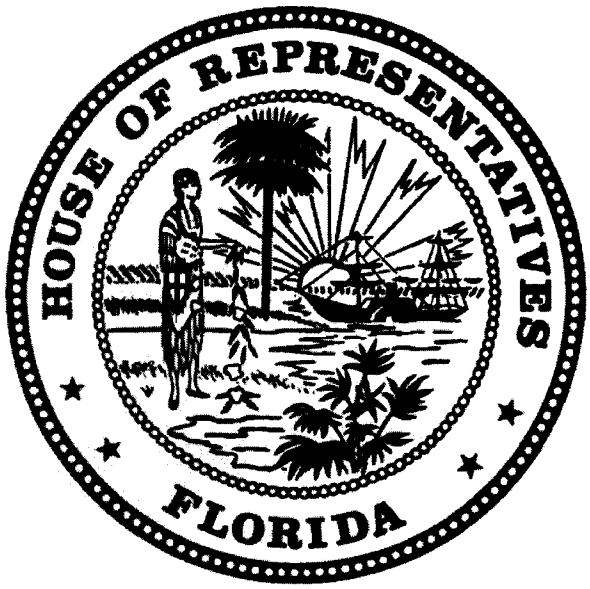

Commerce Committee

Thursday, January 18, 2018
10:30 AM – 12:30 PM
Webster Hall (212 Knott)

Meeting Packet

Richard Corcoran
Speaker

Jim Boyd
Chair

The Florida House of Representatives

Commerce Committee

Richard Corcoran
Speaker

Jim Boyd
Chair

Meeting Agenda

Thursday, January 18, 2018
10:30 am – 12:30 pm
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 239 Consumer Finance by Fine

CS/HB 483 Unfair Insurance Trade Practices by Yarborough

HB 529 Florida Fire Prevention Code by Diaz, M.

CS/HB 533 Unfair Insurance Trade Practices by Hager

CS/HB 539 Alarm Confirmation by Cortes, B.

HB 953 Consumer Report Security Freezes by Harrison

V. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 239 Consumer Finance
SPONSOR(S): Insurance & Banking Subcommittee; Fine
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. One of the loan products regulated by the OFR is set forth in the Florida Consumer Finance Act, ch. 516, F.S. (the Act). Loans permitted under the Act are commonly referred to as "consumer finance loans." Loans under the Act have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:

- 30% per annum computed on the first $3,000.
- 24% per annum on principal above $3,000 and up to $4,000.
- 18% per annum on principal above $4,000 and up to $25,000.

Loans under the Act may not exceed $25,000 and must be repaid in monthly installments as nearly equal as mathematically practicable. The Act permits a lender to impose a delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed.

The bill permits consumer finance loans made pursuant to the Act to be due every 2 weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments as nearly equal as mathematically practicable, but the final payment may be less than the amount of the prior installments. For each payment in default for at least 10 days, the bill sets maximum delinquency charges as follows:

- For payments due monthly, the delinquency charge for a payment in default may not exceed $15.
- For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.
- For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

The bill has no impact on local governments or the state. The bill has an indeterminate fiscal impact on the private sector but may have a financially positive impact on consumers and lenders.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The OFR is responsible for the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR's Division of Consumer Finance (Division) "licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law."[2]

One of the loan products regulated by the Division is set forth in the Florida Consumer Finance Act, ch. 516, F.S. (the Act). Loans permitted under the Act are commonly referred to as "consumer finance loans" and are "loan[s] of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[3] Although consumer finance loans may be secured or unsecured, the Act prohibits lenders from taking a security interest in certain types of collateral.[4]

Consumer finance loans have a tiered interest rate structure such that the maximum interest rate allowed on each tier decreases as principle amounts increase:

- 30% per annum computed on the first $3,000.
- 24% per annum on principal above $3,000 and up to $4,000.
- 18% per annum on principal above $4,000 and up to $25,000.[5]

Consumer finance loans made pursuant to the Act must be repaid in monthly installments as nearly equal as mathematically practicable.[6]

The original principal amount is the amount financed, as defined by the federal Truth in Lending Act (TILA)[7] and TILA's federal implementing regulations.[8] For the purpose of determining compliance with these statutory maximum interest rates, the interest rate computations used must be simple interest.[9] In the event that two or more interest rates are applied to the principal amount of a loan,[10] a lender may charge interest at a single annual percentage rate (APR) which would produce at maturity the total amount of interest as permitted by the tiered interest rate structure above.[11] The APR charged by a lender may not exceed the APR that must be computed and disclosed according to TILA and its

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[1] s. 20.121(3)(a)2., F.S.
[2] Office of Financial Regulation, FAST FACTS, 3 (5th ed. Dec. 2017), *available at* http://www.flofr.com/StaticPages/documents/FastFacts.pdf.
[3] s. 516.01(2), F.S.
[4] *See* s. 516.031(1), F.S. (prohibition on taking a security interest in land for a loan less than $1,000); s. 516.17, F.S. (prohibition on assignment of, or order for payment of, wages given to secure a loan).
[5] s. 516.031(1), F.S.
[6] s. 516.36, F.S. This section does not apply to lines of credit.
[7] Codified at 15 U.S.C. § 1601 *et seq.*
[8] Currently, the statute references TILA's implementing regulations as "Regulation Z of the Board of Governors of the Federal Reserve System." s. 516.031(1), F.S. However, the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173, 124 Stat. 1376-2223, 111th Cong. (July 21, 2010), commonly referred to as the "Dodd-Frank Act", transferred rulemaking authority for TILA to the Bureau of Consumer Financial Protection, effective July 21, 2011. *See also* Truth in Lending (Regulation Z), 76 Fed. Reg. 79768 (Dec. 22, 2011).
[9] *Id.*
[10] For example, on a principle amount of $3,500, an interest rate of 30% per annum may be applied to $3,000 of the principle amount, and an interest rate of 24% per annum may be applied to the remaining $500 of the principal amount.
[11] s. 516.031(1), F.S.

implementing regulations.[12] A licensee may not induce or permit a borrower to divide a loan and may not induce or permit a person to become obligated to the licensee under more than one loan contract for the purpose of obtaining a greater finance charge than would otherwise be permitted under the parameters described above.[13]

If consideration for a new loan contract includes the unpaid principal balance of a prior loan with the licensee, then the principal amount of the new loan contract may not include more than 60 days' unpaid interest accrued on the prior loan.[14]

The Act prohibits lenders from directly or indirectly charging borrowers additional fees as a condition to the grant of a loan, except for the following allowable fees:

- Up to $25 for investigating the credit and character of the borrower,
- A $25 annual fee on the anniversary date of each line-of-credit account,
- Brokerage fees for certain loans, title insurance, and appraisals of real property offered as security,
- Intangible personal property tax on the loan note or obligation if secured by a lien on real property,
- Documentary excise tax and lawful fees for filing, recording, or releasing an instrument securing the loan,
- The premium for any insurance in lieu of perfecting a security interest otherwise required by the licensee in connection with the loan,
- Actual and reasonable attorney fees and court costs,
- Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security,
- A delinquency charge of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed, and
- A bad check charge of up to $20.[15]

Optional credit property, credit life, and disability insurance may be provided at the borrower's expense via a deduction from the principal amount of the loan.[16]

Licenses granted under the Act are for a single place of business[17] and must be renewed every two years.[18] As of December 2017, there were 169 licensed consumer finance loan companies operating at 339 locations in Florida.[19]

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[20]

Effect of the Bill

The bill permits consumer finance loans made pursuant to the Act to be due every 2 weeks, semimonthly, or monthly, rather than only monthly under current law. The bill requires that such a loan be repaid in periodic installments as nearly equal as mathematically practicable, but the final payment

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[12] s. 516.031(2), F.S.
[13] s. 516.031(4), F.S.
[14] s. 516.031(5), F.S.
[15] s. 516.031(3), F.S.
[16] s. 516.35(2), F.S.
[17] ss. 516.01(1) and 516.05(3), F.S.
[18] ss. 516.03(1) and 516.05(1)&(2), F.S.
[19] Office of Financial Regulation, *supra* note 2, at 3.
[20] s. 516.02(4), F.S.

may be less than the amount of the prior installments. For each payment in default for at least 10 days, the bill sets maximum delinquency charges as follows:

- For payments due monthly, the delinquency charge for a payment in default may not exceed $15.
- For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.
- For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 2. Amends s. 516.36, F.S., relating to monthly installment requirement.

Section 3. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Although the impact on the private sector is indeterminate, the bill may have a positive effect on the default rate of loans made pursuant to the Act. One member of the industry who operates in multiple states conducted a test to determine the effect of placing borrowers on a monthly payment schedule rather than a biweekly or semimonthly payment schedule.[21] Return customers with a low risk profile and high ability to repay were offered a monthly payment option instead of a payment schedule every two weeks.[22] When compared to the default rate among customers on biweekly and semimonthly payment schedules, the customers who were placed on a monthly payment schedule had a default rate 25% higher.[23] The difference in default rate may have been even higher if all customers (including those with a higher risk profile and relatively lower ability to repay) had been placed on the monthly payment schedule.[24] If fewer defaults occur among borrowers who are placed on a payment schedule

[21] Email from Ron LaFace, representative of Oportun, Re: HB 239 (Nov. 3, 2017).
[22] *Id.*
[23] *Id.*
[24] *Id.*

every 2 weeks or semimonthly, then the impact of the bill will be financially positive for both consumers and lenders.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 15, 2017, the Insurance and Banking Subcommittee considered one amendment, which was adopted, and reported the bill favorably as a committee substitute. The committee substitute clarifies the maximum delinquency charge to ensure that the more frequent payment schedules permitted by the bill do not result in borrowers incurring higher amounts of delinquency charges each month. The committee substitute also restores the current law for determining equality of installment payments ("as nearly equal as mathematically practicable" rather than "approximately equal").

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to consumer finance; amending s. 516.031, F.S.; revising provisions relating to delinquency charges that may be charged for consumer loans; amending s. 516.36, F.S.; revising installment requirements for consumer loans; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 516.031, Florida Statutes, is amended to read:

516.031 Finance charge; maximum rates.—

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and insurance charges provided in this section, further or other charges or amount for any examination, service, commission, or other thing or otherwise may not be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be collected when the loan is made or at any time thereafter;

7. Actual and reasonable attorney fees and court costs as determined by the court in which suit is filed;

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge ~~of up to $15~~ for each payment in default for at least 10 days if the charge is agreed upon, in writing, between the parties before imposing the charge. Delinquency charges may be imposed as follows:

a. For payments due monthly, the delinquency charge for a payment in default may not exceed $15.

b. For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.

c. For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but within 20 days after the discovery of such error.

Section 2. Section 516.36, Florida Statutes, is amended to read:

516.36 ~~Monthly~~ Installment requirement.—Every loan made pursuant to this chapter shall be repaid in periodic ~~monthly~~ installments as nearly equal as mathematically practicable, except that the final payment may be less than the amount of the prior installments. Installments may be due every 2 weeks, semimonthly, or monthly. This section does ~~shall~~ not apply to lines of credit.

Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 483 Unfair Insurance Trade Practices
SPONSOR(S): Insurance & Banking Subcommittee; Yarborough and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these are prohibitions on certain inducements to the purchase of insurance; however, there are also exceptions provided by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to $25 per gift to an insured, prospective insured, or any person, for the purpose of advertising. This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given over any period of time. The $25 limit has been in place since 1989.

The bill expands the exception for advertising gifts to:

- Allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise;
- Authorize charitable contributions in the name of insureds or prospective insureds, up to the specified limit;
- Remove the limitation that the gifts be for advertising purposes;
- Increase the maximum allowed value from $25 to $100 per customer or prospective customer; and
- Limit the total value given to any customer or prospective customer to $100 in one calendar year.

The bill also creates an exception to the prohibitions of the Unfair Insurance Trade Practices Act to allow the offering of complimentary grief counseling or funeral planning services and discounted rates on funeral services as part of a group policy.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate $25 gift value with no annual aggregate limitation).

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,[1] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.[2] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The law also describes prohibited discrimination. However, there are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to $25 per gift to an insured, prospective insured, or any person for the purpose of advertising. There are several similar limitations on advertising gifts under the Insurance Code[3] related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.[4] This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given. The $25 limit has been in place since 1989.[5]

The Insurance Code does not define the term "merchandise," nor has the Department of Financial Services or the Office of Insurance Regulation defined this term in rules implementing their duties and obligations under the Insurance Code.[6] The common definition of "merchandise" is "commodities or goods that are bought and sold in business."[7] Therefore, insurers and agents are allowed to give saleable items valued at $25 or less to others for advertising purposes.

The bill expands the exception to allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise. It removes the requirement that the gift be given for advertising purposes. The bill increases the allowed maximum value of the item given from $25 to $100 per customer or prospective customer. It also applies the value limit per customer or prospective customer over one calendar year, rather than per gift without an annual limit.

The bill also creates an exception to the prohibitions of the Unfair Insurance Trade Practices Act to allow the offering of complimentary grief counseling or funeral planning services and discounted rates on funeral services as part of a group policy. Such offers are not a violation of law if the funeral planning services and funeral services are provided by a Florida licensed funeral provider or one licensed by another state and the group plan beneficiary, or his or her family (in the case of a death of the beneficiary), initiate contact to receive the services, rather than the funeral provider.

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[1] part IX, ch. 626, F.S.

[2] s. 626.9541, F.S.

[3] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

[4] Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of $25 as an inducement to contract. s. 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. s. 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of $25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. s. 634.282(17), F.S.

[5] Ch. 89-360, Laws of Fla.

[6] Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. §2607 (2017).

[7] MERRIAM-WEBSTER, DICTIONARY, https://www.merriam-webster.com/dictionary/merchandise.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill maintains the existing gift limit applicable to them (i.e., limits them to an aggregate $25 gift value with no annual aggregate limitation).

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. While insurers and agents may see increased opportunities for solicitation and sales through use of higher value and new types of advertising and promotional gifts, the impact is not known.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law and portions of the bill use the terms "insured" and "prospective insured" in relation to the exception to prohibitions on unfair and deceptive trade practices revised by the bill. On lines 36 and 37, the bill uses the terms "customer" and "prospective customer" when applying a limit on gift values

applicable to "insureds" and "prospective insureds." An amendment is expected to conform the terms to "insureds" and "prospective insureds."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment creates an exception to the Unfair Insurance Trade Practices Act to allow insurers, in association with the sale of a group policy, to give vouchers for grief counseling and funeral services to insureds, prospective insureds, or others. It also removes a proposed annual gifting limitation applicable to title insurers, title agencies, and title agents, thus restoring current law.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to unfair insurance trade practices; amending s. 626.9541, F.S.; revising the types, value, and frequency of advertising and promotional gifts that licensed insurers or their agents may give to insureds, prospective insureds, or others; authorizing such insurers and agents to make specified charitable contributions on behalf of insureds or prospective insureds; prohibiting title insurance agents, title insurance agencies, or title insurers from giving insureds, prospective insureds, or others any article of merchandise in excess of a specified value; authorizing certain insurers and agents to give insureds, prospective insureds, or others specified complimentary services or discounted rates on specified services; providing an effective date.

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

Section 1. Paragraph (m) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition

and unfair or deceptive acts or practices:

(m) *Advertising and promotional gifts and charitable contributions permitted.*—

1. The provisions ~~No provision~~ of paragraph (f), paragraph (g), or paragraph (h) do not ~~shall be deemed to~~ prohibit a licensed insurer or its agent from:

a. Giving to insureds, prospective insureds, or ~~and~~ others~~, for the purpose of advertising,~~ any article of merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, or other items having a total value of $100 or less per customer or prospective customer in any calendar year ~~having a value of not more than $25~~.

b. Making charitable contributions, as defined in s. 170(c) of the Internal Revenue Code, on behalf of insureds or prospective insureds, of up to $100 per insured or prospective insured in any calendar year.

2. The provisions of paragraph (f), paragraph (g), or paragraph (h) do not prohibit a title insurance agent or title insurance agency, as those terms are defined in s. 626.841, or a title insurer, as defined in s. 627.7711, from giving to insureds, prospective insureds, or others, for the purpose of advertising, any article of merchandise having a value of not more than $25. A person or entity governed by this subparagraph is not subject to subparagraph 1.

3. A licensed insurer or its agent may offer to an insured, prospective insured, or others, in conjunction with the sale of a group insurance policy, complimentary grief counseling or funeral planning services, or discounted rates on funeral services offered by a third party provider. Such offering is not an advertisement, designation, direction, rebate, or inducement, as described in this section, if:

a. The funeral planning services or funeral services are provided by funeral providers licensed under chapter 497 or licensed by applicable laws in another jurisdiction in which the funeral provider is located; and

b. The contact to such funeral providers is initiated by the beneficiaries or family members of the group policy insured, and not by the funeral provider.

A person or entity governed by this subparagraph is not subject to subparagraph 1.

Section 2. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

CS/HB 483 by Rep. Yarborough
Unfair Insurance Trade Practices

AMENDMENT SUMMARY
January 18, 2018

Amendment 1 by Rep. Yarborough (Line 36): The amendments conforms the terms "customer" and "prospective customer" to the terms "insured" and "prospective insured," to ensure consistency.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 483 (2018)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Yarborough offered the following:

Amendment

Remove lines 36-37 and insert:

items having a total value of $100 or less per insured or prospective insured in any calendar year ~~having a value of not~~

HB 529

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 529 Florida Fire Prevention Code
SPONSOR(S): Diaz, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 746

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	14 Y, 0 N	Brackett	Anstead
2) Commerce Committee		Brackett DB	Hamon K.W.H.

SUMMARY ANALYSIS

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal, and requires the State Fire Marshal to adopt the Florida Fire Prevention Code (Fire Code) by rule every three years. The Fire Code sets forth fire safety standards (including certain national codes) for property, and is enforced by local fire officials within each county, municipality, and special fire districts in the state. The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.

The Fire Code provides that a person may not place combustible waste and refuse in a building's means of egress, which includes a building's exit corridors.

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. Residents in these complexes place waste outside their front door, and the provider picks it up. An apartment complex resident's front door usually opens to a hallway, corridor, or walkway, which may be the building's exit access and therefore is a part of the building's means of egress.

The bill provides that residents in apartment buildings may place combustible waste and refuse in an exit corridor if the following conditions are met:

- Waste containers may not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Waste containers may not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste is not in an exit corridor for a single period greater than 5 hours;
- Waste containers are not in an exit corridor for a single period greater than 12 hours;
- Waste containers do not reduce the exit corridor's width below the width required by the Fire Code; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions.

The bill also provides that local fire officials may approve alternative containers or storage arrangements that are equivalent in safety to the bill's requirements.

The exceptions provided for in the bill will expire on July 1, 2021.

The bill is not expected to have a significant fiscal impact on state or local government.

The bill provides for an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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 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 fire safety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts fire safety inspections of state property; and operates the Florida State Fire College.

Adoption and Interpretation of the Florida Fire Prevention Code

The State Fire Marshal also adopts by rule the Florida Fire Prevention Code (Fire Code), 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 Fire Code every three years.[2] When adopting the Fire Code the Fire Marshal is required to adopt the most current version of the national fire and life safety standards set forth by the National Fire Protection Association (NFPA) including the:

- NFPA's Fire Code (1);
- Life Safety Code (101); and
- Guide on Alternative Approaches to Life Safety (101A).[3]

The State Fire Marshal may modify the national fire safety and life safety standards as needed to accommodate the specific needs of the state.[4]

The most recent Fire Code is the 6th edition, which is referred to as the 2017 Florida Fire Prevention Code. The 6th edition of the Fire Code took effect on January 1, 2018.

The State Marshal has authority to interpret the Code, and is the only authority that may issue a declaratory statement relating to the Fire Code.[5]

Fire Safety Enforcement by Local Governments

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.[6] These local enforcing authorities may adopt more stringent fire

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[1] s. 633.104, F.S.
[2] s. 633.202, F.S.
[3] s. 633.202(2), F.S. Founded in 1896, the National Fire Protection Association delivers information and knowledge through more than 300 consensus codes and standards, research, training, education, outreach and advocacy; and by partnering with others who share an interest in furthering the mission. NFPA, *About NFPA*, http://www.nfpa.org/about-nfpa (last visited on Dec. 7, 2017).
[4] *Id.*
[5] s. 633.104(6), F.S.
[6] ss. 633.108 and 633.208, F.S.

safety standards, subject to certain requirements in s. 633.208, F.S., but may not enact fire safety ordinances that conflict with ch. 633, F.S., or any other state law.[7]

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 fire safety 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]

Section 633.208(5), F.S. states "With regard to existing buildings, the Legislature recognizes that it is not always practical to apply any or all of the provisions of the Fire Code and that physical limitations may require disproportionate effort or expense with little increase in fire or life safety." Pursuant to s. 633.208(5), F.S., local fire officials shall apply the Fire 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.

Florida Building Code

The Florida Building Code (Building Code) is the statewide building code for all construction in the state. The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation (DBPR), implements the Building Code. The Commission reviews the International Code Council's I-Codes and the National Electric Code every three years to determine if it needs to update the Building Code.[10]

Means of Egress

A means of egress is a path available for a person to leave a building. A means of egress is made up of three parts, which includes the following:

- Exit access;
- Exit; and
- Exit discharge.[11]

The exit access is a path, such as a hallway or corridor, from any location in the building to an exit. The exit is usually a door leading outside, or in a multi-story building, an enclosed stairway. The exit discharge is a path from the exit to a space that is dedicated to public use such as a street or alley.[12]

The Fire Code provides that a building's means of egress must be a certain width determined by the number of occupants in the building and the use of the building.[13] The Fire Code further provides that a building's means of egress must be free of all obstructions or impediments in case of fire or other emergency.[14]

The Building Code also provides that a building's means of egress must be a certain width determined by the number of occupants in the building.[15] The Building Code provides that the *required width* of a building's means of egress must be free of all obstructions and impediments.[16]

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[7] ss. 633.208 and 633.214(4), F.S.
[8] s. 633.118, F.S.
[9] s. 633.216(1), F.S.
[10] s. 553.73(7)(a), F.S.
[11] Section 3.3.176 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[12] International Code Council, *Accessible Means of Egress*, https://www.iccsafe.org/safety/Documents/MeansofEgressBroch.pdf (last visited Dec. 7, 2017).
[13] *See* Section 7.3.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[14] Section 7.1.10.1 of the 6th edition of the Florida Fire Prevention Code (NFPA 101, Life Safety Code).
[15] Section 1005 of the 6th edition of the Florida Building Code (Building).
[16] Section 1018.1, 1020.3, and 1024.2 of the 6th edition of the Florida Building Code (Building).

However, the Building Code provides that maintenance of a building's means of egress must be in accordance with the Fire Code.[17] DBPR has interpreted this to mean that the Fire Code takes precedence when it comes to people placing objects, such as a trashcan, in a building's means of egress.[18]

Combustible Waste and Refuse

The Fire Code defines combustible waste as any "combustible or loose waste material that is generated by an establishment or process and, if salvageable, is retained for scrap or reprocessing on the premises where generated or transported to a plant for processing."[19]

The Fire Code defines combustible refuse as "a combustible or loose rubbish, litter, or waste materials generated by an occupancy that are refused, rejected, or considered worthless and are disposed of by incineration on the premises where generated or periodically transported from the premises."[20]

Combustible waste and refuse may be stored in an apartment building if the combustible waste and refuse is:

- Stored in a container less than 1.5 cubic yards (302 gallons);
- Stored in an enclosed area with a 1 hour fire resistance rating and an automatic sprinkler system;
- Removed from the building once a day unless the waste and refuse is stored in a noncombustible room; and
- Not stored in the building's exit(s).[21]

Private Doorstep Collection Providers

Currently, there are various providers offering doorstep waste collection services to apartment complexes throughout the state. The basic business model requires the residents of an apartment building to place their waste outside of their doorstep, in a specified container approved by the provider. The waste collection companies then come by and collect the waste at a specified time.[22]

An apartment complex resident's front door opens to a hallway, corridor, or walkway, which is usually the building's exit access and therefore part of the building's means of egress. According to DFS, apartments that contract with the doorstep waste collection providers are violating the Fire Code by allowing residents to place combustible waste and refuse in their buildings' means of egress.[23]

In recent declaratory statements, the State Fire Marshal determined that apartments may not allow residents to place waste containers outside their front doors regardless of the size of the container or if the waste is removed daily. The State Fire Marshal determined that the Fire Code prohibits apartment residents from placing any type of waste container outside their door because the residents are placing an obstruction in a building's means of egress and combustible waste in a building's exit.[24]

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[17] Section 1001.3 of the 6th edition of the Florida Building Code (Building).
[18] Email from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, Florida Building Code questions (Dec. 18, 2017).
[19] Section 3.3.63 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[20] Section 3.3.62 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[21] Section 10.19.4 and 19.2.1.4 of the 6th edition of the Florida Fire Prevention Code (NFPA 1, Fire Code).
[22] Department of Financial Services, Agency Analysis of 2018 House Bill 529, p. 1 (Nov. 29, 2017).
[23] *See Id.*
[24] *See In the matter of: William Harrison, Fire Marshal Clermont Fire Department*, Case No.: 188696-16-DS (Fla. DFS) (June 21, 2016); *In the matter of: Steve Strong, Fire Marshal Clearwater Fire & Rescue*, Case No.: 196979-16-DS (Fla. DFS) (Dec. 23, 2016).

Effect of the Bill

The bill provides that residents of apartment buildings may place combustible waste and refuse in exit corridors in apartment buildings if the following conditions are met:

- Waste containers may not exceed 13 gallons for apartment buildings with enclosed corridors and interior or exterior stairs;
- Waste containers may not exceed 27 gallons for apartment buildings with open air corridors and exterior stairs or balconies with exterior exit stairs;
- Waste is not placed in an exit corridor for a single period greater than 5 hours;
- Waste containers are not in an exit corridor for a single period greater than 12 hours;
- Waste containers do not reduce the exit corridor's width below the width required by the Fire Code; and
- The apartment's management staff have written policies and procedures to ensure compliance with the above conditions. Management staff must enforce the policies and must provide a copy of the policies to the authority having jurisdiction upon request.

The bill provides that the local fire marshal may approve alternative containers or storage arrangements that are equivalent to the bill's requirements.

Apartment complexes must comply with the bill's requirements by December 31, 2020.

Sunset provision

The bill expires on July 1, 2021. The 7th edition of the Fire Code is expected to take effect in January 2021. The bill's expiration date allows waste collection companies time to work with the State Fire Marshal to add the language of the bill to the 7th edition of the Fire Code through the code adoption process.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S., providing that residents in apartments may place combustible waste and refuse in an apartment's exit corridors under certain conditions, providing for local fire officials to approve alternative containers, providing an expiration date.

Section 2. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown.

2. Expenditures:

Unknown. According to DFS, the bill creates new apartment classifications that the Fire Code currently does not use. This may require local fire marshals to do additional inspections and classifications for apartment complexes that use doorstep waste collection providers.[25]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will allow doorstep waste collection companies to continue operating in the state.[26]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DFS prefers that any change made to the Fire Code be made through the code adoption process instead of being made in statute. According to DFS, the Fire code is an inclusive and flexible document that the Fire Marshal amends every three years to include technological advancements and emerging documents. According to DFS, this results in the Fire Code being able to accommodate changes more quickly than changes being made to statute. Additionally, the Fire Marshal can make amendments following situations involving fires that require a change in operating procedures or requirements.[27]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[25] Department of Financial Services, *supra*, note 19, at 3.
[26] *Id.*
[27] Email from Kimberly Renspie, Deputy Legislative Affairs Director, Florida Department of Financial Services, Response to questions on HB 529, (Dec. 12, 2017).

A bill to be entitled

An act relating to the Florida Fire Prevention Code; amending s. 633.202, F.S.; requiring that doorstep refuse and recycling collection containers be allowed in exit corridors of certain apartment occupancies under certain circumstances; authorizing authorities having jurisdiction to approve certain alternative containers and storage arrangements; requiring such authorities to allow apartment occupancies a phase-in period until a specified date to comply; providing for future repeal; providing an effective date.

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

Section 1. Subsection (20) is added to section 633.202, Florida Statutes, to read:

633.202 Florida Fire Prevention Code.—

(20)(a) In apartment occupancies with enclosed corridors served by interior or exterior exit stairs, doorstep refuse and recycling collection containers must be allowed in exit corridors when all of the following conditions exist:

1. The maximum waste container size does not exceed 13 gallons.

2. Waste is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Waste containers do not occupy the exit access corridors for single periods exceeding 12 hours.

4. Waste containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.

5. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

(b) In apartment occupancies with open-air corridors or balconies served by exterior exit stairs, doorstep refuse and recycling collection containers must be allowed in exit corridors when all of the following conditions exist:

1. The maximum waste container size does not exceed 27 gallons.

2. Waste is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Waste containers do not occupy the exit access corridors for single periods exceeding 12 hours.

4. Waste containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.

5. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies

and procedures to the authority having jurisdiction.

(c) The authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety to that provided under paragraphs (a) and (b).

(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.

(e) This subsection is repealed on July 1, 2021.

Section 2. This act shall take effect July 1, 2018.

COMMERCE COMMITTEE

HB 529 by Rep. Manny Diaz
FLORIDA FIRE PREVENTION CODE

AMENDMENT SUMMARY
January 18, 2018

Amendment 1 by Rep. Manny Diaz (Strike-all amendment):

- Replaces "waste container" with "doorstep refuse and recycling collection container."
- Provides that a doorstep refuse and recycling collection container must be able to stand upright on its own and may not leak fluids when standing upright.
- Only waste that is in a doorstep refuse and recycling collection container is permitted to be in an exit access corridor.
- Replaces "exit corridor" with "exit access corridor."
- Removes the requirement that doorstep refuse and recycling collection containers may only be in an exit access corridor for 12 hours when the apartment building has open air corridors or balconies with exterior exit stairs.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 529 (2018)

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Commerce Committee

Representative Diaz, M. offered the following:

Amendment

Remove everything after the enacting clause and insert:

Section 1. Subsection (20) is added to section 633.202, Florida Statutes, to read:

633.202 Florida Fire Prevention Code.—

(20)(a) In apartment occupancies with enclosed corridors served by interior or exterior exit stairs, doorstep refuse and recycling collection containers, which stand upright on their own and do not leak liquids when standing upright, must be allowed in exit access corridors when all of the following conditions exist:

1. The maximum doorstep refuse and recycling collection container size does not exceed 13 gallons.

2. Waste, which is in a doorstep refuse and recycling collection container, is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Doorstep refuse and recycling collection containers do not occupy the exit access corridors for single periods exceeding 12 hours.

4. Doorstep refuse and recycling collection containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.

5. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

(b) In apartment occupancies with open-air corridors or balconies served by exterior exit stairs, doorstep refuse and recycling collection containers, which stand upright on their own and do not leak liquids when standing upright, must be allowed in exit access corridors when all of the following conditions exist:

1. The maximum doorstep refuse and recycling collection container size does not exceed 27 gallons.

2. Waste, which is in a doorstep refuse and recycling collection container, is not placed in the exit access corridors for single periods exceeding 5 hours.

3. Doorstep refuse and recycling collection containers do not reduce the means of egress width below that required under NFPA Life Safety Code 101:31, as adopted under the Florida Fire Prevention Code.

4. Management staff have written policies and procedures in place and enforce them to ensure compliance with this subsection, and, upon request, provide a copy of such policies and procedures to the authority having jurisdiction.

(c) The authority having jurisdiction may approve alternative containers and storage arrangements that are demonstrated to provide an equivalent level of safety to that provided under paragraphs (a) and (b).

(d) The authority having jurisdiction shall allow apartment occupancies a phase-in period until December 31, 2020, to comply with this subsection.

(e) This subsection is repealed on July 1, 2021.

Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 533 Unfair Insurance Trade Practices
SPONSOR(S): Insurance & Banking Subcommittee; Hager and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Lloyd	Luczynski
2) Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these is a prohibition on an insurer refusing to insure anyone solely because they have not bought the following services related to the ownership and use of a motor vehicle:

- Towing service;
- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; or
- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

The bill allows a property and casualty insurer to condition the sale of insurance on the purchase of motor vehicle services if such services are purchased from a membership organization affiliated with the property and casualty insurer and the affiliated membership organization has maintained more than one million members in Florida continuously since January 1, 2018. The bill also corrects language used in a cross-reference.

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,[1] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.[2] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on an insurer refusing to insure[3] anyone solely because of the following reasons:[4]

- The insured's race, color, creed, marital status, sex, or national origin;
- The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;
- The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;
- The insured's or applicant's failure to purchase noninsurance services or commodities, including automobile services;
- The fact that the insured or applicant is a public official; or
- The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

Effective October 1, 1982, the Legislature exempted automobile clubs from insurance regulation for the provision of "automobile services" related to motor vehicles.[5,6] Accordingly, the provision of the following services related to the ownership, operation, use, or maintenance of a motor vehicle are not subject to the Insurance Code:[7]

- Towing service;
- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; or

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[1] part IX, ch. 626, F.S.

[2] s. 626.9541, F.S.

[3] This includes a prohibition on cancelling or non-renewing a policy. s. 626.9541(1)(x), F.S.

[4] s. 626.9541(1)(x), F.S.

[5] Chapter 82-233, Laws of Florida., creating s. 624.21, F.S., which later became s. 624.124, F.S., as s. 4 of Chapter 82-386, Laws of Florida, also created s. 624.21, F.S., in the same session for a substantively different purpose.

[6] Section 624.124, F.S., provides that "motor vehicle" has the same meaning specified by s. 634.011(6), F.S. Accordingly, "motor vehicle" means :

(a) A self-propelled device operated solely or primarily upon roadways to transport people or property, or the component part of such a self-propelled device, except such term does not include any self-propelled vehicle, or component part of such vehicle, which:

1. Has a gross vehicle weight rating of 10,000 pounds or more, and is not a recreational vehicle as defined by s. 320.01(1)(b);
2. Is designed to transport more than 10 passengers, including the driver; or
3. Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or

(b) A self-propelled device operated solely or primarily upon water for noncommercial, personal use, the engine of such a vehicle, or a trailer or other device used to transport such vehicle or device.

s. 634.011(6), F.S.

[7] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

Section 626.9541(1)(x), F.S., provides that an insurer may not refuse to insure or refuse to continue to insure anyone for their failure to purchase "automobile services as defined in s. 624.124." However, s. 624.124, F.S., does not define "automobile services"; rather, it establishes that providers of the specified "motor vehicle services" are exempt from regulation as an insurer.[8]

Effect of the Bill

The bill allows a property and casualty insurer to condition the sale of insurance[9] on the purchase of motor vehicle services if the following conditions are met:

- The motor vehicle services are purchased from a membership organization affiliated[10] with the property and casualty insurer; and,
- The affiliated membership organization has maintained more than one million Florida members continuously since January 1, 2018.

It is unknown which or how many Florida property and casualty insurers are affiliated with a qualifying membership organization since such membership information is generally withheld by the membership organization for proprietary and trade secrecy purposes. Proponents of the bill assert that the Auto Club Group, operating in Florida as "AAA," meets these conditions. The Office of Insurance Regulation will be responsible for approving changes to required company filings by property and casualty insurers that wish to condition their sale of insurance on the purchase of motor vehicle services and auditing property and casualty insurers for qualification to do so and their subsequent compliance with applicable law.

The bill also corrects language used in a cross-reference. It replaces the term "automobile services" with the term "motor vehicle services" to conform to the terminology of the target statute of the cross-reference, i.e., s. 624.124, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2: Provides an effective date of July 1, 2018.

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[8] Section 624.124, F.S., originally described "automobile services" that were exempt from insurance regulation. Section 624.124, F.S., was amended to replace the term "automobile services" with the term "motor vehicle services" consistent with the existing body of that section. Section 626.9541(1)(x)4., F.S., which states "automobile services as defined in s. 624.124" was not amended to conform to the change in s. 624.124, F.S.

[9] While this provision is related to the purchase of "motor vehicle services," any insurer, without limitation of the type of insurance sold, may condition the sale of insurance in the manner allowed by the bill.

[10] "Affiliate" means an entity that exercises control over or is directly or indirectly controlled by the insurer through:
(a) Equity ownership of voting securities;
(b) Common managerial control; or
(c) Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.
s. 624.10(1), F.S. "Control," including the terms "controlling," "controlled by," and "under common control with," means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person. s. 624.10(3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Insurance purchasers may be refused coverage if they do not purchase motor vehicle services as a prerequisite to purchasing insurance. Accordingly, they may choose to incur the cost of purchasing such services or to obtain coverage from another property and casualty insurer. Whether coverage from other property and casualty insurers will have higher or lower cost for the same coverage level is dependent on the circumstances of the purchaser and the underwriting criteria of the insurers.

Participation in membership organizations that sell motor vehicle services and insurance sales by their affiliated insurers may be affected. Whether this is a positive or negative influence on membership numbers or insurance purchases will be dependent upon a multitude of factors. Membership may shift from non-qualifying membership organizations to ones that qualify if the overall costs of membership and insurance are competitive. In the same manner, membership may shift away from qualifying membership organizations, and their affiliated insurers may see reduced business, if consumers find better coverage or lower costs from others.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 10, 2018, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably with a committee substitute. The amendment limited the exception created by the bill to property and casualty insurers, rather than all insurers.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to unfair insurance trade practices; amending s. 626.9541, F.S.; authorizing property and casualty insurers to refuse to insure or continue to insure an applicant or insured for failing to purchase certain noninsurance motor vehicle services; providing an effective date.

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

Section 1. Paragraph (x) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

(x) *Refusal to insure.*—In addition to other provisions of this code, the refusal to insure, or continue to insure, any individual or risk solely because of:

1. Race, color, creed, marital status, sex, or national origin;

2. The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful

occupation of the individual or the location of the risk and the coverage issued or to be issued;

3. The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;

4. The insured's or applicant's failure to purchase noninsurance services or commodities, including motor vehicle ~~automobile~~ services as defined in s. 624.124 except for motor vehicle services purchased from a membership organization that, since January 1, 2018, has more than 1 million members in this state and is affiliated with an admitted property and casualty insurer;

5. The fact that the insured or applicant is a public official; or

6. The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 539 Alarm Confirmation
SPONSOR(S): Careers & Competition Subcommittee; Cortes, B.
TIED BILLS: **IDEN./SIM. BILLS:** SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Florida requires alarm systems to be installed and monitored by licensed alarm system contractors. Monitored intrusion or burglar alarms trigger a signal alerting the alarm monitoring company of an emergency. Prior to contacting a law enforcement agency for dispatch, the monitoring company must make verification calls to the premises to confirm that it is not a false alarm.

Currently, the alarm monitoring company is only permitted to communicate with the premises via telephone call to confirm the alarm.

The bill expands the modes of confirming an alarm signal to include:

- sending a text message, or
- communicating through other electronic means.

The bill requires that attempts by monitoring personnel to confirm an alarm signal be made to the owner, occupant, or his or her authorized designee of the premises generating the signal instead of to a telephone number associated with the premises.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Alarm Systems and Alarm System Contractors

An "alarm system" is defined as "any electrical device, signaling device, or combination of electrical devices used to signal or detect a burglary, fire, robbery, or medical emergency."[1] It must be installed by a licensed alarm system contractor, subject to regulation and discipline by the Electrical Contractors' Licensing Board under the Florida Department of Business and Professional Regulation.[2]

If an alarm system has central monitoring, the central monitoring station (CMS),[3] or other type of alarm monitoring company, must be qualified by licensed alarm system contractors.[4]

Alarm Verification

A "false alarm" is a false intrusion or burglar alarm signal stemming from causes not connected with an intrusion or burglary, such as user error (e.g. inputting incorrect alarm keypad codes), faulty equipment, poor installation, and bad weather. Between 94 and 98 percent of alarm calls are false. Each false alarm requires approximately 20 minutes of two police officers' time.[5]

Florida, like most jurisdictions across the country, requires an alarm monitoring company to make a first verification call to the premises with an activated alarm system before contacting a law enforcement agency to ensure the alarm signal is not false, which reduces false alarm calls to law enforcement agencies by 75 percent.[6] If the owner is not successfully contacted by the CMS during the initial call, Florida requires a second call by the CMS to another phone number associated with the premises, which further reduces false alarm calls to law enforcement agencies by 40 percent.[7]

Florida does not require verification calling if the alarm signal has been generated by an alarm system with audio or visual sensors, which allow independent verification, or if a federal firearms licensee uses the premises for storage of firearms or ammunition.

Effect of the Bill

The bill expands the modes of confirming an alarm signal. The alarm monitoring company will be able to utilize the following forms of communication:

- sending a text message,
- communicating through other electronic means, or
- placing a telephone call (current law).

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[1] s. 489.505(1), F.S.
[2] s. 489.505(2), F.S.
[3] Generally, a CMS is a facility that receives signals from alarm systems and at which personnel are in constant attendance. Central Station Alarm Association, ALARM CONFIRMATION, VERIFICATION, AND NOTIFICATION PROCEDURES 4 (2016).
[4] *Supra*, note 2.
[5] Rana Thompson, FALSE BURGLAR ALARMS 7, 9, 11 (2nd ed. 2011).
[6] Security Industry Alarm Coalition, *Consumer Guide to ECV*, http://siacinc.org/docs/Executive%20Overview.pdf (last visited March 14, 2017).
[7] It is estimated by the Florida Alarm Association (FAA) that Florida has seen a 40 percent reduction in false alarm calls since passing the second verification call requirement. Most alarm companies use automated dialing technology to make verification calls, which takes seconds to make. Caitlin Doornbos, *After break-in, gun shop owner seeks alarm law change*, Orlando Sentinel, August 26, 2016, available at http://www.orlandosentinel.com/news/breaking-news/os-gun-shop-alarm-911-20160819-story.html.

The bill requires that the attempts by monitoring personnel to confirm an alarm signal be made to the owner, occupant, or his or her authorized designee of the premises generating the signal instead of to a telephone number associated with the premises.

The bill also changes terminology for authenticating an alarm signal from "verification" to "confirmation," and for who verifies an alarm from "central monitoring station" to "alarm monitoring company."

The bill has an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1 Amends s. 489.529, F.S., to expand means of confirming an alarm signal.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 9, 2018, the Careers and Competition Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- makes the phrase "alarm monitoring company" consistent in the bill; and
- clarifies that the alarm monitoring company confirms the alarm with the owner, occupant, or his or her authorized designee of the premises.

This analysis is drafted to the committee substitute as passed by the Careers and Competition Subcommittee.

A bill to be entitled

An act relating to alarm confirmation; amending s. 489.529, F.S.; revising requirements for alarm confirmation to include additional methods by which an alarm monitoring company may confirm a residential or commercial intrusion/burglary alarm signal and to require that two attempts be made to confirm an alarm signal; providing an effective date.

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

Section 1. Section 489.529, Florida Statutes, is amended to read:

489.529 Alarm confirmation ~~verification calls~~ required.—All residential or commercial intrusion/burglary alarms that have central monitoring are required to have the alarm monitoring company attempt to confirm the alarm signal by ~~must have a central monitoring verification~~ call, text message, or other electronic means made to the owner, occupant, or an authorized designee ~~a telephone number~~ associated with the premises generating the alarm signal~~,~~ before alarm monitor personnel contact a law enforcement agency for alarm dispatch. The alarm monitoring company ~~central monitoring station~~ must attempt to confirm ~~employ call-verification methods for the premises generating~~ the alarm signal a second time via

communication with the owner, occupant, or an authorized designee associated with the premises if the first attempt to confirm ~~call~~ is unsuccessful ~~not answered~~. However, alarm signal confirmation ~~verification calling~~ is not required if:

(1) The intrusion/burglary alarm has a properly operating visual or auditory sensor that enables the alarm monitoring personnel to verify the alarm signal; or

(2) The intrusion/burglary alarm is installed on a premises that is used for the storage of firearms or ammunition by a person who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition, provided the customer notifies the alarm monitoring company that he or she holds such license and would like to bypass the two-attempt confirmation ~~two-call verification~~ protocol. Upon initiation of a new alarm monitoring service contract, the alarm monitoring company shall make reasonable efforts to inform a customer who holds a valid federal firearms license as a manufacturer, importer, or dealer of firearms or ammunition of his or her right to opt out of the two-attempt confirmation ~~two-call verification~~ protocol.

Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 953 Consumer Report Security Freezes
SPONSOR(S): Harrison and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 0 N	Hinshelwood	Luczynski
2) Commerce Committee		Hinshelwood	Hamon

SUMMARY ANALYSIS

Florida law allows a consumer to place a security freeze on his or her consumer report. Florida law also contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) who does not have an existing consumer report. The request for a security freeze must be made to each consumer reporting agency, which may charge a fee up to $10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identifier. The fees are the same in relation to the placement or removal of a security freeze for a protected consumer; a temporary lift is not available for a protected consumer. A consumer reporting agency is prohibited from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and is prohibited from charging any fee to a victim of identity theft.

Most states permit fees for placing a security freeze, and fees generally range from $2 to $10. Among the states that do not permit fees for placing a security freeze, the majority permit some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Two states currently prohibit fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer. Bills have been filed in Congress with the goal of creating a security freeze process under federal law and prohibiting or limiting associated fees.

The bill would prohibit a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected consumer. However, the bill would still permit a consumer reporting agency to charge the currently authorized fee of up to $10 for replacing a lost unique personal identifier.

The bill has no impact on state or local governments. The bill has an indeterminate fiscal impact on the private sector.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States.[1] The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.[2]

Most significantly, the FCRA regulates the practices of consumer reporting agencies (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.[3] Consumer reports are used by credit grantors, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services.[4] Information included in consumer reports may include a consumer's credit and payment history, demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).[5]

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.[6] The FACT Act added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.[7] Among these provisions, the FACT Act established a national fraud alert system, required federal agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft, and required that information placed on a consumer report due to identity theft be blocked from the report.[8]

The FCRA, as amended by the FACT Act, allows a consumer or the consumer's representative to assert a good-faith suspicion to a consumer reporting agency that he or she has been or is about to become the victim of identity theft.[9] This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.[10] A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to seven years if an identity theft report is submitted to the consumer reporting agency.[11] However, fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.[12]

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[1] 15 U.S.C. § 1681 *et seq.*
[2] Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), *available at* http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf.
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), *available at* https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf.
[7] Federal Trade Commission, *supra* note 2, at 3.
[8] *Id.*
[9] 15 U.S.C. § 1681c-1(a)(1).
[10] *Id.*
[11] 15 U.S.C. § 1681c-1(b).
[12] 15 U.S.C. §§ 1681c-1 and 1681m(e).

Florida Statutes Relating to Consumer Report Security Freezes

In response to concerns regarding identity theft, Florida and the majority of states have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from trying to open a new account or new credit. A consumer can place a "security freeze" on his or her consumer report by sending a written request by certified mail to a consumer reporting agency.[13] With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer.[14] Additionally, while a security freeze is in effect, a consumer reporting agency cannot change a consumer's name, address, date of birth, or social security number in a consumer report without sending the consumer written confirmation of the change.[15]

A consumer reporting agency must place a security freeze within five business days after receiving a request and must provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the removal of a security freeze.[16] A consumer reporting agency may charge a fee up to $10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identification number or password.[17] However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and prohibits a consumer reporting agency from charging any fee to a victim of identity theft.[18]

Any written consumer disclosures that are required by the federal FCRA and that are provided to a consumer residing in this state must include a written summary of all rights the consumer has under Florida law relating to security freezes.[19]

While this law on security freezes has been in place in Florida since 2006, the law did not contain a mechanism for "freezing" the credit for individuals who do not have an existing credit report. Therefore, in 2014, the Keeping I.D. Safe (KIDS) Act became law in Florida, and Florida law now contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate).[20] To place the "security freeze", a representative of the protected consumer must submit a request to the consumer reporting agency and provide sufficient proof of authority and identification.[21] With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the protected consumer's record.[22] Additionally, while a security freeze is in effect, a consumer reporting agency must send the protected consumer's representative written confirmation of a change to the protected consumer's name, address, date of birth, or social security number.[23]

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[13] s. 501.005(2), F.S.

[14] s. 501.005(1), (12), (15). Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

[15] s. 501.005(14), F.S.

[16] s. 501.005(3), (4), F.S.

[17] s. 501.005(13)(a), (c), F.S.

[18] s. 501.005(13)(b), F.S.

[19] s. 501.005(17), F.S.

[20] Ch. 2014-66, Laws of Fla.; s. 501.0051, F.S.

[21] s. 501.0051(2), F.S.

[22] s. 501.0051(1)(f)2., (8), F.S. Subsection 501.0051(8), F.S., allows for the release of information otherwise protected by a security freeze to persons and entities similar to those listed in s. 501.005(12) and (15), F.S. *See supra* note 14.

[23] s. 501.0051(10), F.S.

A consumer reporting agency must place a security freeze within 30 days after confirming the authenticity of a security freeze request and must provide the protected consumer's representative with a unique personal identifier to be used by the protected consumer's representative when providing authorization for the removal of a security freeze.[24] A consumer reporting agency may charge a fee up to $10 when a security freeze is placed or removed or when the consumer reporting agency reissues a lost unique personal identifier.[25] However, the law prohibits a consumer reporting agency from charging a fee to the representative of a protected consumer who is a victim of identity theft.[26]

Any written consumer disclosures that are required by the federal FCRA and that are provided to a protected consumer and his or her representative residing in this state must include a written summary of all rights the protected consumer and his or her representative have under Florida law relating to security freezes.[27]

Regardless of whether a security freeze is requested on an existing consumer report or on a record created to identify a protected consumer, the request for a security freeze must be made to each consumer reporting agency. For example, when a request to place a security freeze is made to three consumer reporting agencies, the consumer or protected consumer's representative would be charged up to $10 by each, for a total of up to $30.[28] Additionally, the consumer or protected consumer's representative incurs fees of up to $10 by each consumer reporting agency when there is a need to temporarily lift a security freeze, remove a security freeze, or replace a lost unique personal identifier.

Other States' Statutes Relating to Consumer Report Security Freezes

Most states permit fees for placing a security freeze, and fees generally range from $2 to $10.[29] Among the states that do not permit fees for placing a security freeze, the majority permit some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report.[30] Two states currently prohibit fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.[31]

Federal Legislation to Prohibit or Limit Fees for Consumer Report Security Freezes

The following are bills that have been filed in Congress with the goal of creating a security freeze process under federal law and prohibiting or limiting associated fees:

- *Comprehensive Consumer Credit Reporting Reform Act of 2017, H.R. 3755:*[32] This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file. The consumer reporting agency may not charge a fee if the consumer is the victim of identity theft, active duty military, 65 years of age or older, or a member of a class established by the Consumer Financial Protection Bureau. For all other

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[24] s. 501.0051(4), (5), F.S.
[25] s. 501.0051(9)(a) and (b), F.S.
[26] s. 501.0051(9)(c), F.S.
[27] s. 501.0051(14), F.S.
[28] However, Equifax is waiving its fees for placing, temporarily lifting, or removing a security freeze through January 31, 2018. EQUIFAX, *Place, Temporarily Lift or Permanently Remove a Security Freeze*, https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp (last visited Jan. 4, 2018).
[29] EQUIFAX, *What are the security freeze fees in my state?*, https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state (last visited Jan. 4, 2018); EXPERIAN, *Security Freeze*, https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/ (last visited Jan. 4, 2018); TRANSUNION, *Credit Freeze Information by State*, https://www.transunion.com/credit-freeze/credit-freeze-information-by-state (last visited Jan. 4, 2018).
[30] *Id.*
[31] *Id.* The two states are Indiana and South Carolina.
[32] Comprehensive Consumer Credit Reporting Reform Act of 2017, H.R. 3755, 115th Cong. (introduced Sept. 13, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/3755.

consumers, a consumer reporting agency may charge up to $3, as adjusted annually for inflation.

- *Credit Information Protection Act of 2017, H.R. 3766:*[33] This bill amends the FCRA to require that, after a data security breach, a consumer reporting agency provide a security freeze to a consumer upon request. The consumer reporting agency must, without a fee, place a freeze on any consumer's report and provide unlimited security freezes and freeze removals to a consumer affected by the breach.
- *Free Credit Freeze Act, H.R. 3878:*[34] This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file at no charge.
- *Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, H.R. 4028:*[35] This bill amends the FCRA to allow a consumer to request that a consumer reporting agency place, temporarily lift, or remove a security freeze on an existing consumer report. The bill also allows a protected consumer's representative to request that a consumer reporting agency place or remove a security freeze on a record created to identify the protected consumer. The bill permits the consumer reporting agency to charge up to $5 for each placement, temporary lift, or removal of a security freeze, except that fees are prohibited or limited for consumers who are victims of identity theft, minors, 65 years of age or older, or active duty military.
- *Consumer Data Protection Act, H.R. 4544:*[36] This bill amends the FCRA to require a consumer reporting agency that has experienced a data breach to provide affected individuals, upon their request and at no charge for their lifetime, a credit freeze, including imposing, lifting, or permanently removing a credit freeze.
- *Free Credit Freeze Act, S. 1810:*[37] This bill amends the FCRA in a manner similar to H.R. 3878 discussed above.
- *Freedom from Equifax Exploitation Act, S. 1816:*[38] This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file at no charge. The bill also requires a consumer reporting agency to issue a refund to any consumer who requested a credit freeze from September 7, 2017 until the day before the enactment of this bill.
- *Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, S. 1982:*[39] This bill amends the FCRA in a manner similar to H.R. 4028 discussed above.
- *Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155:*[40] This bill amends the FCRA to allow a consumer to request that a consumer reporting agency place or remove a security freeze on an existing consumer report and to allow a representative of a minor to request that a consumer reporting agency place or remove a security freeze on a record

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[33] Credit Information Protection Act of 2017, H.R. 3766, 115th Cong. (introduced Sept. 13, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/3766?r=971.

[34] Free Credit Freeze Act, H.R. 3878, 115th Cong. (introduced Sept. 28, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/3878.

[35] Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, H.R. 4028, 115th Cong. (introduced Oct. 12, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/4028?r=709.

[36] Consumer Data Protection Act, H.R. 4544, 115th Cong. (introduced Dec. 4, 2017), available at https://www.congress.gov/bill/115th-congress/house-bill/4544/text?r=13.

[37] Free Credit Freeze Act, S. 1810, 115th Cong. (introduced Sept. 14, 2017), available at https://www.congress.gov/bill/115th-congress/senate-bill/1810.

[38] Freedom from Equifax Exploitation Act, S. 1816, 115th Cong. (introduced Sept. 14, 2017), available at https://www.congress.gov/bill/115th-congress/senate-bill/1816.

[39] Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, S. 1982, 115th Cong. (introduced Oct. 18, 2017), available at https://www.congress.gov/bill/115th-congress/senate-bill/1982?r=6432.

[40] Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Cong. (introduced Nov. 16, 2017), available at https://www.congress.gov/bill/115th-congress/senate-bill/2155?r=6259.

created to identify the minor. The placement and removal of a security freeze must be free of charge.

- *Consumer Data Protection Act, S. 2188:*[41] This bill amends the FCRA in a manner similar to H.R. 4544 discussed above.

Effect of the Bill

The bill would prohibit a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected consumer. However, the bill would still permit a consumer reporting agency to charge the currently authorized fee of up to $10 for replacing a lost unique personal identifier.

B. SECTION DIRECTORY:

Section 1. Amends s. 501.005, F.S., relating to consumer report security freeze.

Section 2. Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

Section 3. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The elimination of fees for placing, temporarily lifting, or removing a security freeze would decrease revenues for consumer reporting agencies. The elimination of fees would decrease costs for consumers and may increase the occurrence and frequency of these activities by consumers. The use of security freezes may reduce the prevalence of identity theft, which would have a positive impact on consumers as well as creditors and other businesses. It is unknown how much revenue consumer reporting agencies currently earn from Florida residents or how the elimination of fees may affect consumer behavior and the prevalence of identity theft. Therefore, the impact to the private sector is indeterminate.

[41] Consumer Data Protection Act, S. 2188, 115th Cong. (introduced Dec. 4, 2017), available at https://www.congress.gov/bill/115th-congress/senate-bill/2188.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer report security freezes; amending s. 501.005, F.S.; prohibiting a consumer reporting agency from charging any fee to a consumer for placing, removing, or temporarily lifting a security freeze on his or her consumer report; amending s. 501.0051, F.S.; prohibiting a consumer reporting agency from charging any fee to the representative of a protected consumer for placing, removing, or temporarily lifting a security freeze on the protected consumer's consumer report; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2), paragraph (d) of subsection (5), paragraph (c) of subsection (11), subsection (13), and paragraph (c) of subsection (17) of section 501.005, Florida Statutes, are amended to read:

501.005 Consumer report security freeze.—

(2) A consumer may place a security freeze on his or her consumer report by:

~~(c) Paying a fee authorized under this section.~~

(5) A consumer may allow his or her consumer report to be accessed for a designated period of time while a security freeze

is in effect by contacting the consumer reporting agency and requesting that the freeze be temporarily lifted. The consumer must provide the following information to the consumer reporting agency as part of the request:

~~(d) Payment of a fee authorized by this section.~~

(11) A security freeze shall remain in place until the consumer requests that it be removed. A consumer reporting agency shall remove a security freeze within 3 business days after receiving a request for removal from the consumer, who, upon making the request for removal, must provide the following:

~~(c) Payment of a fee authorized by this section.~~

(13)(a) A consumer reporting agency may not charge any ~~a reasonable~~ fee~~, not to exceed $10,~~ to a consumer who elects to place, remove, or temporarily lift a security freeze on his or her consumer report.

~~(b) A consumer reporting agency shall not charge any fee:~~

~~1. To a consumer 65 years of age or older for the initial placement or removal of a security freeze; or~~

~~2. To a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of the victim's identifying information by another person.~~

(b) ~~(c)~~ A consumer reporting agency may charge a reasonable fee, not to exceed $10, if the consumer fails to retain the

original personal identification number or password provided by the consumer reporting agency and the agency must reissue the personal identification number or password or provide a new personal identification number or password to the consumer.

(17) Any written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing in this state shall include a written summary of all rights the consumer has under this section, and, in the case of a consumer reporting agency which compiles and maintains consumer reports on a nationwide basis, a toll-free telephone number which the consumer can use to communicate with the consumer reporting agency. The information set forth in paragraph (b) of the written summary of rights must be in at least 12-point boldface type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(c) When you place a security freeze on your consumer report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your consumer report or authorize the release of your consumer report for a designated period of time after the security freeze is in place. To provide that authorization, you must contact the consumer reporting agency and provide all of the following:

1. The personal identification number or password.

2. Proper identification to verify your identity.

3. Information specifying the period of time for which the

report shall be made available.

~~4. Payment of a fee authorized by this section.~~

Section 2. Paragraph (c) of subsection (2), paragraph (a) of subsection (7), subsection (9), and paragraph (c) of subsection (14) of section 501.0051, Florida Statutes, are amended to read:

501.0051 Protected consumer report security freeze.—

(2) A representative may place a security freeze on a protected consumer's consumer report by:

~~(c) Paying the agency a fee as authorized under this section.~~

(7) A consumer reporting agency shall remove a security freeze from a protected consumer's consumer report or record only under either of the following circumstances:

(a) Upon the request of a representative or a protected consumer. A consumer reporting agency shall remove a security freeze within 30 days after receiving a request for removal from a protected consumer or his or her representative.

1. A representative submitting a request for removal must provide all of the following:

a. Sufficient proof of identification of the representative and sufficient proof of authority as determined by the consumer reporting agency.

b. The unique personal identifier provided by the consumer reporting agency pursuant to subsection (5).

~~c. A fee as authorized under this section.~~

2. A protected consumer submitting a request for removal must provide all of the following:

a. Sufficient proof of identification of the protected consumer as determined by the consumer reporting agency.

b. Documentation that the sufficient proof of authority of the protected consumer's representative to act on behalf of the protected consumer is no longer valid.

~~c. A fee as authorized under this section.~~

(9)(a) A consumer reporting agency may not charge any ~~a reasonable~~ fee~~, not to exceed $10,~~ to place or remove a security freeze.

(b) A consumer reporting agency may ~~also~~ charge a reasonable fee, not to exceed $10, if the representative fails to retain the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.

~~(c) A consumer reporting agency may not charge a fee under this section to the representative of a protected consumer who is a victim of identity theft if the representative submits, at the time the security freeze is requested, a copy of a valid investigative report, an incident report, or a complaint with a law enforcement agency about the unlawful use of the protected consumer's identifying information by another person.~~

(14) A written disclosure by a consumer reporting agency, pursuant to 15 U.S.C. s. 1681g, to a representative and protected consumer residing in this state must include a written summary of all rights that the representative and protected consumer have under this section and, in the case of a consumer reporting agency that compiles and maintains records on a nationwide basis, a toll-free telephone number that the representative can use to communicate with the consumer reporting agency. The information provided in paragraph (b) must be in at least 12-point boldfaced type. The written summary of rights required under this section is sufficient if it is substantially in the following form:

(c) To remove the security freeze on the protected consumer's record or report, you must contact the consumer reporting agency and provide all of the following:

1. Proof of identification as required by the consumer reporting agency.

2. Proof of authority over the protected consumer as required by the consumer reporting agency.

3. The unique personal identifier provided by the consumer reporting agency.

~~4. Payment of a fee.~~

Section 3. This act shall take effect July 1, 2018.