 125 ~~state or federal law enforcement or prosecutorial agencies and~~
 126 ~~shall provide investigative assistance to those agencies as~~
 127 ~~required.~~

128 ~~(i)(b)~~ The Division of State Fire Marshal.

129 ~~(h)(c)~~ The Division of Risk Management.

130 ~~(j)(d)~~ The Division of Treasury, which shall include a
 131 Bureau of Deferred Compensation responsible for administering
 132 the Government Employees Deferred Compensation Plan established
 133 under s. 112.215 for state employees.

134 ~~(k)~~ The Division of Unclaimed Property.

135 (e) The Division of Investigative and Forensic Services,
 136 which shall include the Bureau of Forensic Services and the
 137 Bureau of Fire and Arson Investigations, and which shall
 138 function as a criminal justice agency for purposes of ss.
 139 943.045-943.08. The division may conduct investigations within
 140 or outside of this state as it deems necessary. If, during an
 141 investigation, the division has reason to believe that any
 142 criminal law of this state has or may have been violated, it
 143 shall refer any records tending to show such violation to state
 144 or federal law enforcement or prosecutorial agencies and shall
 145 provide investigative assistance to those agencies as required

24-00960C-16

2016908__

146 ~~Insurance Fraud.~~

147 ~~(g)(f)~~ The Division of Rehabilitation and Liquidation.

148 ~~(d)(g)~~ The Division of Insurance Agent and Agency Services.

149 ~~(b)(h)~~ The Division of Consumer Services.

150 ~~1. The Division of Consumer Services shall perform the~~
 151 ~~following functions concerning products or services regulated by~~
 152 ~~the department or by the Office of Insurance Regulation:~~
 153 ~~a. Receive inquiries and complaints from consumers.~~
 154 ~~b. Prepare and disseminate such information as the~~
 155 ~~department deems appropriate to inform or assist consumers.~~
 156 ~~c. Provide direct assistance and advocacy for consumers who~~
 157 ~~request such assistance or advocacy.~~
 158 ~~d. With respect to apparent or potential violations of law~~
 159 ~~or applicable rules by a person or entity licensed by the~~
 160 ~~department or office, report apparent or potential violations to~~
 161 ~~the office or the appropriate division of the department, which~~
 162 ~~may take such further action as it deems appropriate.~~

163 ~~e. Designate an employee of the division as primary contact~~
 164 ~~for consumers on issues relating to sinkholes.~~

165 ~~2. Any person licensed or issued a certificate of authority~~
 166 ~~by the department or by the Office of Insurance Regulation shall~~
 167 ~~respond, in writing, to the Division of Consumer Services within~~
 168 ~~20 days after receipt of a written request for information from~~
 169 ~~the division concerning a consumer complaint. The response must~~
 170 ~~address the issues and allegations raised in the complaint. The~~
 171 ~~division may impose an administrative penalty for failure to~~
 172 ~~comply with this subparagraph of up to \$2,500 per violation upon~~
 173 ~~any entity licensed by the department or the office and \$250 for~~
 174 ~~the first violation, \$500 for the second violation, and up to~~

24-00960C-16 2016908__

175 \$1,000 per violation thereafter upon any individual licensed by
176 the department or the office.

177 ~~3. The department may adopt rules to administer this~~
178 ~~paragraph.~~

179 ~~4. The powers, duties, and responsibilities expressed or~~
180 ~~granted in this paragraph do not limit the powers, duties, and~~
181 ~~responsibilities of the Department of Financial Services, the~~
182 ~~Financial Services Commission, the Office of Insurance~~
183 ~~Regulation, or the Office of Financial Regulation set forth~~
184 ~~elsewhere in the Florida Statutes.~~

185 ~~(l)(i) The Division of Workers' Compensation.~~

186 ~~(j) The Division of Administration.~~

187 ~~(k) The Division of Legal Services.~~

188 ~~(l) The Division of Information Systems.~~

189 (m) The Office of Insurance Consumer Advocate.

190 ~~(c)(n) The Division of Funeral, Cemetery, and Consumer~~
191 ~~Services.~~

192 ~~(f)(e) The Division of Public Assistance Fraud.~~

193

194 The Chief Financial Officer may establish any other division,
195 bureau, or office of the department that he or she deems
196 necessary to promote the efficient and effective operation of
197 the department pursuant to s. 20.04.

198 ~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT. The~~
199 ~~Strategic Markets Research and Assessment Unit is established~~
200 ~~within the Department of Financial Services. The Chief Financial~~
201 ~~Officer or his or her designee shall report on September 1,~~
202 ~~2008, and quarterly thereafter, to the Cabinet, the President of~~
203 ~~the Senate, and the Speaker of the House of Representatives on~~

24-00960C-16 2016908__

204 ~~the status of the state's financial services markets. At a~~
205 ~~minimum, the report must include a summary of issues, trends,~~
206 ~~and threats that broadly impact the condition of the financial~~
207 ~~services industries, along with the effect of such conditions on~~
208 ~~financial institutions, the securities industries, other~~
209 ~~financial entities, and the credit market. The Chief Financial~~
210 ~~Officer shall also provide findings and recommendations~~
211 ~~regarding regulatory and policy changes to the Cabinet, the~~
212 ~~President of the Senate, and the Speaker of the House of~~
213 ~~Representatives.~~

214 Section 4. Subsection (4) of section 624.26, Florida
215 Statutes, is amended to read:

216 624.26 Collaborative arrangement with the Department of
217 Health and Human Services.—

218 (4) The department's Division of Consumer Services may
219 respond to complaints by consumers relating to a requirement of
220 PPACA ~~as authorized under s. 20.121(2)(h)~~, and report apparent
221 or potential violations to the office and to the federal
222 Department of Health and Human Services.

223 Section 5. Subsection (10) is added to section 624.307,
224 Florida Statutes, to read:

225 624.307 General powers; duties.—

226 (10) (a) The Division of Consumer Services shall perform the
227 following functions concerning products or services regulated by
228 the department or office:

229 1. Receive inquiries and complaints from consumers.

230 2. Prepare and disseminate information that the department
231 deems appropriate to inform or assist consumers.

232 3. Provide direct assistance to and advocacy for consumers

24-00960C-16

2016908__

233 who request such assistance or advocacy.

234 4. With respect to apparent or potential violations of law
 235 or applicable rules committed by a person or entity licensed by
 236 the department or office, report apparent or potential
 237 violations to the office or to the appropriate division of the
 238 department, which may take any additional action it deems
 239 appropriate.

240 5. Designate an employee of the division as the primary
 241 contact for consumers on issues relating to sinkholes.

242 (b) Any person licensed or issued a certificate of
 243 authority by the department or the office shall respond, in
 244 writing, to the division within 20 days after receipt of a
 245 written request for information from the division concerning a
 246 consumer complaint. The response must address the issues and
 247 allegations raised in the complaint. The division may impose an
 248 administrative penalty for failure to comply with this paragraph
 249 of up to \$2,500 per violation upon any entity licensed by the
 250 department or the office and \$250 for the first violation, \$500
 251 for the second violation, and up to \$1,000 for the third or
 252 subsequent violation upon any individual licensed by the
 253 department or the office.

254 (c) The department may adopt rules to administer this
 255 subsection.

256 (d) The powers, duties, and responsibilities expressed or
 257 granted in this subsection do not limit the powers, duties, and
 258 responsibilities of the department, the Financial Services
 259 Commission, the Office of Insurance Regulation, or the Office of
 260 Financial Regulation as otherwise provided by law.

261 Section 6. Section 16.59, Florida Statutes, is amended to

24-00960C-16

2016908__

262 read:

263 16.59 Medicaid fraud control.—The Medicaid Fraud Control
 264 Unit is created in the Department of Legal Affairs to
 265 investigate all violations of s. 409.920 and any criminal
 266 violations discovered during the course of those investigations.
 267 The Medicaid Fraud Control Unit may refer any criminal violation
 268 so uncovered to the appropriate prosecuting authority. The
 269 offices of the Medicaid Fraud Control Unit, the Agency for
 270 Health Care Administration Medicaid program integrity program,
 271 and the Divisions of Investigative and Forensic Services
 272 ~~Insurance Fraud~~ and Public Assistance Fraud within the
 273 Department of Financial Services shall, to the extent possible,
 274 be collocated; however, positions dedicated to Medicaid managed
 275 care fraud within the Medicaid Fraud Control Unit shall be
 276 collocated with the Division of Investigative and Forensic
 277 Services ~~Insurance Fraud~~. The Agency for Health Care
 278 Administration, the Department of Legal Affairs, and the
 279 Divisions of Investigative and Forensic Services ~~Insurance Fraud~~
 280 and Public Assistance Fraud within the Department of Financial
 281 Services shall conduct joint training and other joint activities
 282 designed to increase communication and coordination in
 283 recovering overpayments.

284 Section 7. Subsection (9) of section 400.9935, Florida
 285 Statutes, is amended to read:

286 400.9935 Clinic responsibilities.—

287 (9) In addition to the requirements of part II of chapter
 288 408, the clinic shall display a sign in a conspicuous location
 289 within the clinic readily visible to all patients indicating
 290 that, pursuant to s. 626.9892, the Department of Financial

24-00960C-16

2016908__

291 Services may pay rewards of up to \$25,000 to persons providing
 292 information leading to the arrest and conviction of persons
 293 committing crimes investigated by the Division of Investigative
 294 and Forensic Services Insurance Fraud arising from violations of
 295 s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.
 296 An authorized employee of the Division of Investigative and
 297 Forensic Services Insurance Fraud may make unannounced
 298 inspections of a clinic licensed under this part as necessary to
 299 determine whether the clinic is in compliance with this
 300 subsection. A licensed clinic shall allow full and complete
 301 access to the premises to such authorized employee of the
 302 division who makes an inspection to determine compliance with
 303 this subsection.

304 Section 8. Subsection (6) of section 409.91212, Florida
 305 Statutes, is amended to read:

306 409.91212 Medicaid managed care fraud.—

307 (6) Each managed care plan shall report all suspected or
 308 confirmed instances of provider or recipient fraud or abuse
 309 within 15 calendar days after detection to the Office of
 310 Medicaid Program Integrity within the agency. At a minimum the
 311 report must contain the name of the provider or recipient, the
 312 Medicaid billing number or tax identification number, and a
 313 description of the fraudulent or abusive act. The Office of
 314 Medicaid Program Integrity in the agency shall forward the
 315 report of suspected overpayment, abuse, or fraud to the
 316 appropriate investigative unit, including, but not limited to,
 317 the Bureau of Medicaid program integrity, the Medicaid fraud
 318 control unit, the Division of Public Assistance Fraud, the
 319 Division of Investigative and Forensic Services Insurance Fraud,

Page 11 of 48

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

24-00960C-16

2016908__

320 or the Department of Law Enforcement.

321 (a) Failure to timely report shall result in an
 322 administrative fine of \$1,000 per calendar day after the 15th
 323 day of detection.

324 (b) Failure to timely report may result in additional
 325 administrative, civil, or criminal penalties.

326 Section 9. Paragraph (a) of subsection (1) of section
 327 440.105, Florida Statutes, is amended to read:

328 440.105 Prohibited activities; reports; penalties;
 329 limitations.—

330 (1) (a) Any insurance carrier, any individual self-insured,
 331 any commercial or group self-insurance fund, any professional
 332 practitioner licensed or regulated by the Department of Health,
 333 except as otherwise provided by law, any medical review
 334 committee as defined in s. 766.101, any private medical review
 335 committee, and any insurer, agent, or other person licensed
 336 under the insurance code, or any employee thereof, having
 337 knowledge or who believes that a fraudulent act or any other act
 338 or practice which, upon conviction, constitutes a felony or
 339 misdemeanor under this chapter is being or has been committed
 340 shall send to the Division of Investigative and Forensic
 341 Services Insurance Fraud, Bureau of Workers' Compensation Fraud,
 342 a report or information pertinent to such knowledge or belief
 343 and such additional information relative thereto as the bureau
 344 may require. The bureau shall review such information or reports
 345 and select such information or reports as, in its judgment, may
 346 require further investigation. It shall then cause an
 347 independent examination of the facts surrounding such
 348 information or report to be made to determine the extent, if

Page 12 of 48

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

24-00960C-16

2016908__

349 any, to which a fraudulent act or any other act or practice
 350 which, upon conviction, constitutes a felony or a misdemeanor
 351 under this chapter is being committed. The bureau shall report
 352 any alleged violations of law which its investigations disclose
 353 to the appropriate licensing agency and state attorney or other
 354 prosecuting agency having jurisdiction with respect to any such
 355 violations of this chapter. If prosecution by the state attorney
 356 or other prosecuting agency having jurisdiction with respect to
 357 such violation is not begun within 60 days of the bureau's
 358 report, the state attorney or other prosecuting agency having
 359 jurisdiction with respect to such violation shall inform the
 360 bureau of the reasons for the lack of prosecution.

361 Section 10. Subsections (1) and (2) of section 440.1051,
 362 Florida Statutes, are amended to read:

363 440.1051 Fraud reports; civil immunity; criminal
 364 penalties.-

365 (1) The Bureau of Workers' Compensation Insurance Fraud of
 366 the Division of Investigative and Forensic Services ~~Insurance~~
 367 ~~Fraud~~ of the department shall establish a toll-free telephone
 368 number to receive reports of workers' compensation fraud
 369 committed by an employee, employer, insurance provider,
 370 physician, attorney, or other person.

371 (2) Any person who reports workers' compensation fraud to
 372 the Division of Investigative and Forensic Services ~~Insurance~~
 373 ~~Fraud~~ under subsection (1) is immune from civil liability for
 374 doing so, and the person or entity alleged to have committed the
 375 fraud may not retaliate against him or her for providing such
 376 report, unless the person making the report knows it to be
 377 false.

Page 13 of 48

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

24-00960C-16

2016908__

378 Section 11. Paragraph (c) of subsection (1) of section
 379 440.12, Florida Statutes, is amended to read:

380 440.12 Time for commencement and limits on weekly rate of
 381 compensation.-

382 (1) Compensation is not allowed for the first 7 days of the
 383 disability, except for benefits provided under s. 440.13.
 384 However, if the injury results in more than 21 days of
 385 disability, compensation is allowed from the commencement of the
 386 disability.

387 (c) Each carrier shall keep a record of all payments made
 388 under this subsection, including the time and manner of such
 389 payments, and shall furnish these records or a report based on
 390 these records to the Division of Investigative and Forensic
 391 Services ~~Insurance Fraud~~ and the Division of Workers'
 392 Compensation, upon request.

393 Section 12. Subsection (1) of section 624.521, Florida
 394 Statutes, is amended to read:

395 624.521 Deposit of certain tax receipts; refund of improper
 396 payments.-

397 (1) The department ~~of Financial Services~~ shall promptly
 398 deposit in the State Treasury to the credit of the Insurance
 399 Regulatory Trust Fund all "state tax" portions of agents'
 400 licenses collected under s. 624.501 necessary to fund the
 401 Division of Investigative and Forensic Services ~~Insurance Fraud~~.
 402 The balance of the tax shall be credited to the General Fund.
 403 All moneys received by the department ~~of Financial Services~~ or
 404 the office not in accordance with ~~the provisions of~~ this code or
 405 not in the exact amount as specified by the applicable
 406 provisions of this code shall be returned to the remitter. The

Page 14 of 48

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

24-00960C-16 2016908__

407 records of the department or office shall show the date and
 408 reason for such return.

409 Section 13. Subsection (4) of section 626.016, Florida
 410 Statutes, is amended to read:

411 626.016 Powers and duties of department, commission, and
 412 office.—

413 (4) ~~Nothing in~~ This section is not intended to limit the
 414 authority of the department and the Division of Investigative
 415 and Forensic Services Insurance Fraud, as specified in s.
 416 626.989.

417 Section 14. Section 626.989, Florida Statutes, is amended
 418 to read:

419 626.989 Investigation by department or Division of
 420 Investigative and Forensic Services Insurance Fraud; compliance;
 421 immunity; confidential information; reports to division;
 422 division investigator's power of arrest.—

423 (1) For the purposes of this section:

424 (a) A person commits a "fraudulent insurance act" if the
 425 person:

426 1. Knowingly and with intent to defraud presents, causes to
 427 be presented, or prepares with knowledge or belief that it will
 428 be presented, to or by an insurer, self-insurer, self-insurance
 429 fund, servicing corporation, purported insurer, broker, or any
 430 agent thereof, any written statement as part of, or in support
 431 of, an application for the issuance of, or the rating of, any
 432 insurance policy, or a claim for payment or other benefit
 433 pursuant to any insurance policy, which the person knows to
 434 contain materially false information concerning any fact
 435 material thereto or if the person conceals, for the purpose of

24-00960C-16 2016908__

436 misleading another, information concerning any fact material
 437 thereto.

438 2. Knowingly submits:

439 a. A false, misleading, or fraudulent application or other
 440 document when applying for licensure as a health care clinic,
 441 seeking an exemption from licensure as a health care clinic, or
 442 demonstrating compliance with part X of chapter 400 with an
 443 intent to use the license, exemption from licensure, or
 444 demonstration of compliance to provide services or seek
 445 reimbursement under the Florida Motor Vehicle No-Fault Law.

446 b. A claim for payment or other benefit pursuant to a
 447 personal injury protection insurance policy under the Florida
 448 Motor Vehicle No-Fault Law if the person knows that the payee
 449 knowingly submitted a false, misleading, or fraudulent
 450 application or other document when applying for licensure as a
 451 health care clinic, seeking an exemption from licensure as a
 452 health care clinic, or demonstrating compliance with part X of
 453 chapter 400.

454 (b) The term "insurer" also includes a health maintenance
 455 organization, and the term "insurance policy" also includes a
 456 health maintenance organization subscriber contract.

457 (2) If, by its own inquiries or as a result of complaints,
 458 the department or its Division of Investigative and Forensic
 459 Services Insurance Fraud has reason to believe that a person has
 460 engaged in, or is engaging in, a fraudulent insurance act, an
 461 act or practice that violates s. 626.9541 or s. 817.234, or an
 462 act or practice punishable under s. 624.15, it may administer
 463 oaths and affirmations, request the attendance of witnesses or
 464 proffering of matter, and collect evidence. The department or

24-00960C-16

2016908__

465 its Division of Investigative and Forensic Services shall not
 466 compel the attendance of any person or matter in any such
 467 investigation except pursuant to subsection (4).

468 (3) If matter that the department or its division seeks to
 469 obtain by request is located outside the state, the person so
 470 requested may make it available to the division or its
 471 representative to examine the matter at the place where it is
 472 located. The division may designate representatives, including
 473 officials of the state in which the matter is located, to
 474 inspect the matter on its behalf, and it may respond to similar
 475 requests from officials of other states.

476 (4) (a) The department or its division may request that an
 477 individual who refuses to comply with any such request be
 478 ordered by the circuit court to provide the testimony or matter.
 479 The court shall not order such compliance unless the department
 480 or its division has demonstrated to the satisfaction of the
 481 court that the testimony of the witness or the matter under
 482 request has a direct bearing on the commission of a fraudulent
 483 insurance act, on a violation of s. 626.9541 or s. 817.234, or
 484 on an act or practice punishable under s. 624.15 or is pertinent
 485 and necessary to further such investigation.

486 (b) Except in a prosecution for perjury, an individual who
 487 complies with a court order to provide testimony or matter after
 488 asserting a privilege against self-incrimination to which the
 489 individual is entitled by law may not be subjected to a criminal
 490 proceeding or to a civil penalty with respect to the act
 491 concerning which the individual is required to testify or
 492 produce relevant matter.

493 (c) In the absence of fraud or bad faith, a person is not

Page 17 of 48

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

24-00960C-16

2016908__

494 subject to civil liability for libel, slander, or any other
 495 relevant tort by virtue of filing reports, without malice, or
 496 furnishing other information, without malice, required by this
 497 section or required by the department or division under the
 498 authority granted in this section, and no civil cause of action
 499 of any nature shall arise against such person:

500 1. For any information relating to suspected fraudulent
 501 insurance acts or persons suspected of engaging in such acts
 502 furnished to or received from law enforcement officials, their
 503 agents, or employees;

504 2. For any information relating to suspected fraudulent
 505 insurance acts or persons suspected of engaging in such acts
 506 furnished to or received from other persons subject to the
 507 provisions of this chapter;

508 3. For any such information furnished in reports to the
 509 department, the division, the National Insurance Crime Bureau,
 510 the National Association of Insurance Commissioners, or any
 511 local, state, or federal enforcement officials or their agents
 512 or employees; or

513 4. For other actions taken in cooperation with any of the
 514 agencies or individuals specified in this paragraph in the
 515 lawful investigation of suspected fraudulent insurance acts.

516 (d) In addition to the immunity granted in paragraph (c),
 517 persons identified as designated employees whose
 518 responsibilities include the investigation and disposition of
 519 claims relating to suspected fraudulent insurance acts may share
 520 information relating to persons suspected of committing
 521 fraudulent insurance acts with other designated employees
 522 employed by the same or other insurers whose responsibilities

Page 18 of 48

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

24-00960C-16

2016908__

523 include the investigation and disposition of claims relating to
 524 fraudulent insurance acts, provided the department has been
 525 given written notice of the names and job titles of such
 526 designated employees prior to such designated employees sharing
 527 information. Unless the designated employees of the insurer act
 528 in bad faith or in reckless disregard for the rights of any
 529 insured, neither the insurer nor its designated employees are
 530 civilly liable for libel, slander, or any other relevant tort,
 531 and a civil action does not arise against the insurer or its
 532 designated employees:

533 1. For any information related to suspected fraudulent
 534 insurance acts provided to an insurer; or

535 2. For any information relating to suspected fraudulent
 536 insurance acts provided to the National Insurance Crime Bureau
 537 or the National Association of Insurance Commissioners.

538
 539 Provided, however, that the qualified immunity against civil
 540 liability conferred on any insurer or its designated employees
 541 shall be forfeited with respect to the exchange or publication
 542 of any defamatory information with third persons not expressly
 543 authorized by this paragraph to share in such information.

544 (e) The Chief Financial Officer and any employee or agent
 545 of the department, commission, office, or division, when acting
 546 without malice and in the absence of fraud or bad faith, is not
 547 subject to civil liability for libel, slander, or any other
 548 relevant tort, and no civil cause of action of any nature exists
 549 against such person by virtue of the execution of official
 550 activities or duties of the department, commission, or office
 551 under this section or by virtue of the publication of any report

Page 19 of 48

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

24-00960C-16

2016908__

552 or bulletin related to the official activities or duties of the
 553 department, division, commission, or office under this section.

554 (f) This section does not abrogate or modify in any way any
 555 common-law or statutory privilege or immunity heretofore enjoyed
 556 by any person.

557 (5) The office's and the department's papers, documents,
 558 reports, or evidence relative to the subject of an investigation
 559 under this section are confidential and exempt from the
 560 provisions of s. 119.07(1) until such investigation is completed
 561 or ceases to be active. For purposes of this subsection, an
 562 investigation is considered "active" while the investigation is
 563 being conducted by the office or department with a reasonable,
 564 good faith belief that it could lead to the filing of
 565 administrative, civil, or criminal proceedings. An investigation
 566 does not cease to be active if the office or department is
 567 proceeding with reasonable dispatch and has a good faith belief
 568 that action could be initiated by the office or department or
 569 other administrative or law enforcement agency. After an
 570 investigation is completed or ceases to be active, portions of
 571 records relating to the investigation shall remain exempt from
 572 the provisions of s. 119.07(1) if disclosure would:

573 (a) Jeopardize the integrity of another active
 574 investigation;

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

576 (c) Reveal personal financial information;

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

578 (e) Defame or cause unwarranted damage to the good name or
 579 reputation of an individual or jeopardize the safety of an
 580 individual; or

Page 20 of 48

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

24-00960C-16

2016908__

581 (f) Reveal investigative techniques or procedures. Further,
 582 such papers, documents, reports, or evidence relative to the
 583 subject of an investigation under this section shall not be
 584 subject to discovery until the investigation is completed or
 585 ceases to be active. Office, department, or division
 586 investigators shall not be subject to subpoena in civil actions
 587 by any court of this state to testify concerning any matter of
 588 which they have knowledge pursuant to a pending insurance fraud
 589 investigation by the division.

590 (6) Any person, other than an insurer, agent, or other
 591 person licensed under the code, or an employee thereof, having
 592 knowledge or who believes that a fraudulent insurance act or any
 593 other act or practice which, upon conviction, constitutes a
 594 felony or a misdemeanor under the code, or under s. 817.234, is
 595 being or has been committed may send to the Division of
 596 Investigative and Forensic Services Insurance Fraud a report or
 597 information pertinent to such knowledge or belief and such
 598 additional information relative thereto as the department may
 599 request. Any professional practitioner licensed or regulated by
 600 the Department of Business and Professional Regulation, except
 601 as otherwise provided by law, any medical review committee as
 602 defined in s. 766.101, any private medical review committee, and
 603 any insurer, agent, or other person licensed under the code, or
 604 an employee thereof, having knowledge or who believes that a
 605 fraudulent insurance act or any other act or practice which,
 606 upon conviction, constitutes a felony or a misdemeanor under the
 607 code, or under s. 817.234, is being or has been committed shall
 608 send to the Division of Investigative and Forensic Services
 609 ~~Insurance Fraud~~ a report or information pertinent to such

Page 21 of 48

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

24-00960C-16

2016908__

610 knowledge or belief and such additional information relative
 611 thereto as the department may require. The Division of
 612 Investigative and Forensic Services Insurance Fraud shall review
 613 such information or reports and select such information or
 614 reports as, in its judgment, may require further investigation.
 615 It shall then cause an independent examination of the facts
 616 surrounding such information or report to be made to determine
 617 the extent, if any, to which a fraudulent insurance act or any
 618 other act or practice which, upon conviction, constitutes a
 619 felony or a misdemeanor under the code, or under s. 817.234, is
 620 being committed. The Division of Investigative and Forensic
 621 Services Insurance Fraud shall report any alleged violations of
 622 law which its investigations disclose to the appropriate
 623 licensing agency and state attorney or other prosecuting agency
 624 having jurisdiction with respect to any such violation, as
 625 provided in s. 624.310. If prosecution by the state attorney or
 626 other prosecuting agency having jurisdiction with respect to
 627 such violation is not begun within 60 days of the division's
 628 report, the state attorney or other prosecuting agency having
 629 jurisdiction with respect to such violation shall inform the
 630 division of the reasons for the lack of prosecution.

631 (7) Division investigators shall have the power to make
 632 arrests for criminal violations established as a result of
 633 investigations. Such investigators shall also be considered
 634 state law enforcement officers for all purposes and shall have
 635 the power to execute arrest warrants and search warrants; to
 636 serve subpoenas issued for the examination, investigation, and
 637 trial of all offenses; and to arrest upon probable cause without
 638 warrant any person found in the act of violating any of the

Page 22 of 48

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

24-00960C-16

2016908__

639 provisions of applicable laws. Investigators empowered to make
 640 arrests under this section shall be empowered to bear arms in
 641 the performance of their duties. In such a situation, the
 642 investigator must be certified in compliance with the provisions
 643 of s. 943.1395 or must meet the temporary employment or
 644 appointment exemption requirements of s. 943.131 until
 645 certified.

646 (8) It is unlawful for any person to resist an arrest
 647 authorized by this section or in any manner to interfere, either
 648 by abetting or assisting such resistance or otherwise
 649 interfering, with division investigators in the duties imposed
 650 upon them by law or department rule.

651 (9) In recognition of the complementary roles of
 652 investigating instances of workers' compensation fraud and
 653 enforcing compliance with the workers' compensation coverage
 654 requirements under chapter 440, the Department of Financial
 655 Services shall prepare and submit a joint performance report to
 656 the President of the Senate and the Speaker of the House of
 657 Representatives by January 1 of each year. The annual report
 658 must include, but need not be limited to:

659 (a) The total number of initial referrals received, cases
 660 opened, cases presented for prosecution, cases closed, and
 661 convictions resulting from cases presented for prosecution by
 662 the Bureau of Workers' Compensation Insurance Fraud by type of
 663 workers' compensation fraud and circuit.

664 (b) The number of referrals received from insurers and the
 665 Division of Workers' Compensation and the outcome of those
 666 referrals.

667 (c) The number of investigations undertaken by the Bureau

24-00960C-16

2016908__

668 of Workers' Compensation Insurance Fraud which were not the
 669 result of a referral from an insurer or the Division of Workers'
 670 Compensation.

671 (d) The number of investigations that resulted in a
 672 referral to a regulatory agency and the disposition of those
 673 referrals.

674 (e) The number and reasons provided by local prosecutors or
 675 the statewide prosecutor for declining prosecution of a case
 676 presented by the Bureau of Workers' Compensation Insurance Fraud
 677 by circuit.

678 (f) The total number of employees assigned to the Bureau of
 679 Workers' Compensation Insurance Fraud and the Division of
 680 Workers' Compensation Bureau of Compliance delineated by
 681 location of staff assigned; and the number and location of
 682 employees assigned to the Bureau of Workers' Compensation
 683 Insurance Fraud who were assigned to work other types of fraud
 684 cases.

685 (g) The average caseload and turnaround time by type of
 686 case for each investigator and division compliance employee.

687 (h) The training provided during the year to workers'
 688 compensation fraud investigators and the division's compliance
 689 employees.

690 Section 15. Subsection (2) of section 626.9892, Florida
 691 Statutes, is amended to read:

692 626.9892 Anti-Fraud Reward Program; reporting of insurance
 693 fraud.—

694 (2) The department may pay rewards of up to \$25,000 to
 695 persons providing information leading to the arrest and
 696 conviction of persons committing crimes investigated by the

24-00960C-16 2016908
 697 Division of Investigative and Forensic Services Insurance Fraud
 698 arising from violations of s. 440.105, s. 624.15, s. 626.9541,
 699 s. 626.989, s. 790.164, s. 790.165, s. 790.166, s. 806.031, s.
 700 806.10, s. 806.111, s. 817.233, or s. 817.234.

701 Section 16. Subsection (1) of section 626.9893, Florida
 702 Statutes, is amended to read:

703 626.9893 Disposition of revenues; criminal or forfeiture
 704 proceedings.—

705 (1) The Division of Investigative and Forensic Services
 706 ~~Insurance Fraud~~ of the Department of Financial Services may
 707 deposit revenues received as a result of criminal proceedings or
 708 forfeiture proceedings, other than revenues deposited into the
 709 Department of Financial Services' Federal Law Enforcement Trust
 710 Fund under s. 17.43, into the Insurance Regulatory Trust Fund.
 711 Moneys deposited pursuant to this section shall be separately
 712 accounted for and shall be used solely for the division to carry
 713 out its duties and responsibilities.

714 Section 17. Subsection (2) of section 626.9894, Florida
 715 Statutes, is amended to read:

716 626.9894 Gifts and grants.—

717 (2) All rights to, interest in, and title to such donated
 718 or granted property shall immediately vest in the Division of
 719 Investigative and Forensic Services Insurance Fraud upon
 720 donation. The division may hold such property in coownership,
 721 sell its interest in the property, liquidate its interest in the
 722 property, or dispose of its interest in the property in any
 723 other reasonable manner.

724 Section 18. Section 626.99278, Florida Statutes, is amended
 725 to read:

24-00960C-16 2016908
 726 626.99278 Viatical provider anti-fraud plan.—Every licensed
 727 viatical settlement provider and registered life expectancy
 728 provider must adopt an anti-fraud plan and file it with the
 729 Division of Investigative and Forensic Services Insurance Fraud
 730 of the department. Each anti-fraud plan shall include:

731 (1) A description of the procedures for detecting and
 732 investigating possible fraudulent acts and procedures for
 733 resolving material inconsistencies between medical records and
 734 insurance applications.

735 (2) A description of the procedures for the mandatory
 736 reporting of possible fraudulent insurance acts and prohibited
 737 practices set forth in s. 626.99275 to the Division of
 738 Investigative and Forensic Services Insurance Fraud of the
 739 department.

740 (3) A description of the plan for anti-fraud education and
 741 training of its underwriters or other personnel.

742 (4) A written description or chart outlining the
 743 organizational arrangement of the anti-fraud personnel who are
 744 responsible for the investigation and reporting of possible
 745 fraudulent insurance acts and for the investigation of
 746 unresolved material inconsistencies between medical records and
 747 insurance applications.

748 (5) For viatical settlement providers, a description of the
 749 procedures used to perform initial and continuing review of the
 750 accuracy of life expectancies used in connection with a viatical
 751 settlement contract or viatical settlement investment.

752 Section 19. Paragraph (k) of subsection (6) of section
 753 627.351, Florida Statutes, is amended to read:

754 627.351 Insurance risk apportionment plans.—

24-00960C-16

2016908__

755 (6) CITIZENS PROPERTY INSURANCE CORPORATION.—
 756 (k)1. The corporation shall establish and maintain a unit
 757 or division to investigate possible fraudulent claims by
 758 insureds or by persons making claims for services or repairs
 759 against policies held by insureds; or it may contract with
 760 others to investigate possible fraudulent claims for services or
 761 repairs against policies held by the corporation pursuant to s.
 762 626.9891. The corporation must comply with reporting
 763 requirements of s. 626.9891. An employee of the corporation
 764 shall notify the corporation's Office of the Inspector General
 765 and the Division of Investigative and Forensic Services
 766 ~~Insurance Fraud~~ within 48 hours after having information that
 767 would lead a reasonable person to suspect that fraud may have
 768 been committed by any employee of the corporation.

769 2. The corporation shall establish a unit or division
 770 responsible for receiving and responding to consumer complaints,
 771 which unit or division is the sole responsibility of a senior
 772 manager of the corporation.

773 Section 20. Subsections (4) and (7) of section 627.711,
 774 Florida Statutes, are amended to read:

775 627.711 Notice of premium discounts for hurricane loss
 776 mitigation; uniform mitigation verification inspection form.—
 777 (4) An authorized mitigation inspector that signs a uniform
 778 mitigation form, and a direct employee authorized to conduct
 779 mitigation verification inspections under subsection paragraph
 780 (3), may not commit misconduct in performing hurricane
 781 mitigation inspections or in completing a uniform mitigation
 782 form that causes financial harm to a customer or their insurer;
 783 or that jeopardizes a customer's health and safety. Misconduct

Page 27 of 48

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

24-00960C-16

2016908__

784 occurs when an authorized mitigation inspector signs a uniform
 785 mitigation verification form that:

786 (a) Falsely indicates that he or she personally inspected
 787 the structures referenced by the form;

788 (b) Falsely indicates the existence of a feature which
 789 entitles an insured to a mitigation discount which the inspector
 790 knows does not exist or did not personally inspect;

791 (c) Contains erroneous information due to the gross
 792 negligence of the inspector; or

793 (d) Contains a pattern of demonstrably false information
 794 regarding the existence of mitigation features that could give
 795 an insured a false evaluation of the ability of the structure to
 796 withstand major damage from a hurricane endangering the safety
 797 of the insured's life and property.

798 (7) An insurer, person, or other entity that obtains
 799 evidence of fraud or evidence that an authorized mitigation
 800 inspector or an employee authorized to conduct mitigation
 801 verification inspections under subsection paragraph (3) has made
 802 false statements in the completion of a mitigation inspection
 803 form shall file a report with the Division of Investigative and
 804 Forensic Services ~~Insurance Fraud~~, along with all of the
 805 evidence in its possession that supports the allegation of fraud
 806 or falsity. An insurer, person, or other entity making the
 807 report shall be immune from liability, in accordance with s.
 808 626.989(4), for any statements made in the report, during the
 809 investigation, or in connection with the report. The Division of
 810 Investigative and Forensic Services ~~Insurance Fraud~~ shall issue
 811 an investigative report if it finds that probable cause exists
 812 to believe that the authorized mitigation inspector, or an

Page 28 of 48

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

24-00960C-16

2016908__

813 employee authorized to conduct mitigation verification
 814 inspections under ~~subsection paragraph~~ (3), made intentionally
 815 false or fraudulent statements in the inspection form. Upon
 816 conclusion of the investigation and a finding of probable cause
 817 that a violation has occurred, the Division of Investigative and
 818 Forensic Services Insurance Fraud shall send a copy of the
 819 investigative report to the office and a copy to the agency
 820 responsible for the professional licensure of the authorized
 821 mitigation inspector, whether or not a prosecutor takes action
 822 based upon the report.

823 Section 21. Paragraph (i) of subsection (4) and subsection
 824 (14) of section 627.736, Florida Statutes, are amended to read:
 825 627.736 Required personal injury protection benefits;
 826 exclusions; priority; claims.-

827 (4) PAYMENT OF BENEFITS.-Benefits due from an insurer under
 828 ss. 627.730-627.7405 are primary, except that benefits received
 829 under any workers' compensation law must be credited against the
 830 benefits provided by subsection (1) and are due and payable as
 831 loss accrues upon receipt of reasonable proof of such loss and
 832 the amount of expenses and loss incurred which are covered by
 833 the policy issued under ss. 627.730-627.7405. If the Agency for
 834 Health Care Administration provides, pays, or becomes liable for
 835 medical assistance under the Medicaid program related to injury,
 836 sickness, disease, or death arising out of the ownership,
 837 maintenance, or use of a motor vehicle, the benefits under ss.
 838 627.730-627.7405 are subject to the Medicaid program. However,
 839 within 30 days after receiving notice that the Medicaid program
 840 paid such benefits, the insurer shall repay the full amount of
 841 the benefits to the Medicaid program.

Page 29 of 48

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

24-00960C-16

2016908__

842 (i) If an insurer has a reasonable belief that a fraudulent
 843 insurance act, for the purposes of s. 626.989 or s. 817.234, has
 844 been committed, the insurer shall notify the claimant, in
 845 writing, within 30 days after submission of the claim that the
 846 claim is being investigated for suspected fraud. Beginning at
 847 the end of the initial 30-day period, the insurer has an
 848 additional 60 days to conduct its fraud investigation.
 849 Notwithstanding subsection (10), no later than 90 days after the
 850 submission of the claim, the insurer must deny the claim or pay
 851 the claim with simple interest as provided in paragraph (d).
 852 Interest shall be assessed from the day the claim was submitted
 853 until the day the claim is paid. All claims denied for suspected
 854 fraudulent insurance acts shall be reported to the Division of
 855 Investigative and Forensic Services Insurance Fraud.

856 (14) FRAUD ADVISORY NOTICE.-Upon receiving notice of a
 857 claim under this section, an insurer shall provide a notice to
 858 the insured or to a person for whom a claim for reimbursement
 859 for diagnosis or treatment of injuries has been filed, advising
 860 that:

861 (a) Pursuant to s. 626.9892, the Department of Financial
 862 Services may pay rewards of up to \$25,000 to persons providing
 863 information leading to the arrest and conviction of persons
 864 committing crimes investigated by the Division of Investigative
 865 and Forensic Services Insurance Fraud arising from violations of
 866 s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

867 (b) Solicitation of a person injured in a motor vehicle
 868 crash for purposes of filing personal injury protection or tort
 869 claims could be a violation of s. 817.234, s. 817.505, or the
 870 rules regulating The Florida Bar and should be immediately

Page 30 of 48

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

24-00960C-16 2016908__

871 reported to the Division of Investigative and Forensic Services
872 ~~Insurance Fraud~~ if such conduct has taken place.

873 Section 22. Paragraphs (b) and (c) of subsection (1) of
874 section 627.7401, Florida Statutes, are amended to read:

875 627.7401 Notification of insured's rights.—

876 (1) The commission, by rule, shall adopt a form for the
877 notification of insureds of their right to receive personal
878 injury protection benefits under the Florida Motor Vehicle No-
879 Fault Law. Such notice shall include:

880 (b) An advisory informing insureds that:

881 1. Pursuant to s. 626.9892, the Department of Financial
882 Services may pay rewards of up to \$25,000 to persons providing
883 information leading to the arrest and conviction of persons
884 committing crimes investigated by the Division of Investigative
885 and Forensic Services ~~Insurance Fraud~~ arising from violations of
886 s. 440.105, s. 624.15, s. 626.9541, s. 626.989, or s. 817.234.

887 2. Pursuant to s. 627.736(5)(e)1., if the insured notifies
888 the insurer of a billing error, the insured may be entitled to a
889 certain percentage of a reduction in the amount paid by the
890 insured's motor vehicle insurer.

891 (c) A notice that solicitation of a person injured in a
892 motor vehicle crash for purposes of filing personal injury
893 protection or tort claims could be a violation of s. 817.234, s.
894 817.505, or the rules regulating The Florida Bar and should be
895 immediately reported to the Division of Investigative and
896 Forensic Services ~~Insurance Fraud~~ if such conduct has taken
897 place.

898 Section 23. Subsection (2) of section 631.156, Florida
899 Statutes, is amended to read:

Page 31 of 48

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

24-00960C-16 2016908__

900 631.156 Investigation by the department; scope of
901 authority; sharing of materials.—

902 (2) The department may provide documents, books, and
903 records; other investigative products, work product, and
904 analysis; and copies of any or all of such materials to the
905 Division of Investigative and Forensic Services ~~Insurance Fraud~~
906 or any other appropriate government agency. The sharing of these
907 materials does ~~shall~~ not waive any work product or other
908 privilege otherwise applicable under law.

909 Section 24. Subsection (4) of section 641.30, Florida
910 Statutes, is amended to read:

911 641.30 Construction and relationship to other laws.—

912 (4) The Division of Investigative and Forensic Services
913 ~~Insurance Fraud~~ of the department is vested with all powers
914 granted to it under the Florida Insurance Code with respect to
915 the investigation of any violation of this part.

916 Section 25. Paragraph (a) of subsection (2) of section
917 282.709, Florida Statutes, is amended to read:

918 282.709 State agency law enforcement radio system and
919 interoperability network.—

920 (2) The Joint Task Force on State Agency Law Enforcement
921 Communications is created adjunct to the department to advise
922 the department of member-agency needs relating to the planning,
923 designing, and establishment of the statewide communication
924 system.

925 (a) The Joint Task Force on State Agency Law Enforcement
926 Communications shall consist of the following members:

927 1. A representative of the Division of Alcoholic Beverages
928 and Tobacco of the Department of Business and Professional

Page 32 of 48

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

24-00960C-16

2016908__

929 Regulation who shall be appointed by the secretary of the
930 department.

931 2. A representative of the Division of Florida Highway
932 Patrol of the Department of Highway Safety and Motor Vehicles
933 who shall be appointed by the executive director of the
934 department.

935 3. A representative of the Department of Law Enforcement
936 who shall be appointed by the executive director of the
937 department.

938 4. A representative of the Fish and Wildlife Conservation
939 Commission who shall be appointed by the executive director of
940 the commission.

941 5. A representative of the Department of Corrections who
942 shall be appointed by the secretary of the department.

943 6. A representative of the Division of Investigative and
944 Forensic Services ~~State Fire Marshal~~ of the Department of
945 Financial Services who shall be appointed by the Chief Financial
946 Officer ~~State Fire Marshal~~.

947 7. A representative of the Department of Agriculture and
948 Consumer Services who shall be appointed by the Commissioner of
949 Agriculture.

950 Section 26. Subsection (3) of section 552.113, Florida
951 Statutes, is amended to read:

952 552.113 Reports of thefts, illegal use, or illegal
953 possession.-

954 (3) The Division of Investigative and Forensic Services
955 shall investigate, or be certain that a qualified law
956 enforcement agency investigates, the cause and circumstances of
957 each theft, illegal use, or illegal possession of explosives

24-00960C-16

2016908__

958 which occurs within the state. A report of each such
959 investigation shall be made and maintained by the Division of
960 Investigative and Forensic Services.

961 Section 27. Subsections (1) and (2) of section 552.21,
962 Florida Statutes, are amended to read:

963 552.21 Confiscation and disposal of explosives.-

964 (1) Whenever the ~~department division~~ shall have reason to
965 believe that any person is or has been violating the provisions
966 of this chapter or any rules or regulations adopted and
967 promulgated pursuant thereto, the ~~department division~~ may,
968 without further process of law, confiscate the explosives in
969 question and cause them to be stored in a safe manner, or, if
970 any explosives are deemed by the ~~department division~~ to be in
971 such a state or condition as to constitute a hazard to life or
972 property, the ~~department division~~ may dispose of such explosives
973 without further process of law. The ~~department division~~ is
974 authorized to dispose of any abandoned explosives that it deems
975 to be hazardous to life or property.

976 (2) If the person so charged is found guilty of violating
977 ~~the provisions of~~ this chapter or any rule or regulation adopted
978 pursuant thereto with regard to the possession, handling, or
979 storage of explosives, the ~~department division~~ is authorized to
980 dispose of the confiscated materials in such a way as it shall
981 deem equitable.

982 Section 28. Paragraph (c) of subsection (6) of section
983 633.112, Florida Statutes, is amended to read:

984 633.112 State Fire Marshal; hearings; investigations;
985 recordkeeping and reports; subpoenas of witnesses; orders of
986 circuit court.-

24-00960C-16

2016908__

987 (6) Upon request, the State Fire Marshal shall investigate
 988 the cause, origin, and circumstances of fires and explosions
 989 occurring in this state wherein property has been damaged or
 990 destroyed and there is probable cause to believe that the fire
 991 or explosion was the result of carelessness or design.

992 (c) The State Fire Marshal ~~division~~ shall adopt rules to
 993 assist local fire officials and law enforcement officers in
 994 determining the established responsibilities with respect to the
 995 initial or preliminary assessment of fire and explosion scenes,
 996 and the determination of whether probable cause exists to refer
 997 such scenes to the State Fire Marshal for an investigation.

998 Section 29. Subsection (1) of section 633.114, Florida
 999 Statutes, is amended to read:

1000 633.114 State Fire Marshal agents; authority; duties;
 1001 compensation.—

1002 (1) The State Fire Marshal shall appoint such agents,
 1003 including agents of the Division of Investigative and Forensic
 1004 Services, as may be necessary to carry out effectively this
 1005 chapter, who shall be reimbursed for travel expenses as provided
 1006 in s. 112.061, in addition to their salary, when traveling or
 1007 making investigations in the performance of their duties. Such
 1008 agents, including agents of the Division of Investigative and
 1009 Forensic Services, shall be at all times under the direction and
 1010 control of the State Fire Marshal, who shall fix their
 1011 compensation, and all orders shall be issued in the State Fire
 1012 Marshal's name and by her or his authority.

1013 Section 30. Section 633.122, Florida Statutes, is amended
 1014 to read:

1015 633.122 Impersonating State Fire Marshal, firefighter,

Page 35 of 48

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

24-00960C-16

2016908__

1016 volunteer firefighter, or firesafety inspector; criminal
 1017 penalties.—A person who falsely assumes or pretends to be the
 1018 State Fire Marshal, an agent of the division, an agent of the
 1019 Division of Investigative and Forensic Services, a firefighter,
 1020 a volunteer firefighter, or a firesafety inspector by
 1021 identifying herself or himself as the State Fire Marshal, an
 1022 agent of the division, an agent of the Division of Investigative
 1023 and Forensic Services, a firefighter, a volunteer firefighter,
 1024 or a firesafety inspector by wearing a uniform or presenting or
 1025 displaying a badge as credentials that would cause a reasonable
 1026 person to believe that she or he is a State Fire Marshal, an
 1027 agent of the division, an agent of the Division of Investigative
 1028 and Forensic Services, a firefighter, a volunteer firefighter,
 1029 or firesafety inspector commits a felony of the third degree,
 1030 punishable as provided in ss. 775.082 and 775.083 or, if the
 1031 impersonation occurs during the commission of a separate felony
 1032 by that person, commits a felony of the first degree, punishable
 1033 as provided in ss. 775.082 and 775.083.

1034 Section 31. Paragraph (b) of subsection (1) of section
 1035 633.126, Florida Statutes, is amended to read:

1036 633.126 Investigation of fraudulent insurance claims and
 1037 crimes; immunity of insurance companies supplying information.—

1038 (1)

1039 (b) The State Fire Marshal or an agent appointed pursuant
 1040 to s. 633.114, an agent of the Division of Investigative and
 1041 Forensic Services, any law enforcement officer as defined in s.
 1042 111.065, any law enforcement officer of a federal agency, or any
 1043 fire service provider official who is engaged in the
 1044 investigation of a fire or explosion loss may request any

Page 36 of 48

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

24-00960C-16 2016908__

1045 insurance company or its agent, adjuster, employee, or attorney,
 1046 investigating a claim under an insurance policy or contract with
 1047 respect to a fire or explosion to release any information
 1048 whatsoever in the possession of the insurance company or its
 1049 agent, adjuster, employee, or attorney relative to a loss from
 1050 that fire or explosion. The insurance company shall release the
 1051 available information to and cooperate with any official
 1052 authorized to request such information pursuant to this section.
 1053 The information shall include, but shall not be limited to:

- 1054 1. Any insurance policy relevant to a loss under
- 1055 investigation and any application for such a policy.
- 1056 2. Any policy premium payment records.
- 1057 3. The records, reports, and all material pertaining to any
- 1058 previous claims made by the insured with the reporting company.
- 1059 4. Material relating to the investigation of the loss,
- 1060 including statements of a person, proof of loss, and other
- 1061 relevant evidence.
- 1062 5. Memoranda, notes, and correspondence relating to the
- 1063 investigation of the loss in the possession of the insurance
- 1064 company or its agents, adjusters, employees, or attorneys.

1065 Section 32. Subsection (5) of section 633.422, Florida
 1066 Statutes, is amended to read:

1067 633.422 Firefighters; supplemental compensation.—

1068 (5) APPLICABILITY.—For the purposes of this section, the
 1069 ~~department division~~ shall be considered a fire service provider
 1070 responsible for the payment of supplemental compensation in
 1071 accordance with this section to firefighters employed full time
 1072 by the ~~department division~~.
 1073 Section 33. Subsection (7) of section 633.508, Florida

24-00960C-16 2016908__

1074 Statutes, is amended to read:

1075 633.508 Workplace safety; rulemaking authority; division
 1076 authority.—

1077 (7) The ~~department division~~ shall:

- 1078 (a) Investigate and prescribe by rule what safety devices,
 1079 safeguards, or other means of protection must be adopted for the
 1080 prevention of accidents and injuries in every firefighter
 1081 employee place of employment or at any fire scene; determine
 1082 what suitable devices, safeguards, or other means of protection
 1083 for the prevention of occupational diseases must be adopted or
 1084 followed in any or all such firefighter places of employment or
 1085 at any emergency fire scene; and adopt reasonable rules for the
 1086 prevention of accidents, the safety, protection, and security of
 1087 firefighter employees engaged in interior firefighting, and the
 1088 prevention of occupational diseases.
- 1089 (b) Ascertain, fix, and order such reasonable standards and
 1090 rules for the construction, repair, and maintenance of
 1091 firefighter employee places of employment so as to render them
 1092 safe. Such rules and standards shall be adopted in accordance
 1093 with chapter 120.
- 1094 (c) Adopt rules prescribing recordkeeping responsibilities
 1095 for firefighter employers, which may include maintaining a log
 1096 and summary of occupational injuries, diseases, and illnesses,
 1097 for producing on request a notice of injury and firefighter
 1098 employee accident investigation records, and prescribing a
 1099 retention schedule for such records.

1100 Section 34. Section 633.512, Florida Statutes, is amended
 1101 to read:
 1102 633.512 Compliance.—Failure of a firefighter employer or an

24-00960C-16

2016908__

1103 insurer to comply with this part, or with any rules adopted
 1104 under this part, constitutes grounds for the ~~department division~~
 1105 to seek remedies, including injunctive relief, by making
 1106 appropriate filings with the circuit court.

1107 Section 35. Subsection (1) of section 633.518, Florida
 1108 Statutes, is amended to read:

1109 633.518 Studies, investigations, inspections, or inquiries
 1110 by the division; refusal to admit; penalty.—

1111 (1) The ~~department division~~ shall make studies,
 1112 investigations, inspections, or inquiries with respect to
 1113 compliance with this part or any rules authorized under this
 1114 part and the causes of firefighter employee injuries, illnesses,
 1115 safety-based complaints, or Line of Duty Deaths (LODD) as
 1116 defined in rule in firefighter employee places of employment and
 1117 shall make such recommendations to the Legislature and
 1118 firefighter employers and insurers as the ~~department division~~
 1119 considers proper to prevent or reduce future occurrences. In
 1120 making such studies, investigations, inspections, or inquiries,
 1121 the ~~department division~~ may cooperate with any agency of the
 1122 United States charged with the duty of enforcing any law
 1123 securing safety against injury in any place of firefighter
 1124 employment covered by this part or any agency or department of
 1125 the state engaged in enforcing any law to ensure safety for
 1126 firefighter employees.

1127 Section 36. Subsection (3) of section 791.013, Florida
 1128 Statutes, is amended to read:

1129 791.013 Testing and approval of sparklers; penalties.—

1130 (3) For purposes of the testing requirement by this
 1131 section, the division shall perform such tests as are necessary

24-00960C-16

2016908__

1132 to determine compliance with the performance standards in the
 1133 definition of sparklers, pursuant to s. 791.01. The State Fire
 1134 Marshal shall adopt, by rule, procedures for testing products to
 1135 determine compliance with this chapter. The Division of of
 1136 Investigative and Forensic Services shall dispose of any samples
 1137 which remain after testing.

1138 Section 37. Paragraphs (b), (c), and (d) of subsection (7)
 1139 of section 538.32, Florida Statutes, are amended to read:

1140 538.32 Registration, transaction, and recordkeeping
 1141 requirements; penalties.—

1142 (7)

1143 (b) Alternatively, a secondhand dealer must give written
 1144 notice to the seller, by United States mail or e-mail if an e-
 1145 mail address is provided by the seller, that information
 1146 otherwise required to be given by the seller under subsection
 1147 (2) has not been provided by the seller to the secondhand
 1148 dealer. Notice of the deficient information must be sent by the
 1149 secondhand dealer no later than 10 days after the transaction is
 1150 received by the secondhand dealer. The secondhand dealer must
 1151 specify in the notice that:

1152 1. The seller must provide the missing information or must
 1153 request the return of the property from the secondhand dealer
 1154 within 30 days after receiving the notice from the secondhand
 1155 dealer; and

1156 2. The failure of the seller to provide the missing
 1157 information or request return of the property within the
 1158 applicable 30-day time period shall result in abandonment of the
 1159 seller's property to the Division Bureau of Unclaimed Property
 1160 of the Department of Financial Services pursuant to chapter 717.

24-00960C-16

2016908__

1161 (c) If the seller fails to remedy the deficiency in
 1162 information or request return of the property within 30 days
 1163 after receiving the notice, the seller's property is deemed
 1164 abandoned and is relinquished to the Division Bureau of
 1165 Unclaimed Property pursuant to chapter 717 if the property's
 1166 true market value is greater than \$50 as defined in chapter 717.

1167 (d) Within 24 hours after the expiration of the 30-day hold
 1168 period for the property, the secondhand dealer must notify the
 1169 appropriate law enforcement agency of the abandonment of the
 1170 property by electronic transmission or by sending a copy of the
 1171 completed form authorized by chapter 717 to the Department of
 1172 Financial Services, Division Bureau of Unclaimed Property.

1173 Section 38. Subsection (1) of section 717.1241, Florida
 1174 Statutes, is amended to read:

1175 717.1241 Conflicting claims.—

1176 (1) When conflicting claims have been received by the
 1177 department for the same unclaimed property account or accounts,
 1178 the property shall be remitted in accordance with the claim
 1179 filed by the person as follows, notwithstanding the withdrawal
 1180 of a claim:

1181 (a) To the person submitting the first claim received by
 1182 the Division Bureau of Unclaimed Property of the department that
 1183 is complete or made complete.

1184 (b) If a claimant's claim and a claimant's representative's
 1185 claim are received by the Division Bureau of Unclaimed Property
 1186 of the department on the same day and both claims are complete,
 1187 to the claimant.

1188 (c) If a buyer's claim and a claimant's claim or a
 1189 claimant's representative's claim are received by the Division

24-00960C-16

2016908__

1190 ~~Bureau~~ of Unclaimed Property of the department on the same day
 1191 and the claims are complete, to the buyer.

1192 (d) As between two or more claimant's representative's
 1193 claims received by the Division Bureau of Unclaimed Property of
 1194 the department that are complete or made complete on the same
 1195 day, to the claimant's representative who has agreed to receive
 1196 the lowest fee. If the two or more claimant's representatives
 1197 whose claims received by the Division Bureau of Unclaimed
 1198 Property of the department were complete or made complete on the
 1199 same day are charging the same lowest fee, the fee shall be
 1200 divided equally between the claimant's representatives.

1201 (e) If more than one buyer's claim received by the Division
 1202 ~~Bureau~~ of Unclaimed Property of the department is complete or
 1203 made complete on the same day, the department shall remit the
 1204 unclaimed property to the buyer who paid the highest amount to
 1205 the seller. If the buyers paid the same amount to the seller,
 1206 the department shall remit the unclaimed property to the buyers
 1207 divided in equal amounts.

1208 Section 39. Section 717.1323, Florida Statutes, is amended
 1209 to read:

1210 717.1323 Prohibited practice.—~~A~~ ~~No~~ person may not knowingly
 1211 enter false information onto the Internet website of the
 1212 Division Bureau of Unclaimed Property.

1213 Section 40. Subsection (2) and paragraph (a) of subsection
 1214 (3) of section 717.135, Florida Statutes, are amended to read:

1215 717.135 Power of attorney to recover reported property in
 1216 the custody of the department.—

1217 (2) A power of attorney described in subsection (1) must:

1218 (a) Limit the fees and costs for services to 20 percent per

24-00960C-16 2016908__

1219 unclaimed property account held by the department. Fees and
1220 costs for cash accounts shall be based on the value of the
1221 property at the time the power of attorney is signed by the
1222 claimant. Fees and costs for accounts containing securities or
1223 other intangible ownership interests, which securities or
1224 interests are not converted to cash, shall be based on the
1225 purchase price of the security as quoted on a national exchange
1226 or other market on which the property is regularly traded at the
1227 time the securities or other ownership interest is remitted to
1228 the claimant or the claimant's representative. Fees and costs
1229 for tangible property or safe-deposit box accounts shall be
1230 based on the value of the tangible property or contents of the
1231 safe-deposit box at the time the ownership interest is
1232 transferred or remitted to the claimant. Total fees and costs on
1233 any single account owned by a natural person residing in this
1234 country must not exceed \$1,000; or

1235 (b) Fully disclose that the property is held by the
1236 Division Bureau of Unclaimed Property of the Department of
1237 Financial Services pursuant to this chapter, the mailing address
1238 of the division bureau, the Internet address of the division
1239 bureau, the person or name of the entity that held the property
1240 prior to the property becoming unclaimed, the date of the
1241 holder's last contact with the owner, if known, and the
1242 approximate value of the property, and identify which of the
1243 following categories of unclaimed property the claimant's
1244 representative is seeking to recover, as reported by the holder:

- 1245 1. Cash accounts.
1246 2. Stale dated checks.
1247 3. Life insurance or annuity contract assets.

24-00960C-16 2016908__

- 1248 4. Utility deposits.
1249 5. Securities or other interests in business associations.
1250 6. Wages.
1251 7. Accounts receivable.
1252 8. Contents of safe-deposit boxes.
1253

1254 This subsection shall not apply if probate proceedings must be
1255 initiated on behalf of the claimant for an estate that has never
1256 been probated or if the unclaimed property is being claimed by a
1257 person outside of the United States.

1258 (3) (a) A power of attorney described in paragraph (2) (b)
1259 must state in 12-point type or greater in the order indicated
1260 with the blank spaces accurately completed:

1261 FULL DISCLOSURE STATEMENT

1262
1263
1264 The property is currently held by the State of Florida
1265 Department of Financial Services, Division Bureau of
1266 Unclaimed Property, pursuant to chapter 717, Florida
1267 Statutes. The mailing address of the Division Bureau
1268 of Unclaimed Property is The Internet
1269 address of the Division Bureau of Unclaimed Property
1270 is

1271
1272 The property was remitted by:

1273
1274 Date of last contact:

1275
1276 Property category:

24-00960C-16 2016908__

1277
 1278 Section 41. Subsection (2) of section 717.1351, Florida
 1279 Statutes, is amended to read:
 1280 717.1351 Acquisition of unclaimed property.-
 1281 (2) All contracts to acquire ownership of or entitlement to
 1282 unclaimed property from the person or persons entitled to the
 1283 unclaimed property must be in 10-point type or greater and must:
 1284 (a) Have a purchase price that discounts the value of the
 1285 unclaimed property at the time the agreement is executed by the
 1286 seller at no greater than 20 percent per account held by the
 1287 department. An unclaimed property account must not be discounted
 1288 in excess of \$1,000. However, the \$1,000 discount limitation
 1289 does not apply if probate proceedings must be initiated on
 1290 behalf of the seller for an estate that has never been probated
 1291 or if the seller of the unclaimed property is not a natural
 1292 person or is a person outside the United States; or
 1293 (b) Fully disclose that the property is held by the
 1294 Division Bureau of Unclaimed Property of the Department of
 1295 Financial Services pursuant to this chapter, the mailing address
 1296 of the division bureau, the Internet address of the division
 1297 bureau, the person or name of the entity that held the property
 1298 prior to the property becoming unclaimed, the date of the
 1299 holder's last contact with the owner, if known, and the
 1300 approximate value of the property, and identify which of the
 1301 following categories of unclaimed property the buyer is seeking
 1302 to purchase as reported by the holder:
 1303 1. Cash accounts.
 1304 2. Stale dated checks.
 1305 3. Life insurance or annuity contract assets.

24-00960C-16 2016908__

1306 4. Utility deposits.
 1307 5. Securities or other interests in business associations.
 1308 6. Wages.
 1309 7. Accounts receivable.
 1310 8. Contents of safe-deposit boxes.
 1311
 1312 The purchase agreement described in this paragraph must state in
 1313 12-point type or greater in the order indicated with the blank
 1314 spaces accurately completed:
 1315
 1316 FULL DISCLOSURE STATEMENT
 1317
 1318 The property is currently held by the State of Florida
 1319 Department of Financial Services, Division Bureau of
 1320 Unclaimed Property, pursuant to chapter 717, Florida
 1321 Statutes. The mailing address of the Division Bureau
 1322 of Unclaimed Property is The Internet
 1323 address of the Division Bureau of Unclaimed Property
 1324 is
 1325
 1326 The property was remitted by:
 1327
 1328 Date of last contact:
 1329
 1330 Property category:
 1331
 1332 Immediately above the signature line for the seller, the
 1333 purchase agreement described in this paragraph must state in 12-
 1334 point type or greater:

24-00960C-16

2016908__

1335
1336
1337
1338
1339
1340
1341
1342
1343
1344
1345
1346
1347
1348
1349
1350
1351
1352
1353
1354
1355
1356
1357
1358
1359
1360
1361
1362
1363

Seller agrees, by signing below, that the FULL DISCLOSURE STATEMENT has been read and fully understood.

Section 42. Paragraphs (a) and (b) of subsection (5) of section 717.1400, Florida Statutes, are amended to read:

717.1400 Registration.—

(5) If a material change in the status of a registration occurs, a registrant must, within 30 days, provide the department with the updated documentation and information in writing. Material changes include, but are not limited to: a designated agent or employee ceasing to act on behalf of the designating person, a surrender, suspension, or revocation of a license, or a license renewal.

(a) If a designated agent or employee ceases to act on behalf of the person who has designated the agent or employee to act on such person's behalf, the designating person must, within 30 days, inform the Division ~~Bureau~~ of Unclaimed Property in writing of the termination of agency or employment.

(b) If a registrant surrenders the registrant's license or the license is suspended or revoked, the registrant must, within 30 days, inform the division ~~bureau~~ in writing of the surrender, suspension, or revocation.

Section 43. Section 717.138, Florida Statutes, is amended to read:

717.138 Rulemaking authority.—The department shall administer and provide for the enforcement of this chapter. The department has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this

24-00960C-16

2016908__

1364
1365
1366
1367
1368
1369
1370
1371
1372
1373
1374
1375
1376
1377
1378
1379
1380
1381
1382
1383
1384
1385
1386
1387
1388
1389

chapter. The department may adopt rules to allow for electronic filing of fees, forms, and reports required by this chapter. The authority to adopt rules pursuant to this chapter applies to all unclaimed property reported and remitted to the Chief Financial Officer, including, but not limited to, property reported pursuant to ss. 43.19, 45.032, 732.107, 733.816, and 744.534.

Section 44. Paragraphs (k) and (l) of subsection (6) of section 932.7055, Florida Statutes, are amended to read:

932.7055 Disposition of liens and forfeited property.—

(6) If the seizing agency is a state agency, all remaining proceeds shall be deposited into the General Revenue Fund. However, if the seizing agency is:

(k) The Division of Investigative and Forensic Services ~~State Fire Marshal~~ in the Department of Financial Services, the proceeds accrued under the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund to be used for the purposes of arson suppression, arson investigation, and the funding of anti-arson rewards.

(l) The Division of Investigative and Forensic Services ~~Insurance Fraud~~ of the Department of Financial Services, the proceeds accrued pursuant to ~~the provisions of~~ the Florida Contraband Forfeiture Act shall be deposited into the Insurance Regulatory Trust Fund as provided in s. 626.9893 or into the Department of Financial Services' Federal Law Enforcement Trust Fund as provided in s. 17.43, as applicable.

Section 45. This act shall take effect July 1, 2016.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General
Government
Banking and Insurance
Reapportionment
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE

24th District

December 7, 2015

The Honorable Lizbeth Benacquisto
Senate Committee on Banking and Insurance, Chair
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Benacquisto,

I respectfully request that SB 908, related to the *Organization of the Department of Financial Services*, be placed on the Senate Committee on Banking and Insurance agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee
Senator, District 24

Cc: James Knudosn, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-16
Meeting Date

SB 908
Bill Number (if applicable)

Topic SB 908

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Leg Affairs

Address 400 Monroe St
Street

Phone 850-413-2863

Tallahassee FL 32399
City State Zip

Email elizabeth.boyd@myfloridacfo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CFO Atwater

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 774

INTRODUCER: Senator Montford

SUBJECT: Liability Insurance Coverage

DATE: January 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 774 authorizes the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by s. 627.4137, F.S. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer. Section 627.4137, F.S., requires a liability insurer to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

This bill allows a licensed company adjuster to provide the sworn statement.

II. Present Situation:

Section 627.4137, F.S., requires a liability insurer¹ to provide to a claimant a statement containing the following information within 30 days of a written request by the claimant:

- The name of the insurer;
- The name of each insured;
- The limits of the liability coverage;
- A statement of any policy or coverage defense which such insurer reasonably believes is available to the such insurer at the time of filing such statement; and
- A copy of the policy.

¹ Section 627.4137, F.S., does not apply to PIP insurance. *See Progressive American Ins. Co. v. Rural/Metro Corp. of Florida*, 994 So.2d 1202 (Fla. 5th DCA 2008).

The required statement must be under oath by a corporate officer or the insurer's claims manager or superintendent. Section 627.4137(2), F.S., requires that the disclosure statement be amended immediately upon discovery of facts calling for an amendment to such statement.

A review of insurance information required under section 627.4137, F.S., allows a claimant to evaluate the damages that could be paid by the tortfeasor. Florida courts have explained that the purpose of the disclosure requirements in section 627.4137, F.S., is to allow a claimant to make an informed decision whether to settle a case.²

III. Effect of Proposed Changes:

This bill authorizes the licensed company adjuster of an insurer that provides liability insurance coverage to provide the sworn statement required by s. 627.4137, F.S. Current law allows the sworn statement to be provided by only the insurer's claims manager or superintendent, or a corporate officer of the insurer.

This bill takes effect on July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill will allow more persons to provide required disclosures to claimants and might reduce insurance company administrative costs. Claimants would only be impacted if the accuracy of such sworn statements is decreased by allowing licensed company adjusters to provide them.

² See *Cheverie v. Geisser*, 783 So.2d 1115 (Fla. 4th DCA 2001)(rejecting the argument that compliance with s. 627.4137, F.S., is a technicality and explained the Legislature recognized the importance to claimants of access to the information required by statute in making settlement decisions); *Gira v. Wolfe*, 115 So.3d 414, 417 (Fla. 2^d DCA 2013)(explaining that "the legislature has recognized the importance of a claimant's access to the type of insurance information covered in the statute in order for a claimant to make settlement decisions").

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.4137 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.



572854

LEGISLATIVE ACTION

Senate

.
. .
. .
. .
. .

House

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

Senate Amendment (with title amendment)

Delete line 19

and insert:

superintendent, or a company employee adjuster setting forth the

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

And the title is amended as follows:

Delete line 3

and insert:



572854

11

amending s. 627.4137, F.S.; adding company employee

By Senator Montford

3-01046A-16

2016774__

1 A bill to be entitled
2 An act relating to liability insurance coverage;
3 amending s. 627.4137, F.S.; adding licensed company
4 adjusters to the list of persons who may respond to a
5 claimant's written request for information relating to
6 liability insurance coverage; providing an effective
7 date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (1) of section 627.4137, Florida
12 Statutes, is amended to read:

13 627.4137 Disclosure of certain information required.—

14 (1) Each insurer that provides ~~which does~~ or may provide
15 liability insurance coverage to pay all or a portion of a any
16 claim ~~that which~~ might be made shall provide, within 30 days
17 after ~~of~~ the written request of the claimant, a statement, under
18 oath, of a corporate officer, ~~of~~ the insurer's claims manager or
19 superintendent, or a licensed company adjuster setting forth the
20 following information with regard to each known policy of
21 insurance, including excess or umbrella insurance:

- 22 (a) The name of the insurer.
23 (b) The name of each insured.
24 (c) The limits of the liability coverage.
25 (d) A statement of any policy or coverage defense that the
26 ~~which such~~ insurer reasonably believes is available to the such
27 insurer at the time of filing such statement.
28 (e) A copy of the policy.
29

Page 1 of 2

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

3-01046A-16

2016774__

30 In addition, the insured, or her or his insurance agent, upon
31 written request of the claimant or the claimant's attorney,
32 shall disclose the name and coverage of each known insurer to
33 the claimant and shall forward such request for information as
34 required by this subsection to all affected insurers. The
35 insurer shall then supply the information required in this
36 subsection to the claimant within 30 days after ~~of~~ receipt of
37 such request.

38 Section 2. This act shall take effect July 1, 2016.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Chair*
Appropriations Subcommittee on Education, *Vice Chair*
Appropriations
Banking and Insurance
Education Pre-K - 12
Rules

SENATOR BILL MONTFORD

3rd District

November 19, 2015

Senator Lizbeth Benacquisto, Chair
Senate Banking & Insurance Committee
326 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Benacquisto:

I respectfully request that SB 774 be scheduled for a hearing before the Senate Banking & Insurance Committee. SB 774 would add licensed company adjusters to the list of people who can respond to a claimant's request for liability insurance coverage information.

Your assistance and favorable consideration of my request is greatly appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford
State Senator, District 3

cc: James Knudson, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
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: SB 966

INTRODUCER: Senator Benacquisto

SUBJECT: Unclaimed Property

DATE: January 11, 2016 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	Pre-meeting
2.			AGG	
3.			AP	

I. Summary:

SB 966 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract term of the policy and s. 627.451, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer's policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expressly states that it is remedial and applies retroactively. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. The bill establishes a rebuttable presumption that an insured, annuitant, or retained asset account holder is deceased if that person's date of death is indicated on the DMF. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to

provide insurers 5 years to comply with the requirements of the bill before being subject to such sanctions.

The bill is effective upon becoming law.

II. Present Situation:

Life Insurance

Life insurance is the insurance of human lives.¹ Life insurance is generally purchased to ensure the financial security of the beneficiaries of the policy in the event the insured dies. The two most common types of life insurance are whole life insurance and term life insurance. A whole life insurance policy provides coverage for the life of the policyholder and pays a death benefit when the policyholder dies, regardless of his or her age, or on the maturity date.² A term life insurance policy provides coverage for a specific time period and only pays a benefit if the policyholder dies during the term of the policy. There exist a wide array of life insurance policies that provide options to consumers to create flexible death benefits, flexible premium amounts, allow policyholders investment control of the cash value of the policy at variable rates of return, and more.

Endowment Insurance Policies

An endowment insurance policy provides for the payment of the face of the policy at the end a fixed term of years. As noted by the Department of Financial Services (DFS), a whole life policy is actually an endowment at a limiting age of 100.³ As with the whole life policy, endowment policies provide insurance protection against the economic loss of a premature death. Common endowment terms are five, ten, and twenty years, or to a stated age, such as 65. If the insured is living at the end of the endowment term, the insurance company will pay the face amount of the policy.

Annuities

An annuity is a form of life insurance contract between a consumer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer. In return, the insurer agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Annuities are available in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for a lifetime. For a deferred annuity, premiums are usually either paid in a lump sum or through a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a

¹ Section 624.602, F.S.

² The maturity date for a life insurance policy often is when a policyholder turns 100 years old, but some policies have a later maturity date.

³ Florida Department of Financial Services Division of Consumer Services, Life Insurance Overview, <http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm> (click on link for types of policies)(last visited January 8, 2015).

regular stream of periodic payments. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows tax-deferred.

An annuity may or may not have a death benefit upon the death of the annuitant, based on the payment plan of the annuity. In a “life only” annuity, payments are only made until the death of the annuitant while in a fixed period annuity payments are made for a fixed number of years certain regardless of whether the annuitant dies during the years certain. Many life insurers regularly seek to verify whether an annuitant has died by searching the Social Security Administration Death Master File.

Retained Asset Accounts

A retained asset account is an account that may be used to settle a death claim.⁴ Generally, a beneficiary establishes a retained asset account to deposit the proceeds into an interest bearing account so that the beneficiary may consider investment options and other possible uses of the money. Generally, the beneficiary can choose to withdraw money from the account in a single “lump sum” payment or via installments, or may choose to only receive interest payments with any remaining money at the beneficiary’s death passing on to his or her beneficiaries.

Florida Disposition of Unclaimed Property Act

In 1987, the Florida Legislature adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (chapter 717, F.S., the Act).⁵ The Act defines unclaimed property as any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers’ checks, uncashed payroll or cashiers’ checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.⁶ The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the DFS Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder’s business, is presumed to be unclaimed when the owner fails to claim the property for more than five years after the property becomes payable or distributable, unless otherwise provided in the Act.⁷ Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate the

⁴ National Association of Insurance Commissioners, *Retained Asset Accounts and Life Insurance: What Consumers Need to Know About Life Insurance Benefit Payment Options*, http://www.naic.org/documents/consumer_alert_raa.htm (January 8, 2016).

⁵ Ch. 87-105, L.O.F. See also UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act> (Last visited March 26, 2014)

⁶ ss. 717.104 – 717.116, F.S.

⁷ s. 717.102(1), F.S.

apparent owners within 180 days after an account becomes inactive.⁸ Once this search period expires, holders must file an annual report with the DFS for all property, valued at \$50 or more, that is presumed unclaimed for the preceding year.⁹ The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.¹⁰

Upon the payment or delivery of unclaimed property to the DFS, the state assumes custody and responsibility for the safekeeping of the property.¹¹ The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to the DFS may file a claim for the property, subject to certain requirements.¹² The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department must deliver or pay to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.¹³

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.¹⁴ The DFS is allowed to retain up to \$15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.¹⁵

Like many other state unclaimed property programs, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property but instead obtains its custody and beneficial use pending identification of the property owner.¹⁶

Unclaimed Property Owing Under Life Insurance Policies

The Act provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more than 5 years¹⁷ after the funds became due and payable as established by records of the insurance company owing the funds.¹⁸

⁸ s. 717.117(4), F.S.

⁹ s. 717.117, F.S.

¹⁰ s. 717.119, F.S.

¹¹ s. 717.1201, F.S.

¹² ss. 717.117 and 717.124, F.S.

¹³ s. 717.124, F.S.

¹⁴ s. 717.123, F.S.

¹⁵ Id.

¹⁶ Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.

¹⁷ If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed if unclaimed for 2 years.

¹⁸ S. 717.107(1), F.S.

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon receipt of due proof of death and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Regulatory Examination of Life Settlement Claim Practices

According to the Office of Insurance Regulation, a 2009 Florida market conduct investigation revealed that some life insurance companies were using information from the Social Security Administration's Death Master File to stop paying a deceased person's annuity, but were not using such information to search for beneficiaries of a life insurance policy. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums.¹⁹

Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies.²⁰ Kevin McCarty, the Director of the Florida Office of Insurance Regulation, has served as the chair of the task force since its inception. Currently, an examination has been concluded or a settlement reached for 22 of the 40 have reached settlements or concluded an examination.²¹

Life Insurance Claim Settlement Practices

Florida has entered into a number of settlement agreements with 20 life insurers from 2011 to the present, often has part of multi-state settlement agreements.²² Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the Bureau of Unclaimed Property at the Department of Financial Services, Attorney General Pam Bondi through the Office of the Attorney General, and the Office of Insurance Regulation. According to the Office of Insurance Regulation, these life claim settlement agreements have resulted in the

¹⁹ Florida Department of Financial Services Division of Consumer Services, Life Insurance Settlement Information, <http://www.myfloridacfo.com/Division/Consumers/FAQ/FAQ.htm> (click on hyperlink for John Hancock Life Insurance)(last visited January 8, 2016).

²⁰ National Association of Insurance Commissioners, *News Release: Regulators to Review Life Insurance Payment Practices*, (May 17, 2011)(last visited January 8, 2016).

²¹ Florida Office of Insurance Regulation, *Top 40 Nationally Significant Groups Writing Direct Life, Annuity and Other Considerations*, <http://www.floir.com/siteDocuments/Top40LifeGroups.pdf> (last visited January 8, 2016).

²² Office of Insurance Regulation, *Life Claim Settlement Practices*, http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited January 8, 2016).

return of over \$5 billion to beneficiaries directly by the companies and over \$2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The settlements generally require the life insurer to compare all the life insureds listed in company records against the DMF.²³ For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within 5 years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Social Security Administration Death Master File

The Social Security Administration (SSA) collects death information to administer its programs.²⁴ The SSA receives death reports from many sources, including family members, funeral homes, financial institutions, postal authorities, States and other Federal agencies. The information is then compiled in the Death Master File (DMF). The DMF is actually an extract of the death information on the Numerical Identification System (Numident). Numident is the SSA electronic database that contains the records of Social Security Numbers assigned to individuals since 1936. The DMF includes the deceased individual's social security number, first name, middle name, last name, date of birth, and date of death.

There are two versions of the DMF. The full file contains all death records extracted from the Numident database, including death data received from the States and is shared only with certain Federal and State agencies pursuant to section 205(r) of the Social Security Act. The limited access public file contains death records extracted from the Numident database, but does not include death data received from the States. The public file is available through the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public. Access to the DMF is restricted and requires users to have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty. Further, any party accessing the DMF must certify it has systems, facilities, and procedures to safeguard the information in the DMF and has experience in maintaining the confidentiality, security, and appropriate use of such information.

Trivent Financial for Lutherans v. State of Florida

The 2014 decision of the Florida District Court of Appeal for the First District resolved a dispute between the DFS and Thrivent Financial for Lutherans (Thrivent) as to when funds under a life insurance or endowment insurance policy or annuity contract become due and payable, thus

²³ See Florida Office of Insurance Regulation, *Florida's Regulatory Life Claim Settlement Agreements*, <http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf> (follow hyperlinks to regulatory settlement agreements)(last visited January 8, 2016).

²⁴ Social Security Administration, *Requesting the Death Master File*, https://www.ssa.gov/dataexchange/request_dmf.html (last visited January 7, 2016).

triggering the start of the dormancy period that results in the funds being remitted to the DFS as unclaimed property after the dormancy period ends.²⁵ Thrivent had appealed a DFS declaratory statement finding that life insurance funds are “due and payable” under s. 717.107(1), F.S., upon the death of the insured, at which time the dormancy period is automatically triggered. The DFS declaratory statement interpreting the statute also opined that s. 717.107, F.S., created an affirmative duty on insurer to search databases, such as the DMF, to determine if any of its insureds has died.

The Court found the DFS declaratory statement interpreting s. 717.107(1), F.S., invalid because it incorrectly interpreted the statute. The Court noted that under s. 717.107(1), F.S., life insurance funds “become due and payable as established by the records of the insurance company.” Because s. 627.461, F.S., requires each life insurance contract to provide that payment “shall be made upon receipt of due proof of death and surrender of the policy” the records of the insurer do not establish funds as due and payable under s. 717.107(1), F.S., until the insurer receives proof of death and surrender of the policy. The Court noted subsection (3) of the statute provides that contracts “not matured by actual proof of the death of the insured or the annuitant” according to company records are deemed matured and the proceeds are due and payable if the company knows the insured or annuitant has died or the insured has attained the limiting age. The Court reasoned that to interpret subsection (1) to make policy proceeds due and payable once the insured dies would render meaningless subsection (3). The Court also refused to impose an affirmative duty on insurers to dearch death records in order to determine whether any insured has died. The Court noted that the plain language of s. 717.107, F.S., does not impose such a duty and refused to rewrite the statute based on policy consideration, instead noting that policy concerns “must be addressed by the Legislature.”

III. Effect of Proposed Changes:

Section 1 amends s. 717.107, F.S., of the Florida Disposition of Unclaimed Property Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder. Under current law, such funds are presumed unclaimed if unclaimed for more than 5 years after the funds became due and payable as established from the records of the insurance company holding the funds. The decision in *Thrivent Insurance for Lutherans v. State of Florida, Department of Financial Services*, (Thrivent decision) established that under current law, funds are not due and payable as established from the records of the insurance company until the company receives a certified copy of a death certificate as required by the contract terms of the policy and s. 627.461, F.S.

The bill requires insurers to at least annually perform a comparison of its insureds against the United States Social Security Administration Death Master File (DMF). The comparison must be performed for all the insurer’s policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The annual comparison must be made before August 31 of each

²⁵ *Thrivent Financial for Lutherans v. State of Florida, Department of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. The Thrivent decision found that currently the DFS lacks the authority to require such a search under s. 717.107, F.S.

The bill establishes a rebuttable presumption that an insured, annuitant, or retained asset account holder is deceased if that person's date of death is indicated on the DMF. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

The bill exempts any annuity contract issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or an annuity contract issued to fund an employment-based retirement plan, including any deferred compensation plans. An insurer is not required to confirm the possible death of an insured for accidental death plans or when the insurer does not perform recordkeeping functions. The provision related to record keeping functions will exempt a policy issued to a group policy owner for which the insurer does not provide record keeping services. The bill defines record keeping services as maintaining the information necessary to process a claim or having access to such information.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill.

Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers 5 years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The provisions of SB 966 are applied to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The bill expresses clear intent to apply retroactively, thus constitutional concerns are raised if the statute impairs vested rights, creates new obligations, or imposes new penalties.²⁶ A vested right is more than a mere expectation based on an anticipation of the continuance of an existing law. It must be an immediate, fixed right of present or future enjoyment.²⁷ If, however, the statute is remedial in nature and expresses clear intent to apply retroactively, it does not raise constitutional concerns. Remedial statutes are those that do not create new or take away vested rights.²⁸

Representatives of some life insurers argue that the application of the bill's requirements to life insurance policies with contractual terms that require proof of death in accordance with s. 627.461, F.S., could raise constitutional issues related to the impairment of contracts. Representatives from the Department of Financial Services counter such concerns, pointing to the United States Supreme Court decision in *Connecticut Mutual Life Insurance Co. v. Moore*²⁹ (*Moore*).

In *Moore*, the Court addressed the validity of the New York unclaimed property statute as applied to life insurance policies, including "policies payable on death in which the insured has died and no claim by the person entitled thereto has been made for seven years."³⁰ The Court addressed whether the unclaimed property statute impaired the obligation of contract within the meaning of Art. I, S. 10 of the United States Constitution.³¹ The insurers argued that the terms of the insurance policies provided the insurer has no obligation until proof of death is submitted and the policy is surrendered. The unclaimed property statute, the insurers further argued, transforms a conditional obligation under the life insurance policy into a liquidated obligation.³²

The Supreme Court held that the New York statute did not violate the constitution because of its enforced variations from the insurance policy provisions.³³ The Court reasoned that the state has the same power to seize abandoned life insurance moneys as abandoned bank deposits, despite the differences between the two. The Court concluded by saying it saw no constitutional reason why a state may not proceed administratively to take over the care of unclaimed property, noting that the right of appropriation by the state of abandoned property has existed for centuries in the common law.³⁴

²⁶ *R.A.M. of South Florida, Inc., v. WCI Communities, Inc.*, 869 So.2d 1210, 1216 (Fla. 2nd DCA 2004).

²⁷ *Florida Hosp. Waterman, Inc. v. Buster*, 948 So.2d 478, 490 (Fla. 2008).

²⁸ *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).

²⁹ 333 U.S. 541 (1948).

³⁰ *Moore*, 333 U.S. 541 at 543.

³¹ *Moore*, 333 U.S. 541 at 545.

³² *Moore*, 333 U.S. 541 at 546.

³³ *Moore*, 333 U.S. 541 at 546.

³⁴ *Moore*, 333 U.S. 541 at 547.

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

None.

B. Private Sector Impact:

Many beneficiaries of life or endowment insurance policies and annuities contracts who are unaware of such policies will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

Life insurers will incur indeterminate costs related to identifying policies and contracts subject to the provisions of the bill, conducting searches of the DMF to identify deceased policyholders, and attempting to locate beneficiaries.

C. Government Sector Impact:

The Department of Financial Services indicates that the Bureau of Unclaimed Property expects to receive reports and remittances “far exceeding \$100 million, from unknown and unclaimed life insurance benefits” that insurers are unable to pay beneficiaries after searching the DMF and performing due diligence searches for beneficiaries. The DFS did not project remittance amounts to the state for the coming fiscal years because the bill specifies that insurers will not be subject to fines, penalties or additional interest related to the remittance of unclaimed proceeds on policies and contracts where the insured had died prior to the dormancy trigger time period (generally 5 years) expiring.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.107 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 Benacquisto

30-00996B-16

2016966__

A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to perform a comparison of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File to determine if a death is indicated; providing when such comparisons must be made; providing for a rebuttable presumption of death of certain individuals; requiring an insurer to account for certain variations in data and partial information; providing applicability; providing an exception; defining a term; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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

Section 1. Section 717.107, Florida Statutes, is amended to read:

Page 1 of 6

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

30-00996B-16

2016966__

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder ~~became due and payable as established from the records of the insurance company holding or owing the funds,~~ but property described in paragraph (3) (d) ~~(3) (b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, ~~the~~ or ~~annuitant, or the~~ retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured, ~~the~~ or ~~annuitant, or the~~ retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:

Page 2 of 6

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

30-00996B-16

2016966__

59 (a) The company knows that the insured, ~~the~~ ~~or~~ annuitant,
60 ~~or the retained asset account holder~~ has died. ~~or~~

61 (b) A presumption of death made in accordance with
62 paragraph (8) (b) has not been rebutted.

63 (c) The policy or contract has reached its maturity date.

64 ~~(d) (b)~~ 1. The insured has attained, or would have attained
65 if he or she were living, the limiting age under the mortality
66 table on which the reserve is based;

67 2. The policy was in force at the time the insured
68 attained, or would have attained, the limiting age specified in
69 subparagraph 1.; and

70 3. Neither the insured nor any other person appearing to
71 have an interest in the policy within the preceding 2 years,
72 according to the records of the company, has assigned,
73 readjusted, or paid premiums on the policy; subjected the policy
74 to a loan; corresponded in writing with the company concerning
75 the policy; or otherwise indicated an interest as evidenced by a
76 memorandum or other record on file prepared by an employee of
77 the company.

78 (4) For purposes of this chapter, the application of an
79 automatic premium loan provision or other nonforfeiture
80 provision contained in an insurance policy does not prevent the
81 policy from being matured or terminated under subsection (1) if
82 the insured has died or the insured or the beneficiaries of the
83 policy otherwise have become entitled to the proceeds thereof
84 before the depletion of the cash surrender value of a policy by
85 the application of those provisions.

86 (5) If the laws of this state or the terms of the life
87 insurance policy require the company to give notice to the

Page 3 of 6

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

30-00996B-16

2016966__

88 insured or owner that an automatic premium loan provision or
89 other nonforfeiture provision has been exercised and the notice,
90 given to an insured or owner whose last known address according
91 to the records of the company is in this state, is
92 undeliverable, the company shall make a reasonable search to
93 ascertain the policyholder's correct address to which the notice
94 must be mailed.

95 (6) Notwithstanding any other provision of law, if the
96 company learns of the death of the insured, ~~the~~ ~~or~~ annuitant, ~~or~~
97 the retained asset account holder and the beneficiary has not
98 communicated with the insurer within 4 months after the death,
99 the company shall take reasonable steps to pay the proceeds to
100 the beneficiary.

101 (7) Commencing 2 years after July 1, 1987, every change of
102 beneficiary form issued by an insurance company under any life
103 or endowment insurance policy or annuity contract to an insured
104 or owner who is a resident of this state must request the
105 following information:

106 (a) The name of each beneficiary, or if a class of
107 beneficiaries is named, the name of each current beneficiary in
108 the class.

109 (b) The address of each beneficiary.

110 (c) The relationship of each beneficiary to the insured.

111 (8) (a) Notwithstanding any other provision of law, an
112 insurer shall perform a comparison of its insureds' life or
113 endowment insurance policies, annuity contracts that provide a
114 death benefit, and retained asset accounts that were in force at
115 any time on or after January 1, 1992, against the United States
116 Social Security Administration Death Master File to determine if

Page 4 of 6

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

30-00996B-16

2016966__

117 the death of an insured, an annuitant, or a retained asset
 118 account holder is indicated. The comparison must be made on at
 119 least an annual basis before August 31 of each year. If an
 120 insurer performs such a comparison regarding its annuities or
 121 other books of business more frequently than once a year, the
 122 insurer must also make a comparison regarding its life insurance
 123 policies, annuity contracts that provide a death benefit, and
 124 retained asset accounts at the same frequency as is made
 125 regarding its annuities or other books or lines of business.

126 (b) There is a rebuttable presumption that an insured, an
 127 annuitant, or a retained asset account holder is deceased if the
 128 date of the insured's, annuitant's, or retained asset account
 129 holder's death is indicated on the United States Social Security
 130 Administration Death Master File. The insurer shall account for
 131 common variations in data and for any partial names, social
 132 security numbers, dates of birth, and addresses of the insured,
 133 the annuity owner, or the retained asset account holder which
 134 would otherwise preclude an exact match.

135 (c) For purposes of this section, a policy, a contract, or
 136 a retained asset account is deemed to be in force if it has not
 137 lapsed, has not been cancelled, or has not been terminated at
 138 the time of death of the insured, the annuity owner, or the
 139 retained asset account holder.

140 (d) This subsection does not apply to an annuity contract
 141 that is issued in connection with an employment-based plan
 142 subject to the Employee Retirement Income Security Act of 1974
 143 or that is issued to fund an employment-based retirement plan,
 144 including any deferred compensation plans.

145 (9) An insurer is not required to confirm the possible

30-00996B-16

2016966__

146 death of an insured with respect to benefits payable under
 147 accidental death or when the insurer does not perform
 148 recordkeeping functions. For purposes of this subsection, the
 149 term "recordkeeping" means maintaining, or being legally or
 150 contractually responsible for maintaining, either directly or
 151 through a third party, the information necessary to process a
 152 claim or having access to information necessary to process a
 153 claim.

154 (10) An insurer, or any agent or third party that it
 155 engages or that works on its behalf, may not charge insureds,
 156 annuity owners, retained asset account holders, beneficiaries,
 157 or the estates of insureds, annuity owners, retained asset
 158 account holders, or the beneficiaries of an estate any fees or
 159 costs associated with any search, verification, claim, or
 160 delivery of funds conducted pursuant to this section.

161 Section 2. The amendments made by this act are remedial in
 162 nature and apply retroactively. Fines, penalties, or additional
 163 interest may not be imposed due to the failure to report and
 164 remit an unclaimed life or an endowment insurance policy, a
 165 retained asset account, or an annuity contract with a death
 166 benefit if any unclaimed life or endowment insurance policy,
 167 retained asset account, or annuity contract proceeds are
 168 reported and remitted to the Department of Financial Services on
 169 or before May 1, 2021.

170 Section 3. This act shall take effect upon becoming a law.

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 854

INTRODUCER: Banking and Insurance Committee and Senator Hukill

SUBJECT: Funeral, Cemetery, and Consumer Services

DATE: January 12, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	FAV/CS
2.			RI	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 854 amends various provisions of the Florida Funeral, Cemetery, and Consumer Services Act (Act), which sets forth licensure requirements related to funerals and cemeteries regulated by the Department of Financial Services.

Care and maintenance trusts must be maintained by a cemetery company to ensure that the grounds, structures and improvements of a cemetery are well cared for and maintained in a proper condition. The bill amends the Act to accommodate unitrusts as an alternative option to the current net income approach for care and maintenance (C&M) trusts. The bill creates a comprehensive C&M trust distribution statute, which requires the use of one of two methods for withdrawals from a C&M trust and requires the Board and Department to adopt rules related to C&M trusts.

A “preneed contract” is the sale of burial merchandise or burial service in advance. Current laws requires the deposit of certain amounts from the sale of preneed contracts into a trust for the benefit of the purchaser. The bill revises the trust deposit requirement for preneed contract sales of merchandise. The bill requires a preneed licensee to deposit all preneed contract funds into a trust prior to inactive status. The bill also clarifies when a preneed contract can be made irrevocable, for purposes of financially qualifying for assistance programs such as Medicaid and Supplemental Security Income (SSI). The bill requires cemetery companies to remit unexpended monies paid on irrevocable preneed contracts to the Agency Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary’s final disposition.

The bill requires annual reporting to the Department on preneed licensees trust accounts and repeals the servicing agent exemption from preneed licensure.

The bill also:

- Creates definitions.
- Adds an e-mail address as information that can be required for licensure and allows the Department to use email as a means of notification.
- Requires the Department to adopt rules regarding discipline for miscellaneous financial errors.
- Provides a consistent deposit requirement for graves, mausoleums, and columbaria.
- Clarifies that the annual report must record the fair market value of the care and maintenance trust fund.
- Removes the \$50 fee cap for transferring burial rights and allows the fee to be set by rule.
- Requires an applicant for embalmer apprentice to be of good character.
- Repeals s. 497.461, F.S., which currently allows the use of surety bonding in lieu of the requirement for a preneed licensee to establish a trust for the deposit of funds. The bill allows licensees who have bonds prior to July 1, 2016, to keep them.
- Specifies cremated remains are not property and that any disputes among heirs shall be resolved by the courts.

II. Present Situation:

Chapter 497, F.S., entitled the Florida Funeral, Cemetery, and Consumer Services Act (Act), provides for the regulatory oversight of the death care industry, which includes the following individual and entity licenses:¹

- Brokers of burial rights;
- Cemeteries;
- Central embalming facilities;
- Cinerator facilities;
- Direct disposer and direct disposal establishments;
- Embalmers (including apprentices, interns, and by endorsement);
- Funeral directors and funeral establishments;
- Preneed, preneed branches, and preneed sales agents;
- Monument establishments and monument establishment sales agents;
- Refrigeration facilities;
- Removal services;
- Training facilities.

The Act is administered jointly by the Division of Funeral, Cemetery, & Consumer Services of the Department of Financial Services (“DFS” or “Division”) and the Board of Funeral, Cemetery & Funeral Services (“Board”).

¹ DFS DIVISION OF FUNERAL, CEMETERY & CONSUMER SERVICES, Who We Regulate: Regulated Categories & Number of Licensees, <http://www.myfloridacfo.com/Division/FuneralCemetery/About/Whoweregulate.htm> (last viewed Jan. 6, 2016).

E-mail Notifications

The Act requires DFS to administer a licensing system to process and track applications, renewals, and fees; DFS is authorized to require specified information in its application forms, such as the applicant's work history, criminal history, and business plans. Currently, application forms adopted by rule require the e-mail address of the applicant or licensee as a means of correspondence for DFS.

Legally Authorized Persons & the Disposition of Human Remains

Currently, the Act sets forth the order or priority of persons ("legally authorized persons") who are authorized to direct the disposition of human remains. The "legally authorized person" concept is similar to the Probate Code's order of preference in appointing a personal representative over an estate.² The Act sets the priority of legally authorized persons³ as:

1. A written *inter vivos*⁴ authorization made by the deceased,
2. The person designated by the decedent as authorized to direct disposition pursuant to Pub. L. No. 109-163, s. 564, as listed on the decedent's United States Department of Defense Record of Emergency Data, DD Form 93, or its successor form, if the decedent died while serving military service as described in 10 U.S.C. s. 1481(a)(1)-(8) in any branch of the United States Armed Forces, United States Reserve Forces, or National Guard.
3. The surviving spouse;
4. A son or daughter of majority age;
5. A parent;
6. A sibling of majority age;
7. A grandchild of majority age;
8. A grandparent; or
9. Another person in the next degree of kinship.

However, current usage of the term throughout the Act is inconsistent, leading to concerns of uncertainty and potential disputes among heirs regarding the disposition of human remains. Such disputes can also involve funeral homes and other licensees under the Act, because they receive, store, and process the remains, and are sometimes sued by the relative whose wishes regarding final disposition did not prevail.⁵

Burial Fees

A burial right is the right to use a grave space, mausoleum, columbarium, ossuary, or scattering garden for the interment, entombment, inurnment, or other disposition of human remains or cremated remains.⁶ While cemetery companies may collect fees for the sale of burial rights, merchandise, or services, they may only charge certain fees for the use of any burial right, merchandise, or service, such as sales tax and any interest on unpaid balances. Another

² s. 733.301, F.S.

³ s. 497.005(39), F.S. The definition also addresses legally authorized persons when no family member exists or is available.

⁴ An *inter vivos* authorization is one made during the life of the deceased; "between the living; from one living person to another." See BLACK'S LAW DICTIONARY, <http://thelawdictionary.org/inter-vivos/> (last viewed Jan. 6, 2016).

⁵ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015), on file with the Committee on Banking and Insurance.

⁶ s. 497.005(7), F.S.

permissible fee is the cost of transferring burial rights from one purchaser to another, which current law caps at \$50. The price cap has not been adjusted since the inception of this statute in 1993.

Sale of Personal Property or Services by Cemetery Companies

Currently, s. 497.283, F.S., requires cemetery companies that sell personal property or services in connection with burial or commemorative services to deliver such goods or to perform such services within 120 days of receiving final payment, except for preneed contracts. "Delivery" of goods means actual delivery and installation at the time of need or at the request of the owner or owner's agent. However, subsection (2)(c) provides an alternative delivery method only for manufacturers of outer burial receptacles (OBC) who sell to cemetery companies and funeral establishments if they show evidence of "financial responsibility" as set forth in the "standards and procedures" in s. 497.461, F.S. (relating to surety bonding as an alternative to trust deposit for preneed licensees).

Applicants for the Embalmer Apprentice Program

Applicants for the following licenses under the Act require demonstration of good character:

- Cemetery companies - s. 497.263(2)(p), F.S.
- Brokers of burial rights - s. 497.281(2)(d), F.S.
- Embalmers and embalmers by endorsement - ss. 497.368(1)(c) and 497.369(1)(d), F.S.
- Funeral directors and funeral director by endorsement - ss. 497.373(1)(c) and 497.374(1)(d), F.S.
- Funeral establishments - s. 497.380(4), F.S.
- Removal services, refrigeration services, and centralized embalming facilities - s. 497.385(1)(a) and (2)(f), F.S.
- Preneed licensees - s. 497.453(2)(f), F.S.
- Direct disposers and direct disposal establishments - ss. 497.602(3)(f) and 497.604(3)(c), F.S.
- Cinerator facilities - s. 497.606(3)(d), F.S.

However, no such requirement currently exists for applicants for the embalmer apprentice program.

Scope of Funeral Directing

The Act sets forth the scope of the practice of funeral directing which may be performed only by a licensed funeral director. Currently, one of the permitted acts is planning or arranging, on an at-need basis, the details of funeral services, embalming, cremation, or other services relating to the final disposition of human remains with the decedent's family, friends, or other person responsible for such services.

Cemetery Companies - Care & Maintenance Trusts

Cemetery companies that own or control cemetery lands and property are required by the Act to ensure that the grounds, structures and improvements of a cemetery are well cared for and

maintained in a proper condition.⁷ To achieve this, the Act requires cemetery companies to establish “care and maintenance (C&M) trust funds” with state or national trust companies or banks or savings and loan associations with trust powers.⁸ In other states, these trusts are commonly known as “perpetual care trusts.” Cemetery companies are required to set aside and deposit specified amounts from the sales of burial rights into their care and maintenance trust funds.

Net Income Trusts vs. Total Return Unitrusts

Since 1959, the Act has required that the net income of these trust funds may only be used for the care and maintenance of the cemetery and monuments (excluding the cleaning, refinishing, repairing or replacement of monuments) and reasonable costs of administering care, maintenance, and the trust fund. This net income approach is how cemetery licensees can determine how much may be withdrawn and paid to them every year from the C&M trust fund. While the Act does not define “net income,” it has been understood to include only cash received by the trust as interest or dividends from trust investments, not capital gains (which are treated as accretions to principal, not income). This view has been largely informed by trust practices codified in other parts of Florida law.⁹ As such, cemetery owners have an economic incentive to invest their C&M trust funds to maximize payments of current interest or cash dividends (e.g., government securities and corporate bonds), as opposed to investing in items that provide capital appreciation (e.g., corporate stocks). This approach typically results in erosion of trust principal as a result of inflation and may negatively affect the trust’s long-term growth. Currently, the Act does not expressly dictate the relative mix of income-producing versus capital appreciation investments for C&M trusts, but only speaks to permissible investments that are also allowable for the State Board of Administration (SBA).¹⁰

Another type of trust, known as the “total return trust,” has attracted some interest among trust practitioners for C&M or perpetual care funds. As the name implies, the total return trust allows the trustee to focus on the total return, and to maximize growth of both income and principal by accounting for both income and capital appreciation. One type of total return trust is the unitrust. With the unitrust, the trustee distributes a percentage of the trust based on the fair market value of its assets, regardless of income earned or the original amount invested in the trust. As opposed to withdrawing only income, the unitrust allows cemeteries to withdraw a percentage, no less than 3 percent and no more than 5 percent, of the total fair market value of the trust for annual care and maintenance. Typically, a unitrust:

- Produces a return of 2 to 4 percent greater than an income trust,
- Allows cemetery operators to receive larger distributions (on average and over time),
- Grows principal at a greater rate than an income trust, and

⁷ s. 497.262, F.S.

⁸ The appointments of these institutional trustees are subject to the approval of the licensing authority. These trustees are subject to investment limitations and annual financial reporting requirements in the Act.

⁹ DFS DIVISION OF FUNERAL, CEMETERY, AND CONSUMER SERVICES, *Unitrust Concept for Cemetery Care & Maintenance Trust Funds: Background and Analysis* (“DFS Unitrust Analysis”), p. 3 (Nov. 18, 2015), on file with the Committee on Banking and Insurance.

¹⁰ *Id.* See ss. 497.266(4) and 497.458(5)(a), F.S., and permissible investment statute for the SBA, s. 215.47(1), F.S.

- Shows exactly how much funds will be available for withdrawal in advance, which is important for budgeting purposes.¹¹

According to the Division, the unitrust concept as applied to cemetery C&M trusts has been recently approved for use in 3 states (Iowa, Missouri, and Tennessee).¹²

Preneed Contracts

A “preneed contract” is any arrangement or method, of which the provider of funeral merchandise or service has actual knowledge, whereby any person agrees to sell burial merchandise or burial service in advance. Examples of “burial merchandise” are caskets, outer burial containers, urns, monuments, floral arrangements, and register books, and “burial service” includes any service offered or provided in connection with the final disposition, memorialization, interment, entombment, inurnment, or other disposition of human remains or cremated remains.¹³

Preneed sales are governed by part IV of the Act, which requires sellers of funeral merchandise or service to obtain a preneed license and also be licensed as a funeral establishment, cemetery company, direct disposal establishment, or monument establishment.¹⁴

III. Effect of Proposed Changes:

Care & Maintenance Trusts

The bill amends the Act to accommodate unitrusts as an alternative option to the current net income approach for C&M trusts.

Section 8 of the bill creates s. 497.2675, F.S., as a comprehensive C&M trust distribution statute, which requires the use of one of two methods for withdrawals from a care and maintenance trust and requires the Board and Department to adopt rules related to C&M trusts. Specifically, this section:

- Requires the Board and Department to adopt rules related to the withdrawals from C&M trust accounts in accordance with ss. 497.267 and 497.268, F.S., the rules must include:
 - Reporting requirements for a cemetery licensed under this chapter, including the requirement that specific reports be made on forms designed and approved by the board by rule.
 - Rules to address a cemetery licensed under this chapter whose pro rata share of the fair market value of the trust has not grown over a 3-year average, including limiting withdrawals from the care and maintenance trust fund, and any exceptions approved by the board.

¹¹ Lauren Moore, *Perpetual Care Roundtable*, AMERICAN CEMETERY, Jan. 2014, at p. 33 (on file with the Committee on Banking and Insurance).

¹² *DFS Unitrust Analysis*, pp. 1, 7-9. Cemetery unitrusts may be used in Iowa beginning in 2016, while they have been authorized in Missouri in 2009 and in Tennessee in 2006. It appears unitrusts have largely been used in the long-term higher education and charitable foundation endowment trusts.

¹³ s. 497.005(56), (6), and (7), F.S.

¹⁴ s. 497.452, F.S. The statute exempts certain cemeteries owned by religious institutions from preneed licensure.

- Requires each cemetery company licensed under this chapter shall elect one of two methods for withdrawals from the cemetery company's care and maintenance trust fund.
 - Net income withdrawal method.—Net income may be withdrawn from the trust, as earned, on a monthly basis.
 - Total return withdrawal method (Unitrust).—The licensee shall multiply the average fair market value of its pro rata share of the trust by the total return withdrawal percentage and may withdraw one-fourth of that amount at least quarterly beginning the first quarter of the new trust year. The initial total return withdrawal percentage elected by the licensee may not increase the total return withdrawal percentage for that quarter. For purposes of this paragraph, “average fair market value” means, in relation to a trust, the average of the fair market value of each asset held by the trust at the beginning of the current year and in each of the 2 previous years, or for the entire term of the trust if there are less than 2 previous years, and adjusted as follows:
 1. If assets are added to the trust during the years used to determine the average, the amount of each addition is added to all years in which such addition is not included.
 2. If assets are distributed from the trust during the years used to determine the average, other than in satisfaction of the unitrust amount, as defined in s. 738.1041, the amount of each distribution is subtracted from all other years in which such distribution is not included.
- Without regard to the withdrawal method selected, taxes on capital gains, if any, must be paid from the trust principal.

Sections 6 and 7 of the bill update financial and trust terms in existing C&M trust statutes.

- Section 6 of the bill amends s. 497.266, F.S., to substitute “assets” for “corpus” and provides that withdrawals and transfers of such assets must be in accordance with the new C&M distribution statute, s. 497.2675, F.S. Additionally, the bill provides that the trustee may distribute “withdrawals” from the trust instead of “principal and income.”
- Section 7 of the bill amends s. 497.267, F.S., governing the disposition of monies from a care and maintenance trust, to eliminate the requirement that withdrawals may only be from the net income of the trust. The revision is necessary to accommodate the use of a unitrust, as withdrawals are not based on the net income of the trust under section 8 of the bill. The section retains the requirement that such monies may only be used for the care and maintenance of the cemetery.

Section 10 of the bill amends s. 497.269, F.S., to clarify that the annual report must record the fair market value of the C&M trust fund.

Burial Fees

Section 9 of the bill amends s. 497.268, F.S., to provide a consistent deposit requirement for graves, mausoleums, and columbaria which are all “burial rights” under the Act. Clarifies that 10 percent of all sales of burial rights is to be deposited into the C&M trust fund, and a \$25 minimum is to be deposited for each post-1993 sale of a burial right, and \$25 for each burial right provided without charge.

Section 13 amends s. 497.277(2), F.S., to delete the \$50 fee limitation for transferring burial rights and instead requires the fee to be set by rule.

Preneed Contracts

Section 5 of the bill amends the Act's rulemaking authority in s. 497.161, F.S., to provide authority for rules that establish conditions of use for insurance as a funding mechanism for preneed contracts if such rules are not inconsistent with part IV of the Act (relating to preneed sales) and the Florida Insurance Code. According to the Division, the intent of this change is to create clear rulemaking authority for current Board rule 69K-8.005, F.A.C., relating to preneed contracts funded by life insurance, because the current statutory authority may be subject to challenge. The rule was adopted in 1996, prior to the implementation of legislative changes to the Administrative Procedure Act that significantly restricted rulemaking to clear grants of rulemaking authority.

Section 19 amends s. 497.452(2)(c), F.S., to repeal the Servicing Agent Exemption from Preneed Licensure. This exemption is not currently used.

Section 20 amends s. 497.454, F.S., to add "electronic or paper" preneed contracts and removes a cross-reference to s. 497.461, F.S., which is being repealed in section 25 of the bill.

Section 22 amends s. 497.458, F.S., which requires the methods by which proceeds received on preneed contracts may be distributed. Under current law, if an item of merchandise is sold under a preneed contract, the greater of 30 percent of the purchase price collected or 110 percent of the wholesale price must be deposited in a trust for the benefit of the purchaser. Instead, the bill simply requires the deposit of 30 percent of the purchase price. Elimination of the wholesale price option reduces recordkeeping requirements for vendors and is administratively less burdensome, though in some circumstances it will decrease the amount deposited into the trust. The bill eliminates the method of determining wholesale cost of a preneed contract, which would no longer be necessary.

The bill grants the board rule making authority to classify items sold in preneed contracts as services, cash advances, or merchandise. Under current law and in the bill, the three different types of items trigger different trust deposit requirements.

The bill requires an annual report be provided to the department regarding each preneed trust account held by a trustee at any time during the previous calendar year. The report must contain information identifying the trustee, the licensee to whom the report relates, the trust account number; the beginning and ending trust balance; and, as may be specified by department rule, a list of receipts showing the date and amount of any disbursement. The report must be signed by the trustee's account manager for the trust account and be formatted and submitted pursuant to department rule. The first report is due April 1, 2018, and subsequent annual reports must be submitted on or before April 1.

The bill prohibits a trustee from investing in or counting as assets life insurance policies or annuity contracts. Trust investments in real estate may not exceed 25 percent of trust assets. The bill allows the trustee to allocate and divide capital gains and losses. Current law also allows the allocation and division of assets, liabilities, income, and expenses.

This section also deletes provisions in the statute relating to s. 497.461, F.S., because that section of statute is repealed by the bill.

Section 23 of the bill amends s. 497.459(6)(a), F.S., to specify that the requirement that preneed contracts cannot restrict any purchaser who is a qualified applicant or recipient of Medicaid, supplemental security income (SSI), or temporary cash assistance from making her or his contract irrevocable must also be the beneficiary of the preneed contract. Additionally, the bill clarifies that a preneed contract made irrevocable pursuant to this section cannot be canceled during the life or after the death of the contract purchaser or beneficiary.¹⁵

The bill requires unexpended monies spent on an irrevocable contract to be remitted to the Agency for Health Care Administration (AHCA) for deposit into the Medical Care Trust Fund after the beneficiary's final disposition. This ensures that the state and federal governments recover their respective shares of the unexpended monies of the irrevocable contract.

Section 25 of the bill repeals s. 497.461, F.S., which currently allows a preneed licensee to use surety bonds instead of depositing into the trust moneys collected on preneed licensure sales. The use of surety bonds is not widely utilized within the industry. Section 26 of the bill specifies that the repeal of s. 497.461, F.S., does not affect preneed licensees who have elected to maintain a surety bond in lieu of depositing funds into a trust as of July 1, 2016. Section 27 of the bill eliminates the letter of credit as an alternative to trust deposits as it primarily relates to the use of surety bonds that are being repealed in section 25 of the bill.

Section 28 of the bill amends s. 497.464, F.S., to apply the trust deposit requirements of s. 497.458(1), (3), and (6), to alternative preneed contracts. Currently those requirements are not applicable..

Section 29 of the bill amends s. 497.465, F.S., to provide that prior to inactive status, the licensee must deposit into the trust all of the funds received from preneed contracts. This change is intended to clarify that the licensee cannot retain any of the funds and must put them into the trust account in their entirety. Additionally, the bill removes the qualifier "unaudited or audited" from financial statements.

Email

Sections 2 and 3 of the bill amend s. 497.141, F.S., and s. 497.146, F.S., respectively, to include an email address as information the Department can require for licensure and allows the Department to use email as a means of notification.

Embalmer Apprentice Applicants

Section 16 amends s. 497.371, F.S., to require that an applicant for the embalmer apprentice program be of good character and not have demonstrated a history of lack of trustworthiness or integrity in business or professional matters.

¹⁵ Section 1 of the bill creates definitions of "purchaser" and "beneficiary" in s. 497.005, F.S.

Cremated Remains

Section 31 amends s. 497.607, F.S., to specify that cremated remains are not property, and that any disputes among heirs shall be resolved by the courts. The bill adds the term “legally authorized” and clarifies the legally authorized person’s written authorization to perform a cremation – required before one may be legally performed – may include a declaration of intent as to the cremation procedure.

Definitions

Section 1 amends s. 497.005, F.S., to define the following terms under the Florida Funeral, Cemetery, and Consumer Services Act:

- “Beneficiary” means a natural person expressly identified in a preneed contract as the person for whom funeral merchandise or services are intended.
- “Capital gain” or “capital loss” means a change in the value of a capital asset, such as investment or real estate, which gives the asset a different worth than the purchase price. The gain or loss is not realized until the asset is sold.
- “Fair market value” means the fair market value of assets held by a trust as of a specific date, assuming all assets of the trust are sold on that specific date.
- “Income” means earnings on trust assets, including interest, dividends, and other income earned on the principal.
- “Net income” means, in relation to a trust, ordinary income minus any income distributions for items such as trust expenses. For purposes of this subsection, “ordinary income” means, in relation to a trust, any earnings on trust assets, including interest and dividends received on property derived from the use of the trust principal, but does not include capital gains or capital losses.
- “Purchaser” means a natural person who has executed a preneed contract with or seeks at-need funeral merchandise or services from a licensee.
- “Total return withdrawal percentage” means a percentage, not to exceed 5 percent, of the fair market value of a trust.

Technical Changes

Section 4 amends s. 497.152, F.S., to make technical changes that replace the term “his or her representative or legal guardian” with “a legally authorized person.”

Sections 11 amends s. 497.273, F.S., and 12 amends s. 497.274, F.S., to make technical changes that replace the terms “decedent or other” and “family or next of kin” with “legally authorized person.”

Section 14 amends s. 497.283, F.S., to remove a cross-reference to s. 497.461, F.S., which is being repealed in the bill.

Section 15 amends s. 497.286(3), F.S., to make a technical change that adds the term “or legally authorized person.”

Section 17 amends s. 497.372, F.S., makes a technical change clarifying the duties of a funeral director.

Section 18 amends s. 497.381, F.S., to make a technical change that replaces the term “next of kin of a deceased person” with “legally authorized person.”

Section 21 amends s. 497.456, F.S., to remove a cross-reference to s. 497.461, F.S., which is being repealed in the bill, and replaces “income” with the term “appreciation.”

Section 24 amends s. 497.460, F.S., to make a technical changes that add the terms “fair market value” and “legally authorized person.”

Section 30 amends s. 497.601, F.S., to make a technical change that replaces the term “the decedent’s next of kin” with “legally authorized person.”

Effective Date

Section 32 of the bill states this act shall take effect July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The unitrust proposal may provide a benefit to cemetery licensees in the form of increased annual distributions to licensed cemeteries to defray cemetery care and maintenance expenses; however, the Division states there is too little experience among other state funeral and cemetery regulators with the concept to make specific projections.

The requirement for annual trustee reports to DFS may increase costs to the approximately 370 preneed licensees in the state. The costs would be in the form of increased fees charged by preneed trustees to preneed licensees. DFS believes the cost

will be relatively insignificant, because the trustees already have and provide the information to the preneed licensees. DFS believes the recurring cost might be in the range of \$250 per licensee per year.¹⁶

C. Government Sector Impact:

The Department will need to develop new rules to administer the changes in various sections of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 497.005, 497.141, 497.152, 497.266, 497.267, 497.268, 497.269, 497.273, 497.274, 497.277, 497.283, 497.286, 497.371, 497.372, 497.381, 497.452, 497.454, 497.456, 497.458, 497.459, 497.460, 497.462, 497.464, 497.465, 497.601, 497.607

This bill creates section 497.2675 of the Florida Statutes.

This bill repeals section 497.461 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 January 11, 2016:

The CS conforms to provisions in HB 473

- Lines 5-6 changes the definition of "purchaser" as compared to what was filed.
- Lines 58-78 amend s. 497.146, F.S., as it relates to email notification.
- Line 178 makes a technical cross-reference change.
- Lines 547-549 provides rulemaking authority regarding rules to classify items as merchandise, services, or cash advance.
- Lines 608-610 adds a provision prohibiting investment of preneed trust assets in insurance policies, and limits real estate investments to 25% of trust assets.
- Lines 669-672 adds language that certain preneed trust funds for unused irrevocable preneed contracts are to be remitted to an ACHA trust fund.

¹⁶ Florida Department of Financial Services, Agency Analysis of 2016 Senate Bill 854 (Nov. 30, 2015).

B. Amendments:

None.

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



953794

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 112 - 861

and insert:

(67) "Purchaser" means a person who executes a preneed or an at-need contract with a licensee for merchandise or services.

(77) "Total return withdrawal percentage" means a percentage, not to exceed 5 percent, of the fair market value of a trust.

Section 2. Subsections (2) and (11) of section 497.141,



953794

11 Florida Statutes, are amended to read:

12 497.141 Licensing; general application procedures.—

13 (2) Any person desiring to be licensed shall apply to the
14 licensing authority in writing using such forms and procedures
15 as may be prescribed by rule. The application for licensure
16 shall include the applicant's social security number if the
17 applicant is a natural person; otherwise, the applicant's
18 federal tax identification number shall be included.

19 Notwithstanding any other provision of law, the department is
20 the sole authority for determining the forms and form contents
21 to be submitted for initial licensure and licensure renewal
22 application. Such forms and the information and materials
23 required by such forms may include, as appropriate,
24 demographics, education, work history, personal background,
25 criminal history, finances, business information, signature
26 notarization, performance periods, reciprocity, local government
27 approvals, supporting documentation, periodic reporting
28 requirements, fingerprint requirements, continuing education
29 requirements, business plans, character references, e-mail
30 addresses, and ongoing education monitoring. Such forms and the
31 information and materials required by such forms may also
32 include, to the extent such information or materials are not
33 already in the possession of the department or the board,
34 records or information as to complaints, inspections,
35 investigations, discipline, and bonding. The application shall
36 be supplemented as needed to reflect any material change in any
37 circumstance or condition stated in the application that takes
38 place between the initial filing of the application and the
39 final grant or denial of the license and that might affect the



953794

40 decision of the department or the board. After an application by
41 a natural person for licensure under this chapter is approved,
42 the licensing authority may require the successful applicant to
43 provide a photograph of himself or herself for permanent
44 lamination onto the license card to be issued to the applicant,
45 pursuant to rules and fees adopted by the licensing authority.

46 (11) The department shall implement a system for
47 administration of the overall licensing process, including e-
48 mail notification for the processing and tracking of
49 applications for licensure, the issuance of licenses approved by
50 the board, the tracking of licenses issued, the administration
51 of the license renewal process, and the collection and
52 processing of fees related to those activities. The system may
53 use staff and facilities of the department or the department may
54 enter into a contract for all or any part of such system, upon
55 such terms and conditions as the department deems advisable, and
56 such contract may be with another government agency or a private
57 business.

58 Section 3. Section 497.146, Florida Statutes, is amended to
59 read:

60 497.146 Licensing; address of record; changes; licensee
61 responsibility.—Each licensee under this chapter is responsible
62 for notifying the department in writing of the licensee's
63 current e-mail address, business and residence mailing address,
64 and the street address of the licensee's primary place of
65 practice and shall notify the department ~~in writing~~ within 30
66 days after any change in such information, in accordance with
67 procedures and forms prescribed by rule. Notwithstanding any
68 other provision of law, electronic notification ~~service by~~



953794

69 ~~regular mail~~ to a licensee's last known e-mail address of record
70 or preferred street address of record with the department
71 constitutes adequate and sufficient notice to the licensee for
72 any official communication to the licensee by the board or the
73 department, except when other service is expressly required by
74 this chapter. The department may adopt rules, forms, and
75 procedures, including a procedure for electronic reporting of
76 the data provided pursuant to this section. ~~Rules may be adopted~~
77 ~~establishing forms and procedures for licensees to provide the~~
78 ~~notice required by this section.~~

79 Section 4. Paragraphs (b) and (e) of subsection (8),
80 paragraph (d) of subsection (12), paragraphs (b) and (c) of
81 subsection (14), and paragraph (b) of subsection (15) of section
82 497.152, Florida Statutes, are amended to read:

83 497.152 Disciplinary grounds.—This section sets forth
84 conduct that is prohibited and that shall constitute grounds for
85 denial of any application, imposition of discipline, or other
86 enforcement action against the licensee or other person
87 committing such conduct. For purposes of this section, the
88 requirements of this chapter include the requirements of rules
89 adopted under authority of this chapter. No subsection heading
90 in this section shall be interpreted as limiting the
91 applicability of any paragraph within the subsection.

92 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN
93 REMAINS.—

94 (b) Refusing to surrender promptly the custody of a dead
95 human body upon the express order of the ~~person~~ legally
96 authorized person to such person's ~~its~~ custody; however, this
97 provision shall be subject to any state or local laws or rules



953794

98 governing custody or transportation of dead human bodies.

99 (e) Failing to obtain written authorization from a legally
100 authorized person before ~~the family or next of kin of the~~
101 ~~deceased prior to~~ entombment, interment, disinterment,
102 disentombment, or disinurnment of the remains of any human
103 being.

104 (12) DISCLOSURE REQUIREMENTS.—

105 (d) Failure by a funeral director to make full disclosure
106 in the case of a funeral or direct disposition with regard to
107 the use of funeral merchandise that is not to be disposed of
108 with the body or failure to obtain written permission from a
109 legally authorized person ~~the purchaser~~ regarding disposition of
110 such merchandise.

111 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
112 CUSTOMERS.—

113 (b) Committing or performing with such frequency as to
114 indicate a general business practice any of the following:

115 1. Failing to acknowledge and act promptly upon
116 communications from a licensee's customers and their
117 representatives with respect to claims or complaints relating to
118 the licensee's activities regulated by this chapter.

119 2. Denying claims or rejecting complaints received by a
120 licensee from a customer or customer's representative, relating
121 to the licensee's activities regulated by this chapter, without
122 first conducting reasonable investigation based upon available
123 information.

124 3. Attempting to settle a claim or complaint on the basis
125 of a material document that was altered without notice to, or
126 without the knowledge or consent of, the contract purchaser or a



953794

127 legally authorized person ~~her or his representative or legal~~
128 ~~guardian.~~

129 4. Failing within a reasonable time to affirm or deny
130 coverage of specified services or merchandise under a contract
131 entered into by a licensee upon written request of the contract
132 purchaser or a legally authorized person ~~her or his~~
133 ~~representative or legal guardian.~~

134 5. Failing to promptly provide, in relation to a contract
135 for funeral or burial merchandise or services entered into by
136 the licensee or under the licensee's license, a reasonable
137 explanation to the contract purchaser or a legally authorized
138 person ~~her or his representative or legal guardian~~ of the
139 licensee's basis for denying or rejecting all or any part of a
140 claim or complaint submitted.

141 (c) Making a material misrepresentation to a contract
142 purchaser or a legally authorized person ~~her or his~~
143 ~~representative or legal guardian~~ for the purpose and with the
144 intent of effecting settlement of a claim or complaint or loss
145 under a prepaid contract on less favorable terms than those
146 provided in, and contemplated by, the prepaid contract.

147
148 For purposes of this subsection, the response of a customer
149 recorded by the customer on a customer satisfaction
150 questionnaire or survey form sent to the customer by the
151 licensee, and returned by the customer to the licensee, shall
152 not be deemed to be a complaint.

153 (15) MISCELLANEOUS FINANCIAL MATTERS.—

154 (b) Failing to timely remit as required by this chapter the
155 required amounts to any trust fund required by this chapter. The



953794

156 board shall ~~may~~ by rule provide criteria for identifying minor,
157 nonwillful trust remittance deficiencies; and remittance
158 deficiencies falling within such criteria, if fully corrected
159 within 30 days after notice to the licensee by the department,
160 ~~do shall~~ not constitute grounds for disciplinary action or a
161 fine.

162 Section 5. Paragraph (g) is added to subsection (1) of
163 section 497.161, Florida Statutes, to read:

164 497.161 Other rulemaking provisions.—

165 (1) In addition to such other rules as are authorized or
166 required under this chapter, the following additional rules, not
167 inconsistent with this chapter, shall be authorized by the
168 licensing authority.

169 (g) Rules, not inconsistent with part IV of this chapter
170 and the Florida Insurance Code, establishing conditions of use
171 for insurance as a funding mechanism for preneed contracts.

172 Section 6. Subsections (3) and (4) of section 497.266,
173 Florida Statutes, are amended to read:

174 497.266 Care and maintenance trust fund; remedy of
175 department for noncompliance.—

176 (3) A ~~No~~ person may not withdraw or transfer any portion of
177 assets within the corpus of the care and maintenance trust fund,
178 except as authorized by s. 497.2675, without first obtaining
179 written consent from the licensing authority.

180 (4) The trustee of the trust established pursuant to this
181 section may only invest in investments and loan trust funds, as
182 prescribed in s. 497.458. The trustee shall take title to the
183 property conveyed to the trust for the purposes of investing,
184 protecting, and conserving it for the cemetery company;



953794

185 collecting income; and distributing withdrawals from the trust
186 ~~the principal and income~~ as prescribed in this chapter. The
187 cemetery company is prohibited from sharing in the discharge of
188 the trustee's responsibilities under this subsection, except
189 that the cemetery company may request the trustee to invest in
190 tax-free investments.

191 Section 7. Section 497.267, Florida Statutes, is amended to
192 read:

193 497.267 Disposition of withdrawals from the ~~income of~~ care
194 and maintenance trust fund; notice to purchasers and
195 depositors.—Withdrawals from the ~~net income of the~~ care and
196 maintenance trust fund shall be used solely for the care and
197 maintenance of the cemetery, including maintenance of monuments,
198 which maintenance may ~~shall~~ not be deemed to include the
199 cleaning, refinishing, repairing, or replacement of monuments;
200 for reasonable costs of administering the care and maintenance;
201 and for reasonable costs of administering the trust fund. At the
202 time of making a sale or receiving an initial deposit, the
203 cemetery company shall deliver to the person to whom the sale is
204 made, or who makes a deposit, a written instrument which shall
205 specifically state the purposes for which withdrawals from the
206 ~~income of the~~ trust fund shall be used.

207 Section 8. Section 497.2675, Florida Statutes, is created
208 to read:

209 497.2675 Withdrawal methods from the care and maintenance
210 trust fund.—

211 (1) The board shall adopt rules, with the approval of the
212 department, to administer ss. 497.267 and 497.268, including,
213 but not limited to:



953794

214 (a) Reporting requirements for a cemetery licensed under
215 this chapter, including the requirement that specific reports be
216 made on forms designed and approved by the board by rule.

217 (b) Rules to address a cemetery licensed under this chapter
218 whose pro rata share of the fair market value of the trust has
219 not grown over a 3-year average, including limiting withdrawals
220 from the care and maintenance trust fund, and any exceptions
221 approved by the board.

222 (2) Each cemetery company licensed under this chapter shall
223 elect one of two withdrawal methods, as specified in paragraphs
224 (a) and (b), for withdrawals from the cemetery company's care
225 and maintenance trust fund. The board shall adopt rules, with
226 the approval of the department, to administer this subsection.

227 (a) Net income withdrawal method.—Net income may be
228 withdrawn from the trust, as earned, on a monthly basis.

229 (b) Total return withdrawal method.—The licensee shall
230 multiply the average fair market value of its pro rata share of
231 the trust by the total return withdrawal percentage and may
232 withdraw one-fourth of that amount at least quarterly beginning
233 the first quarter of the new trust year. The initial total
234 return withdrawal percentage elected by the licensee may not
235 increase the total return withdrawal percentage for that
236 quarter. For purposes of this paragraph, "average fair market
237 value" means, in relation to a trust, the average of the fair
238 market value of each asset held by the trust at the beginning of
239 the current year and in each of the 2 previous years, or for the
240 entire term of the trust if there are less than 2 previous
241 years, and adjusted as follows:

242 1. If assets are added to the trust during the years used



953794

243 to determine the average, the amount of each addition is added
244 to all years in which such addition is not included.

245 2. If assets are distributed from the trust during the
246 years used to determine the average, other than in satisfaction
247 of the unitrust amount, as defined in s. 738.1041, the amount of
248 each distribution is subtracted from all other years in which
249 such distribution is not included.

250 (3) Without regard to the withdrawal method selected, taxes
251 on capital gains, if any, must be paid from the trust principal.

252 Section 9. Paragraphs (a) and (b) of subsection (1) and
253 subsection (2) of section 497.268, Florida Statutes, are amended
254 to read:

255 497.268 Care and maintenance trust fund, percentage of
256 payments for burial rights to be deposited.—

257 (1) Each cemetery company shall set aside and deposit in
258 its care and maintenance trust fund the following percentages or
259 amounts for all sums received from sales of burial rights:

260 (a) For burial rights, 10 percent of all payments received;
261 however, for sales made after September 30, 1993, no deposit
262 shall be less than \$25 per burial right ~~grave~~. For each burial
263 right which is provided without charge, the deposit to the fund
264 shall be \$25.

265 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
266 ~~received.~~

267 (2) Deposits to the care and maintenance trust fund shall
268 be made by the cemetery company not later than 30 days following
269 the close of the calendar month in which any payment was
270 received; however, when such payments are received in
271 installments, the percentage of the installment payment placed



953794

272 in trust must be identical to the percentage which the payment
273 received bears to the total cost for the burial rights. Trust
274 income may be used to pay for all usual and customary services
275 for the operation of a trust account, including, but not limited
276 to: reasonable trustee and custodian fees, investment adviser
277 fees, allocation fees, and taxes. If the net income is not
278 sufficient to pay the fees and other expenses, the fees and
279 other expenses shall be paid by the cemetery company. ~~Capital~~
280 ~~gains taxes shall be paid from the corpus.~~

281 Section 10. Section 497.269, Florida Statutes, is amended
282 to read:

283 497.269 Care and maintenance trust fund; financial
284 reports.—On or before April 1 of each year, the trustee shall
285 furnish adequate financial reports that record the fair market
286 value with respect to the care and maintenance trust fund
287 utilizing forms and procedures specified by rule. However, the
288 department may require the trustee to make such additional
289 financial reports as it deems necessary. In order to ensure that
290 the proper deposits to the trust fund have been made, the
291 department shall examine the status of the trust fund of the
292 company on a semiannual basis for the first 2 years of the trust
293 fund's existence.

294 Section 11. Subsection (4) of section 497.273, Florida
295 Statutes, is amended to read:

296 497.273 Cemetery companies; authorized functions.—

297 (4) This chapter does not prohibit the interment or
298 entombment of the inurned cremated animal remains of the
299 decedent's pet or pets with the decedent's human remains or
300 cremated human remains if:



953794

301 (a) The human remains or cremated human remains are not
302 commingled with the inurned cremated animal remains; and

303 (b) The interment or entombment with the inurned cremated
304 animal remains is with the authorization of a ~~the decedent or~~
305 ~~either~~ legally authorized person.

306 Section 12. Subsection (1) of section 497.274, Florida
307 Statutes, is amended to read:

308 497.274 Standards for grave spaces.—

309 (1) A standard adult grave space shall measure at least 42
310 inches in width and 96 inches in length, except for preinstalled
311 vaults in designated areas. For interments, except cremated
312 remains, the covering soil shall measure no less than 12 inches
313 from the top of the outer burial container at time of interment,
314 unless such level of soil is not physically possible. In any
315 interment, a legally authorized person ~~the family or next of kin~~
316 may waive the 12-inch coverage minimum.

317 Section 13. Subsection (2) of section 497.277, Florida
318 Statutes, is amended to read:

319 497.277 Other charges.—Other than the fees for the sale of
320 burial rights, burial merchandise, and burial services, no other
321 fee may be directly or indirectly charged, contracted for, or
322 received by a cemetery company as a condition for a customer to
323 use any burial right, burial merchandise, or burial service,
324 except for:

325 (2) Charges paid for transferring burial rights from one
326 purchaser to another, as determined by rule of the board,
327 ~~however, no such fee may exceed \$50.~~

328 Section 14. Paragraph (c) of subsection (2) of section
329 497.283, Florida Statutes, is amended to read:



953794

330 497.283 Prohibition on sale of personal property or
331 services.—

332 (2)

333 (c) In lieu of delivery as required by paragraph (b), for
334 sales to cemetery companies and funeral establishments, and only
335 for such sales, the manufacturer of a permanent outer burial
336 receptacle which meets standards adopted by rule may elect, at
337 its discretion, to comply with the delivery requirements of this
338 section by annually submitting for approval pursuant to
339 procedures and forms as specified by rule, in writing, evidence
340 of the manufacturer's financial responsibility with the
341 licensing authority for its review and approval. ~~The standards
342 and procedures to establish evidence of financial responsibility
343 shall be those in s. 497.461, with the manufacturer of permanent
344 outer burial receptacles which meet national industry standards
345 assuming the same rights and responsibilities as those of a
346 preneed licensee under s. 497.461.~~

347 Section 15. Subsection (3) of section 497.286, Florida
348 Statutes, is amended to read:

349 497.286 Owners to provide addresses; presumption of
350 abandonment; abandonment procedures; sale of abandoned unused
351 burial rights.—

352 (3) Upon the occurrence of a presumption of abandonment as
353 set forth in subsection (2), a cemetery may file with the
354 department a certified notice attesting to the abandonment of
355 the burial rights. The notice shall do the following:

356 (a) Describe the burial rights certified to have been
357 abandoned;

358 (b) Set forth the name of the owner or owners of the burial



953794

359 rights, or if the owner is known to the cemetery to be deceased,
360 then the names, if known to the cemetery, of such claimants as
361 are heirs at law, next of kin, or specific devisees under the
362 will of the owner or the legally authorized person;

363 (c) Detail the facts with respect to the failure of the
364 owner or survivors as outlined in this section to keep the
365 cemetery informed of the owner's address for a period of 50
366 consecutive years or more; and

367 (d) Certify that no burial right has been exercised which
368 is held in common ownership with any abandoned burial rights as
369 set forth in subsection (2).

370 Section 16. Section 497.371, Florida Statutes, is amended
371 to read:

372 497.371 Embalmers; establishment of embalmer apprentice
373 program.—The licensing authority adopts rules establishing an
374 embalmer apprentice program. An embalmer apprentice may perform
375 only those tasks, functions, and duties relating to embalming
376 which are performed under the direct supervision of an embalmer
377 who has an active, valid license under s. 497.368 or s. 497.369.
378 An embalmer apprentice is ~~shall be~~ eligible to serve in an
379 apprentice capacity for a period not to exceed 3 years as may be
380 determined by licensing authority rule or for a period not to
381 exceed 5 years if the apprentice is enrolled in and attending a
382 course in mortuary science or funeral service education at any
383 mortuary college or funeral service education college or school.
384 An embalmer apprentice shall be issued a license ~~licensed~~ upon
385 payment of a licensure fee as determined by licensing authority
386 rule but not to exceed \$200. An applicant for the embalmer
387 apprentice program may not be issued a license unless the



953794

388 licensing authority determines that the applicant is of good
389 character and has not demonstrated a history of lack of
390 trustworthiness or integrity in business or professional
391 matters.

392 Section 17. Paragraph (b) of subsection (1) of section
393 497.372, Florida Statutes, is amended to read:

394 497.372 Funeral directing; conduct constituting practice of
395 funeral directing.—

396 (1) The practice of funeral directing shall be construed to
397 consist of the following functions, which may be performed only
398 by a licensed funeral director:

399 (b) Planning or arranging, on an at-need basis, the details
400 of funeral services, embalming, cremation, or other services
401 relating to the final disposition of human remains, including
402 the removal of such remains from the state, ~~with the family or~~
403 ~~friends of the decedent or any other person responsible for such~~
404 ~~services~~; setting the time of the services; establishing the
405 type of services to be rendered; acquiring the services of the
406 clergy; and obtaining vital information for the filing of death
407 certificates and obtaining of burial transit permits.

408 Section 18. Subsection (4) of section 497.381, Florida
409 Statutes, is amended to read:

410 497.381 Solicitation of goods or services.—

411 (4) At-need solicitation of funeral merchandise or services
412 is prohibited. A ~~No~~ funeral director or direct disposer or her
413 or his agent or representative may not contact the legally
414 authorized person or family ~~or next of kin of a deceased person~~
415 to sell services or merchandise unless the funeral director or
416 direct disposer or her or his agent or representative has been



953794

417 initially called or contacted by the legally authorized person
418 or family ~~or next of kin of such person~~ and requested to provide
419 her or his services or merchandise.

420 Section 19. Paragraph (c) of subsection (2) of section
421 497.452, Florida Statutes, is amended to read:

422 497.452 Preneed license required.—

423 (2)

424 ~~(c) The provisions of paragraph (a) do not apply to any~~
425 ~~Florida corporation existing under chapter 607 acting as a~~
426 ~~servicing agent hereunder in which the stock of such corporation~~
427 ~~is held by 100 or more persons licensed pursuant to part III of~~
428 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
429 ~~has proxies for more than 5 percent of the issued stock of such~~
430 ~~corporation; provided the corporation has a blanket fidelity~~
431 ~~bond, covering all employees handling the funds, in the amount~~
432 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
433 ~~this state; and provided the corporation processes the funds~~
434 ~~directly to and from the trustee within the applicable time~~
435 ~~limits set forth in this chapter. The department may require any~~
436 ~~person claiming that the provisions of this paragraph exempt it~~
437 ~~from the provisions of paragraph (a) to demonstrate to the~~
438 ~~satisfaction of the department that it meets the requirements of~~
439 ~~this paragraph.~~

440 Section 20. Subsections (1) and (3) of section 497.454,
441 Florida Statutes, are amended to read:

442 497.454 Approval of preneed contract and related forms.—

443 (1) Preneed contract forms and related forms shall be filed
444 with and approved by the licensing authority before ~~prior to~~
445 use, pursuant to procedures specified by rule. The licensing



953794

446 authority may not approve any electronic or paper preneed
447 contract ~~form~~ that does not provide for sequential prenumbering
448 thereon.

449 ~~(3) Specific disclosure regarding the preneed licensee's~~
450 ~~ability to select either trust funding or the financial~~
451 ~~responsibility alternative as set forth in s. 497.461 in~~
452 ~~connection with the receipt of preneed contract proceeds is~~
453 ~~required in the preneed contract.~~

454 Section 21. Subsections (2), (7), and (8) of section
455 497.456, Florida Statutes, are amended to read:

456 497.456 Preneed Funeral Contract Consumer Protection Trust
457 Fund.—

458 (2) Within 60 days after the end of each calendar quarter,
459 for each preneed contract written during the quarter and not
460 canceled within 30 days after the date of the execution of the
461 contract, each preneed licensee, whether funding preneed
462 contracts by the sale of insurance or by establishing a trust
463 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
464 \$2.50 for each preneed contract having a purchase price of
465 \$1,500 or less, and the sum of \$5 for each preneed contract
466 having a purchase price in excess of \$1,500; and each preneed
467 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
468 of \$5 for each preneed contract having a purchase price of
469 \$1,500 or less, and the sum of \$10 for each preneed contract
470 having a purchase price in excess of \$1,500.

471 (7) In any situation in which a delinquency proceeding has
472 not commenced, the licensing authority may, in its discretion,
473 use the trust fund for the purpose of providing restitution to
474 any consumer, owner, or beneficiary of a preneed contract or



953794

475 similar regulated arrangement under this chapter entered into
476 after June 30, 1977. If, after investigation, the licensing
477 authority determines that a preneed licensee has breached a
478 preneed contract by failing to provide benefits or an
479 appropriate refund, or that a provider, who is a former preneed
480 licensee or an establishment which has been regulated under this
481 chapter, has sold a preneed contract and has failed to fulfill
482 the arrangement or provide the appropriate refund, and such
483 preneed licensee or provider does not provide or does not
484 possess adequate funds to provide appropriate refunds, payments
485 from the trust fund may be authorized by the licensing
486 authority. In considering whether payments shall be made or when
487 considering who will be responsible for such payments, the
488 licensing authority shall consider whether the preneed licensee
489 or previous provider has been acquired by a successor who is or
490 should be responsible for the liabilities of the defaulting
491 entity. With respect to preneed contracts funded by life
492 insurance, payments from the fund shall be made: if the insurer
493 is insolvent, but only to the extent that funds are not
494 available through the liquidation proceeding of the insurer; or
495 if the preneed licensee is unable to perform under the contract
496 and the insurance proceeds are not sufficient to cover the cost
497 of the merchandise and services contracted for. In no event
498 shall the licensing authority approve payments in excess of the
499 insurance policy limits unless it determines that at the time of
500 sale of the preneed contract, the insurance policy would have
501 paid for the services and merchandise contracted for. Such
502 monetary relief shall be in an amount as the licensing authority
503 may determine and shall be payable in such manner and upon such



953794

504 conditions and terms as the licensing authority may prescribe.
505 However, with respect to preneed contracts to be funded pursuant
506 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
507 restitution made pursuant to this subsection may ~~shall~~ not
508 exceed, as to any single contract or arrangement, the lesser of
509 the gross amount paid under the contract or 4 percent of the
510 uncommitted assets of the trust fund. With respect to preneed
511 contracts funded by life insurance policies, any restitution may
512 ~~shall~~ not exceed, as to any single contract or arrangement, the
513 lesser of the face amount of the policy, the actual cost of the
514 arrangement contracted for, or 4 percent of the uncommitted
515 assets of the trust fund. The total of all restitutions made to
516 all applicants under this subsection in a single fiscal year may
517 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
518 assets of the trust fund as of the end of the most recent fiscal
519 year or \$120,000. The department may use moneys in the trust
520 fund to contract with independent vendors pursuant to chapter
521 287 to administer the requirements of this subsection.

522 (8) All moneys deposited in the Preneed Funeral Contract
523 Consumer Protection Trust Fund together with all accumulated
524 appreciation ~~income~~ shall be used only for the purposes
525 expressly authorized by this chapter and may ~~shall~~ not be
526 subject to any liens, charges, judgments, garnishments, or other
527 creditor's claims against the preneed licensee, any trustee
528 utilized by the preneed licensee, any company providing a surety
529 bond as specified in this chapter, or any purchaser of a preneed
530 contract. No preneed contract purchaser shall have any vested
531 rights in the trust fund.

532 Section 22. Paragraphs (a), (b), (d), and (f) of subsection



953794

533 (1) of section 497.458, Florida Statutes, are amended, a new
534 paragraph (j) is added to that subsection, and paragraph (a) of
535 subsection (3), subsection (4), paragraphs (a) and (c) of
536 subsection (5), and subsections (6) through (9) of that section
537 are amended, to read:

538 497.458 Disposition of proceeds received on contracts.—

539 (1) (a) Any person who is paid, collects, or receives funds
540 under a preneed contract for funeral services or merchandise or
541 burial services or merchandise shall deposit an amount at least
542 equal to the sum of 70 percent of the purchase price collected
543 for all services sold and facilities rented; 100 percent of the
544 purchase price collected for all cash advance items sold; and 30
545 percent of the purchase price collected ~~or 110 percent of the~~
546 ~~wholesale cost, whichever is greater,~~ for each item of
547 merchandise sold. The board may, by rule, specify criteria for
548 the classification of items sold in a preneed contract as
549 services, cash advances, or merchandise.

550 ~~(b) The method of determining wholesale cost shall be~~
551 ~~established by rule of the licensing authority and shall be~~
552 ~~based upon the preneed licensee's stated wholesale cost for the~~
553 ~~12-month period beginning July 1 during which the initial~~
554 ~~deposit to the preneed trust fund for the preneed contract is~~
555 ~~made.~~

556 (c) ~~(d)~~ The trustee shall take title to the property
557 conveyed to the trust for the purpose of investing, protecting,
558 and conserving it for the preneed licensee; collecting income;
559 and distributing the fair market value ~~principal and income~~ as
560 prescribed in this chapter. The preneed licensee is prohibited
561 from sharing in the discharge of these responsibilities, except



562 that the preneed licensee may request the trustee to invest in
563 tax-free investments and may appoint an adviser to the trustee.
564 The licensing authority may adopt rules limiting or otherwise
565 specifying the degree to which the trustee may rely on the
566 investment advice of an investment adviser appointed by the
567 preneed licensee. The licensing authority may adopt rules
568 limiting or prohibiting payment of fees by the trust to
569 investment advisors that are employees or principals of the
570 licensee to whom the trust fund relates.

571 (e)~~(f)~~ The deposited funds shall be held in trust, both as
572 to principal and any change in fair market value ~~income earned~~
573 thereon, and shall remain intact, except that the cost of the
574 operation of the trust or trust account authorized by this
575 section may be deducted from the income earned thereon.

576 (j) Beginning April 1, 2018, and on or before each April 1
577 thereafter, the trustee shall furnish the department with an
578 annual report regarding each preneed licensee trust account held
579 by the trustee at any time during the previous calendar year.
580 The report shall state the name and address of the trustee; the
581 name, address, and license number of the licensee to whom the
582 report relates; the trust account number; the beginning and
583 ending trust balance; and, as may be specified by department
584 rule, a list of receipts showing the date and amount of any
585 disbursement. The report must be signed by the trustee's account
586 manager for the trust account. The trustee shall submit the
587 report in a format and pursuant to procedures specified by
588 department rule.

589 (3) (a) The trustee shall make regular valuations of assets
590 it holds in trust and provide a fair market value report of such



953794

591 valuations to the preneed licensee at least quarterly.

592 (4) The licensing authority may adopt rules exempting from
593 the prohibition of paragraph (1)(g) ~~(1)(h)~~, pursuant to criteria
594 established in such rule, the investment of trust funds in
595 investments, such as widely and publicly traded stocks and
596 bonds, notwithstanding that the licensee, its principals, or
597 persons related by blood or marriage to the licensee or its
598 principals have an interest by investment in the same entity,
599 where neither the licensee, its principals, or persons related
600 by blood or marriage to the licensee or its principals have the
601 ability to control the entity invested in, and it would be in
602 the interest of the preneed contract holders whose contracts are
603 secured by the trust funds to allow the investment.

604 (5) The trustee of the trust established pursuant to this
605 section shall only have the power to:

606 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~
607 and exercise the powers set forth in part VIII of chapter 736.
608 However, the trustee may not invest in, or count as assets, life
609 insurance policies or annuity contracts; real estate may not
610 compose more than 25 percent of the trust's assets; and,
611 ~~provided that~~ the licensing authority may by order require the
612 trustee to liquidate or dispose of any investment within 30 days
613 after such order, or within such other times as the order may
614 direct. The licensing authority may issue such order if it
615 determines that the investment violates any provision of this
616 chapter or is not in the best interests of the preneed contract
617 holders whose contracts are secured by the trust funds.

618 (c) Commingle the property of the trust with the property
619 of any other trust established pursuant to this chapter and make



953794

620 corresponding allocations and divisions of assets, liabilities,
621 income, ~~and expenses, and capital gains and losses.~~

622 ~~(6) The preneed licensee, at her or his election, shall~~
623 ~~have the right and power, at any time, to revest in it title to~~
624 ~~the trust assets, or its pro rata share thereof, provided it has~~
625 ~~complied with s. 497.461.~~

626 ~~(7) Notwithstanding anything contained in this chapter to~~
627 ~~the contrary, the preneed licensee, via its election to sell or~~
628 ~~offer for sale preneed contracts subject to this section, shall~~
629 ~~represent and warrant, and is hereby deemed to have done such,~~
630 ~~to all federal and Florida taxing authorities, as well as to all~~
631 ~~potential and actual preneed contract purchasers, that:~~

632 ~~(a) Section 497.461 is a viable option available to it at~~
633 ~~any and all relevant times;~~

634 ~~(b) Section 497.462 is a viable option available to it at~~
635 ~~any and all relevant times for contracts written prior to July~~
636 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

637 ~~(c) For any preneed licensee authorized to do business in~~
638 ~~this state that has total bonded liability exceeding \$100~~
639 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
640 ~~at any and all relevant times for contracts written prior to~~
641 ~~December 31, 2004, for funds not held in trust as of July 1,~~
642 ~~2001.~~

643 ~~(8) If in the preneed licensee's opinion it does not have~~
644 ~~the ability to select the financial responsibility alternative~~
645 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
646 ~~have the right to sell or solicit preneed contracts.~~

647 ~~(6)(9)~~ The amounts required to be placed in a trust by this
648 section for contracts previously entered into shall be as



953794

649 follows:

650 (a) For contracts entered into before October 1, 1993, the
651 trust amounts as amended by s. 6, chapter 83-316, Laws of
652 Florida, shall apply.

653 (b) For contracts entered into on or after October 1, 1993,
654 the trust amounts as amended by s. 98, chapter 93-399, Laws of
655 Florida, shall apply.

656 Section 23. Paragraph (a) of subsection (6) of section
657 497.459, Florida Statutes, is amended to read:

658 497.459 Cancellation of, or default on, preneed contracts.-

659 (6) OTHER PROVISIONS.-

660 (a) All preneed contracts are cancelable and revocable as
661 provided in this section, provided that a preneed contract does
662 not restrict any contract purchaser who is the beneficiary of
663 the preneed contract and who is a qualified applicant for, or a
664 recipient of, supplemental security income, temporary cash
665 assistance, or Medicaid from making her or his contract
666 irrevocable. A preneed contract that is made irrevocable
667 pursuant to this section may not be canceled during the life or
668 after the death of the contract purchaser or beneficiary as
669 described in this section. Any unexpended moneys paid on an
670 irrevocable contract shall be remitted to the Agency for Health
671 Care Administration for deposit into the Medical Care Trust Fund
672 after final disposition of the beneficiary.

673 Section 24. Section 497.460, Florida Statutes, is amended
674 to read:

675 497.460 Payment of funds upon death of named beneficiary.-
676 Disbursements of funds discharging any preneed contract
677 fulfilled after September 30, 1993, shall be made by the trustee



953794

678 to the preneed licensee upon receipt of a certified copy of the
679 death certificate of the contract beneficiary or satisfactory
680 evidence as established by rule of the licensing authority that
681 the preneed contract has been performed in whole or in part.
682 However, if the contract is only partially performed, the
683 disbursement shall only cover the fair market value of that
684 portion of the contract performed. In the event of any contract
685 default by the contract purchaser, or in the event that the
686 funeral merchandise or service or burial merchandise or service
687 contracted for is not provided or is not desired by the legally
688 authorized person ~~heirs or personal representative of the~~
689 ~~contract beneficiary,~~ the trustee shall return, within 30 days
690 after its receipt of a written request therefor, funds paid on
691 the contract to the preneed licensee or to its assigns, subject
692 to ~~the provisions of s. 497.459.~~

693 Section 25. Section 497.461, Florida Statutes, is repealed.

694 Section 26. The repeal of s. 497.461, Florida Statutes, by
695 this act does not apply to a preneed licensee who has elected to
696 maintain a surety bond in lieu of depositing funds into a trust
697 as of July 1, 2016.

698 Section 27. Subsection (2), paragraph (a) of subsection
699 (3), and subsections (7) and (10) of section 497.462, Florida
700 Statutes, are amended to read:

701 497.462 Other alternatives to deposits under s. 497.458.—

702 ~~(2) Upon prior approval by the licensing authority, the~~
703 ~~preneed licensee may file a letter of credit with the licensing~~
704 ~~authority in lieu of a surety bond. Such letter of credit must~~
705 ~~be in a form, and is subject to terms and conditions, prescribed~~
706 ~~by the board. It may be revoked only with the express approval~~



953794

707 ~~of the licensing authority.~~

708 (2)~~(3)~~(a) A buyer of preneed merchandise or services who
709 does not receive such services or merchandise due to the
710 economic failure, closing, or bankruptcy of the preneed licensee
711 must file a claim with the surety as a prerequisite to payment
712 of the claim and, if the claim is not paid, may bring an action
713 based on the bond and recover against the surety. ~~In the case of~~
714 ~~a letter of credit or cash deposit that has been filed with the~~
715 ~~licensing authority, the buyer may file a claim with the~~
716 ~~licensing authority.~~

717 (6)~~(7)~~ Any preneed contract which promises future delivery
718 of merchandise at no cost constitutes a paid-up contract.
719 Merchandise which has been delivered is not covered by the
720 required performance bond ~~or letter of credit~~ even though the
721 contract is not completely paid. The preneed licensee may not
722 cancel a contract unless the purchaser is in default according
723 to the terms of the contract and subject to the requirements of
724 s. 497.459. A contract sold, discounted, and transferred to a
725 third party constitutes a paid-up contract for the purposes of
726 the performance bond ~~or letter of credit~~.

727 (9)~~(10)~~ The licensing authority may adopt forms and rules
728 necessary to implement this section, including, but not limited
729 to, rules which ensure that the surety bond provides ~~and line of~~
730 ~~credit provide~~ liability coverage for preneed merchandise and
731 services.

732 Section 28. Paragraphs (c) and (f) of subsection (1) of
733 section 497.464, Florida Statutes, are amended to read:

734 497.464 Alternative preneed contracts.-

735 (1) Nothing in this chapter shall prevent the purchaser and



953794

736 the preneed licensee from executing a preneed contract upon the
737 terms stated in this section. Such contracts shall be subject to
738 ~~all provisions of~~ this chapter except:

739 ~~(e) Section 497.458(1), (3), and (6).~~

740 ~~(f) Section 497.461.~~

741 Section 29. Subsection (2) and paragraph (c) of subsection
742 (9) of section 497.465, Florida Statutes, are amended to read:

743 497.465 Inactive, surrendered, and revoked preneed
744 licensees.—

745 (2) Upon becoming inactive, a preneed licensee shall cease
746 all preneed sales to the public and upon becoming inactive. the
747 preneed licensee shall collect and deposit into the trust all
748 funds it receives on or after the date on which it becomes
749 inactive from sales of into trust all of the funds paid toward
750 preneed contracts sold before prior to becoming inactive.

751 (9) The licensing authority may adopt rules for the
752 implementation of this section, for the purpose of ensuring a
753 thorough review and investigation of the status and condition of
754 the preneed licensee's business affairs for the protection of
755 the licensee's preneed customers. Such rules may include:

756 (c) Requirements for submission of ~~unaudited or audited~~
757 financial statements, as the licensing authority deems
758 advisable.

759 Section 30. Paragraph (b) of subsection (1) of section
760 497.601, Florida Statutes, is amended to read:

761 497.601 Direct disposition; duties.—

762 (1) Those individuals licensed as direct disposers may
763 perform only those functions set forth below:

764 (b) Secure pertinent information from a legally authorized



953794

765 person ~~the decedent's next of kin~~ in order to complete the death
766 certificate and to file for the necessary permits for ~~direct~~
767 disposition.

768 Section 31. Subsection (1) of section 497.607, Florida
769 Statutes, is amended, present subsections (2), (3), and (4) of
770 that section are redesignated as subsections (3), (4), and (5),
771 respectively, and a new subsection (2) is added to that section,
772 to read:

773 497.607 Cremation; procedure required.—

774 (1) At the time of the arrangement for a cremation
775 performed by any person licensed pursuant to this chapter, the
776 legally authorized person contracting for cremation services
777 shall be required to designate her or his intentions with
778 respect to ~~the~~ disposition of the cremated remains of the
779 deceased in a signed declaration of intent which shall be
780 provided by and retained by the funeral or direct disposal
781 establishment. A cremation may not be performed until a legally
782 authorized person gives written authorization, which may include
783 the declaration of intent to dispose of the cremated remains,
784 for such cremation. The cremation must be performed within 48
785 hours after a specified time which has been agreed to in writing
786 by the person authorizing the cremation.

787 (2) Cremated remains are not property, as defined in s.
788 731.201(32), and are not subject to ownership or court-ordered
789 partition. A division of cremated remains requires the consent
790 of the legally authorized person who approved the cremation or,
791 if the legally authorized person is the decedent, the next
792 legally authorized person pursuant to s. 497.005(43). A dispute
793 regarding the division of cremated remains



953794

794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822

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

And the title is amended as follows:

Delete lines 8 - 63

and insert:

the licensing process; amending s. 497.146, F.S.;
revising required information for current licensees to
include an address for e-mail notification; providing
for rulemaking relating to electronic reporting;
amending s. 497.152, F.S.; conforming provisions to
changes made by the act; requiring, rather than
authorizing, the Board of Funeral, Cemetery, and
Consumer Services to provide certain criteria;
prohibiting the board from requiring a fine when
certain deficiencies are fully corrected within a
specified period; amending s. 497.161, F.S.; revising
requirements for rules of the licensing authority;
amending s. 497.266, F.S.; revising the prohibition
against withdrawal or transfer of assets within the
care and maintenance trust fund to include an
exception; amending s. 497.267, F.S.; revising
provisions relating to the disposition of withdrawals
from the care and maintenance trust fund; creating s.
497.2675, F.S.; requiring the board to adopt certain
rules; requiring a licensed cemetery company to
request a method for withdrawal from the cemetery
company's care and maintenance trust fund; providing
requirements for such methods; requiring that taxes on
capital gains be paid from the trust principal;



823 amending s. 497.268, F.S.; conforming provisions to
824 changes made by the act; deleting a required deposit
825 in a cemetery company's care and maintenance trust
826 fund for mausoleums or columbaria; deleting the
827 requirement that taxes on capital gain be paid from
828 the trust corpus; amending s. 497.269, F.S.; requiring
829 a trustee to annually furnish financial reports that
830 record the fair market value of the care and
831 maintenance trust fund; amending ss. 497.273 and
832 497.274, F.S.; conforming provisions to changes made
833 by the act; amending s. 497.277, F.S.; deleting a
834 limitation on the fee for transfer of burial rights
835 from one purchaser to another; authorizing the board
836 to determine the transfer fee; amending ss. 497.283
837 and 497.286, F.S.; conforming provisions to changes
838 made by the act; amending s. 497.371, F.S.; providing
839 that an applicant for the embalmer apprentice program
840 may not be licensed without a determination of
841 character by the licensing authority; amending ss.
842 497.372 and 497.381, F.S.; conforming provisions to
843 changes made by the act; amending s. 497.452, F.S.;
844 deleting an exception that prohibits a person from
845 receiving specified funds without holding a valid
846 preneed license; amending ss. 497.454 and 497.456,
847 F.S.; conforming provisions to changes made by the
848 act; amending s. 497.458, F.S.; revising requirements
849 relating to the disposition of proceeds on a preneed
850 contract; authorizing the board to specify criteria
851 for the classification of items sold in a preneed



953794

852 contract; requiring the trustee to furnish the
853 department with an annual report regarding preneed
854 licensee trust accounts beginning on a specified date;
855 providing requirements for the annual report; revising
856 which investments a trustee of a trust has the power
857 to invest in; deleting provisions relating to the
858 preneed licensee; amending s. 497.459, F.S.;
859 prohibiting certain preneed contracts from being
860 canceled during the life or after the death of the
861 contract purchaser or beneficiary; requiring
862 unexpended moneys on an irrevocable contract to be
863 deposited into the Medical Care Trust Fund under
864 certain circumstances; amending s. 497.460, F.S.;

865

By Senator Hukill

8-00997-16

2016854__

1 A bill to be entitled
 2 An act relating to funeral, cemetery, and consumer
 3 services; amending s. 497.005, F.S.; defining terms;
 4 amending s. 497.141, F.S.; revising required
 5 information for licensure to include e-mail addresses;
 6 requiring the Department of Financial Services to
 7 include e-mail notification as a means to administer
 8 the licensing process; amending s. 497.152, F.S.;
 9 conforming provisions to changes made by the act;
 10 requiring, rather than authorizing, the Board of
 11 Funeral, Cemetery, and Consumer Services to provide
 12 certain criteria; prohibiting the board from requiring
 13 a fine when certain deficiencies are fully corrected
 14 within a specified period; amending s. 497.266, F.S.;
 15 revising the prohibition against withdrawal or
 16 transfer of assets within the care and maintenance
 17 trust fund to include an exception; amending s.
 18 497.267, F.S.; revising provisions relating to the
 19 disposition of withdrawals from the care and
 20 maintenance trust fund; creating s. 497.2675, F.S.;
 21 requiring the board to adopt certain rules; requiring
 22 a licensed cemetery company to request a method for
 23 withdrawal from the cemetery company's care and
 24 maintenance trust fund; providing requirements for
 25 such methods; requiring that taxes on capital gains be
 26 paid from the trust principal; amending s. 497.268,
 27 F.S.; conforming provisions to changes made by the
 28 act; deleting a required deposit in a cemetery
 29 company's care and maintenance trust fund for

Page 1 of 30

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

8-00997-16

2016854__

30 mausoleums or columbaria; deleting the requirement
 31 that taxes on capital gain be paid from the trust
 32 corpus; amending s. 497.269, F.S.; requiring a trustee
 33 to annually furnish financial reports that record the
 34 fair market value of the care and maintenance trust
 35 fund; amending ss. 497.273 and 497.274, F.S.;
 36 conforming provisions to changes made by the act;
 37 amending s. 497.277, F.S.; deleting a limitation on
 38 the fee for transfer of burial rights from one
 39 purchaser to another; authorizing the board to
 40 determine the transfer fee; amending ss. 497.283 and
 41 497.286, F.S.; conforming provisions to changes made
 42 by the act; amending s. 497.371, F.S.; providing that
 43 an applicant for the embalmer apprentice program may
 44 not be licensed without a determination of character
 45 by the licensing authority; amending ss. 497.372 and
 46 497.381, F.S.; conforming provisions to changes made
 47 by the act; amending s. 497.452, F.S.; deleting an
 48 exception that prohibits a person from receiving
 49 specified funds without holding a valid preneed
 50 license; amending ss. 497.454 and 497.456, F.S.;
 51 conforming provisions to changes made by the act;
 52 amending s. 497.458, F.S.; revising requirements
 53 relating to the disposition of proceeds on a preneed
 54 contract; requiring the trustee to furnish the
 55 department with an annual report regarding preneed
 56 licensee trust accounts beginning on a specified date;
 57 providing requirements for the annual report; revising
 58 which investments a trustee of a trust has the power

Page 2 of 30

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

8-00997-16

2016854__

59 to invest in; deleting provisions relating to the
 60 preneed licensee; amending s. 497.459, F.S.;
 61 prohibiting certain preneed contracts from being
 62 canceled during the life or after the death of the
 63 contract purchaser; amending s. 497.460, F.S.;
 64 conforming provisions to changes made by the act;
 65 repealing s. 497.461, F.S., relating to the
 66 authorization for a preneed licensee to elect surety
 67 bonding as an alternative to depositing funds into a
 68 trust; amending s. 497.462, F.S.; deleting obsolete
 69 references to surety bonds; amending s. 497.464, F.S.;
 70 conforming provisions to changes made by the act;
 71 amending s. 497.465, F.S.; requiring an inactive
 72 preneed licensee to deposit a specified amount of
 73 funds received on certain preneed contracts into the
 74 trust upon a specified time; amending ss. 497.601 and
 75 497.607, F.S.; specifying that cremated remains are
 76 not property; requiring a division of cremated remains
 77 to be consented to by certain persons; providing that
 78 a dispute shall be resolved by a court of competent
 79 jurisdiction; conforming provisions to changes made by
 80 the act; providing an effective date.

81
 82 Be It Enacted by the Legislature of the State of Florida:

83
 84 Section 1. Present subsections (5) through (8), (9) through
 85 (31), (32) through (38), (39) through (46), (47) through (61),
 86 (62) through (70), and (71) of section 497.005, Florida
 87 Statutes, are redesignated as subsections (6) through (9), (11)

Page 3 of 30

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

8-00997-16

2016854__

88 through (33), (35) through (41), (43) through (50), (52) through
 89 (66), (68) through (76), and (78), respectively, and new
 90 subsections (5), (10), (34), (42), (51), (67), and (77) are
 91 added to that section, to read:

92 497.005 Definitions.—As used in this chapter, the term:

93 (5) "Beneficiary" means a natural person expressly
 94 identified in a preneed contract as the person for whom funeral
 95 merchandise or services are intended.

96 (10) "Capital gain" or "capital loss" means a change in the
 97 value of a capital asset, such as investment or real estate,
 98 which gives the asset a different worth than the purchase price.
 99 The gain or loss is not realized until the asset is sold.

100 (34) "Fair market value" means the fair market value of
 101 assets held by a trust as of a specific date, assuming all
 102 assets of the trust are sold on that specific date.

103 (42) "Income" means earnings on trust assets, including
 104 interest, dividends, and other income earned on the principal.

105 (51) "Net income" means, in relation to a trust, ordinary
 106 income minus any income distributions for items such as trust
 107 expenses. For purposes of this subsection, "ordinary income"
 108 means, in relation to a trust, any earnings on trust assets,
 109 including interest and dividends received on property derived
 110 from the use of the trust principal, but does not include
 111 capital gains or capital losses.

112 (67) "Purchaser" means a natural person who has executed a
 113 preneed contract with or seeks at-need funeral merchandise or
 114 services from a licensee.

115 (77) "Total return withdrawal percentage" means a
 116 percentage, not to exceed 5 percent, of the fair market value of

Page 4 of 30

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

8-00997-16

2016854__

117 a trust.

118 Section 2. Subsections (2) and (11) of section 497.141,
119 Florida Statutes, are amended to read:

120 497.141 Licensing; general application procedures.—

121 (2) Any person desiring to be licensed shall apply to the
122 licensing authority in writing using such forms and procedures
123 as may be prescribed by rule. The application for licensure
124 shall include the applicant's social security number if the
125 applicant is a natural person; otherwise, the applicant's
126 federal tax identification number shall be included.

127 Notwithstanding any other provision of law, the department is
128 the sole authority for determining the forms and form contents
129 to be submitted for initial licensure and licensure renewal
130 application. Such forms and the information and materials
131 required by such forms may include, as appropriate,
132 demographics, education, work history, personal background,
133 criminal history, finances, business information, signature
134 notarization, performance periods, reciprocity, local government
135 approvals, supporting documentation, periodic reporting
136 requirements, fingerprint requirements, continuing education
137 requirements, business plans, character references, e-mail
138 addresses, and ongoing education monitoring. Such forms and the
139 information and materials required by such forms may also
140 include, to the extent such information or materials are not
141 already in the possession of the department or the board,
142 records or information as to complaints, inspections,
143 investigations, discipline, and bonding. The application shall
144 be supplemented as needed to reflect any material change in any
145 circumstance or condition stated in the application that takes

Page 5 of 30

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

8-00997-16

2016854__

146 place between the initial filing of the application and the
147 final grant or denial of the license and that might affect the
148 decision of the department or the board. After an application by
149 a natural person for licensure under this chapter is approved,
150 the licensing authority may require the successful applicant to
151 provide a photograph of himself or herself for permanent
152 lamination onto the license card to be issued to the applicant,
153 pursuant to rules and fees adopted by the licensing authority.

154 (11) The department shall implement a system for
155 administration of the overall licensing process, including e-
156 mail notification for the processing and tracking of
157 applications for licensure, the issuance of licenses approved by
158 the board, the tracking of licenses issued, the administration
159 of the license renewal process, and the collection and
160 processing of fees related to those activities. The system may
161 use staff and facilities of the department or the department may
162 enter into a contract for all or any part of such system, upon
163 such terms and conditions as the department deems advisable, and
164 such contract may be with another government agency or a private
165 business.

166 Section 3. Paragraphs (b) and (e) of subsection (8),
167 paragraph (d) of subsection (12), paragraphs (b) and (c) of
168 subsection (14), and paragraph (b) of subsection (15) of section
169 497.152, Florida Statutes, are amended to read:

170 497.152 Disciplinary grounds.—This section sets forth
171 conduct that is prohibited and that shall constitute grounds for
172 denial of any application, imposition of discipline, or other
173 enforcement action against the licensee or other person
174 committing such conduct. For purposes of this section, the

Page 6 of 30

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

8-00997-16

2016854

175 requirements of this chapter include the requirements of rules
 176 adopted under authority of this chapter. No subsection heading
 177 in this section shall be interpreted as limiting the
 178 applicability of any paragraph within the subsection.

179 (8) TRANSPORT, CUSTODY, TREATMENT, OR DISINTERMENT OF HUMAN
 180 REMAINS.—

181 (b) Refusing to surrender promptly the custody of a dead
 182 human body upon the express order of the ~~person~~ legally
 183 authorized person to such person's ~~its~~ custody; however, this
 184 provision shall be subject to any state or local laws or rules
 185 governing custody or transportation of dead human bodies.

186 (e) Failing to obtain written authorization from a legally
 187 authorized person before ~~the family or next of kin of the~~
 188 ~~deceased prior to~~ entombment, interment, disinterment,
 189 disentombment, or disinurnment of the remains of any human
 190 being.

191 (12) DISCLOSURE REQUIREMENTS.—

192 (d) Failure by a funeral director to make full disclosure
 193 in the case of a funeral or direct disposition with regard to
 194 the use of funeral merchandise that is not to be disposed of
 195 with the body or failure to obtain written permission from a
 196 legally authorized person ~~the purchaser~~ regarding disposition of
 197 such merchandise.

198 (14) OBLIGATIONS REGARDING COMPLAINTS AND CLAIMS BY
 199 CUSTOMERS.—

200 (b) Committing or performing with such frequency as to
 201 indicate a general business practice any of the following:

202 1. Failing to acknowledge and act promptly upon
 203 communications from a licensee's customers and their

8-00997-16

2016854

204 representatives with respect to claims or complaints relating to
 205 the licensee's activities regulated by this chapter.

206 2. Denying claims or rejecting complaints received by a
 207 licensee from a customer or customer's representative, relating
 208 to the licensee's activities regulated by this chapter, without
 209 first conducting reasonable investigation based upon available
 210 information.

211 3. Attempting to settle a claim or complaint on the basis
 212 of a material document that was altered without notice to, or
 213 without the knowledge or consent of, the contract purchaser or a
 214 legally authorized person ~~her or his representative or legal~~
 215 ~~guardian~~.

216 4. Failing within a reasonable time to affirm or deny
 217 coverage of specified services or merchandise under a contract
 218 entered into by a licensee upon written request of the contract
 219 purchaser or a legally authorized person ~~her or his~~
 220 ~~representative or legal guardian~~.

221 5. Failing to promptly provide, in relation to a contract
 222 for funeral or burial merchandise or services entered into by
 223 the licensee or under the licensee's license, a reasonable
 224 explanation to the contract purchaser or a legally authorized
 225 person ~~her or his representative or legal guardian~~ of the
 226 licensee's basis for denying or rejecting all or any part of a
 227 claim or complaint submitted.

228 (c) Making a material misrepresentation to a contract
 229 purchaser or a legally authorized person ~~her or his~~
 230 ~~representative or legal guardian~~ for the purpose and with the
 231 intent of effecting settlement of a claim or complaint or loss
 232 under a prepaid contract on less favorable terms than those

8-00997-16 2016854__

233 provided in, and contemplated by, the prepaid contract.

234

235 For purposes of this subsection, the response of a customer
236 recorded by the customer on a customer satisfaction
237 questionnaire or survey form sent to the customer by the
238 licensee, and returned by the customer to the licensee, shall
239 not be deemed to be a complaint.

240 (15) MISCELLANEOUS FINANCIAL MATTERS.—

241 (b) Failing to timely remit as required by this chapter the
242 required amounts to any trust fund required by this chapter. The
243 board shall ~~may~~ by rule provide criteria for identifying minor,
244 nonwillful trust remittance deficiencies; and remittance
245 deficiencies falling within such criteria, if fully corrected
246 within 30 days after notice to the licensee by the department,
247 do shall not constitute grounds for disciplinary action or a
248 fine.

249 Section 4. Subsections (3) and (4) of section 497.266,
250 Florida Statutes, are amended to read:

251 497.266 Care and maintenance trust fund; remedy of
252 department for noncompliance.—

253 (3) ~~A~~ No person may not withdraw or transfer any portion of
254 assets within the corpus of the care and maintenance trust fund,
255 except as authorized by s. 497.268, without first obtaining
256 written consent from the licensing authority.

257 (4) The trustee of the trust established pursuant to this
258 section may only invest in investments and loan trust funds, as
259 prescribed in s. 497.458. The trustee shall take title to the
260 property conveyed to the trust for the purposes of investing,
261 protecting, and conserving it for the cemetery company;

8-00997-16 2016854__

262 collecting income; and distributing withdrawals from the trust
263 ~~the principal and income~~ as prescribed in this chapter. The
264 cemetery company is prohibited from sharing in the discharge of
265 the trustee's responsibilities under this subsection, except
266 that the cemetery company may request the trustee to invest in
267 tax-free investments.

268 Section 5. Section 497.267, Florida Statutes, is amended to
269 read:

270 497.267 Disposition of withdrawals from the income of care
271 and maintenance trust fund; notice to purchasers and
272 depositors.—Withdrawals from the net income of the care and
273 maintenance trust fund shall be used solely for the care and
274 maintenance of the cemetery, including maintenance of monuments,
275 which maintenance may shall not be deemed to include the
276 cleaning, refinishing, repairing, or replacement of monuments;
277 for reasonable costs of administering the care and maintenance;
278 and for reasonable costs of administering the trust fund. At the
279 time of making a sale or receiving an initial deposit, the
280 cemetery company shall deliver to the person to whom the sale is
281 made, or who makes a deposit, a written instrument which shall
282 specifically state the purposes for which withdrawals from the
283 income of the trust fund shall be used.

284 Section 6. Section 497.2675, Florida Statutes, is created
285 to read:

286 497.2675 Withdrawal methods from the care and maintenance
287 trust fund.—

288 (1) The board shall adopt rules, with the approval of the
289 department, to administer ss. 497.267 and 497.268, including,
290 but not limited to:

8-00997-16

2016854__

291 (a) Reporting requirements for a cemetery licensed under
 292 this chapter, including the requirement that specific reports be
 293 made on forms designed and approved by the board by rule.

294 (b) Rules to address a cemetery licensed under this chapter
 295 whose pro rata share of the fair market value of the trust has
 296 not grown over a 3-year average, including limiting withdrawals
 297 from the care and maintenance trust fund, and any exceptions
 298 approved by the board.

299 (2) Each cemetery company licensed under this chapter shall
 300 elect one of two withdrawal methods, as specified in paragraphs
 301 (a) and (b), for withdrawals from the cemetery company's care
 302 and maintenance trust fund. The board shall adopt rules, with
 303 the approval of the department, to administer this subsection.

304 (a) Net income withdrawal method.—Net income may be
 305 withdrawn from the trust, as earned, on a monthly basis.

306 (b) Total return withdrawal method.—The licensee shall
 307 multiply the average fair market value of its pro rata share of
 308 the trust by the total return withdrawal percentage and may
 309 withdraw one-fourth of that amount at least quarterly beginning
 310 the first quarter of the new trust year. The initial total
 311 return withdrawal percentage elected by the licensee may not
 312 increase the total return withdrawal percentage for that
 313 quarter. For purposes of this paragraph, "average fair market
 314 value" means, in relation to a trust, the average of the fair
 315 market value of each asset held by the trust at the beginning of
 316 the current year and in each of the 2 previous years, or for the
 317 entire term of the trust if there are less than 2 previous
 318 years, and adjusted as follows:

319 1. If assets are added to the trust during the years used

Page 11 of 30

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

8-00997-16

2016854__

320 to determine the average, the amount of each addition is added
 321 to all years in which such addition is not included.

322 2. If assets are distributed from the trust during the
 323 years used to determine the average, other than in satisfaction
 324 of the unitrust amount, as defined in s. 738.1041, the amount of
 325 each distribution is subtracted from all other years in which
 326 such distribution is not included.

327 (3) Without regard to the withdrawal method selected, taxes
 328 on capital gains, if any, must be paid from the trust principal.

329 Section 7. Paragraphs (a) and (b) of subsection (1) and
 330 subsection (2) of section 497.268, Florida Statutes, are amended
 331 to read:

332 497.268 Care and maintenance trust fund, percentage of
 333 payments for burial rights to be deposited.—

334 (1) Each cemetery company shall set aside and deposit in
 335 its care and maintenance trust fund the following percentages or
 336 amounts for all sums received from sales of burial rights:

337 (a) For burial rights, 10 percent of all payments received;
 338 however, for sales made after September 30, 1993, no deposit
 339 shall be less than \$25 per burial right ~~grave~~. For each burial
 340 right which is provided without charge, the deposit to the fund
 341 shall be \$25.

342 ~~(b) For mausoleums or columbaria, 10 percent of payments~~
 343 ~~received.~~

344 (2) Deposits to the care and maintenance trust fund shall
 345 be made by the cemetery company not later than 30 days following
 346 the close of the calendar month in which any payment was
 347 received; however, when such payments are received in
 348 installments, the percentage of the installment payment placed

Page 12 of 30

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

8-00997-16

2016854__

349 in trust must be identical to the percentage which the payment
 350 received bears to the total cost for the burial rights. Trust
 351 income may be used to pay for all usual and customary services
 352 for the operation of a trust account, including, but not limited
 353 to: reasonable trustee and custodian fees, investment adviser
 354 fees, allocation fees, and taxes. If the net income is not
 355 sufficient to pay the fees and other expenses, the fees and
 356 other expenses shall be paid by the cemetery company. ~~Capital~~
 357 ~~gains taxes shall be paid from the corpus.~~

358 Section 8. Section 497.269, Florida Statutes, is amended to
 359 read:

360 497.269 Care and maintenance trust fund; financial
 361 reports.—On or before April 1 of each year, the trustee shall
 362 furnish adequate financial reports that record the fair market
 363 value with respect to the care and maintenance trust fund
 364 utilizing forms and procedures specified by rule. However, the
 365 department may require the trustee to make such additional
 366 financial reports as it deems necessary. In order to ensure that
 367 the proper deposits to the trust fund have been made, the
 368 department shall examine the status of the trust fund of the
 369 company on a semiannual basis for the first 2 years of the trust
 370 fund's existence.

371 Section 9. Subsection (4) of section 497.273, Florida
 372 Statutes, is amended to read:

373 497.273 Cemetery companies; authorized functions.—

374 (4) This chapter does not prohibit the interment or
 375 entombment of the inurned cremated animal remains of the
 376 decedent's pet or pets with the decedent's human remains or
 377 cremated human remains if:

Page 13 of 30

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

8-00997-16

2016854__

378 (a) The human remains or cremated human remains are not
 379 commingled with the inurned cremated animal remains; and

380 (b) The interment or entombment with the inurned cremated
 381 animal remains is with the authorization of a the decedent or
 382 ~~other~~ legally authorized person.

383 Section 10. Subsection (1) of section 497.274, Florida
 384 Statutes, is amended to read:

385 497.274 Standards for grave spaces.—

386 (1) A standard adult grave space shall measure at least 42
 387 inches in width and 96 inches in length, except for preinstalled
 388 vaults in designated areas. For interments, except cremated
 389 remains, the covering soil shall measure no less than 12 inches
 390 from the top of the outer burial container at time of interment,
 391 unless such level of soil is not physically possible. In any
 392 interment, a legally authorized person ~~the family or next of kin~~
 393 may waive the 12-inch coverage minimum.

394 Section 11. Subsection (2) of section 497.277, Florida
 395 Statutes, is amended to read:

396 497.277 Other charges.—Other than the fees for the sale of
 397 burial rights, burial merchandise, and burial services, no other
 398 fee may be directly or indirectly charged, contracted for, or
 399 received by a cemetery company as a condition for a customer to
 400 use any burial right, burial merchandise, or burial service,
 401 except for:

402 (2) Charges paid for transferring burial rights from one
 403 purchaser to another, as determined by rule of the board;
 404 ~~however, no such fee may exceed \$50.~~

405 Section 12. Paragraph (c) of subsection (2) of section
 406 497.283, Florida Statutes, is amended to read:

Page 14 of 30

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

8-00997-16

2016854__

407 497.283 Prohibition on sale of personal property or
408 services.-

409 (2)

410 (c) In lieu of delivery as required by paragraph (b), for
411 sales to cemetery companies and funeral establishments, and only
412 for such sales, the manufacturer of a permanent outer burial
413 receptacle which meets standards adopted by rule may elect, at
414 its discretion, to comply with the delivery requirements of this
415 section by annually submitting for approval pursuant to
416 procedures and forms as specified by rule, in writing, evidence
417 of the manufacturer's financial responsibility with the
418 licensing authority for its review and approval. ~~The standards
419 and procedures to establish evidence of financial responsibility
420 shall be those in s. 497.461, with the manufacturer of permanent
421 outer burial receptacles which meet national industry standards
422 assuming the same rights and responsibilities as those of a
423 preneed licensee under s. 497.461.~~

424 Section 13. Subsection (3) of section 497.286, Florida
425 Statutes, is amended to read:

426 497.286 Owners to provide addresses; presumption of
427 abandonment; abandonment procedures; sale of abandoned unused
428 burial rights.-

429 (3) Upon the occurrence of a presumption of abandonment as
430 set forth in subsection (2), a cemetery may file with the
431 department a certified notice attesting to the abandonment of
432 the burial rights. The notice shall do the following:

433 (a) Describe the burial rights certified to have been
434 abandoned;

435 (b) Set forth the name of the owner or owners of the burial

8-00997-16

2016854__

436 rights, or if the owner is known to the cemetery to be deceased,
437 then the names, if known to the cemetery, of such claimants as
438 are heirs at law, next of kin, or specific devisees under the
439 will of the owner or the legally authorized person;

440 (c) Detail the facts with respect to the failure of the
441 owner or survivors as outlined in this section to keep the
442 cemetery informed of the owner's address for a period of 50
443 consecutive years or more; and

444 (d) Certify that no burial right has been exercised which
445 is held in common ownership with any abandoned burial rights as
446 set forth in subsection (2).

447 Section 14. Section 497.371, Florida Statutes, is amended
448 to read:

449 497.371 Embalmers; establishment of embalmer apprentice
450 program.-The licensing authority adopts rules establishing an
451 embalmer apprentice program. An embalmer apprentice may perform
452 only those tasks, functions, and duties relating to embalming
453 which are performed under the direct supervision of an embalmer
454 who has an active, valid license under s. 497.368 or s. 497.369.
455 An embalmer apprentice ~~is~~ shall be eligible to serve in an
456 apprentice capacity for a period not to exceed 3 years as may be
457 determined by licensing authority rule or for a period not to
458 exceed 5 years if the apprentice is enrolled in and attending a
459 course in mortuary science or funeral service education at any
460 mortuary college or funeral service education college or school.
461 An embalmer apprentice shall be issued a license ~~licensed~~ upon
462 payment of a licensure fee as determined by licensing authority
463 rule but not to exceed \$200. An applicant for the embalmer
464 apprentice program may not be issued a license unless the

8-00997-16

2016854__

465 licensing authority determines that the applicant is of good
 466 character and has not demonstrated a history of lack of
 467 trustworthiness or integrity in business or professional
 468 matters.

469 Section 15. Paragraph (b) of subsection (1) of section
 470 497.372, Florida Statutes, is amended to read:

471 497.372 Funeral directing; conduct constituting practice of
 472 funeral directing.-

473 (1) The practice of funeral directing shall be construed to
 474 consist of the following functions, which may be performed only
 475 by a licensed funeral director:

476 (b) Planning or arranging, on an at-need basis, the details
 477 of funeral services, embalming, cremation, or other services
 478 relating to the final disposition of human remains, including
 479 the removal of such remains from the state, ~~with the family or~~
 480 ~~friends of the decedent or any other person responsible for such~~
 481 ~~services~~; setting the time of the services; establishing the
 482 type of services to be rendered; acquiring the services of the
 483 clergy; and obtaining vital information for the filing of death
 484 certificates and obtaining of burial transit permits.

485 Section 16. Subsection (4) of section 497.381, Florida
 486 Statutes, is amended to read:

487 497.381 Solicitation of goods or services.-

488 (4) At-need solicitation of funeral merchandise or services
 489 is prohibited. A ~~No~~ funeral director or direct disposer or her
 490 or his agent or representative may not contact the legally
 491 authorized person or family or next of kin of a deceased person
 492 to sell services or merchandise unless the funeral director or
 493 direct disposer or her or his agent or representative has been

8-00997-16

2016854__

494 initially called or contacted by the legally authorized person
 495 or family or next of kin of such person and requested to provide
 496 her or his services or merchandise.

497 Section 17. Paragraph (c) of subsection (2) of section
 498 497.452, Florida Statutes, is amended to read:

499 497.452 Preneed license required.-

500 (2)

501 ~~(c) The provisions of paragraph (a) do not apply to any~~
 502 ~~Florida corporation existing under chapter 607 acting as a~~
 503 ~~servicing agent hereunder in which the stock of such corporation~~
 504 ~~is held by 100 or more persons licensed pursuant to part III of~~
 505 ~~this chapter, provided no one stockholder holds, owns, votes, or~~
 506 ~~has proxies for more than 5 percent of the issued stock of such~~
 507 ~~corporation; provided the corporation has a blanket fidelity~~
 508 ~~bond, covering all employees handling the funds, in the amount~~
 509 ~~of \$50,000 or more issued by a licensed insurance carrier in~~
 510 ~~this state; and provided the corporation processes the funds~~
 511 ~~directly to and from the trustee within the applicable time~~
 512 ~~limits set forth in this chapter. The department may require any~~
 513 ~~person claiming that the provisions of this paragraph exempt it~~
 514 ~~from the provisions of paragraph (a) to demonstrate to the~~
 515 ~~satisfaction of the department that it meets the requirements of~~
 516 ~~this paragraph.~~

517 Section 18. Subsections (1) and (3) of section 497.454,
 518 Florida Statutes, are amended to read:

519 497.454 Approval of preneed contract and related forms.-

520 (1) Preneed contract forms and related forms shall be filed
 521 with and approved by the licensing authority before ~~prior to~~
 522 use, pursuant to procedures specified by rule. The licensing

8-00997-16

2016854__

523 authority may not approve any electronic or paper preneed
524 contract ~~form~~ that does not provide for sequential prenumbering
525 thereon.

526 ~~(3) Specific disclosure regarding the preneed licensee's~~
527 ~~ability to select either trust funding or the financial~~
528 ~~responsibility alternative as set forth in s. 497.461 in~~
529 ~~connection with the receipt of preneed contract proceeds is~~
530 ~~required in the preneed contract.~~

531 Section 19. Subsections (2), (7), and (8) of section
532 497.456, Florida Statutes, are amended to read:

533 497.456 Preneed Funeral Contract Consumer Protection Trust
534 Fund.—

535 (2) Within 60 days after the end of each calendar quarter,
536 for each preneed contract written during the quarter and not
537 canceled within 30 days after the date of the execution of the
538 contract, each preneed licensee, whether funding preneed
539 contracts by the sale of insurance or by establishing a trust
540 pursuant to s. 497.458 or s. 497.464, shall remit the sum of
541 \$2.50 for each preneed contract having a purchase price of
542 \$1,500 or less, and the sum of \$5 for each preneed contract
543 having a purchase price in excess of \$1,500; and each preneed
544 licensee utilizing ~~s. 497.461~~ or s. 497.462 shall remit the sum
545 of \$5 for each preneed contract having a purchase price of
546 \$1,500 or less, and the sum of \$10 for each preneed contract
547 having a purchase price in excess of \$1,500.

548 (7) In any situation in which a delinquency proceeding has
549 not commenced, the licensing authority may, in its discretion,
550 use the trust fund for the purpose of providing restitution to
551 any consumer, owner, or beneficiary of a preneed contract or

8-00997-16

2016854__

552 similar regulated arrangement under this chapter entered into
553 after June 30, 1977. If, after investigation, the licensing
554 authority determines that a preneed licensee has breached a
555 preneed contract by failing to provide benefits or an
556 appropriate refund, or that a provider, who is a former preneed
557 licensee or an establishment which has been regulated under this
558 chapter, has sold a preneed contract and has failed to fulfill
559 the arrangement or provide the appropriate refund, and such
560 preneed licensee or provider does not provide or does not
561 possess adequate funds to provide appropriate refunds, payments
562 from the trust fund may be authorized by the licensing
563 authority. In considering whether payments shall be made or when
564 considering who will be responsible for such payments, the
565 licensing authority shall consider whether the preneed licensee
566 or previous provider has been acquired by a successor who is or
567 should be responsible for the liabilities of the defaulting
568 entity. With respect to preneed contracts funded by life
569 insurance, payments from the fund shall be made: if the insurer
570 is insolvent, but only to the extent that funds are not
571 available through the liquidation proceeding of the insurer; or
572 if the preneed licensee is unable to perform under the contract
573 and the insurance proceeds are not sufficient to cover the cost
574 of the merchandise and services contracted for. In no event
575 shall the licensing authority approve payments in excess of the
576 insurance policy limits unless it determines that at the time of
577 sale of the preneed contract, the insurance policy would have
578 paid for the services and merchandise contracted for. Such
579 monetary relief shall be in an amount as the licensing authority
580 may determine and shall be payable in such manner and upon such

8-00997-16

2016854__

581 conditions and terms as the licensing authority may prescribe.
 582 However, with respect to preneed contracts to be funded pursuant
 583 to s. 497.458, s. 497.459, ~~s. 497.461~~, or s. 497.462, any
 584 restitution made pursuant to this subsection ~~may shall~~ not
 585 exceed, as to any single contract or arrangement, the lesser of
 586 the gross amount paid under the contract or 4 percent of the
 587 uncommitted assets of the trust fund. With respect to preneed
 588 contracts funded by life insurance policies, any restitution may
 589 ~~shall~~ not exceed, as to any single contract or arrangement, the
 590 lesser of the face amount of the policy, the actual cost of the
 591 arrangement contracted for, or 4 percent of the uncommitted
 592 assets of the trust fund. The total of all restitutions made to
 593 all applicants under this subsection in a single fiscal year may
 594 ~~shall~~ not exceed the greater of 30 percent of the uncommitted
 595 assets of the trust fund as of the end of the most recent fiscal
 596 year or \$120,000. The department may use moneys in the trust
 597 fund to contract with independent vendors pursuant to chapter
 598 287 to administer the requirements of this subsection.

599 (8) All moneys deposited in the Preneed Funeral Contract
 600 Consumer Protection Trust Fund together with all accumulated
 601 appreciation income shall be used only for the purposes
 602 expressly authorized by this chapter and may shall not be
 603 subject to any liens, charges, judgments, garnishments, or other
 604 creditor's claims against the preneed licensee, any trustee
 605 utilized by the preneed licensee, any company providing a surety
 606 bond as specified in this chapter, or any purchaser of a preneed
 607 contract. No preneed contract purchaser shall have any vested
 608 rights in the trust fund.

609 Section 20. Paragraphs (a), (b), (d), and (f) of subsection

Page 21 of 30

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

8-00997-16

2016854__

610 (1) of section 497.458, Florida Statutes, are amended, a new
 611 paragraph (j) is added to that subsection, and paragraph (a) of
 612 subsection (3), subsection (4), paragraphs (a) and (c) of
 613 subsection (5), and subsections (6) through (9) of that section
 614 are amended, to read:

615 497.458 Disposition of proceeds received on contracts.—

616 (1) (a) Any person who is paid, collects, or receives funds
 617 under a preneed contract for funeral services or merchandise or
 618 burial services or merchandise shall deposit an amount at least
 619 equal to the sum of 70 percent of the purchase price collected
 620 for all services sold and facilities rented; 100 percent of the
 621 purchase price collected for all cash advance items sold; and 30
 622 percent of the purchase price collected ~~or 110 percent of the~~
 623 ~~wholesale cost, whichever is greater,~~ for each item of
 624 merchandise sold.

625 ~~(b) The method of determining wholesale cost shall be~~
 626 ~~established by rule of the licensing authority and shall be~~
 627 ~~based upon the preneed licensee's stated wholesale cost for the~~
 628 ~~12-month period beginning July 1 during which the initial~~
 629 ~~deposit to the preneed trust fund for the preneed contract is~~
 630 ~~made.~~

631 ~~(c)(d)~~ The trustee shall take title to the property
 632 conveyed to the trust for the purpose of investing, protecting,
 633 and conserving it for the preneed licensee; collecting income;
 634 and distributing the fair market value principal and income as
 635 prescribed in this chapter. The preneed licensee is prohibited
 636 from sharing in the discharge of these responsibilities, except
 637 that the preneed licensee may request the trustee to invest in
 638 tax-free investments and may appoint an adviser to the trustee.

Page 22 of 30

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

8-00997-16

2016854

639 The licensing authority may adopt rules limiting or otherwise
 640 specifying the degree to which the trustee may rely on the
 641 investment advice of an investment adviser appointed by the
 642 preneed licensee. The licensing authority may adopt rules
 643 limiting or prohibiting payment of fees by the trust to
 644 investment advisors that are employees or principals of the
 645 licensee to whom the trust fund relates.

646 ~~(e)-(f)~~ The deposited funds shall be held in trust, both as
 647 to principal and any change in fair market value ~~income earned~~
 648 thereon, and shall remain intact, except that the cost of the
 649 operation of the trust or trust account authorized by this
 650 section may be deducted from the income earned thereon.

651 (j) Beginning April 1, 2018, and on or before each April 1
 652 thereafter, the trustee shall furnish the department with an
 653 annual report regarding each preneed licensee trust account held
 654 by the trustee at any time during the previous calendar year.
 655 The report shall state the name and address of the trustee; the
 656 name, address, and license number of the licensee to whom the
 657 report relates; the trust account number; the beginning and
 658 ending trust balance; and, as may be specified by department
 659 rule, a list of receipts showing the date and amount of any
 660 disbursement. The report must be signed by the trustee's account
 661 manager for the trust account. The trustee shall submit the
 662 report in a format and pursuant to procedures specified by
 663 department rule.

664 (3) (a) The trustee shall make regular valuations of assets
 665 it holds in trust and provide a fair market value report of such
 666 valuations to the preneed licensee at least quarterly.

667 (4) The licensing authority may adopt rules exempting from

8-00997-16

2016854

668 the prohibition of paragraph (1) (g) ~~(1) (h)~~, pursuant to criteria
 669 established in such rule, the investment of trust funds in
 670 investments, such as widely and publicly traded stocks and
 671 bonds, notwithstanding that the licensee, its principals, or
 672 persons related by blood or marriage to the licensee or its
 673 principals have an interest by investment in the same entity,
 674 where neither the licensee, its principals, or persons related
 675 by blood or marriage to the licensee or its principals have the
 676 ability to control the entity invested in, and it would be in
 677 the interest of the preneed contract holders whose contracts are
 678 secured by the trust funds to allow the investment.

679 (5) The trustee of the trust established pursuant to this
 680 section shall only have the power to:

681 (a) Invest in investments as prescribed in s. 518.11 ~~215.47~~
 682 and exercise the powers set forth in part VIII of chapter 736,
 683 provided that the licensing authority may by order require the
 684 trustee to liquidate or dispose of any investment within 30 days
 685 after such order, or within such other times as the order may
 686 direct. The licensing authority may issue such order if it
 687 determines that the investment violates any provision of this
 688 chapter or is not in the best interests of the preneed contract
 689 holders whose contracts are secured by the trust funds.

690 (c) Commingle the property of the trust with the property
 691 of any other trust established pursuant to this chapter and make
 692 corresponding allocations and divisions of assets, liabilities,
 693 income, ~~and~~ expenses, and capital gains and losses.

694 ~~(6) The preneed licensee, at her or his election, shall~~
 695 ~~have the right and power, at any time, to revest in it title to~~
 696 ~~the trust assets, or its pro rata share thereof, provided it has~~

8-00997-16

2016854__

697 ~~complied with s. 497.461.~~

698 ~~(7) Notwithstanding anything contained in this chapter to~~
 699 ~~the contrary, the preneed licensee, via its election to sell or~~
 700 ~~offer for sale preneed contracts subject to this section, shall~~
 701 ~~represent and warrant, and is hereby deemed to have done such,~~
 702 ~~to all federal and Florida taxing authorities, as well as to all~~
 703 ~~potential and actual preneed contract purchasers, that:~~

704 ~~(a) Section 497.461 is a viable option available to it at~~
 705 ~~any and all relevant times;~~

706 ~~(b) Section 497.462 is a viable option available to it at~~
 707 ~~any and all relevant times for contracts written prior to July~~
 708 ~~1, 2001, for funds not held in trust as of July 1, 2001; or~~

709 ~~(c) For any preneed licensee authorized to do business in~~
 710 ~~this state that has total bonded liability exceeding \$100~~
 711 ~~million as of July 1, 2001, s. 497.462 is a viable option to it~~
 712 ~~at any and all relevant times for contracts written prior to~~
 713 ~~December 31, 2004, for funds not held in trust as of July 1,~~
 714 ~~2001.~~

715 ~~(8) If in the preneed licensee's opinion it does not have~~
 716 ~~the ability to select the financial responsibility alternative~~
 717 ~~of s. 497.461 or s. 497.462, then the preneed licensee shall not~~
 718 ~~have the right to sell or solicit preneed contracts.~~

719 ~~(6)(9)~~ The amounts required to be placed in a trust by this
 720 section for contracts previously entered into shall be as
 721 follows:

722 (a) For contracts entered into before October 1, 1993, the
 723 trust amounts as amended by s. 6, chapter 83-316, Laws of
 724 Florida, shall apply.

725 (b) For contracts entered into on or after October 1, 1993,

8-00997-16

2016854__

726 the trust amounts as amended by s. 98, chapter 93-399, Laws of
 727 Florida, shall apply.

728 Section 21. Paragraph (a) of subsection (6) of section
 729 497.459, Florida Statutes, is amended to read:

730 497.459 Cancellation of, or default on, preneed contracts.-

731 (6) OTHER PROVISIONS.-

732 (a) All preneed contracts are cancelable and revocable as
 733 provided in this section, provided that a preneed contract does
 734 not restrict any contract purchaser who is the beneficiary of
 735 the preneed contract and who is a qualified applicant for, or a
 736 recipient of, supplemental security income, temporary cash
 737 assistance, or Medicaid from making her or his contract
 738 irrevocable. A preneed contract that is made irrevocable
 739 pursuant to this section may not be canceled during the life or
 740 after the death of the contract purchaser as described in this
 741 section.

742 Section 22. Section 497.460, Florida Statutes, is amended
 743 to read:

744 497.460 Payment of funds upon death of named beneficiary.-
 745 Disbursements of funds discharging any preneed contract
 746 fulfilled after September 30, 1993, shall be made by the trustee
 747 to the preneed licensee upon receipt of a certified copy of the
 748 death certificate of the contract beneficiary or satisfactory
 749 evidence as established by rule of the licensing authority that
 750 the preneed contract has been performed in whole or in part.
 751 However, if the contract is only partially performed, the
 752 disbursement shall only cover the fair market value of that
 753 portion of the contract performed. In the event of any contract
 754 default by the contract purchaser, or in the event that the

8-00997-16 2016854__

755 funeral merchandise or service or burial merchandise or service
 756 contracted for is not provided or is not desired by the legally
 757 authorized person heirs or personal representative of the
 758 contract beneficiary, the trustee shall return, within 30 days
 759 after its receipt of a written request therefor, funds paid on
 760 the contract to the preneed licensee or to its assigns, subject
 761 to ~~the provisions of s. 497.459.~~

762 Section 23. Section 497.461, Florida Statutes, is repealed.

763 Section 24. The repeal of s. 497.461, Florida Statutes, by
 764 this act does not apply to a preneed licensee who has elected to
 765 maintain a surety bond in lieu of depositing funds into a trust
 766 as of July 1, 2016.

767 Section 25. Subsection (2), paragraph (a) of subsection
 768 (3), and subsections (7) and (10) of section 497.462, Florida
 769 Statutes, are amended to read:

770 497.462 Other alternatives to deposits under s. 497.458.—

771 ~~(2) Upon prior approval by the licensing authority, the~~
 772 ~~preneed licensee may file a letter of credit with the licensing~~
 773 ~~authority in lieu of a surety bond. Such letter of credit must~~
 774 ~~be in a form, and is subject to terms and conditions, prescribed~~
 775 ~~by the board. It may be revoked only with the express approval~~
 776 ~~of the licensing authority.~~

777 (2)(3) (a) A buyer of preneed merchandise or services who
 778 does not receive such services or merchandise due to the
 779 economic failure, closing, or bankruptcy of the preneed licensee
 780 must file a claim with the surety as a prerequisite to payment
 781 of the claim and, if the claim is not paid, may bring an action
 782 based on the bond and recover against the surety. ~~In the case of~~
 783 ~~a letter of credit or cash deposit that has been filed with the~~

8-00997-16 2016854__

784 ~~licensing authority, the buyer may file a claim with the~~
 785 ~~licensing authority.~~

786 (6)(7) Any preneed contract which promises future delivery
 787 of merchandise at no cost constitutes a paid-up contract.
 788 Merchandise which has been delivered is not covered by the
 789 required performance bond ~~or letter of credit~~ even though the
 790 contract is not completely paid. The preneed licensee may not
 791 cancel a contract unless the purchaser is in default according
 792 to the terms of the contract and subject to the requirements of
 793 s. 497.459. A contract sold, discounted, and transferred to a
 794 third party constitutes a paid-up contract for the purposes of
 795 the performance bond ~~or letter of credit.~~

796 (9)(10) The licensing authority may adopt forms and rules
 797 necessary to implement this section, including, but not limited
 798 to, rules which ensure that the surety bond provides ~~and line of~~
 799 ~~credit provide~~ liability coverage for preneed merchandise and
 800 services.

801 Section 26. Paragraphs (c) and (f) of subsection (1) of
 802 section 497.464, Florida Statutes, are amended to read:

803 497.464 Alternative preneed contracts.—

804 (1) Nothing in this chapter shall prevent the purchaser and
 805 the preneed licensee from executing a preneed contract upon the
 806 terms stated in this section. Such contracts shall be subject to
 807 ~~all provisions of this chapter except:~~

808 ~~(e) Section 497.458(1), (3), and (6).~~

809 ~~(f) Section 497.461.~~

810 Section 27. Subsection (2) and paragraph (c) of subsection
 811 (9) of section 497.465, Florida Statutes, are amended to read:

812 497.465 Inactive, surrendered, and revoked preneed

8-00997-16

2016854__

813 licensees.-

814 (2) A preneed licensee shall cease all preneed sales to the
815 public upon becoming inactive. Upon becoming inactive, the
816 preneed licensee shall collect and deposit into the trust all of
817 the funds received from ~~into trust all of the funds paid toward~~
818 ~~preneed contracts sold before~~ prior to becoming inactive.

819 (9) The licensing authority may adopt rules for the
820 implementation of this section, for the purpose of ensuring a
821 thorough review and investigation of the status and condition of
822 the preneed licensee's business affairs for the protection of
823 the licensee's preneed customers. Such rules may include:

824 (c) Requirements for submission of ~~unaudited or audited~~
825 financial statements, as the licensing authority deems
826 advisable.

827 Section 28. Paragraph (b) of subsection (1) of section
828 497.601, Florida Statutes, is amended to read:

829 497.601 Direct disposition; duties.-

830 (1) Those individuals licensed as direct disposers may
831 perform only those functions set forth below:

832 (b) Secure pertinent information from a legally authorized
833 person ~~the decedent's next of kin~~ in order to complete the death
834 certificate and to file for the necessary permits for ~~direct~~
835 disposition.

836 Section 29. Subsection (1) of section 497.607, Florida
837 Statutes, is amended, present subsections (2), (3), and (4) of
838 that section are redesignated as subsections (3), (4), and (5),
839 respectively, and a new subsection (2) is added to that section,
840 to read:

841 497.607 Cremation; procedure required.-

Page 29 of 30

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

8-00997-16

2016854__

842 (1) At the time of the arrangement for a cremation
843 performed by any person licensed pursuant to this chapter, the
844 legally authorized person contracting for cremation services
845 shall be required to designate her or his intentions with
846 respect to ~~the~~ disposition of the cremated remains of the
847 deceased in a signed declaration of intent which shall be
848 provided by and retained by the funeral or direct disposal
849 establishment. A cremation may not be performed until a legally
850 authorized person gives written authorization, which may include
851 the declaration of intent to dispose of the cremated remains,
852 for such cremation. The cremation must be performed within 48
853 hours after a specified time which has been agreed to in writing
854 by the person authorizing the cremation.

855 (2) Cremated remains are not property, as defined in s.
856 731.201(32), and are not subject to ownership or court-ordered
857 partition. A division of cremated remains requires the consent
858 of the legally authorized person who approved the cremation or,
859 if the legally authorized person is the decedent, the next
860 legally authorized person pursuant to s. 497.005(43). A dispute
861 between the legally authorized person, heirs, or other parties
862 shall be resolved by a court of competent jurisdiction.

863 Section 30. This act shall take effect July 1, 2016.

Page 30 of 30

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Finance and Tax, *Chair*
Communications, Energy, and Public Utilities,
Vice Chair
Appropriations
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Fiscal Policy

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DOROTHY L. HUKILL
8th District

December 14, 2015

The Honorable Lizbeth Benacquisto
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Re: Senate Bill 854 – Funeral, Cemetery, and Consumer Services

Dear Chairwoman Benacquisto:

Senate Bill 854, relating Funeral, Cemetery, and Consumer Services has been referred to the Banking and Insurance Committee. I am requesting your consideration on placing SB 854 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: James Knudson, Staff Director of the Banking and Insurance Committee
Sheri Green, Administrative Assistant of the Banking and Insurance Committee

REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-16
Meeting Date

SB 854
Bill Number (if applicable)

Topic Support the bill as amended

Amendment Barcode (if applicable)

Name Martha Edenfield

Job Title Attorney

Address 215 So Monroe Street # 815
Street

Phone 850-999-4100

Tallahassee FL 32301
City State Zip

Email medenfield@deannmead.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Funeral Services, Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-14
Meeting Date

854
Bill Number (if applicable)

Topic Funeral Trust

Amendment Barcode (if applicable)

Name Johan Mixon

Job Title Consultant

Address 115 Park Ave

Phone 222 251

Tull FL 32301
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Independent Funeral Directors Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1-11-14

Meeting Date

SB 854

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Elizabeth Boyd

Job Title Director of Legislative Affairs

Address 400 N Monwest

Phone 850-413-2863

Street

Tallahassee FL

Email elizabeth.boyd@myfloridastate.com

City

State

32303

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Dept. of Financial Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/14
Meeting Date

854
Bill Number (if applicable)

Topic Funeral Cemetery Bill

Amendment Barcode (if applicable)

Name Lisa Coney

Job Title Chair, Govt. Affairs / Compliance Dir

Address 994 E. Altamonte Dr.
Street

Phone 407 636 1995

Altamonte Springs, FL 32701
City State Zip

Email lisa.coney@sci-us.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FCCFA - Florida Cemetery Cremation & Funeral Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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 940

INTRODUCER: Banking and Insurance Committee and Senator Bradley

SUBJECT: Title Insurance

DATE: January 11, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Billmeier	Knudson	BI	Fav/CS
2.			CM	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 940 changes the unearned premium reserve requirement for title insurers that are members of an insurance holding company system having \$1 billion or more in surplus as to policyholders and a financial strength rating of “superior,” “excellent,” “exceptional,” or an equivalent rating by a rating agency acceptable to the Office of Insurance Regulation. Such insurers must have a reserve of a minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, with certain adjustments. Currently, only title insurers with a surplus in excess of \$50 million can use that formula to calculate required unearned premium reserve.

The bill removes the requirement that a title insurer that transfers its domicile to Florida release its unearned premium under the laws of its previous domicile state. The bill requires the title insurer to release the unearned premium reserve over 20 years at a rate not to exceed the following formula:

- 35 percent of the initial sum during the year following the year the premium was written or assumed;
- 15 percent during each year of the next succeeding 2 years;
- 10 percent during the next succeeding year;
- 3 percent during each of the next succeeding 3 years;
- 2 percent during each of the next succeeding 3 years;;
- 1 percent during each of the next succeeding 10 years.

II. Present Situation:

Title insurance is (1) insurance of owners of real property or others having an interest in real property or contractual interest derived therefrom, or liens or encumbrances on real property, against loss by encumbrance, or defective titles, or invalidity, or adverse claim to title; or (2) insurance of owners and secured parties of the existence, attachment, perfection, and priority of security interests in personal property under the Uniform Commercial Code.¹ Title insurance serves to indemnify the insured against financial loss caused by defects in the title arising out of events that occurred before the date of the policy.² Title insurance agents and agencies are licensed and regulated by the Department of Financial Services (“DFS”) while title insurance companies are licensed and regulated by the Office of Insurance Regulation (“OIR”).

Title Insurance Reserve Requirements

Insurance companies must maintain cash or liquid assets on hand to pay claims and satisfy other liabilities. These are called reserves. A title insurer must maintain two types of reserves. First, a title insurer must maintain reserves sufficient to pay all of its unpaid losses.³ In addition, a title insurer must maintain a guaranty fund or unearned premium reserve to be used for reinsurance in the event the insurer becomes insolvent.⁴

Since 2014⁵, Florida has had different unearned premium reserve requirements depending on whether a title insurer has \$50 million or more in surplus.⁶ For title insurers with less than \$50 million in surplus, the unearned premium reserve must consist of not less than the sum of:

- A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums. For domestic title insurers, such amounts shall be calculated in accordance with provisions of law of this state in effect at the time the associated premiums were written or assumed and as amended prior to July 1, 1999.⁷
- A total amount equal to 30 cents for each \$1,000 of net retained liability⁸ for policies written or title liability assumed in reinsurance on or after July 1, 1999.⁹
- An additional amount, if deemed necessary by a qualified actuary.¹⁰

For title insurance with more than \$50 million in surplus, the unearned premium reserve must be the sum of:

¹ See s. 624.608, F.S.

² See *Lawyers Title Insurance Co. Inc. v. Novastar Mortgage, Inc.*, 862 So.2d 793, 797 (Fla. 4th DCA 2003).

³ See ss. 625.041, 625.111, F.S.

⁴ See s. 625.111, F.S.

⁵ The reserve requirements were changed by 2014-132, L.O.F.

⁶ The capital and surplus of an insurance company are sometimes referred to as surplus as regards to policyholders or policyholders’ surplus. Policyholders’ surplus is equal to net admitted assets, or admitted assets minus liabilities. See 627.778(2), F.S.

⁷ See s. 625.111(1)(a), F.S.

⁸ “Net retained liability” means the “total liability retained by a title insurer for a single risk, after taking into account the deduction for ceded liability, if any.” s. 625.111(6)(b), F.S.

⁹ See s. 625.111(1)(b), F.S.

¹⁰ See s. 625.111(1)(d), F.S.

- A minimum of 6.5 percent of the total of (1) direct premiums written and (2) premiums for reinsurance assumed, plus other income, less premiums for reinsurance ceded as displayed in Schedule P of the title insurer's most recent annual statement filed with the OIR.¹¹
- An additional amount, if deemed necessary by a qualified actuary.¹²

According to the OIR, the changes to the reserve requirements made Florida “a more attractive place for title companies.” A large title company moved to Florida after the change in reserve requirements.¹³

Releasing Unearned Premium Reserve

Section 625.111, F.S., sets the following schedule for release of reserves. Once the reserve money is released, it is available for use by the title insurer. For policies written before July 1, 1999, an insurer shall release:

- 30 percent of the initial aggregate sum during 1999;
- 15 percent during calendar year 2000;
- 10 percent during each of calendar years 2001 and 2002;
- 5 percent during each of calendar years 2003 and 2004;
- 3 percent during each of calendar years 2005 and 2006;
- 2 percent during each of calendar years 2007-2013;
- 1 percent during each of calendar years 2014-2018.¹⁴

For policies written after July 1, 1999, an insurer shall release:

- 30 percent of the initial sum during calendar year next succeeding the year the premium was written
- 15 percent during the next succeeding year;
- 10 percent during each of the next succeeding 2 years;
- 5 percent during each of the next succeeding 2 years;
- 3 percent during each of the next succeeding 2 years;
- 2 percent during each of the next succeeding 7 years;
- 1 percent during each of the next succeeding 5 years.¹⁵

For companies with more than \$50 million in surplus, the title insurer shall release 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year.¹⁶ Thereafter, the title insurer shall release, on the same quarterly basis:

- 15 percent during each year of the next succeeding 2 years;
- 10 percent during the next succeeding year;
- 3 percent during each of the next succeeding 3 years;
- 2 percent during each of the next succeeding 3 years;

¹¹ See s. 625.111(1)(c), F.S.

¹² See s. 625.111(1)(d), F.S.

¹³ See <http://www.floir.com/pressreleases/viewmediarelease.aspx?id=2086> (last accessed January 6, 2016).

¹⁴ See s. 625.111(2)(a), F.S.

¹⁵ See s. 625.111(2)(b), F.S.

¹⁶ See s. 625.111(2)(c), F.S.

- 1 percent during each of the next succeeding 10 years.¹⁷

Reserve Requirement When a Title Insurer Moves to Florida

A title insurer organized under the laws of another state that transfers its domicile to Florida has the same unearned premium reserve requirement as set by the laws of the title insurer's former state of domicile. The reserve is released according to the requirements of law in effect in the former state at the time of domicile. For business written after January 1, 2014, the title insurer shall add to and set aside in the statutory or unearned premium reserve the appropriate amount as determined by the company's surplus.¹⁸

Rating Agencies

Rating agencies issue financial strength ratings for insurance companies. These ratings are an attempt by the rating agencies to judge whether an insurance company can survive an economic downturn or meet policy obligations.¹⁹ The A.M. Best Company ratings range from "A+" to "D."²⁰ A rating of A- or higher by A.M. Best Company is considered "superior" or "excellent" under that company's rating system.²¹ An "A" rating by Demotech is considered "exceptional" under the Demotech rating system. The opinions of rating agencies such as Standard & Poor's, Moody's Investors Service, Fitch Ratings, A.M. Best Company, and Demotech may be used in some instances by the OIR.²² The OIR is not involved in the rating of insurance companies by outside entities.

III. Effect of Proposed Changes:

This bill allows title insurers that are members of an insurance holding company system having \$1 billion or more in surplus as to policyholders and a "superior," "excellent," "exceptional," or equivalent financial strength rating as determined by a rating agency acceptable to the OIR to set unearned premium reserve in the same manner as companies with \$50 million in surplus. This unearned premium reserve requirement will give smaller insurers access to additional capital if they are members of larger holding companies.

The bill removes the requirement that a title insurer that transfers its domicile to Florida release its unearned premium under the laws of its previous domicile state. The bill requires the title insurer to release the unearned premium reserve over 20 years at a rate not to exceed the following formula:

- 35 percent of the initial sum during the year following the year the premium was written or assumed, with one quarter of that amount being released on March 31, June 30, September 30, and December 31 of such year; 15 percent during each year of the next succeeding 2 years;

¹⁷ *Id.*

¹⁸ See s. 625.111(3), F.S.

¹⁹ See <http://www.ambest.com/ratings/guide.pdf> and http://www.demotech.com/fsr_definitions.asp (last accessed January 11, 2016).

²⁰ See <http://www.ambest.com/ratings/guide.pdf> (last accessed January 11, 2016).

²¹ See <http://www.ambest.com/ratings/guide.pdf> (last accessed January 11, 2016).

²² See s. 624.610(3)(e), F.S. (last accessed January 6, 2016).

- 10 percent during the next succeeding year;
- 3 percent during each of the next succeeding 3 years;
- 2 percent during each of the next succeeding 3 years;
- 1 percent during each of the next succeeding 10 years.

This could result in a faster release schedule if Florida's release schedule is faster than other states. A faster release of unearned premium reserve could increase a title insurer's surplus above \$50 million and allow it to use different reserve requirements. If a title insurer that transfers its domicile to Florida subsequently becomes insolvent, there could be less unearned premium reserve available to pay claims due to the faster release of reserve.²³

This bill is effective July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill could allow some title insurers to have access to additional capital due to different reserve requirements and more favorable release schedules.

C. Government Sector Impact:

The OIR does not anticipate a fiscal impact on the agency due to this bill.²⁴

VI. Technical Deficiencies:

None.

²³ See Department of Financial Services *SB 940 Bill Analysis* (January 7, 2016)(on file with the Senate Committee on Banking and Insurance).

²⁴ Telephone conversation with OIR staff, January 7, 2016.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 625.111 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 January 11, 2016:

The CS allows a title insurer that is a member of an insurance holding company system that has \$1 billion or more in surplus and a superior, excellent, exceptional or equivalent financial strength rating from a rating agency acceptable to the OIR to have different reserve requirements from companies with less than \$50 million in surplus. The original bill only applied to companies with a specified rating by the A.M. Best Company. The CS allows companies to use different rating agencies if the agency is acceptable to the OIR.

- B. **Amendments:**

None.



583332

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/11/2016	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 39 - 76
and insert:
are members of an insurance holding company system that has \$1 billion or more in surplus as to policyholders and a superior, excellent, exceptional, or an equivalent financial strength rating by a rating agency acceptable to the office:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance



11 before July 1, 1999, equal to the reserve established on June
12 30, 1999, for those unearned premiums with such reserve being
13 subsequently released as provided in subsection (2). For
14 domestic title insurers subject to this section, such amounts
15 shall be calculated in accordance with state law in effect at
16 the time the associated premiums were written or assumed and as
17 amended before July 1, 1999.

18 (b) A total amount equal to 30 cents for each \$1,000 of net
19 retained liability for policies written or title liability
20 assumed in reinsurance on or after July 1, 1999, with such
21 reserve being subsequently released as provided in subsection
22 (2). For the purpose of calculating this reserve, the total of
23 the net retained liability for all simultaneous issue policies
24 covering a single risk shall be equal to the liability for the
25 policy with the highest limit covering that single risk, net of
26 any liability ceded in reinsurance.

27 (c) On or after January 1, 2014, for title insurers that
28 are members of an insurance holding company system that has \$1
29 billion or more in surplus as to policyholders and a superior,
30 excellent, exceptional, or an equivalent financial strength
31 rating by a rating agency acceptable to the office, or title
32 insurers holding \$50 million or more in surplus as to
33 policyholders as of the previous year end, a minimum of 6.5
34 percent of the total of the following:

- 35 1. Direct premiums written; and
- 36 2. Premiums for reinsurance assumed, plus other income,
37 less premiums for reinsurance ceded as displayed in Schedule P
38 of the title insurer's most recent annual statement filed with
39 the office with such reserve being subsequently released as



583332

40 provided in subsection (2). Title insurers with less than \$50
41 million in surplus as to policyholders that are not members of
42 an insurance holding company system that has \$1 billion or more
43 in surplus as to policyholders and a superior, excellent,
44 exceptional, or an equivalent financial strength rating by a
45 rating agency acceptable to the office must continue to record
46 unearned premium reserve in

By Senator Bradley

7-01108-16

2016940__

A bill to be entitled

An act relating to title insurance; amending s. 625.111, F.S.; revising the reserves that certain title insurers must set aside after a certain date; revising the manner in which reserves must be released; revising reserve requirements for a title insurer who transfers domicile to this state; providing an effective date.

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

Section 1. Subsections (1) and (3) of section 625.111, Florida Statutes, are amended to read:

625.111 Title insurance reserve.—In addition to an adequate reserve as to outstanding losses relating to known claims as required under s. 625.041, a domestic title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. The sums to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition. Such reserved funds shall be withdrawn from the use of the insurer for its general purposes, impressed with a trust in favor of the holders of title guarantees and policies, and held available for reinsurance of the title guarantees and policies in the event of the insolvency of the insurer. This section does not preclude the insurer from investing such reserve in investments authorized by law, and the income from such investments shall be

Page 1 of 5

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

7-01108-16

2016940__

included in the general income of the insurer and may be used by such insurer for any lawful purpose.

(1) For an unearned premium reserve established on or after July 1, 1999, such reserve must be in an amount at least equal to the sum of paragraphs (a), (b), and (d) for title insurers holding less than \$50 million in surplus as to policyholders as of the previous year end and the sum of paragraphs (c) and (d) for title insurers holding \$50 million or more in surplus as to policyholders as of the previous year end or title insurers that are members of an insurance holding company system having \$1 billion or more in surplus as to policyholders and rated "A-" or higher by A.M. Best Company:

(a) A reserve with respect to unearned premiums for policies written or title liability assumed in reinsurance before July 1, 1999, equal to the reserve established on June 30, 1999, for those unearned premiums with such reserve being subsequently released as provided in subsection (2). For domestic title insurers subject to this section, such amounts shall be calculated in accordance with state law in effect at the time the associated premiums were written or assumed and as amended before July 1, 1999.

(b) A total amount equal to 30 cents for each \$1,000 of net retained liability for policies written or title liability assumed in reinsurance on or after July 1, 1999, with such reserve being subsequently released as provided in subsection (2). For the purpose of calculating this reserve, the total of the net retained liability for all simultaneous issue policies covering a single risk shall be equal to the liability for the policy with the highest limit covering that single risk, net of

Page 2 of 5

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

7-01108-16

2016940__

59 any liability ceded in reinsurance.

60 (c) On or after January 1, 2014, for title insurers that
 61 are members of an insurance holding company system having \$1
 62 billion or more in surplus as to policyholders and rated "A-" or
 63 higher by A.M. Best Company or title insurers holding \$50
 64 million or more in surplus as to policyholders as of the
 65 previous year end, a minimum of 6.5 percent of the total of the
 66 following:

67 1. Direct premiums written; and

68 2. Premiums for reinsurance assumed, plus other income,
 69 less premiums for reinsurance ceded as displayed in Schedule P
 70 of the title insurer's most recent annual statement filed with
 71 the office with such reserve being subsequently released as
 72 provided in subsection (2). Title insurers with less than \$50
 73 million in surplus as to policyholders that are not members of
 74 an insurance holding company system holding \$1 billion or more
 75 in surplus as to policyholders and rated "A-" or higher by A.M.
 76 Best Company must continue to record unearned premium reserve in
 77 accordance with paragraph (b).

78 (d) An additional amount, if deemed necessary by a
 79 qualified actuary, to be subsequently released as provided in
 80 subsection (2). Using financial results as of December 31 of
 81 each year, all domestic title insurers shall obtain a Statement
 82 of Actuarial Opinion from a qualified actuary regarding the
 83 insurer's loss and loss adjustment expense reserves, including
 84 reserves for known claims, incurred but not reported claims, and
 85 unallocated loss adjustment expenses. The actuarial opinion must
 86 conform to the annual statement instructions for title insurers
 87 adopted by the National Association of Insurance Commissioners

Page 3 of 5

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

7-01108-16

2016940__

88 and include the actuary's professional opinion of the insurer's
 89 reserves as of the date of the annual statement. If the amount
 90 of the reserve stated in the opinion and displayed in Schedule P
 91 of the annual statement for that reporting date is greater than
 92 the sum of the known claim reserve and unearned premium reserve
 93 as calculated under this section, as of the same reporting date
 94 and including any previous actuarial provisions added at earlier
 95 dates, the insurer shall add to the insurer's unearned premium
 96 reserve an actuarial amount equal to the reserve shown in the
 97 actuarial opinion, minus the known claim reserve and the
 98 unearned premium reserve, as of the current reporting date and
 99 calculated in accordance with this section, but not calculated
 100 as of any date before December 31, 1999. The comparison shall be
 101 made using that line on Schedule P displaying the Total Net Loss
 102 and Loss Adjustment Expense which is comprised of the Known
 103 Claim Reserve, and any associated Adverse Development Reserve,
 104 the reserve for Incurred But Not Reported Losses, and
 105 Unallocated Loss Adjustment Expenses.

106 (3) If a title insurer that is organized under the laws of
 107 another state transfers its domicile to this state, the
 108 statutory or unearned premium reserve shall be the amount
 109 required by the laws of the state of the title insurer's former
 110 state of domicile as of the date of transfer of domicile and
 111 shall be released from reserve over the subsequent 20 years at
 112 an amortization rate not to exceed the formula in paragraph
 113 (2) (c) according to the requirements of law in effect in the
 114 ~~former state at the time of domicile~~. On or after January 1,
 115 2014, for new business written after the effective date of the
 116 transfer of domicile to this state, the domestic title insurer

Page 4 of 5

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

7-01108-16

2016940__

117 shall add to and set aside in the statutory or unearned premium
118 reserve such amount as provided in subsection (1).
119 Section 2. This act shall take effect July 1, 2016.



The Florida Senate

Committee Agenda Request

To: Senator Lizbeth Benacquisto, Chair
Committee on Banking and Insurance

Subject: Committee Agenda Request

Date: December 11, 2015

I respectfully request that **Senate Bill # 940**, relating to Title Insurance, be placed on the:

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

A handwritten signature in black ink, appearing to read "Rob Bradley", written over a horizontal line.

Senator Rob Bradley
Florida Senate, District 7

THE FLORIDA SENATE
APPEARANCE RECORD

Amendment

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

1/11/16

Meeting Date

940

Bill Number (if applicable)

58332

Amendment Barcode (if applicable)

Topic TITLE INSURANCE

Name PAUL HANDERHAN

Job Title CONSULTANT

Address 120 SOUTH MONROE STREET
Street

Phone 361 704 0428

Tallahassee FL 32301
City State Zip

Email Paul@rambaconsulting.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FAIR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/11/16
Meeting Date

5 940
Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name David Altmaier

Job Title Deputy Commissioner, PTC

Address 200 E Gaines Street
Street

Phone _____

Tallahassee FL 32399
City State Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Office of Ins Reg

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/11/16

Meeting Date

940

Bill Number (if applicable)

Topic Title Insurance

Amendment Barcode (if applicable)

Name Caitlin Murray

Job Title Director of Government Affairs

Address Street

Phone 413-5005

City

State

Zip

Email Caitlin.murray@flair.com

Speaking: For Against Information

Waive Speaking: In Support Against (The Chair will read this information into the record.)

Representing Office of Insurance Regy.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

CourtSmart Tag Report

Room: EL 110 Case No.:
Caption: Senate Banking and Insurance Committee

Type:
Judge:

Started: 1/11/2016 4:02:56 PM
Ends: 1/11/2016 4:31:56 PM Length: 00:29:01

4:03:03 PM Meeting called to order - quorum present
4:03:50 PM TAB 8 SB 940 Title Insurance
4:04:07 PM Senator Bradley recognized to explain the bill
4:04:36 PM Amd. 583332 - explanation of amd. by Sen. Bradley
4:06:10 PM Amd. 583332 - explanation of amd. by Sen. Bradley
4:07:03 PM Office of Insurance Regulation --Caitlin Murray
4:08:04 PM David Altmier - Office of Insurance Regulation
4:09:09 PM Amd. 583332 -- adopted w/o objection
4:09:26 PM Roll call on CS/SB 940 -- Favorable
4:09:54 PM TAB 7 - Hukill - Funeral, Cemetery
4:10:18 PM Senator Hukill recognized to explain the bill
4:13:21 PM Rep. Robison recognized on SB 854
4:14:21 PM Amd. 953794 - explanation of amendment by Sen. Hukill -- adopted w/o objection
4:15:49 PM Roll call on CS/SB 854 -- favorable
4:16:18 PM TAB 1 - SB 822 - Firesafety
4:16:35 PM Senator Stargel recognized to explain the bill
4:18:01 PM Amd. 296588-adopted w/o objection
4:19:02 PM Amd. 972554 - technical amendment -- favorable w/o objection
4:20:08 PM Roll call on CS/SB 822 - Favorable
4:21:09 PM TAB 2 - SB 828 Insur. Guaranty Assoc. Assessments
4:22:08 PM Explanation of bill by Misty Alexander
4:23:18 PM Robert Reyes - FL Workers Comp Guaranty fund
4:23:45 PM Amd. 909062 - Technical amendment - adopted w/o objection
4:24:32 PM Roll call on CS/SB 828 -- favorable
4:25:03 PM TAB 3 -S 260- Financial Transactions- Smith
4:25:45 PM Explanation of bill by Senator Smith
4:26:45 PM Amd. 878296 - explanation of amendment by Sen. Smith
4:28:18 PM Amd. 878296 -- amendment adopted w/o objection
4:28:41 PM Roll call on CS/SB 260 -- Favorable
4:29:15 PM TAB 5 --SB 774 - tp'd
4:29:34 PM TAB 6 SB 966 - tp'd
4:29:55 PM TAB 4 - SB 908 - Organization - Dept. of Financial Svcs.
4:30:35 PM Doug Roberts - explanation of bill
4:31:09 PM roll call on SB 908 - Favorable
4:31:27 PM Meeting adjourned



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations, *Chair*
Appropriations Subcommittee on General
Government
Banking and Insurance
Reapportionment
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

SENATOR TOM LEE

24th District

January 11, 2016

The Honorable Senator Lizbeth Benacquisto, Chair
Senate Banking and Insurance Committee
404 South Monroe Street
320 Knott Building
Tallahassee, FL 32399

Dear Chair Benacquisto

I respectfully request to be excused from today's meeting of the Senate Banking and Insurance Committee. My Legislative Aide Doug Roberts will present SB 908 in my absence.

Sincerely,

A handwritten signature in blue ink that reads "Tom Lee".

Tom Lee
Florida State Senator
24th District

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and
Civil Justice, *Chair*
Appropriations
Banking and Insurance
Ethics and Elections
Higher Education
Regulated Industries
Rules

SENATOR JOE NEGRON

32nd District

January 11, 2016

Senator Lizbeth Benacquisto
Chair, Committee on Banking and Insurance
320 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Re: Excused Absence Request

Dear Chair Benacquisto:

This letter will serve as my formal request for an excused absence from the Senate Committee on Banking and Insurance Meeting on Monday, January 11, 2016. I am requesting this excused absence to present proposed legislation.

Thank you for your consideration of this request.

Sincerely Yours,

A handwritten signature in blue ink, appearing to read "Joe Negron".

Joe Negron
State Senator
District 32

JN/cl

c: James Knudson, Staff Director

REPLY TO:

- 3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore