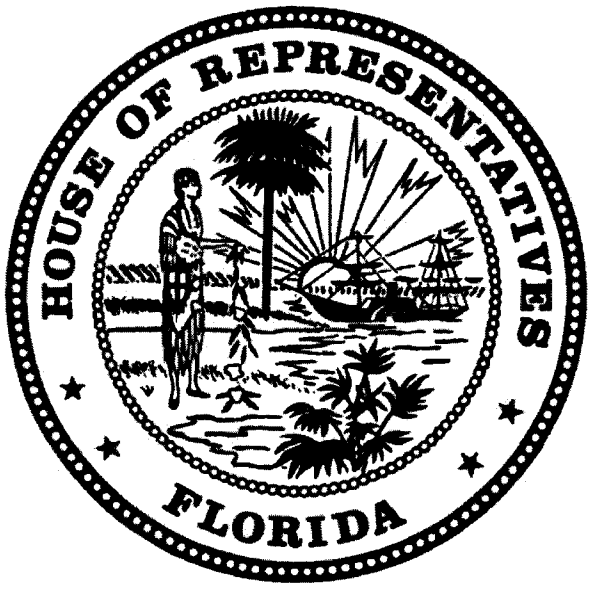


# Commerce Committee

**Thursday, February 1, 2018**
**12:00 PM – 2:00 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, February 1, 2018
## 12:00 pm – 2:00 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 315 Telephone Solicitation by Ausley

CS/HB 465 Insurance by Santiago

CS/HB 553 Department of Agriculture and Consumer Services by Raburn

HB 585 Tourist Development Tax by Fine

CS/HB 1011 Hurricane Flood Insurance by Cruz

CS/HB 1267 Telephone Solicitation by Killebrew

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 315 Telephone Solicitation
**SPONSOR(S):** Careers and Competition Subcommittee; Ausley
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 568

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Careers & Competition Subcommittee | 14 Y, 0 N, As CS | Willson | Anstead |
| 2) Commerce Committee | | Willson MW | Hamon K.W. H. |

### SUMMARY ANALYSIS

Residents who do not wish to receive telephonic sales calls may have their residential, mobile, or paging device telephone number included on Florida's "Do Not Call" list. Individuals or entities that wish to make unsolicited telephone calls must acquire the list from the Florida Department of Agriculture and Consumer Services, and unless an exception applies, may not initiate an outbound sales call to a number on the list.

Currently, "telephonic sales call" is defined as a telephone call or a text message.

The bill expands the definition of "telephonic sales calls" to include voicemail transmissions, and defines "voicemail transmissions" as technologies that deliver a voice message directly to a voicemail application, service or device.

The bill prohibits a telephone solicitor from sending voicemail transmissions to a consumer who has previously communicated that he or she does not wish to be contacted.

The bill requires any telephone number reflected on a call recipient's caller ID service as the result of a telephone sales call to be capable of receiving phone calls, and able to connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was made.

The bill also increases maximum penalties for violations of the Do Not Call Program from up to $1,000 per violation that is administratively prosecuted to up to $10,000; and allows increased penalties from up to $10,000 per violation that is civilly prosecuted to up to $10,000 or more per civil penalty.

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

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

**Background**

*Florida Do Not Call Registry and Telemarketers*

The Florida Telemarketing Act[1] requires non-exempt businesses engaged in telemarketing and their salespeople to be licensed by the Florida Department of Agriculture and Consumer Services (FDACS) before operating in Florida. Certain exempt entities must have a valid affidavit of exemption on file prior to operating in Florida. There are approximately 28 exemptions, including, but not limited to, the following: soliciting for religious, charitable, political or educational purposes, research companies, newspapers, book and video clubs, cable television, and persons or companies with whom the consumer has a prior business relationship.[2]

FDACS maintains the Florida Do Not Call Act, also known as the "Do Not Call" list, which prohibits unsolicited phone calls and text messages from telemarketers[3]. Residents who do not wish to receive sales calls may have their residential, mobile, or paging device telephone number included on this list.[4]

In Florida, it is unlawful for telemarketers to:

- Make telephone sales calls before 8 a.m. or after 9 p.m. local time.
- Not provide you with their name and telephone number.
- Use auto dialers with prerecorded messages.
- Call a number on the Do Not Call List.

Currently, telemarketers are required to provide a telephone number for caller ID purposes when placing a call to a consumer but are not required to provide a telephone number that is capable receiving calls.

Telephone solicitors[5] are prohibited from making telephonic sales calls to consumers who register for the "Do Not Call" program. Section 501.059(1)(g), F.S., defines "telephonic sales call" as a telephone call or text message to a consumer for the purpose of soliciting a sale or extension of credit for consumer goods or services, or obtaining information that may be used for such purposes.

In addition to those consumers registered for the "Do Not Call" program, a telephone solicitor may not call or text a consumer who previously communicated to the telephone solicitor that he or she does not wish to be contacted. Businesses and charities are required to maintain a list of consumers who have made a do-not-call request, and it is a violation to call a consumer who has asked to be placed on the company's do-not-call list.

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[1] part IV, ch. 501, F.S.
[2] s. 501.604, F.S.
[3] The Florida Do Not Call List can be found at: https://www.fldnc.com/.
[4] *See* s. 501.059, F.S., FDACS, *Florida DO NOT CALL Program*, https://www.fldnc.com/About.aspx (last visited 1/2/2018). The Florida No Sales Solicitation Act added specific language to prohibit unwanted sales texts.
[5] Section 501.059(1)(f), F.S., defines "Telephone solicitor" as "a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices."

Anyone who receives an unsolicited sales call can report the call to FDACS using the online Do Not Call Complaint Form.[6]

A telephone solicitor who violates the provisions of Florida's "Do Not Call" program are currently subject to an injunction and a civil penalty[7] with a maximum fine of $10,000 per violation, or an administrative fine[8] with a maximum of $1,000 per violation, in addition to the consumer's attorney fees and costs.

*Federal Do Not Call Registry and Telemarketers*

Although the states were the first to address consumers' requests to stop unwanted telemarketing calls[9], the federal government soon followed with a National Do Not Call Registry in 2003.[10] In July 2003, the federal government took action and issued a report and order establishing the National Do Not Call registry. The national registry covers all telemarketers (with the exception of certain nonprofit organizations), and applies to both interstate and intrastate calls. The registry is administered by the FTC. To reduce the number of hang-up and dead air calls consumers experience, the Commissions telemarketing rules also contain restrictions on the use of autodialers and requirements for transmitting caller ID information.

As the National Do Not Call Registry has gained popularity, some states have decided to forego the expense of maintaining their own lists. As of August 2016, only 12 states maintained their own Do Not Call lists: Colorado, Florida, Indiana, Louisiana, Massachusetts, Mississippi, Missouri, Oklahoma, Pennsylvania, Tennessee, Texas and Wyoming.[11] Thirty-one states have officially adopted the National Do Not Call Registry as their Do Not Call list.

In an effort to address a growing number of telephone marketing calls, Congress enacted in 1991 the Telephone Consumer Protection Act (TCPA). The TCPA restricts the making of telemarketing calls and the use of automatic telephone dialing systems and artificial or prerecorded voice messages. The rules apply to common carriers as well as to other marketers. In 1992, the Commission adopted rules to implement the TCPA, including the requirement that entities making telephone solicitations institute procedures for maintaining company-specific do-not-call lists.[12]

In July 2015, the FCC established rules indicating that telephone carriers can block unwanted calls at the request of consumers.[13] Following the FCC's ruling, the National Association of Attorneys General called upon the major telephone carriers to do more to provide these services to consumers.[14] Currently there are a number of call-blocking applications that provide some relief from unwanted and spam calls.[15] The FCC's rules require telemarketers (1) to obtain prior express written consent from consumers before robocalling them, (2) to no longer allow telemarketers to use an "established business relationship" to avoid getting consent from consumers to call their home phones, and (3) to require telemarketers to provide an automated, interactive "opt-out" mechanism during each robocall so consumers can immediately tell the telemarketer to stop calling.

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[6] FDACS, http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call (last visited January 11, 2017).
[7] s. 501.059(9)(a), F.S.
[8] s. 501.059(9)(b), F.S.
[9] At least 28 states, starting with Florida in 1987, have implemented Do Not Call registries.
[10] The Federal Do Not Call Registry can be found at: https://donotcall.gov/.
[11] National Association of Attorneys General, Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved, NAGTRI Journal, Vol. 1 No. 4., at Note 5.
[12] The FCC, Telemarketing and Robocalls, (last visted January 11, 2018) https://www.fcc.gov/general/telemarketing-and-robocalls.
[13] Declaratory Ruling and Order, In the Matter of Rules and Regulations Implementing the Telecommunications Consumer Protection Act of 1991, 30 FCC Rcd. 7961 (July 10, 2015).
[14] National Association of Attorneys General, Attorneys General Urge Phone Companies to Offer Technology that Blocks Unwanted Sales Calls or Texts, http://www.naag.org/naag/media/naag-news/attorneys-general-urge-federal-government-to-allow-phone-companies-to-block-unwanted-sales-calls-to-customers.php (last visited January 12, 2017).
[15] CTIA, The Wireless Association, How to Stop Robocalls, https://www.ctia.org/consumer-tips/robocalls.

On Nov. 16, 2017, the FCC adopted new rules to allow voice service providers to proactively block certain types of robocalls that are likely to be fraudulent because they come from certain types of phone numbers, including those that do not or cannot make outgoing calls. For example, perpetrators have used IRS phone numbers that don't dial out to impersonate the tax agency, informing the people who answer that they are calling to collect money owed to the U.S. government. Such calls appear to be legitimate to those who receive them and can result in fraud or identity theft. Service providers now can block such calls, as well as calls from invalid numbers, like those with area codes that don't exist, from numbers that have not been assigned to a provider, and from numbers allocated to a provider but not currently in use.[16]

FCC rule 47 C.F.R. 64.1601, provides that telemarketers must comply with the following:

> "(e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(10) must transmit caller identification information.
>
> (1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. **The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.**
>
> (2) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.
>
> (3) Tax-exempt nonprofit organizations are not required to comply with this paragraph."

With regard to telephone carriers, the FCC allows carriers to offer their customers external call-blocking apps on their landlines and allows carriers to block certain illegal robocalls directly. A consortium of telecom providers is currently working on a Caller ID authentication program that would provide verification of Caller ID information for call recipients. It is anticipated that this program will be available later in 2018.[17]

*Constitutionality of Do Not Call Registries*

Do Not Call registries have been subject to numerous state and federal lawsuits challenging their constitutionality. These suits have failed and the National Registry upheld. The Courts have found that the Do Not Call Registry is a reasonable restriction on commercial speech and that the FTC is authorized to promulgate rules for the registry. The court stated, "the do-not-call registry prohibits only telemarketing calls aimed at consumers who have affirmatively indicated that they do not want to receive such calls and for whom such calls would constitute and invasion of privacy." Thus, the government may have a role in restricting the ability of a telemarketer to reach a household via telephone and because the government left the ultimate decision of whether or not to be placed on the registry up to the individual, the government itself did not restrict the First Amendment rights of the solicitor.[18]

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[16] FCC, Stop Unwanted Calls and Texts, https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited January 11, 2018).

[17] Simon van Zuylen-Wood, *How robo-callers outwitted the government and completely wrecked the Do Not Call list*, THE WASHINGTON POST (Jan. 11, 2018), https://www.washingtonpost.com/lifestyle/magazine/how-robo-call-moguls-outwitted-the-government-and-completely-wrecked-the-do-not-call-list/2018/01/09/52c769b6-df7a-11e7-bbd0-9dfb2e37492a_story.html?utm_term=.8a6e6ea55f32.

[18] *Mainstream Marketing Services Inc v. Federal Trade Commission*, 358 F.3d 1228 (10th Cir. 2004).

Claims of preemption have also been unsuccessful. The TCPA's non-preemption clause[19], often referred to as the savings clause, has been relied upon by Courts to uphold state's Do Not Call Registries. The clause reads in part: "Nothing in this section or in the regulations prescribed under this section shall preempt any State law that imposes more restrictive intrastate requirements or regulation on, or which prohibits ...." The clause indicates specific types of actions that a state may prohibit or place more restrictive regulations on, such as sending unsolicited advertisements via fax, regulation of the use of automatic dialing systems and prerecorded messages, and the making of telephone solicitations.[20]

The TPCA is silent on the states' ability to place regulations that are more stringent than the TCPA requirements for interstate calls.[21] However, at least one Court has held that state regulations and prohibitions of telemarketing can cross state lines.[22]

*Caller ID and "Spoofing"*

"Spoofing" is the practice of altering or manipulating the caller ID information that is received in conjunction with a telephone call. In the past, caller ID services were not commonplace and spoofing required special equipment or a relatively high degree of technical sophistication. However, advances in technology, such as the proliferation of cellular phones, cell phone applications, and the widespread availability of Voice over Internet Protocol (VoIP) allows anyone to inexpensively spoof their caller ID using the services of a third-party spoofing provider.[23] For example, one such spoofing provider allows a consumer to download an app on their smartphone, purchase credits towards call time, and simply input the number that they want displayed on the receiving end in order to place an untraceable, spoofed call.[24]

In response to the growing practice of spoofing, Congress amended the TCPA to add the Truth in Caller ID Act of 2009. Under the Act, and Federal Communications Commission rules, any person or entity is prohibited from transmitting false or misleading caller ID information "with the intent to defraud, cause harm, or wrongly obtain anything of value", and carries a penalty of up to $10,000 for each violation.[25] However, spoofing is not illegal when no harm is intended or caused, or if the caller has legitimate reasons to hide their information, such as law enforcement agencies working on cases, victims of domestic abuse or doctors who wish to discuss private medical matters.[26]

In 2008, Florida passed its own anti-spoofing legislation, The Florida Caller ID Anti-Spoofing Act (2008).[27] The Act prohibits **any person** from:

- making a call with knowledge that false information was entered into a telephone caller ID system with the intent to deceive, defraud, or mislead the call's recipient; and
- entering false information into a telephone caller ID system "with the intent to deceive, defraud, or mislead" the call's recipient.

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[19] 47 U.S.C. § 227(f)(1).
[20] National Association of Attorneys General, *Do Not Call: The History of Do Not Call and How Telemarketing Has Evolved*, NAGTRI Journal, Vol. 1 No. 4.
[21] s. 47 U.S.C. s. 227 (f)(1).
[22] *See Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 at 1044-45 (7th Cir. 2013) and *Patriotic Veterans, Inc. v. State of Indiana*, No. 16-2059 (7th Cir. 2017)( "Preventing automated messages to persons who don't want their peace and quiet disturbed is a valid time, place, and manner restriction.").
[23] *See* FCC 11-100, *Rules and Regulations Implementing the Truth in Caller ID Act of 2009*, WC Docket No. 11-39, (June 22, 2011), at 9116, *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-11-100A1_Rcd.pdf.
[24] Paul Szoldra, *It's surprisingly easy for a hacker to call anyone from your personal phone number,* BUSINESS INSIDER (March 3, 2016), http://www.businessinsider.com/phone-number-spoofing-2016-2.
[25] 47 U.S.C. § 227 (e).
[26] FCC, *Spoofing and Caller ID*, https://www.fcc.gov/consumers/guides/spoofing-and-caller-id (last visited 1/2/2018).
[27] s. 817.487, F.S. (2008).

However, a U.S. District Court in Miami found that Florida's Caller ID Anti-Spoofing Act (2008) violated the Commerce Clause of the United State Constitution because it had the effect of controlling spoofing practices that took place entirely outside of the state, wherein individuals or companies could not ascertain what telephone numbers are subject to Florida law, and would have to subject all of their call practices to Florida law to avoid liability.[28]

The Commerce Clause of the U.S. Constitution bars state laws that control conduct outside the state's boundaries, regardless of whether the Legislature intended the law's extraterritorial reach.[29] Similarly, in 2011, a federal court in Mississippi struck Mississippi's anti-spoofing law, which was substantially similar to Florida's.[30]

**Effect of the Bill**

The bill expands the definition of "telephonic sales calls" to include voicemail transmissions, and defines "voicemail transmissions" as technologies that deliver a voice message directly to a voicemail application, service or device.

The bill prohibits a telephone solicitor from sending voicemail transmissions to consumers who have previously communicated that they do not wish to be contacted.

The bill requires any telephone number reflected on a call recipient's caller ID service as the result of a telephone sales call to be capable of receiving phone calls, and requires that the number be able to connect the call recipient with the telephone solicitor or the seller on behalf of which the phone call was made.

The bill increases maximum penalties for violations of the Do Not Call Program from up to $1,000 per violation that is administratively prosecuted to up to $10,000; and allows for increased penalties for a violation that is civilly prosecuted from to up to $10,000 per administrative fine to $10,000 or more.

B. SECTION DIRECTORY:

Section 1 Amends s. 501.059, F.S.; revising the definition of "telephonic sales call" to include voicemail transmissions, prohibiting the transmission of certain voicemails to certain persons and providing for certain requirements.

Section 2 Provides an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

Expenditures:

None.

[28] *TelTech Systems, Inc. v. McCollum*, No. 08-61664-CIV-MARTINEZ-BROWN (S.D. Fla. Filed Oct. 16, 2008).
[29] *Healy v. Beer Institute, Inc.*, 491 U.S. 324, 336 (1989).
[30] *TelTech Systems, Inc. v. Barbour*, 866 F.Supp.2d 571 (S.D. Miss 2011), *aff'd sub nom Teltech Systems, Inc. v. Bryant*, 702 F. 2d 232 (5th Cir. 2012).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Telemarketers will be prohibited from sending unsolicited voicemail transmissions to persons who register for the "Do Not Call" program, and to those who have otherwise previously communicated to the telephone solicitor that they do not wish to be contacted. Telemarketers that previously sent unsolicited voicemail transmissions and did not acquire Florida's Do Not Call list may need to acquire the list from the Department, at a maximum cost of $400 per year for the statewide listing.

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:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides:

> If a telephone number is made available through a caller identification service as a result of a telephone sales call, **that telephone number must be capable of receiving phone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed**.

The bill could be amended to more closely match federal regulations. FCC rule 47 C.F.R. 64.1601, provides that:

> (e) Any person or entity that engages in telemarketing, as defined in section 64.1200(f)(10) must transmit caller identification information.
>
> (1) For purposes of this paragraph, caller identification information must include either CPN or ANI, and, when available by the telemarketer's carrier, the name of the telemarketer. It shall not be a violation of this paragraph to substitute (for the name and phone number used in, or billed for, making the call) the name of the seller on behalf of which the telemarketing call is placed and the seller's customer service telephone number. **The telephone number so provided must permit any individual to make a do-not-call request during regular business hours.**

(2) Any person or entity that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(3) Tax-exempt nonprofit organizations are not required to comply with this paragraph.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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

- Requires individuals who make telephone sales calls to provide a telephone number that is capable of receiving phone calls, and which a telephone sales call recipient may use to dial the sales call initiator back;
- Increases permitted penalties from up to $1,000 for each administrative violation and up to $10,000 for each civil violation, to up to $10,000 and $10,000 or more, respectively; and
- Makes a technical amendment to clarify that a voicemail transmission is any technology that delivers a voice message directly to a voicemail application, service, or device.

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

A bill to be entitled

An act relating to telephone solicitation; amending s. 501.059, F.S.; revising the definition of the term "telephonic sales call" to include voicemail transmissions; defining the term "voicemail transmission"; prohibiting the transmission of voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests for donations; requiring that if a telephone number is available through a caller identification system, that telephone number must be capable of receiving calls and must connect the original call recipient to the solicitor; revising penalties; providing an effective date.

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

Section 1. Paragraph (g) of subsection (1) of section 501.059, Florida Statutes, is amended, a new paragraph (i) is added to that subsection, and subsection (5), paragraph (c) of subsection (8), and subsection (9) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ~~or~~ text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(i) "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application, service, or device.

(5) A telephone solicitor or other person may not initiate an outbound telephone call, ~~or~~ text message, or voicemail transmission to a consumer or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or~~ text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the telephone number and, when made available by the telephone

solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephone sales call, that telephone number must be capable of receiving phone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive

relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class IV ~~III~~ category pursuant to s. 570.971 for each violation and shall be deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class III ~~II~~ category pursuant to s. 570.971 for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to chapter 120.

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

**COMMERCE COMMITTEE**

**CS/HB 315 by Rep. Ausley**
**Telephone Solicitation**

**AMENDMENT SUMMARY**
**February 1, 2018**

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**Amendment 1 by Rep. Ausley (Lines 38-60):** Clarifies language relating to the duties imposed on telephone solicitors when making telephonic sales calls.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 315 (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 Ausley offered the following:

**Amendment (with title amendment)**

Remove lines 38-60 and insert:

transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or~~ text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving phone

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

Remove line 10 and insert:
for donations; requiring a solicitor to ensure that if a telephone number is

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 465 Insurance
**SPONSOR(S):** Insurance & Banking Subcommittee; Santiago
**TIED BILLS:** **IDEN./SIM. BILLS:**

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

### SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Foreign Insurer Stock Valuation** – provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from certain limitations on valuation and investment requirements for solvency evaluation purposes in certain circumstances.
- **Exemption to Adjuster Examination Requirement** – provides an exemption to the all-lines adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.
- **Surplus Lines Export Eligibility** – lowers, from $1,000,000 to $700,000, the threshold for exporting a homeowner's property insurance risk to a surplus lines insurer following a single coverage rejection.
- **Surplus Lines Insurer Eligibility** – repeals a requirement that conflicts with federal law; however, it does not affect the current eligibility determination process implemented in the state.
- **Surplus Lines Tax** – provides for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the surplus lines tax rate of each state where the risk is located.
- **Personal Financial and Health Information Privacy** – incorporates a recent amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to certain notices required by rules adopted by the Department of Financial Services and the Financial Services Commission.
- **Execution of Insurance Policies** – provides that an insurer may elect to issue a policy that is not executed by one of several specified insurer representatives and that the policy is not invalid despite not being executed.
- **Notice of Policy Change** – requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").
- **Property Insurance Claim Mediation** – provides that a third-party assignee may request mediation of property insurance claims; except, an insurer is not required to participate in mediations requested by the assignee.
- **Proof of Mailing** – permits motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices.
- **Transportation Network Company Related Automobile Liability Insurance Exclusions** – allows private passenger motor vehicle insurers to generally exclude coverage of transportation network services provided by a named insured, rather than limiting the exclusion to specific motor vehicles.
- **Filing Exception for Specialty Insurers** – authorizes specialty insurers to overcome a presumption of control regarding acquisition of stocks, interests, and assets of other companies in the same manner as insurers.
- **Confidentiality of Documents Submitted to the Office of Insurance Regulation** – expands the confidentiality of documents submitted to the Office of Insurance Regulation (OIR) under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained, rather than only when they are obtained from OIR.
- **Reciprocal Insurer Reserve Requirements** – revises unearned premium reserve requirements.
- **Delivery of Policies** – authorizes motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver agreements and HMO contracts, respectively, in the same manner as currently required for insurers, including the posting of boilerplate contents on a website and requiring delivery within 60 days, rather than 45 days and 10 days, respectively.

The bill has no impact on state or local government revenues or expenditures. It has positive and negative impacts on the private sector.

The bill is effective upon becoming law.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Foreign Insurer Stock Valuation**

Chapter 625, F.S., regulates the financial dealings of insurers admitted to do insurance business in this state and empowers OIR to regulate and oversee their financial conduct. Among other things, the law provides for the valuation of a variety of assets held by the insurer, which contribute to the insurer's financial stability and, in the event of troubled assets, possible instability or insolvency.

Assets held in the form of stock in a subsidiary corporation are subject to maximum percentages of investments by the insurer, as follows:

- If the insurer's surplus, including investments in subsidiaries, does not exceed $100 million, the maximum percentage of investment in the subsidiaries may not exceed the lesser of:
  - 10 percent of admitted assets;[1] or,
  - 50 percent of the surplus in excess of minimum required surplus.[2]
- If the insurer's surplus, including investments in subsidiaries, is $100 million, or more, the maximum percentage investment in the subsidiaries may not exceed:
  - 25 percent of admitted assets.

The valuation of the stock held in the subsidiary may not exceed the net value established using only the assets of the subsidiary eligible under part II of ch. 625, F.S. The valuation of stocks and securities must be consistent with methods published by the National Association of Insurance Commissioners (NAIC).[3]

Part II of ch. 625, F.S., regulates the valuation of investments by domestic insurers and commercially domiciled insurers.[4] However, the law also provides that "[t]he investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required under [ch. 625, F.S.] for similar funds of like domestic insurers."[5]

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.[6] These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, it is necessary to review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.[7]

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[1] "Admitted assets" are "assets recognized and accepted by state insurance laws in determining the solvency of insurers and reinsurers. To make it easier to assess an insurance company's financial position, state statutory accounting rules do not permit certain assets to be included on the balance sheet. Only assets that can be easily sold in the event of liquidation or borrowed against, and receivables for which payment can be reasonably anticipated, are included in admitted assets." https://www.iii.org/resource-center/iii-glossary/A (last visited Jan. 15, 2018).

[2] s. 625.151(3)(a), F.S.

[3] s. 625.151(4), F.S.

[4] s. 625.301, F.S

[5] s. 625.340, F.S.

[6] Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), Standard & Poor's (www.standardandpoors.com), and Demotech (www.demotech.com).

[7] See A.M. BEST COMPANY, Guide to Best's Financial Strength Ratings, http://www.ambest.com/ratings/guide.pdf (Last visited Jan. 15, 2018).

*Effect of the Bill*

The bill provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from the limitations on valuation and investment requirements of ss. 625.151(3) and 625.325, F.S., for solvency evaluation purposes. The exemption applies if the investment is allowed under the laws of the insurer's domicile state provided that state is a member of NAIC. In addition, the subsidiary's stock must be valued by NAIC's Securities Valuation Office (SVO)[8] with a rating of 1, 2, or 3 or be exempt from NAIC filing and carry a rating assigned by a nationally recognized statistical rating organization that is equivalent to SVO's rating.[9]

**Exemptions to Adjuster Examination Requirement**

An adjuster is "an individual employed by a property/casualty insurer to evaluate losses and settle policyholder claims."[10] An adjuster may be licensed as either an "all-lines adjuster" or a "public adjuster."[11] An all-lines adjuster "is a person who, for money, commission, or any other thing of value, directly or indirectly undertakes on behalf of a public adjuster or an insurer to ascertain and determine the amount of any claim, loss, or damage payable under an insurance contract or undertakes to effect settlement of such claim, loss, or damage."[12] Subject to certain exceptions, a public adjuster is someone that is paid by an insured to prepare and file a claim against their insurer.[13] Adjusters are commonly understood as an insurer's representative in an insurance claim. The public is not generally aware of the role of a public adjuster, but access to their services becomes competitive following natural disasters or other mass loss/claim events (e.g., hurricanes, tornadoes, floods, and fires).

Among other requirements, an applicant must pass an examination to obtain an adjuster's license; however, the examination requirement is waived if they have attained certain professional designations that document their successful completion of professional education coursework. This is true for applicants for life and health agents,[14] general lines agents,[15] adjusters,[16] resident or nonresident all-lines adjusters,[17] and non-resident agents.[18] An examination is not required for all-lines adjuster applicants with the following professional designations:

- Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state;
- Associate in Claims (AIC) from the Insurance Institute of America;
- Professional Claims Adjuster (PCA) from the Professional Career Institute;
- Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy;

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[8] http://www.naic.org/svo.htm (last visited Jan. 14, 2018).

[9] NAIC has published tables of equivalent ratings comparing SVO ratings to ratings published by nationally recognized statistical rating organizations. http://www.naic.org/documents/svo_naic_aro.pdf (last visited Jan. 14, 2018).

[10] https://www.iii.org/resource-center/iii-glossary/A (last visited Jan. 20, 2018).

[11] s. 626.864, F.S. An individual may be licensed as either an all-lines adjuster or a public adjuster, but not both. An all-lines adjuster may be appointed as one, but no more than one at a time, of the following: independent adjuster, public adjuster apprentice, or company employee adjuster.

[12] ss. 626.015(2) and 626.8548, F.S.

[13] s. 626.854, F.S. A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim. s. 626.854(1), F.S.

[14] s. 626.221(g), F.S.

[15] s. 626.221(h), F.S.

[16] *Id.*

[17] s. 626.221(j), F.S.

[18] s. 626.211(l), F.S.

- Certified Adjuster (CA) from ALL LINES Training;
- Certified Claims Adjuster (CCA) from AE21 Incorporated; or
- Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM).

DFS must approve the curriculum, which must include comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license.[19] The curriculum must include 40 hours of instruction covering all of the topics in the all-lines adjuster Examination Content Outline adopted by DFS.[20] DFS only approves curriculum related to adjuster licensing for designations listed in s. 626.221(2)(j), F.S.

WebCE, Inc., is a national provider of professional and continuing educational courses.[21] They provide education related to multiple professions, including: insurance, financial planning, accounting, and tax. Participants can obtain the following professional designations from WebCE: Certified Financial Planner (CFP), Certified Investment Management Analyst (CIMA), Certified Private Wealth Advisor (CPWA), and Certified Fraud Examiner (CFE). WebCE provides continuing education to insurance professionals with courses in subjects of life and health, property and casualty, adjuster, and limited lines.

*Effect of the Bill*

The bill provides an exemption to the all-lines adjuster licensing exam requirements to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.

**Surplus Lines**

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[22] There are three basic categories of surplus lines risks:

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

Surplus lines insurers are not "authorized" insurers as defined in the Insurance Code,[23] which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[24] Rather, surplus lines insurers are "unauthorized" insurers,[25] but may transact surplus lines insurance if they are made eligible by OIR.

Export Eligibility

"To export" a policy means to place it with an unauthorized insurer under the Surplus Lines Law.[26] Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[27] "Diligent effort" means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is $1,000,000 or more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking

[19] s. 626.221(2)(j), F.S. In addition, DFS must adopt rules establishing standards for the approval of curriculum.
[20] Rule 69B-227.320, F.A.C.
[21] https://www.webce.com/ (last visited Jan. 20, 2018).
[22] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. s. 626.921, F.S.
[23] The Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. s. 624.01, F.S.
[24] s. 624.09(1), F.S.
[25] s. 624.09(2), F.S.
[26] s. 626.914(3), F.S.
[27] s. 626.916(1)(a), F.S.

and being denied coverage from at least one authorized insurer in the admitted market.[28] The law further specifies that:[29]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,[30] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

As of January 1, 2017, Citizens decreased the maximum coverage limit for dwellings from $1,000,000 to $700,000 statewide, except for Miami-Dade and Monroe counties.[31]

*Effect of the Bill*

The bill allows homeowner's property insurance for a residential dwelling with a replacement cost of $700,000 or more to be exported to a surplus lines insurer following a single coverage rejection. This reduces, from three to one, the number of coverage rejections required prior to exportation for homes valued between $700,000 and $1,000,000.

Insurer Registration

The Florida Surplus Lines Service Office (FSLSO)[32] must file a written request with OIR in order for a surplus lines insurer to become eligible to underwrite insurance risks in Florida.[33] Subsequent to the adoption of this requirement, Congress passed the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA).[34] The NRRA requires the eligibility of surplus lines insurers to be determined in compliance with its criteria, unless the state has adopted nationwide uniform eligibility requirements.[35] OIR has implemented such eligibility determination standards that may be accessed directly by interested surplus lines insurers. Accordingly, surplus lines insurers apply directly to OIR rather than having FSLSO make the written request. The statute requiring such a written request by FSLSO has become superfluous because it conflicts with NRRA and is no longer implemented.

*Effect of the Bill*

The bill repeals the requirement that FSLSO submit written requests to OIR for eligibility purposes.

Tax

Surplus lines policies are taxed at five percent of all gross premiums.[36] However, a surplus lines policy written in Florida may cover risks that are only partially located in this state. This is because the

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[28] s. 626.914(4), F.S.
[29] s. 626.916(1), F.S.
[30] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[31] https://www.citizensfla.com/-/20160726-maximum-coverage-limit-decreased (last visited Jan. 14, 2018).
[32] s. 626.921, F.S.
[33] OIR uses an online system to receive and process requests for authority to do insurance business in Florida. https://www.floir.com/iportal (last visited Jan. 20, 2018).
[34] 15 U.S.C. § 8201 *et seq.*
[35] 15 U.S.C. § 8204.
[36] s. 626.932(1), F.S. The surplus lines premium taxes of the many states, District of Columbia, Puerto Rico, and Virgin Islands vary from a low of 1 percent in Iowa to a high of 9 percent in Puerto Rico. Four jurisdictions apply a higher tax rate than Florida (AL, KS, OK, and Puerto Rico). Seven jurisdictions tax surplus lines premiums at the same rate as Florida, i.e., 5 percent (LA, MO, NJ, NC,

insured's business, property, or other risks cross state lines. Since not all states use gross premiums as the taxable base nor use the same tax rate, this can lead to disparities in cost associated with the applicable premium tax law of other states.

The law provides that, if Florida is the "home" state, as defined under applicable federal law,[37] the tax is computed on the gross premium to facilitate uniform application of the tax rate to the gross premiums paid on multi-state risks. The law also provides that the surplus lines premium tax is limited to the tax rate in the state where the risk is located. This causes the surplus lines agent to calculate and the FSLSO to collect premium tax in a manner that coordinates the tax rate of premiums covering risks located in Florida and other states. This results in an effective tax rate on total taxable premiums that is lower than the statutory five percent.

*Effect of the Bill*

The bill repeals the provision requiring premium tax to be calculated at the rate of the tax allowed in the state where the risk is located. In order to avoid an unintended increase in premium tax revenue that would result if the five percent surplus lines premiums tax applicable to risks located in this state were applied to risks located other states, the bill lowers the tax to 4.936 percent.[38] On average, the tax rate will remain unchanged and the burden on surplus lines agents will be simplified (i.e., they will only have to apply Florida's tax rate, rather than applying the tax rate of multiple states to various portions of premiums within a single policy). On January 26, 2018, the Revenue Estimating Conference of the Office of Economic & Demographic Research found that this change would have no impact on state revenues.[39]

**Personal Financial and Health Information Privacy**

DFS and the Financial Services Commission (Commission) are required to adopt rules governing the use of a consumer's non-public personal financial and health information by regulated entities.[40] The rules must be consistent with and not more restrictive than the requirements of Title V of the Gramm-Leach-Bliley Act of 1999. However, in December 2015, the Gramm-Leach-Bliley Act was amended by the Fixing America's Surface Transportation (FAST) Act.[41] The law governing DFS and Commission rules on privacy of consumer's non-public personal financial and health information does not yet incorporate this change. FAST added the following exception to the annual notice requirement found in Section 503 of the Gramm-Leach-Bliley Act:[42]

> (f) Exception to Annual Notice Requirement.--A financial institution that--
> (1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and
> (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,

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OH, TN, and the Virgin Islands). The remaining 41 jurisdictions apply a tax rate lower than Florida. United States Government Accountability Office, REPORT TO CONGRESSIONAL COMMITTEES, PROPERTY AND CASUALTY INSURANCE, EFFECTS OF THE NONADMITTED AND REINSURANCE REFORM ACT OF 2010, GAO-14-136, January 2014, https://www.gao.gov/assets/670/660245.pdf (last visited Jan. 20, 2018).

[37] 15 U.S.C. § 8201 *et seq.*

[38] The Florida Surplus Lines Service Office reports that they received $235.8 million in tax revenues on $4.7768 billion in total taxable premium in 2017 (0.2358 / 4.7768 = 4.936%). Email from Sheila Pearson, Controller, Florida Surplus Lines Service Office, Re: HB 465 - impact of proposed change to s. 626.932, F.S. (Jan. 17, 2018).

[39] OFFICE OF ECONOMIC & DEMOGRAPHIC RESEARCH, REVENUE ESTIMATING CONFERENCE IMPACT CONFERENCE, *01/26/18 Revenue Impact Results*, pp. 328-330, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0126.pdf (last visited Jan. 30, 2018).

[40] s. 626.9651, F.S.

[41] https://www.congress.gov/bill/114th-congress/house-bill/22/text (last visited Jan. 14, 2018).

[42] 15 U.S.C. §6803.

shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

*Effect of the Bill*

The bill incorporates FAST's amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to rules adopted by DFS and the Commission. This nullifies any existing rules and prohibits any new rules that would require an annual notice that would be exempted by FAST.

**Execution of Insurance Policies**

Part II of ch. 627, F.S., specifies numerous requirements applicable to insurance contracts.[43] These requirements apply to all aspects of the insurance transaction from the initial application to the cancellation, non-renewal, or lapse of the policy. This includes requirements concerning the execution of the policy.[44] The policy must be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer. A facsimile signature of one of the specified persons is acceptable and the policy cannot be made invalid because the facsimile signature is that of an individual who did not have the authority to execute the policy on the date of issuance.

*Effect of the Bill*

The bill provides that an insurer may elect to issue an insurance policy without being executed by one of the specified insurer representatives. If such a policy is issued, it is not invalid despite not being executed.

**Notice of Policy Change**

An insurer is prohibited from changing policy terms at renewal, unless they issue a notice of change in policy terms.[45] A change in policy terms includes, the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy, not including typographical or scrivener's errors or the application of mandated legislative changes. The notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.

The policyholder must receive advance written notice of the change.[46] If the insurer fails to issue the notice, coverage continues until the next renewal occurs (with proper service of notice) or replacement coverage is obtained. The notice is required to be titled a "Notice of Change in Policy Terms." However, there is no explicit requirement for any other specific content of the notice. OIR has not adopted a rule interpreting the applicable statute.

Section 627.43141(7), F.S., states that the intent of the law is to:

- Allow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring;
- Alleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms; and,
- Encourage policyholders to discuss their coverages with their insurance agents.

Despite the stated intent, it is arguable that a bare notice with the title "Notice of Change in Policy Terms" and containing no meaningful explanation of the change in policy terms complies with the law.

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[43] Section 627.401, F.S., provides limited exceptions to the applicability of part II of ch. 627, F.S.
[44] s. 627.416, F.S.
[45] s. 627.43141(2), F.S.
[46] The written notice may be issued with the notice of renewal premium or consistent with the timeline for issuing a notice of non-renewal provided by law. *Id.*

*Effect of the Bill*

The bill requires that an insurer summarize policy changes on the required notice upon renewal, rather than merely issuing a properly titled notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").

**Property Insurance Claim Mediation**

DFS administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance[47] and automobile insurance[48] claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[49] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[50]

For property insurance claims[51] involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.[52] This means that third parties cannot utilize the program. This is true even if the policyholder assigns their policy benefit rights to the third party.[53] The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim. The mediation costs are generally the responsibility of the insurer.

*Effect of the Bill*

The bill provides that a third party who receives rights to policy benefits through an assignment may request mediation of a property insurance claim; except, an insurer is not required to participate in a mediation requested by the third-party assignee. It also conforms terminology in the applicable section of law to change the term "insured" to the term "policyholder." The terms are currently used interchangeably in the statute. This makes it clear that the purchaser of the policy is the one with mediation rights, except as provided by the bill.

**Proof of Mailing**

When cancelling or non-renewing a policy, motor vehicle insurers are required to mail the cancellation or non-renewal to the first named insured on the policy and the applicable insurance agent at least 45 days prior to the effective date of the cancellation or non-renewal. In the case of non-payment of premium, only a 10-day notice is required. A policy that has been in effect for less than 60 days cannot be cancelled. The reason for the cancellation must be included in the notice. The insurer may also transfer the policy to an insurer under the same ownership or management upon proper notice. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or registered mail.[54]

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[47] s. 627.7015, F.S.
[48] s. 626.745, F.S.
[49] s. 627.7074, F.S.
[50] ss. 627.7015, 627.7074, and 627.745, F.S.
[51] An eligible claim is one that does not involve: suspected fraud; there is no coverage under the policy; one where the insurer reasonably believes the policyholder has made material misrepresentations relevant to the claim and request for payment has been denied for that reason; one for less than $500 (unless agreed to by the parties); or, windstorm or hurricane loss if the required notice of claim was not issued in compliance with law. s. 627.7015(9), F.S.
[52] Policyholders may have the assistance of legal counsel during the mediation process. Litigants in the county and circuit court may be referred to the program. Commercial coverages, private passenger motor vehicle coverages, and liability coverages of property insurance policies are not eligible for the property insurance mediation program. s. 627.7015(1), F.S.
[53] s. 627.7015(1), F.S.
[54] s. 627.728, F.S. While certified mail and registered mail are both services currently offered by the United States Postal Service (USPS), "proof of mailing" is not a service offered. https://www.usps.com/ship/insurance-extra-services.htm (last visited Jan. 14, 2018). However, "certificate of mailing" is a service offered that documents presentment of the item to USPS.

*Effect of the Bill*

The bill permits use of the Intelligent Mail barcode,[55] or similar method approved by the United States Postal Service, to be used to establish proof that required motor vehicle insurance notices of cancellation, non-renewal, or transfer of insurer were mailed.

**Transportation Network Company Related Automobile Liability Insurance Exclusions**

While a transportation network company (TNC) driver[56] is logged on to the TNC's digital network but is not engaged in a prearranged ride, a TNC[57] (i.e., a ridesharing company like Uber, Lyft, and Sidecar) or TNC driver must have automobile insurance that provides:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.[58] The amount of insurance required is $10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death.[59]

A TNC driver is required to secure coverage while they are logged on to the TNC's digital network, but if the driver fails to do so, the TNC is required to provide coverage for the driver and vehicle. An insurer that provides an automobile liability insurance policy under part XI of ch. 627, F.S.,[60] may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride.[61] This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.

The exclusions apply notwithstanding any requirement under the Financial Responsibility Law of 1955.[62] An automobile insurer that excludes the coverage described above does not have a duty to defend or indemnify any claim expressly excluded thereunder. Some insurers offer policy addendums for the driver to purchase coverage of TNC activities.

Automobile liability insurance policies cover automobiles identified on the policy and the policyholder when operating other motor vehicles. However, s. 627.728(8)(b)1., F.S., appears to limit TNC related exclusions to specific motor vehicles. It uses the specific term "that vehicle" rather than a general term

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[55] https://postalpro.usps.com/ (last visited Jan. 14, 2018).
[56] A "TNC driver" means an individual who: 1. Receives connections to potential riders and related services from a transportation network company; and 2. In return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. s. 627.728(1)(f), F.S.
[57] "Transportation Network Company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section. s. 627.728(1)(e), F.S.
[58] ss. 627.730-627.7405, F.S.
[59] s. 627.736, F.S.
[60] Part XI of ch. 627, F.S., relates to motor vehicle and casualty insurance contracts.
[61] s. 627.728(8)(b), F.S.
[62] ch. 324, F.S.

like "a vehicle." Arguably, current law allows a coverage exclusion applicable to a particular vehicle while the vehicle is used as a TNC vehicle, but it does not explicitly allow a coverage exclusion applicable to the named insured(s) when operating as TNC driver using another vehicle, which is not listed on policy. In other words, a question arises over whether the coverage exclusion applies to a vehicle that the insured borrows and uses as a TNC vehicle.

*Effect of the Bill*

The bill allows private passenger motor vehicle liability insurers to generally exclude coverage of a named insured's TNC related activities, rather than limiting the exclusion to a specific motor vehicle.

**Filing Exception for Specialty Insurers**

In 2014, the Legislature passed CS/CS/SB 1308,[63] which implemented new elements of NAIC Model Acts related to risk-based capital, holding company systems, standard valuation, and actuarial opinions and memorandum. This was primarily in response to the financial crisis of 2008. The financial crisis was affected by the impact of common ownership and control of insurance and financial services companies, such that when one company became financially troubled or insolvent, the value and solvency of related companies also became affected. This led regulators to have an interest in knowing and understanding the web of controlling interests among related companies. This legislation created a presumption of control in certain interests and acquisitions among related companies.

While not a portion of a model act, the 2014 bill allowed insurers to overcome the presumption of control by either filing a disclaimer of control on a form prescribed by OIR or by providing a copy of the applicable Schedule 13G on file with the federal Securities and Exchange Commission (SEC).

After a disclaimer is filed, the insurer is relieved of any further duty to register or report under s. 628.461, F.S., unless OIR disallows the disclaimer. Specialty insurers must meet similar requirements addressing solvency and organizational risk controls as those created for insurers; however they do not have the option of filing their SEC Schedule 13G to rebut the presumption of control.

Specialty insurers are defined as:[64]

- Motor vehicle service agreement companies;
- Home warranty associations;
- Service warranty associations;
- Prepaid limited health service organizations;
- Authorized health maintenance organizations;
- Authorized prepaid health clinics;
- Legal expense insurance corporations;
- Providers licensed to operate a facility that undertakes to provide continuing care;
- Multiple-employer welfare arrangements;
- Premium finance companies; and
- Corporations authorized to accept donor annuity agreements.

*Effect of the Bill*

The bill adds viatical settlement providers to the list of specialty insurers and allows any specialty insurer to overcome the presumption of control by filing with OIR a disclaimer of control on an OIR form or a copy of their SEC Schedule 13G.

[63] Ch. 2014-101, Laws of Fla.
[64] s. 627.4615(1), F.S.

**Confidentiality of Documents Submitted to the Office of Insurance Regulation**

In 2011, as part of NAIC's Solvency Modernization Initiative, NAIC adopted a new insurance regulatory tool: the Own Risk and Solvency Assessment (ORSA). ORSA requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process and allows regulators to form an enhanced view of an insurer's ability to withstand financial stress, particularly on a holding company's level.[65] In essence, an ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA requires insurers to analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

Insurers and insurance groups are required to articulate their own judgment about risk management and the adequacy of their capital position. This is meant to encourage management to anticipate potential capital needs and to take action proactively, and serves as an early warning mechanism for insurance regulators. ORSA is not a one-off exercise - it is a continuous evolving process and should be a component of an insurer's enterprise risk-management framework. Moreover, there is no mechanical way of conducting an ORSA; how to conduct the ORSA is left to each insurer to decide, and actual results and contents of an ORSA report will vary from company to company. The output is a set of documents that demonstrate the results of management's self-assessment.

Effective January 1, 2018, ORSA is an NAIC accreditation standard for state insurance regulators. During the 2016 Regular Session, the Legislature passed CS/CS/HB 1422[66] and CS/CS/HB 1416[67] adopting ORSA requirements for Florida regulated insurers and providing a public record exemption for information produced to OIR in required ORSA filings, respectively.

The law requires insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
    - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations.
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;[68] and
- File an ORSA summary report, based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
    - Be submitted once every calendar year;
    - Include notification to OIR of its proposed annual submission date by December 1, 2016; initial ORSA summary report must be submitted by December 31, 2017;
    - Include a brief description of material changes and updates from the prior year's report;
    - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide a copy to the board of directors or appropriate board committee; and
    - Be prepared in accordance with the ORSA Guidance Manual; the insurer must maintain and make documentation and supporting information available for OIR examination.

The law provides that an ORSA summary report and certain other related information are confidential and exempt public record information. In addition, that information in required ORSA filings is

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[65] NAIC, *Own Risk and Solvency Assessment (ORSA)*, at http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 15, 2018).

[66] Ch. 2016-206, Laws of Fla.

[67] Ch. 2016-205, Laws of Fla.

[68] The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by NAIC. *See* NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf (last visited Jan. 15, 2018).

privileged, may not be produced by OIR in response to a subpoena or discovery request directed to OIR, and, if such information is obtained from OIR, it is not admissible in evidence in any private civil action.[69]

*Effect of the Bill*

The bill expands the confidentiality of documents submitted to OIR under ORSA requirements to prohibit these documents from being admitted as evidence in a private civil action regardless of the source of the ORSA documents, rather than only when they are obtained from OIR. This change relates to use of these documents while in private hands and not to public record information held by the state.

**Reciprocal Insurer Reserve Requirements**

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.[70] Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as "subscribers."[71] The subscribers generally have something in common. There are currently four companies active in Florida and licensed as reciprocal insurers under s. 629.401, F.S.[72]

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.[73] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[74]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for authority to transact insurance.[75] Reciprocal insurers may transact any kind of insurance other than life or title.[76]

Reciprocal insurers offering property insurance are required to maintain an unearned premium[77] reserve consistent with the requirement generally applicable to property insurers under the Insurance Code.[78] This reserve requirement ensures the availability of funds for transfer to loss reserves when losses are incurred during the policy period or refunds that become due before the premium is earned, among other things. Premiums ceded to reinsurers for the purchase of reinsurance may be deducted from unearned premiums.

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[69] s. 628.8015(4), F.S.
[70] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[71] ss. 629.011 and 629.021, F.S.
[72] https://www.floir.com/CompanySearch/ (last visited Jan. 21, 2018). Under "Company Type," select "Reciprocal."
[73] ss. 629.011 and 629.101, F.S.
[74] Moriarty, *supra* note 69.
[75] s. 629.081(1), F.S.
[76] s. 629.041(1), F.S.
[77] "Unearned premium" is the portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. https://www.iii.org/resource-center/iii-glossary (last visited Jan. 13, 2018).
[78] s. 625.051, F.S. This section does not apply to title insurers. s. 625.051(5), F.S.

Property insurers are required to retain unearned premiums on reserve in the following proportions based upon the length of the policy period, as follows:

| Policy Term | Proportion Required to be Reserved | |
|---|---|---|
| 1 year or less | | 1/2 |
| 2 years | 1st year | 3/4 |
| | 2nd year | 1/4 |
| 3 years | 1st year | 5/6 |
| | 2nd year | 1/2 |
| | 3rd year | 1/6 |
| 4 years | 1st year | 7/8 |
| | 2nd year | 5/8 |
| | 3rd year | 3/8 |
| | 4th year | 1/8 |
| 5 years | 1st year | 9/10 |
| | 2nd year | 7/10 |
| | 3rd year | 1/2 |
| | 4th year | 3/10 |
| | 5th year | 1/10 |
| Over 5 years | | pro rata |

In the alternative, insurers are allowed to calculate unearned premium reserves on monthly or more frequent pro rata basis. In other words, the insurer may reduce unearned premium reserves on a one-year policy at the rate of 1/12 per month or, for a two-year policy at 1/24 per month, and so on. Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.[79]

NAIC has developed a model act for regulation of reciprocals. Section 7., Reserves, of NAIC Model Act 356, Model Indemnity Contracts Act,[80] provides for an unearned premium reserve, as follows:

> There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than $25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

*Effect of the Bill*

The bill revises the unearned premium reserve requirement that must be met by a reciprocal insurer, regardless of the line of insurance underwritten. The reciprocal insurer must retain 50 percent of "net written premiums" on policies having a policy period of one year or less. "Net written premiums" means premium payments made or due from subscribers after deducting expenses specified in the

[79] s. 629.401(6)(b)24., F.S. OIR may require reciprocal insurers to calculate unearned premium reserves on a different time basis. Marine and transportation risk premiums are not earned until the trip is completed and must be entirely kept in unearned premium reserve until then.

[80] http://www.naic.org/store/free/MDL-356.pdf (last visited Jan. 13, 2018).

subscriber's agreement, including reinsurance costs and subscriber fees. To take the deduction from "net written premiums" for subscriber fees, the power of attorney agreement must contain an explicit provision to return subscriber fees on a pro rata basis for cancelled policies. The bill requires an unearned premium reserve of $100,000, at all times, and provides a mechanism to return the reserve to that amount if it is not maintained at the required amount.

**Delivery of Policies by Motor Vehicle Service Agreement Companies and Health Maintenance Organizations**

The law requires every insurance policy[81] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect.[82] Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

Insurers are allowed to post insurance policies not containing policyholder personal identifiable information for certain types of insurance on the insurer's website instead of mailing or delivering the policy to the insured. Only policies for property and casualty insurance are allowed to be posted online. Casualty insurance includes automobile policies, workers' compensation policies, liability policies, and malpractice policies, among others.[83] Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.[84] The policy information posted online is general in nature.

The policy declarations page, which contains personal information about the policyholder, is provided to the policyholder in another manner, usually by mail. The declarations page must also identify the exact policy form purchased by the policyholder so the policyholder can find the policy on the insurer's website.

If an insurer opts to post an insurance policy online instead of mailing it, the policy must be easily accessible on the insurer's website and posted in a format that allows the policy to be printed by the policyholder free of charge. Insurers posting policies on their website must notify each policyholder of their right to request and obtain a paper or electronic copy of the policy without charge, but policyholder consent is not required for an insurer to post an insurance policy online. Insurers must also notify policyholders of this right if the insurer changes a policy. Insurers posting policies online must archive expired policies for five years on the insurer's website and archived policies must be available to policyholders at their request.

*Effect of the Bill*

The bill requires motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver motor vehicle service agreements and HMO contracts in compliance with the standards applicable to insurers. This changes the timeline for delivery of a motor vehicle service agreement from 45 days to 60 days and for HMO contracts from ten days from enrollment to 60 days. It also allows posting of the non-personal portions of agreements and contracts, as applicable, on a website in the manner allowed for policies by insurers. The personal portions of these documents would be delivered by other allowable means, usually mailing.

B. SECTION DIRECTORY:

**Section 1.** Amends s. 625.151, F.S., relating to valuation of other securities.

**Section 2.** Amends s. 625.325, F.S., relating to investments in subsidiaries and related corporations.

**Section 3.** Amends s. 626.221, F.S., relating to examination requirement; exemptions.

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[81] s. 627.402, F.S., defines policy to include endorsements, riders, and clauses. Reinsurance, wet marine and transportation insurance, title insurance, and credit life or credit disability insurance policies do not have to be mailed or delivered. s. 627.401, F.S.
[82] s. 627.421, F.S.
[83] s. 624.605, F.S.
[84] See s. 624.604, F.S., defining property insurance and s. 627.4025, F.S., defining residential property insurance.

**Section 4.** Amends s. 626.914, F.S., relating to definitions.

**Section 5.** Repeals s. 626.918(2)(a), F.S., relating to eligible surplus lines insurers.

**Section 6.** Amends s. 626.932, F.S., relating to surplus lines tax.

**Section 7.** Amends s. 626.9651, F.S., relating to privacy.

**Section 8.** Amends s. 627.416, F.S., relating to execution of policies.

**Section 9.** Amends s. 627.43141, F.S., relating to notice of change in policy terms.

**Section 10.** Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

**Section 11.** Amends s. 627.728, F.S., relating to cancellations; nonrenewals.

**Section 12.** Amends s. 627.748, F.S., relating to transportation network companies.

**Section 13.** Amends s. 628.4615, F.S., relating to specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.

**Section 14.** Amends s. 628.8015, F.S., relating to own-risk and solvency assessment; corporate governance annual disclosure.

**Section 15.** Amends s. 629.401, F.S., relating to insurance exchange.

**Section 16.** Amends s. 634.121, F.S., relating to forms, required procedures, provisions.

**Section 17.** Amends s. 641.3107, F.S., relating to delivery of contract.

**Section 18.** Provides an effective date of upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None. On January 26, 2018, the Revenue Estimating Conference of the Office of Economic & Demographic Research found that the change in surplus lines insurance premium tax would have no impact on state revenues.[85]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[85] OFFICE OF ECONOMIC & DEMOGRAPHIC RESEARCH, REVENUE ESTIMATING CONFERENCE IMPACT CONFERENCE, *01/26/18 Revenue Impact Results*, pp. 328-330, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/Impact0126.pdf (last visited Jan. 30, 2018).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Reducing the number of coverage rejections required prior to exportation of a residential dwelling valued between $700,000 and $1,000,000 to the surplus lines market may remove some of these risks from the admitted market in the state. Owners in this home value range may find it easier to obtain coverage at a price acceptable to them.

Revising the surplus lines tax to provide for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the tax rate of each state where the risk is located, will cause a net decrease in tax burden on average to payors with Florida based risks and a net increase on average to payors with multi-state risks, but the net increase and net decrease is expected to offset and result in no change in tax revenue solely attributable to the tax rate change.

Incorporating the recent amendment to the Gramm-Leach-Bliley Act will reduce costs to insurers, because they will be relieved from issuing certain required notices of change, if the underlying document was not changed.

Changes to the proof of mailing requirements may create savings for insurers.

Allowing private passenger motor vehicle insurers to generally exclude motor vehicles used to provide transportation network services will reduce losses incurred by the insurer. Since the transportation network company is required to provide coverage when the driver fails to do so, a general exclusion applicable to the driver's policy may increase losses incurred by the company's insurer.

Exempting certain monies from a reciprocal insurer's reserve requirements will reduce the amount of funds that must be retained in reserves and allow it to be utilized by the reciprocal insurer for other purposes.

Allowing motor vehicle service agreement companies and HMOs to post general agreement and contract language, respectively, to their websites will reduce their costs.

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 23, 2018, the Insurance & Banking Subcommittee considered a proposed committee substitute, adopted one amendment to the proposed committee substitute, and reported the bill favorably as a committee substitute. The amendment removed a provision that would have created a public records exemption that was not in the bill, as filed. The committee substitute made the following deletions and additions.

- **Deletions** – the bill no longer:
  - Specifies that third-party vendors, as an assignee of policy benefits, are not insurance consumers and will not be used for purposes of calculating complaint ratios;
  - Increases surplus lines insurer's capital and surplus requirements from $25 million to $30 million that qualifies them for a regulatory exception;
  - Makes the filing of certain fraud data reporting elements elective;
  - Prohibits a surplus lines insurer from being joined into a court case over a claim until after the claimant has prevailed in a claim against an insured; and
  - Expands a licensure exemption that relieves sellers of travel insurance from required health insurance agent licensing to allow anyone to sell such prepaid limited health service contracts without licensure, if the contract only relates to air ambulance coverage.

- **Additions** – the bill now:
  - Provides an exemption to the adjuster licensing exam to individuals who receive a Claims Adjuster Certified Professional (CACP) designation from WebCE, Inc.;
  - Repeals a requirement related to surplus lines insurer registration that conflicts with federal law; however, it does not affect the current eligibility determination process implemented in the state;
  - Provides for a uniform surplus lines tax of 4.936 percent of gross premiums, regardless of where the risk is located, rather than the tax rate of each state where the risk is located (surplus lines premiums on Florida risks are currently taxed at five percent);
  - Specifies that an insurer may elect to issue an insurance policy without being executed by one of several specified insurer representatives and the policy is not invalid despite not being executed;
  - Requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms");
  - Authorizes specialty insurers to disclaim a presumption of control regarding acquisition of stocks, interests, and assets of other companies in the same manner as insurers, also, it adds viatical settlement providers to the list of specialty insurers, for this purpose;
  - Revises unearned premium reserve requirements applicable to reciprocal insurers; and
  - Authorizes motor vehicle service agreement companies and health maintenance organizations (HMO) to deliver agreements and HMO contracts, respectively, in the same manner as currently required for insurers, including the posting of boilerplate contents on a website and requiring delivery within 60 days, rather than 45 days and 10 days, respectively.

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

A bill to be entitled

An act relating to insurance; amending s. 625.151, F.S.; providing an exception from valuation rules for stocks in subsidiaries for certain foreign insurers under certain conditions; amending s. 625.325, F.S.; exempting foreign insurers from investment requirements relating to subsidiaries and corporations under certain conditions; amending s. 626.221, F.S.; providing an exception from an examination requirement for an all-lines adjuster license applicant with a specified designation; amending s. 626.914, F.S.; revising the definition of the term "diligent effort" to decrease the replacement cost threshold for a residential structure for purposes of proving rejection of coverage by authorized insurers; repealing s. 626.918(2)(a), F.S., relating to eligibility of certain surplus lines insurers; amending s. 626.932, F.S.; revising a premium receipts tax for specified coverages; deleting a provision relating to a surplus lines tax threshold; amending s. 626.9651, F.S.; revising requirements for rules adopted by the Department of Financial Services and the Financial Services Commission relating to the privacy of certain consumer information; amending s. 627.416, F.S.; revising requirements for execution of

insurance policies; amending s. 627.43141, F.S.; revising the requirements for notice of change in policy terms; amending s. 627.7015, F.S.; authorizing insurers to participate in mediations requested by third parties; revising terminology; amending s. 627.728, F.S.; providing requirements for sufficient proof of notice for certain motor vehicle insurance notices; amending s. 627.748, F.S.; revising circumstances in which insurers may exclude coverage for owners or operators of transportation network company vehicles; amending s. 628.4615, F.S.; revising the definition of the term "specialty insurer" to include viatical settlement providers; providing requirements and procedures for a person seeking to rebut a presumption of control in a specialty insurer; amending s. 628.8015, F.S.; revising the type of documents that are not admissible in evidence in a private civil action; amending s. 629.401, F.S.; revising reserve requirements for reciprocal insurers; amending s. 634.121, F.S.; providing definitions; providing that provisions relating to the delivery of insurance policy documents by insurers to policyholders apply to certain motor vehicle service agreements provided by motor vehicle service agreement companies; deleting specified methods for the delivery

of such documents; amending s. 641.3107, F.S.; providing definitions; providing that provisions relating to the delivery of insurance policy documents by insurers to policyholders apply to delivery of such documents by health maintenance organizations to subscribers; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (3) of section 625.151, Florida Statutes, to read:

625.151 Valuation of other securities.—

(3) Stock of a subsidiary corporation of an insurer may ~~shall~~ not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under part II for investment of the funds of the insurer directly.

(c) This subsection does not apply to stock of a subsidiary corporation or related entities of a foreign insurer that is permissible under the laws of its state of domicile if the state of domicile is a member of the National Association of Insurance Commissioners.

Section 2. Subsection (7) is added to section 625.325, Florida Statutes, to read:

625.325 Investments in subsidiaries and related

corporations.—

(7) APPLICABILITY.-This section does not apply to a foreign insurer's investments in its subsidiaries or related corporations if:

(a) The foreign insurer is domiciled in a state that is a member of the National Association of Insurance Commissioners.

(b) Such investments in the foreign insurer's subsidiaries or related corporations are:

1. Permitted under the laws of the foreign insurer's state of domicile.

2.a. Assigned a rating of 1, 2, or 3 by the Securities Valuation Office of the of the National Association of Insurance Commissioners; or

b. Qualify for the National Association of Insurance Commissioners' filing exemption rule and assigned a rating by a nationally recognized statistical rating organization that would be equivalent to a rating of 1, 2, or 3 by the Securities Valuation Office.

Section 3. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a

regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 4. Subsection (4) of section 626.914, Florida Statutes, is amended to read:

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

(4) "Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling replacement cost of $700,000 ~~$1 million~~ or more, the term means seeking coverage from and having been rejected by at least one

authorized insurer currently writing this type of coverage and documenting this rejection.

Section 5. Paragraph (a) of subsection (2) of section 626.918, Florida Statutes, is repealed.

Section 6. Subsections (1) and (3) of section 626.932, Florida Statutes, are amended to read:

626.932 Surplus lines tax.—

(1) The premiums charged for surplus lines coverages are subject to a premium receipts tax of 4.936 percent ~~5 percent~~ of all gross premiums charged for such insurance. The surplus lines agent shall collect from the insured the amount of the tax at the time of the delivery of the cover note, certificate of insurance, policy, or other initial confirmation of insurance, in addition to the full amount of the gross premium charged by the insurer for the insurance. The surplus lines agent is prohibited from absorbing such tax or, as an inducement for insurance or for any other reason, rebating all or any part of such tax or of his or her commission.

(3) If a surplus lines policy covers risks or exposures only partially in this state and the state is the home state as defined in the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), the tax payable must ~~shall~~ be computed on the gross premium. ~~The tax must not exceed the tax rate where the risk or exposure is located.~~

Section 7. Section 626.9651, Florida Statutes, is amended

to read:

626.9651 Privacy.—The department and commission must ~~shall~~ each adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners; however, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended in Title LXXV of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94. If the office determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 8. Subsection (1) of section 627.416, Florida Statutes, is amended, and subsection (4) is added to that

section, to read:

627.416 Execution of policies.—

(1) Except as set forth in subsection (4), ~~every~~ insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.

(4) An insurer may elect to issue an insurance policy that is not executed by an officer, attorney in fact, employee, or representative, provided that such policy may not be rendered invalid by reason of the lack of execution thereof.

Section 9. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If such change occurs, the insurer shall give the named insured advance written notice summarizing ~~of~~ the change, which may be enclosed along with the written notice of renewal premium required under ss. 627.4133 and 627.728 or sent separately within the timeframe required under the Florida Insurance Code for the provision of a notice of nonrenewal to the named insured for that line of insurance. The insurer must also provide a sample copy of the notice to the named insured's insurance agent before or at the same time that notice is provided to the named insured. Such notice shall be entitled "Notice of Change in Policy Terms."

Section 10. Subsections (1), (3), (6), and (9) of section 627.7015, Florida Statutes, are amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(1) This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner and commercial residential insurance policies obligate policyholders to participate in a potentially expensive and time-consuming adversarial appraisal process before litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines and commercial residential policies before commencing the appraisal process, or before commencing litigation. Mediation may be requested only by the policyholder, as a first-party claimant, a third-party, as an assignee of the policy benefits, or the insurer. However, an insurer is not required to participate in any mediation

requested by a third-party assignee of the policy benefits. If requested by the policyholder, participation by legal counsel is permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(3) The costs of mediation must ~~shall~~ be reasonable, and the insurer must ~~shall~~ bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If a policyholder ~~an insured~~ fails to appear at the conference, the conference must ~~shall~~ be rescheduled upon the policyholder's ~~insured's~~ payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer must ~~shall~~ pay the policyholder's ~~insured's~~ actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled conference. The fees assessed by the administrator must ~~shall~~ include a charge necessary to defray the expenses of the department related to

its duties under this section and must ~~shall~~ be deposited in the Insurance Regulatory Trust Fund.

(6) Mediation is nonbinding; however, if a written settlement is reached, the policyholder ~~insured~~ has 3 business days within which the policyholder ~~insured~~ may rescind the settlement unless the policyholder ~~insured~~ has cashed or deposited any check or draft disbursed to the policyholder ~~insured~~ for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it is ~~shall be~~ binding and acts ~~act~~ as a release of all specific claims that were presented in that mediation conference.

(9) For purposes of this section, the term "claim" refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(a) With respect to which the insurer has a reasonable basis to suspect fraud;

(b) When ~~Where~~, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy;

(c) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation;

(d) With respect to which the amount in controversy is less than $500, unless the parties agree to mediate a dispute

involving a lesser amount; or

(e) With respect to a windstorm or hurricane loss that does not comply with s. 627.70132.

Section 11. Subsection (5) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

(5) United States postal proof of mailing, ~~or~~ certified or registered mailing, or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the United States Postal Service of notice of cancellation, of intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management, to the first-named insured at the address shown in the policy, are ~~shall be~~ sufficient proof of notice.

Section 12. Paragraph (b) of subsection (8) of section 627.748, Florida Statutes, is amended to read:

627.748 Transportation network companies.—

(8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE; EXCLUSIONS.—

(b)1. An insurer that provides an automobile liability insurance policy under this part may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle ~~while driving that vehicle~~ for any loss or injury that occurs while a TNC driver is logged on to a

digital network and driving a motor vehicle, or when ~~while~~ a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property damage;

b. Uninsured and underinsured motorist coverage;

c. Medical payments coverage;

d. Comprehensive physical damage coverage;

e. Collision physical damage coverage; and

f. Personal injury protection.

2. The exclusions described in subparagraph 1. apply notwithstanding any requirement under chapter 324. These exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile insurance policy of the TNC driver or owner of the TNC vehicle who are not occupying the TNC vehicle at the time of loss. This section does not require that a personal automobile insurance policy provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation.

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

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

Section 13. Subsections (11) through (14) of section 628.4615, Florida Statutes, are renumbered as subsections (12) through (15), respectively, subsections (1) and (7) of that section are amended, and a new subsection (11) is added to that section, to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term "specialty insurer" means any person holding a license or certificate of authority as:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011;

(b) A home warranty association authorized to issue "home warranties" as those terms are defined in s. 634.301;

(c) A service warranty association authorized to issue "service warranties" as those terms are defined in s. 634.401(13) and (14);

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636;

(e) An authorized health maintenance organization operating pursuant to s. 641.21;

(f) An authorized prepaid health clinic operating pursuant to s. 641.405;

(g) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(h) A provider that is licensed to operate a facility that undertakes to provide continuing care as those terms are defined in s. 651.011;

(i) A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;

(j) A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; ~~or~~

(k) A corporation authorized to accept donor annuity agreements pursuant to s. 627.481; or

(l) A viatical settlement provider authorized to do business in this state under part X of chapter 626.

(7) The office may disapprove any acquisition subject to

~~the provisions of~~ this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (12) ~~(11)~~, fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12) ~~(11)~~, acquires an additional stock or ownership interest in a specialty insurer or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the specialty insurer as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the specialty insurer is relieved of any duty to register or report

under this section which may arise out of the specialty insurer's relationship with the person unless the office disallows the disclaimer.

Section 14. Subsection (4) of section 628.8015, Florida Statutes, is amended to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

(4) CONFIDENTIALITY.—The required filings and related documents submitted pursuant to subsections (2) and (3) are privileged such that they may not be produced in response to a subpoena or other discovery directed to the office, and any such filings and related documents~~, if obtained from the office,~~ are not admissible in evidence in any private civil action. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning

any such filings or related documents.

Section 15. Paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the office shall regulate the exchange pursuant to the following powers, rights, and duties:

1. General examination powers.—The office shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office at the offices of the entity or person being examined. The office shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office shall investigate the new directors or principal officers of the

underwriting member. The office's investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial examination, the office may accept an audited financial statement.

6. Correction and reconstruction of records.—If the office finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the office has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such

extension of time as the office for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office as soon as reasonably possible such information about its transactions or affairs as the office requests in writing. All information furnished pursuant to the office's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of office.—The office or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the office deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office against the person or entity

examined, or against his or her or its officers, employees, or agents. The office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.

13. Publication of reports.—After an examination report has been filed, the office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office, not more than 30 days after the report has been filed, on a form furnished by the office and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the office shall pay to the office the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the office for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the office, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office or its examiner, on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the

insurance law.

b. Any such individual may execute, acknowledge, and file with the office a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using

any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office for the approval of the office.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of $3 million and thereafter shall maintain a minimum policyholder surplus of $2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of $1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of $2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of

determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office, or by the last report or examination filed by the office, whichever is more recent at the time of assumption of such risk.

24. Unearned premium reserves.—An underwriting member must at all times maintain an unearned premium reserve equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on those for longer periods, ~~All unearned premium reserves for business written on the exchange shall be calculated on a monthly or more frequent basis or on such other basis as determined by the office;~~ except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated. For the purpose of this subparagraph, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscribers fees on a pro-rata basis for cancelled policies. If there is no such provision, the unearned

premium reserve shall be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time do not amount to $100,000, there shall be maintained on deposit at the exchange at all times additional funds in cash or eligible securities which, together with the unearned premium reserves, equal $100,000. In calculating the foregoing reserves, the amount of the attorney's bond, as filed with the office and as required by s. 629.121, shall be included in such reserves. If at any time the unearned premium reserves is less than the foregoing requirements, the subscribers, or the attorney in fact, shall advance funds to make up the deficiency. Such advances shall only be repaid out of the surplus of the exchange and only after receiving written approval from the office.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net

operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its

776 funds other than such excess of surplus, as stipulated in the
777 agreement. No commission or promotion expense shall be paid in
778 connection with any such loan. The use of any surplus note and
779 any repayments thereof shall be subject to the approval of the
780 office.
781 b. Money so borrowed, together with any interest thereon
782 if so stipulated in the agreement, shall not form a part of the
783 underwriting member's legal liabilities except as to its surplus
784 in excess of the amount thereof stipulated in the agreement, nor
785 be the basis of any setoff; but until repayment, financial
786 statements filed or published by an underwriting member shall
787 show as a footnote thereto the amount thereof then unpaid,
788 together with any interest thereon accrued but unpaid.
789 30. Liquidation, rehabilitation, and restrictions.—The
790 office, upon a showing that a member or associate broker of an
791 exchange has met one or more of the grounds contained in part I
792 of chapter 631, may restrict sales by type of risk, policy or
793 contract limits, premium levels, or policy or contract
794 provisions; increase surplus or capital requirements of
795 underwriting members; issue cease and desist orders; suspend or
796 restrict a member's or associate broker's right to transact
797 business; place an underwriting member under conservatorship or
798 rehabilitation; or seek an order of liquidation as authorized by
799 part I of chapter 631.
800 31. Prohibited conduct.—The following acts by a member,

associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office upon application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct, inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the office.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office may order the suspension of further

transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding $25,000 imposed by the office.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding $25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office and shall be paid into the Insurance Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate

broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office within 30 days of the effective date thereof. The report shall set forth the details of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the

same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914 who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance

agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds

any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the office therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60

days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in sub-subparagraph a., the office shall forthwith prohibit the underwriting member from transacting business. The office shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office may disapprove any acquisition subject to

the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office issued pursuant to sub-subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office pursuant to sub-subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its

policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the

acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or

controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office that it perform its functions shall be required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

i. Any approval by the office under this subparagraph does not constitute a recommendation by the office for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates the provisions of this

sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member or controlling company without complying with the provisions of this subparagraph, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office may order the person and affiliated person to divest

themselves of any voting securities so acquired.

k.(I) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

l.(I) For the purpose of this sub-sub-subparagraph, the term "affiliated person" of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal

descendants and the parents of such other person's spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more

of the voting securities of one or more underwriting members.

m. The commission may adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person

was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term "underwriting member" is used in this subsection, it shall be construed to mean "underwriting syndicate."

47. Offsets.—Any action, requirement, or constraint imposed by the office shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to

less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988, such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. "Underwriting manager" defined.—"Underwriting manager" as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. "Affiliate and controlling company" for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment" or any "membership," "policy," "survey," "inspection," "service" fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission shall adopt rules necessary for or as an aid to the effectuation of any provision of this section.

Section 16. Subsection (6) of section 634.121, Florida

Statutes, is amended to read:

634.121 Forms, required procedures, provisions; delivery and definitions.—

(6)(a) Each service agreement, which includes a copy of the application form, must be mailed, delivered, or otherwise provided ~~electronically transmitted~~ to the agreement holder as provided in s. 627.421. As used in s. 627.421, the term:

1. "Insurance policies and endorsements," "policy and endorsements," "policy," and "policy form and endorsement form" include a motor vehicle service agreement and related endorsement forms.

2. "Insured" includes a motor vehicle service agreement holder.

3. "Insurer" includes a motor vehicle service agreement company.

(b) If the motor vehicle service agreement company elects to post motor vehicle service agreements on its Internet website in lieu of mailing or delivery to agreement holders the motor vehicle service agreement company must comply with the requirements of s. 627.421(4) ~~within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder~~

~~communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder~~.

Section 17. Section 641.3107, Florida Statutes, is amended to read:

641.3107 Delivery of contract; definitions.—

(1) ~~Unless delivered upon execution or issuance,~~ A health maintenance contract, certificate of coverage, endorsements and riders, or member handbook shall be mailed, ~~or~~ delivered, or otherwise provided to the subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group, as provided in s. 627.421.

(2) As used in s. 627.421, the term:

(a) "Insurance policies and endorsements," "policy and endorsements," "policy," and "policy form and endorsement form" include the health maintenance contract, endorsement and riders, certificate of coverage, or member handbook.

(b) "Insured" includes a subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group.

(c) "Insurer" includes a health maintenance organization.

(3) If the health maintenance organization elects to post health maintenance contracts on its Internet website in lieu of mailing or delivery to subscribers or the person who will hold the contract on behalf of a subscriber group the health maintenance organization must comply with the requirements of s. 627.421(4) ~~within 10 working days from approval of the enrollment form by the health maintenance organization or by the effective date of coverage, whichever occurs first. However, if the employer or other person who will hold the contract on behalf of the subscriber group requires retroactive enrollment of a subscriber, the organization shall deliver the contract, certificate, or member handbook to the subscriber within 10 days after receiving notice from the employer of the retroactive enrollment~~. This section does not apply to the delivery of those contracts specified in s. 641.31(13).

Section 18. This act shall take effect upon becoming a law.

## COMMERCE COMMITTEE

## HB 465 by Rep. Santiago
## Insurance

## AMENDMENT SUMMARY
## February 1, 2018

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**Amendment 1 by Rep. Santiago (Line 291):** The amendment removes the proposed revision of motor vehicle insurance coverage exclusions applicable to drivers of transportation network vehicles.

**Amendment 2 by Rep. Santiago (Line 1340):** The amendment makes the proposed revision of the surplus lines insurance premium tax effective October 1, 2018. The effective date for the remainder of the bill is unchanged.

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 Santiago offered the following:

**Amendment (with title amendment)**

Remove lines 291-334

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

Remove lines 33-36 and insert:

notices; amending s. 628.4615, F.S.; revising

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 465 (2018)

Amendment No. 2

| 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 Santiago offered the following:

**Amendment (with directory and title amendments)**

Remove line 1340 and insert:

Section 18. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a

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**D I R E C T O R Y A M E N D M E N T**

Remove line 130 and insert:

Section 6. Effective October 1, 2018, subsections (1) and (3) of section 626.932,

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

Remove line 56 and insert:

subscribers; providing effective dates.

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 553 Department of Agriculture and Consumer Services
**SPONSOR(S):** Agriculture & Property Rights Subcommittee; Raburn
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 740

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Agriculture & Property Rights Subcommittee | 14 Y, 0 N, As CS | Thompson | Smith |
| 2) Agriculture & Natural Resources Appropriations Subcommittee | 13 Y, 0 N | White | Pigott |
| 3) Commerce Committee | | Thompson | Hamon |

## SUMMARY ANALYSIS

The bill modifies several agricultural, consumer service, and licensing activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Relating to agriculture and consumer services, the bill:

- Provides that screen enclosed structures used in citrus production for pest exclusion, when consistent with DACS adopted best management practices, have no separately assessable value for purposes of ad valorem taxation;
- Transfers Apalachicola Bay Oyster Harvesting license administration from DACS to the City of Apalachicola;
- Prohibits commingling of contributions with noncharitable funds by charitable organizations;
- Allows for electronic submission of water vending-machine application forms to DACS;
- Expands consumer protections provided under the Do Not Call statute;
- Consolidates the definition of "antifreeze," extends antifreeze permitting up to 24 months, eliminates phased out antifreeze product affidavits and DACS antifreeze testing requirements;
- Allows for the lawful seizure of petroleum "skimming devices" by DACS;
- Extends brake fluid permitting up to 24-months, eliminates phased-out brake fluid product affidavits, and revises DACS brake fluid testing requirements;
- Makes definitional changes to liquefied petroleum (LP) gas licensee categories and expands the license period, replaces the two-tiered LP gas fee structure with a single tiered annual fee structure, revises the LP gas annual vehicle registration requirement, and increases the cost threshold for reporting LP gas accidents;
- Extends the expiration date for the weights and measures permitting statutes by five years;
- Removes the Nathan Mayo Building bulletin board marketing order posting requirements;
- Updates and reorganizes the Florida Seed Law to align with federal provisions; and
- Authorizes the Florida Forest Service to pay initial commercial driver license exam fees for certain employees.

Relating to licensing, the bill:

- Removes the requirement that payments of pesticide registration fees be submitted electronically;
- Allows military veterans to utilize military firearms instructor status when applying for professional firearms instructor Class "K" licensure;
- Requires DACS to expedite efforts to acquire criminal history information for concealed weapon or firearm license applicants;
- Replaces the statement under oath with a notarized statement, when replacing a lost or destroyed concealed weapon or firearm license; and
- Authorizes tax collectors to print and deliver a replacement for a lost or destroyed concealed weapon or firearm license, revises the concealed weapon or firearm license fees that a tax collector is required to collect, allows a tax collector to collect and retain convenience fees for a concealed weapon or firearm license, and authorizes tax collectors to provide concealed weapon or firearm licensure fingerprinting and photographing services.

The bill is expected to have a negative, but insignificant, fiscal impact on the Department of Agriculture and Consumer Services that can be absorbed within existing resources. See Fiscal Analysis & Economic Impact Statement section for discussion.

The effective date of the bill is July 1, 2018.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The mission of the Department of Agriculture and Consumer Services (DACS) is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;
- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.[1]

The Division of Consumer Services is the state's clearinghouse for consumer complaints, information and protection. The division regulates various businesses, such as charitable organizations and telemarketers. In addition, the division protects consumers and businesses from unfair and unsafe business practices across a wide range of market sectors, including antifreeze, brake fluid, gasoline, liquefied petroleum (LP) gas, pesticides, water vending machines, and weighing and measuring devices.[2]

The Division of Licensing administers Florida's concealed weapon or firearm licensing program and oversees Florida's private investigative, private security, and recovery services industries. This includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[3] In 2017, the division regulated almost 2 million professional licenses in the state of Florida, including approximately 1.8 million concealed weapon or firearm licenses.[4]

The bill modifies several agricultural, consumer services, and licensing activities under DACS's jurisdiction.

**Citrus Protection Structures (Section 1)**

Present Situation

Florida's "greenbelt law," allows properties classified as bona fide agricultural operations to be taxed according to the "use" value of the agricultural operation, rather than the development value.[5] Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. For purposes of the income methodology approach to assessment of property used for agricultural purposes, certain structures that are physically attached to the land are considered a part of the average yields per acre and have no separately assessable contributory (taxable) value. These structures include the following:

- Irrigation systems, including pumps and motors;

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[1] Office of Program Policy Analysis & Government Accountability (OPPAGA) Government Program Summaries (GPS), *Department of Agriculture and Consumer Services,* http://www.oppaga.state.fl.us/profiles/4122 (last visited Jan. 19, 2018).

[2] The Florida Department of Agriculture and Consumer Services, http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services (last visited Jan. 19, 2018).

[3] The Florida Department of Agriculture and Consumer Services, http://www.freshfromflorida.com/Divisions-Offices/Licensing (last visited Jan. 19, 2018).

[4] The Florida Department of Agriculture and Consumer Services Division of Licensing, *Number of Licensees by Type As of October 31, 2017,* available at: http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf (last visited Jan. 19, 2018).

[5] s. 196.461, F.S.

- Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms; and
- Structures or improvements used in horticultural production for frost or freeze protection, which are consistent with the interim measures or best management practices adopted by DACS.[6]

Effect of Proposed Changes

The bill provides that screen enclosed structures used in citrus production for pest exclusion, when consistent with DACS adopted best management practices, have no separate assessable value for purposes of ad valorem taxation. These structures are considered part of the average yields per acre, and thus have no separate assessable contributory value.

**Apalachicola Bay Oyster Harvesting License (Section 2)**

Present Situation

Current law sets forth requirements for the Apalachicola Bay oyster harvesting license (license).[7] The license first became law in 1989.[8] The license is administered by DACS and is required for persons who harvest commercial quantities of oysters from Apalachicola Bay.[9]

Proceeds from license fees are deposited in the General Inspection Trust Fund and, less reasonable administrative costs, used or distributed by DACS for the following purposes in Apalachicola Bay:
- Relaying and transplanting live oysters.
- Shell planting to construct or rehabilitate oyster bars.
- Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.
- Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.[10]

Effect of Proposed Changes

The bill transfers the license administrative responsibilities from DACS to the City of Apalachicola. Specifically, the bill requires the City of Apalachicola, instead of DACS, to issue the license and collect, deposit, and distribute the license fees. The bill requires the proceeds to be deposited into a trust account, instead of the General Inspection Trust Fund, and, less reasonable administrative costs, used or distributed by the City of Apalachicola for the purposes listed in current law. However, instead of using the funds for the purpose of relaying and transplanting live oysters, the bill requires the City of Apalachicola to use or distribute the funds for an Apalachicola Bay oyster shell recycling program.

According to DACS, transferring the license administrative responsibilities from DACS to the City of Apalachicola will eliminate departmental processing expenses and allow the City of Apalachicola to more directly control the allocation of funds for restoration activities.[11]

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[6] s. 196.461(6)(c), F.S.
[7] s. 379.361(5), F.S.
[8] Ch. 89-175, Laws of Fla.
[9] According to the Florida Department of Agriculture and Consumer Services, Apalachicola Bay Oyster Harvesting License webpage: Apalachicola Bay refers to all waters within St. George Sound, East Bay, Apalachicola Bay, St. Vincent Sound in Franklin County, and Indian Lagoon in Gulf County, including canals, channels, rivers and creeks. This information is available at: http://www.freshfromflorida.com/Business-Services/Aquaculture/Apalachicola-Bay-Oyster-Harvesting-License (last visited Jan. 19, 2018).
[10] s. 379.361(5)(i), F.S.
[11] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 3 (Nov. 21, 2017).

**Pesticide Registration Payment Method (Section 3)**

Present Situation

All payments of pesticide registration fees, including late fees, must be submitted electronically using the DACS website.[12]

Effect of Proposed Changes

The bill removes the electronic submission requirement of payments and allows alternate payment methods.

**Private Investigative, Private Security, and Repossession Services (Sections 4 & 5)**

Present Situation

Current law requires that an applicant for an initial Class "K" (firearms instructor) license[13] submit an application, photograph, requisite fees and a full set of fingerprints, and provide proof of firearm training.[14] Specifically, the law requires firearms instructor license applicants to submit one of the following as proof of firearm training:

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate[15] and written confirmation by the commission that the applicant possesses an active firearms certification.
- A valid National Rifle Association Private Security Firearm Instructor Certificate[16] issued not more than 3 years before the submission of the applicant's Class "K" application.
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

Each Class "K" license renewal applicant is also required to submit one of these certificates as proof that he or she remains certified to provide firearms instruction.[17]

Effect of Proposed Changes

The bill allows veterans who served as firearms instructors in the military to provide proof of firearms instructor status when applying for initial and renewal of Class "K" licensure. For an initial application, the bill allows the applicant to submit a valid DD form 214 issued not more than three years before the submission of the applicant's Class "K" application, indicating the applicant has been honorably discharged and served at least three years in the military as a firearms instructor.

For a renewal application, the bill allows the applicant to submit proof of having taught no less than six, 28-hour firearms instruction courses to Class "G" (statewide firearm) license applicants during the previous triennial licensure period.

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[12] s. 487.041(1)(i), F.S.

[13] s. 493.6101(14), F.S., defines "firearm instructor" as any Class "K" licensee who provides classroom or range instruction to applicants for a Class "G" statewide firearm license.

[14] s. 493.6105(6), F.S.

[15] Information regarding the Criminal Justice Standards & Training Commission Certificate can be found on the Florida Department of Law Enforcement Criminal Justice Standards & Training Commission (CJSTC) webpage, available here: http://www.fdle.state.fl.us/cms/CJSTC/Commission/CJSTC-Home.aspx (last visited Jan. 19, 2018).

[16] Information regarding the National Rifle Association Instructor Development Schools can be found on the NRA Instructor Development Schools webpage, available here: http://le.nra.org/training/instructor-development-schools.aspx#schedule (last visited Jan. 19, 2018).

[17] s. 493.6113(3)(d), F.S.

**Solicitation of Contributions (Sections 6 & 7)**

Present Situation

Organizations that intend to solicit donations in Florida are required to register with DACS pursuant to the Solicitation of Contributions Act (SCA).[18] The SCA contains basic registration, financial disclosure, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Veterans' organizations that have been granted a federal charter under Title 36, U.S.C., are exempt from the DACS registration requirements.[19]

While DACS does not oversee the activities of the organizations that must register, it does monitor an organization's activities to ensure compliance with the requirements of the SCA. In addition, DACS provides information to the public on organizations that are registered to solicit contributions in Florida via the DACS Check-A-Charity database.[20]

The SCA contains a list of acts that are prohibited when done in connection with any solicitation or charity sales promotion.[21] Examples of prohibited acts include, but are not limited to:

- Submitting false, misleading, or inaccurate information in a document that is filed with DACS, provided to the public, or offered in response to a request or investigation by DACS, the Department of Legal Affairs, or the state attorney;
- Representing that the contribution is for or on behalf of a charitable organization or sponsor or to use any emblem, device, or printed matter belonging to or associated with a charitable organization or sponsor, without first being authorized in writing to do so by the charitable organization or sponsor; and
- Using a name, symbol, emblem, device, service mark, or statement so closely related or similar to that used by another charitable organization or sponsor that the use thereof would mislead the public.

In addition, each charitable organization, sponsor, professional fundraising consultant, and professional solicitor is required to keep for at least 3 years true and accurate records regarding its activities in this state which are covered by the SCA.[22] The records must be made available, without subpoena, to DACS for inspection and must be furnished no later than 10 working days after requested.[23]

Current law does not prohibit commingling or contain recordkeeping requirements, regarding charitable and non-charitable funds. According to DACS, investigations of allegations of misuse of charitably-solicited funds are oftentimes made more challenging by the need to decouple charitable and non-charitable monies in the accounting records.[24]

Effect of Proposed Changes

The bill prohibits the commingling of contributions with noncharitable funds by charitable organizations and sponsors. The bill requires that each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose do the following:

- Keep records to permit accurate reporting and auditing as required by law;
- Not commingle contributions with noncharitable funds as specified in s. 496.415(19), F.S.; and

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[18] ch. 496, F.S.
[19] s. 496.406(1)(c), F.S.
[20] The Florida Department of Agriculture and Consumer Services, *Check-A-Charity,* https://csapp.800helpfla.com/CSPublicApp/CheckACharity/CheckACharity.aspx (last visited Jan. 19, 2018).
[21] *See* s. 496.15, F.S.
[22] s. 496.418, F.S.
[23] *Id.*
[24] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 4 (Nov. 21, 2017).

- Be able to account for the funds.

The bill provides that when expenditures of a charitable organization are not properly documented and disclosed by records, there exists a rebuttable presumption of impropriety. The bill stipulates noncharitable funds as including any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

**Water Vending Machines (Section 8)**

Present Situation

Water vending-machine applicants must currently submit forms to DACS "in writing", which prohibits the use of digital applications. DACS issues serialized permit ID decals to approved vending machine-owners; however, the serialized decals are inconsistent with non-serialized decals used in other DACS inspection programs.

Effect of Proposed Changes

The bill removes the requirement that an application for a water vending machine operating permit be made "in writing", and that the operating permit number be placed on each water vending machine. These changes allow for the electronic submission of water vending-machine application forms and the issuance of non-serialized decals.

**Telephone Solicitation (Sections 9 & 10)**

Present Situation

The federal Telephone Consumer Protection Act provides for restrictions on unsolicited advertisement to a telephone.[25] The state mirrors this provision statutorily[26] and requires DACS to maintain the state's Do Not Call list,[27] also known as the "no sales solicitation calls" list.[28]

A "telephonic sales call" is defined as a telephone call or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.[29]

According to DACS, advances in ringless communication technology allow telemarketers to directly deliver voicemail messages without causing a customer's phone to ring.[30] The department believes that ringless communication constitutes a telephonic sales call under the state's Do Not Call statute.[31] In the absence of a federal rule regarding this technological innovation, DACS believes adding a state prohibition of ringless voicemails is necessary.[32]

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[25] 47 U.S.C. § 227.
[26] s. 501.059, F.S.
[27] Information regarding the Do Not Call list can be found at the Florida Department of Agriculture and Consumer Services, *Florida DO NOT CALL Program* webpage, available at: https://www.fldnc.com/About.aspx (last visited Jan. 19, 2018).
[28] s. 501.059(3), F.S.
[29] s. 501.059(1)(g), F.S.
[30] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 5 (Nov. 21, 2017).
[31] *Id.* at 5 and 6.
[32] *Id.* at 6.

Effect of Proposed Changes

The bill expands consumer protections provided under the state's Do Not Call statute, prohibiting ringless direct-to-voicemail solicitation phone calls and requiring commercial telephone sellers to retain and make call records available.

The bill includes "ringless direct-to-voicemail delivery" in the definition of "telephonic sales call." The bill adds "business" to the list of entities to whom a telephone solicitor or other person is prohibited from calling or texting when the entity communicates to the telephone solicitor or other person that he or she does not wish to receive a call or text message.

The bill requires a commercial telephone seller to keep the following information for 2 years after the date the information first becomes part of the seller's business records:

- The name and telephone number of each consumer contacted by a telephone sales call;
- All express requests authorizing the telephone solicitor to contact the consumer; and
- Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting, including sales information or literature to be provided by the commercial telephone seller to a salesperson and a consumer in connection with any solicitation.

Within 10 days of an oral or written request by DACS, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps available for inspection and copying by DACS during DACS's normal business hours. This provision does not limit DACS's ability to inspect and copy material pursuant to any other law.

**Florida Antifreeze Act (Sections 11-14)**

Present Situation

Section 501.912, F.S., currently has separate definitions for antifreeze, antifreeze coolant, and summer coolant. Current law authorizes DACS to access at reasonable hours all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling.[33] All samples taken must be properly sealed and sent to a laboratory designated by DACS for examination together with all labeling pertaining to such samples.[34]

Effect of Proposed Changes

The bill makes several changes to the state Antifreeze Act. The bill consolidates the definition of antifreeze to include all antifreeze-coolant, antifreeze and summer coolant, extends antifreeze permitting for up to 24-months, eliminates phased-out product affidavits, and removes the requirement for DACS internal testing (parallels the brake fluid provisions).

The bill changes the registration application timeframe from annual to both annual and biennial, and requires the expiration timeframes to be indicated on the registration certificate. The bill specifies that for each brand of antifreeze, the application fee for a 12-month registration is $200 and a 24-month registration is $400.

The bill removes the provisions that addresses a registered brand that is not in production for distribution in this state. The bill requires that a completed registration application be accompanied by specimens or copies of the label for each brand of antifreeze, instead of the current requirement of specimens or facsimiles of the label for each brand of antifreeze.

[33] s. 501.917, F.S.
[34] *Id.*

The bill removes the requirement that a completed application be accompanied by a one to two gallon labeled sample of each brand of antifreeze, and instead requires that all first-time applications be accompanied by a certified report from an independent testing laboratory, dated no more than 6 months prior to the registration application, setting forth the analysis which shows that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of DACS, and is not adulterated.

The bill requires collected samples to be analyzed by DACS. The bill provides that the certificate of analysis by DACS is prima facie evidence of the facts stated therein in any legal proceeding in the state.

The bill revises the requirement that a statement of formula be required for analysis by the laboratory designated by DACS by removing the laboratory designation terminology. According to DACS, this change makes antifreeze formula requirements consistent with the internal departmental-testing, and will allow the department to have reasonable access to an antifreeze manufacturer's formula for the purposes of confirming the independently-conducted testing results submitted with an application.[35]

**Skimming Devices (Section 15)**

Present Situation

When departmental inspectors locate credit and debit card skimming devices, they contact the Office of Agriculture Law Enforcement (OALE) or, when geographic and staffing issues prevent a response from OALE, local law enforcement is asked to remove these devices. These law enforcement personnel seize these illegal devices and maintain the chain of custody for future legal proceedings. DACS staff often wait on-site for an average of two to three hours per incident because these are non-emergency requests.

Effect of Proposed Changes

The bill amends DACS' responsibilities relating to credit and debit card skimming devices, conforming the definitions of "scanning device" and "payment card" to the definitions used in the State Credit Card Crime Act,[36] and allowing for the lawful seizure of "skimming devices" by DACS regulators.

The bill authorizes DACS to seize without warrant any skimming device, as defined in s. 817.625, F.S., for use as evidence. According to DACS, this will free up tremendous personnel resources for further enforcement.[37]

**Brake Fluid (Sections 16 & 17)**

Present Situation

Applicants currently must submit all brake fluid brands and products to the Bureau of Standards' laboratory for testing prior to initial registration. Despite this requirement, there are no assurances that the samples that DACS tests are the same as the products being offered for sale since the applicant collects and ships samples directly to the laboratory.

[35] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 7 (Nov. 21, 2017).
[36] part II, ch. 817, F.S.
[37] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 8 (Nov. 21, 2017).

Effect of Proposed Changes

The bill makes several changes to the law that provides guidance to DACS' regulation of brake fluid products in the state. The bill allows brake fluid permitting up to 24-months, eliminates phased-out product affidavits, and revises DACS testing requirements (parallels antifreeze provisions).

The bill authorizes a 24-month brake fluid registration period in addition to the 12-month registration period, and sets forth an application fee of $50 for the 12-month registration, or $100 for the 24-month registration. The bill requires completed brake fluid registration applications to be accompanied by specimens or copies of the label for each brand of brake fluid, and an application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

The bill requires that the certified report from an independent testing laboratory required of all first time-applicants be dated no more than six months before the registration application. The bill removes the requirement that an applicant submit to DACS a sample of at least 24 fluid ounces of brake fluid in a container with a label printed in the same manner that it will be labeled when sold, and removes the requirement that the sample and container be analyzed and inspected by DACS in order that compliance be verified.

The bill removes the requirement that a registrant submit a notarized affidavit on company letterhead to DACS if a registered brand and formula combination is no longer in production for distribution in this state.

The bill requires collected brake fluid samples to be analyzed by DACS, and the certificate of analysis by DACS to be prima facie evidence of the facts stated therein in any legal proceeding in this state.

According to DACS, allowing businesses to submit readily available analysis reports for new products will streamline registration and will allow the laboratory to focus on inspection samples, thereby creating efficiencies for all parties and greater protections for consumers.[38] Additionally, businesses may opt to register products for 24-months, which offers both the applicants and DACS increased opportunities for efficiencies.[39]

**Liquefied Petroleum Gas (Sections 18-28)**

Present Situation

Currently, DACS regulates the licensing, inspection and training requirements relating to the liquefied petroleum (LP) gas industry.[40] The bill makes several changes to the business practices, registration process, and regulatory structure of the chapter of law governing the sale of LP gas. According to DACS, these changes were made in collaboration with the Florida LP Gas Association and other industry leaders to modernize the LP gas statute.[41]
*Definitions (Section 18)*

Current law governing LP gas provides definitions for numerous LP gas and the LP gas license categories.[42] These licenses include those for selling propane, installation, service or repair work, manufacture of equipment, and other miscellaneous activities.

[38] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 8 (Nov. 21, 2017).
[39] *Id.*
[40] ch. 527, F.S.
[41] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).
[42] s. 527.02, F.S.

Effect of Proposed Changes

The bill clarifies LP gas license categories, revises the license year terminology, and expands the license period from one to three years from the issuance of the license. The bill also removes the word "ultimate" from the definition of "ultimate consumer" throughout the LP gas chapter of law. According to DACS, the definitional clarifications sought in this provision modernize subsequent LP gas statutory requirements.[43]

*License, Penalty, Fees (Section 19)*

Present Situation

Section 527.01, F.S., provides definitions related to liquefied petroleum gas. Section 527.02, F.S., provides a two-tiered LP gas fee structure with separate fees for an Original Application Fee and a Renewal Fee.

Effect of Proposed Changes

The bill redefines the LP gas unlawful activities by incorporating the activities specified in s. 527.01(6)-(11), F.S., replaces the two-tiered LP gas fee structure with a single tiered annual fee structure with new fees, allows a material change in license information prior to renewal with a $10 fee. In addition, the bill revises the requirement that DACS waive the initial license fee for honorably discharged veterans, their spouses, or the businesses they own by only allowing the waiver to occur for one year.

The bill deletes the provisions related to pipeline-system operator licensure and fees. According to DACS, pipeline-operator requirements are now regulated under federal code[44] and only monitored by DACS during the startup phase or after an incident.[45] The bill deletes the transferability of LP gas licensure as licenses may be applied for continuously instead of once annually.

*Qualifiers; Master Qualifiers; Examinations (Section 20)*

Present Situation

Currently, any person applying for a license to engage in the activities of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks must prove competency by passing a written DACS examination with a grade of 75 percent or above in each area tested.

Upon successful completion of the competency examination, DACS currently issues a qualifier identification card to the examinee. The qualifier identification card remains in effect as long as the individual provides DACS proof of active employment in the area of examination and all continuing education requirements are met.

Effect of Proposed Changes

The bill requires only persons applying for a license to engage in category I, II, and V activities to prove competency by passing the written DACS examination. The bill reduces the DACS examination grade percentage that the applicants must achieve for passage from 75 percent or above, to 70 percent or above. The bill requires DACS to register an examinee who successfully completes the examination,

[43] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).
[44] 49 CFR § 191, § 192 (2017).
[45] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 9 (Nov. 21, 2017).

instead of issuing the examinee a qualifier identification card. The bill revises the automatic expiration provision for qualifiers so that it addresses the registration instead of the identification cards, and makes conforming changes regarding registration as opposed to qualifier status. The bill requires businesses in license categories I, II and V to employ a full time qualifier in each business location.

The bill provides that qualifier registration, instead of cards, expire three years after the date of issuance. The bill removes an outdated qualifier qualification renewal date, and requires persons failing to renew before the expiration date to reapply and take a qualifier competency examination in order to reestablish qualifier status.

The bill removes the requirement that if a category I LP gas qualifier or LP gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.

The bill provides that a qualifier for a business must actually function in a supervisory capacity of other company employees performing licensed activities, and removes the requirement for additional qualifiers for those business organizations employing more than 10 employees that install, repair, maintain, or service LP gas equipment and systems.

The bill revises the requirement that each category I LP gas dealer and LP gas installer, at the time of application for licensure, identify to DACS one master qualifier who is a full-time employee at the licensed location, to instead require this of a category I and category V licensee.

In order to apply for certification as a master qualifier, the bill requires each applicant to have been a registered qualifier for a minimum of 3 years immediately preceding submission of the application, employed by a licensed category I or category V licensee, or applicant for such license, and pass a master qualifier competency examination. The bill removes the requirement that the master qualifier registration include the name of the licensed company for which the master qualifier is employed. The bill replaces references to the master qualifier certificate with master qualifier registration, and makes conforming changes.

The bill removes the requirement that each category I LP gas dealer or installer licensed as of August 31, 2000, identify to DACS one current category I LP gas dealer qualifier or LP gas installer qualifier who will be the designated master qualifier for the license holder. The bill removes the requirement that a failure by a business organization to obtain a replacement qualifier within 60 days after a vacancy shall be grounds for revocation of licensure or eligibility for licensure. Further removed is the requirement that a failure by a category I or category V licensee to obtain a replacement master qualifier within 90 days of a vacancy shall be grounds for revocation of licensure or eligibility for licensure.

*Registration of Transport Vehicles (Section 21)*

Present Situation

Owners or lessees of LP gas vehicles must register transport vehicle with DACS annually.

Effect of Proposed Changes

The bill revises the annual registration requirement to instead require each LP gas bulk delivery vehicle owned or leased by an LP gas licensee to be registered as part of the licensing application or when placed into service.

*License Renewals (Section 22)*

Present Situation

Current law requires all LP gas licenses to be renewed annually within certain timeframes, and subject to the license fees.[46] All licenses, except Category III LP Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of LP Gas licenses, must be renewed for the period beginning September 1 and expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III LP Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of LP Gas licenses must be renewed for the period beginning April 1 and expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated. Any license allowed to expire becomes inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.

Effect of Proposed Changes

The bill allows LP gas licenses to be renewed annually, biennially, or triennially, as elected by the licensee, requires all renewals to meet the same requirements and conditions as an annual license for each licensed year, and removes the license category renewal timeframes. According to DACS, these changes optimize the application process and should accelerate application processing, especially during periods of high volume.[47]

*Proof of Insurance (Section 23)*

Present Situation

Currently, LP gas companies are required to provide DACS with proof of insurance coverage or a surety bond to conduct business in the state. However, for a license other than a dealer in appliances and equipment for use of liquefied petroleum gas or a category III liquefied petroleum gas cylinder exchange operator, the Governor is authorized to accept a $1 million bond in lieu of the insurance policy requirements.[48] For a license issued to a class III liquefied petroleum gas cylinder exchange operator, the Governor is authorized to accept a bond of at least $300,000 in lieu of the insurance policy requirements.[49]

Effect of the Proposed Change:

This bill replaces the Governor with the Commissioner of Agriculture as the responsible party authorized to accept the $1 million and the $300,000 bonds in lieu of the insurance policy requirements. The bill also adds category IV licenses to the exceptions to the insurance requirements. According to DACS, these changes will align this program with similar initiatives and programs such as agricultural dealers, movers and sellers, to make it consistent with historical legislative intent and to optimize interactions with the surety company.[50]

[46] s. 527.03, F.S.
[47] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 10 (Nov. 21, 2017).
[48] s. 527.04(1), F.S.
[49] s. 527.04(2), F.S.
[50] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 10-11 (Nov. 21, 2017).

*Bulk Storage Locations; Jurisdiction (Section 24)*

Present Situation

Current law requires, prior to the installation of any bulk storage container, an LP gas licensee to submit to DACS a site plan of the facility, which shows the proposed location of the container, and to obtain written approval of such location from DACS. A fee of $200 is assessed for each site plan that DACS reviews. The review must include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.[51]

Effect of Proposed Changes

The bill removes the requirements that an LP gas licensee submit to DACS a site plan of the facility, which shows the proposed location of the container, the requirement to obtain written approval of such location from DACS, and the fee of $200 which is assessed for each site plan that DACS reviews. The bill also removes the requirement for the review to include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility. According to DACS, master qualifiers have the ability and expertise to review site plans for compliance prior to installation, and a final inspection by DACS is still required prior to commencing operations.[52]

*Notification of Accidents; Leak Calls; Jurisdiction (Section 25)*

Present Situation

Currently, immediately upon discovery, all LP gas licensees are required to notify DACS of any LP gas-related accident that involves an LP gas licensee or customer account. The accident must fall under one of the following descriptions:

- Caused a death or personal injury requiring professional medical treatment;
- Uncontrolled ignition of LP gas resulted in death, personal injury, or property damage exceeding $1,000; or
- Caused estimated damage to property exceeding $1,000.[53]

Effect of Proposed Changes

The bill increases the cost threshold for reporting LPG accidents involving property damage and/or personal injury from $1,000 to $3,000. According to DACS, this reflects inflation adjusted costs.[54] The dollar value has not been updated since 2003.[55]

*Restriction on Use of Unsafe Container or System (Section 26) & Definitions Relating to Florida Propane Gas Education, Safety, and Research Act (Section 27)*

Present Situation

Currently, the definition for "dealer" and "wholesaler" relating to the Florida Propane Gas Education, Safety, and Research Act include the term "ultimate consumer."

[51] s. 527.0605, F.S.
[52] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 11 (Nov. 21, 2017).
[53] s. 527.065(1), F.S.
[54] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 11 (Nov. 21, 2017).
[55] The last time the dollar value was revised was in 2003 (Ch. No. 2003-132, Laws of Florida.) providing that an LP gas-related incident must be reported by an LP gas licensee only when it involves death, personal injury, or property damage exceeding $1,000.

Effect of Proposed Changes

The bill removes the term "ultimate" from "ultimate consumer" to make these provisions consistent with the rest of the chapter regarding consumers.

*Florida Propane Gas Education, Safety, and Research Council*[56] *Established; Membership; Duties and Responsibilities (Section 28)*

Present Situation

Section 527.22, F.S., currently requires the Commissioner of Agriculture to "make a call to" qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council.

Effect of Proposed Changes

The bill removes the requirement that the Commissioner of Agriculture make a call to qualified industry organizations for nominees to the Florida Propane Gas Education, Safety, and Research Council but retains the submission of nominees by qualified industry organizations. According to DACS, this streamlines the appointment process for the council.[57]

**Weights, Measures, and Standards (Section 29)**

Present Situation

Currently, the DACS Bureau of Standards is responsible for the inspection of weights and measures devices or instruments in Florida.[58] The law defines "weights and measures" as all weights and measures of every kind, instruments, and devices for weighing and measuring, and any appliance and accessories associated with any or all such instruments and devices, excluding those weights and measures used for the purpose of inspecting the accuracy of devices used in conjunction with aviation fuel.[59] The weights and measures program is funded through permit fees.[60] This framework including provisions related to general permitting, initial and renewal applications, maximum permit fees, suspensions, penalties, revocations, and exemptions, is set to expire on July 1, 2020.

Effect of Proposed Changes

The bill extends the expiration date for the weights and measures program permitting fee framework until July 1, 2025. According to DACS, it will no longer be able to cover the costs to perform this function if the permitting statute is not extended.[61]

**DACS Emergency Powers (Section 30)**

Present Situation

Current law governing emergency management gives the Governor extensive authority to act as he or she deems necessary during a declared state of emergency.[62] The law authorizes the Governor to assume or delegate direct operational control over all or any part of the emergency management

[56] s. 527.22, F.S.
[57] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).
[58] ch. 531, F.S., "Weights and Measures Act of 1971."
[59] s. 531.37(1), F.S.
[60] s. 531.67, F.S.
[61] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).
[62] ch. 252, F.S.

functions within this state.[63] In addition, the Governor may issue executive orders, proclamations, and rules, which have the force and effect of law.[64] In addition, the Governor is authorized to, among other things, use all resources of the state government and of each political subdivision of the state, as reasonably necessary to cope with the emergency.[65]

Currently, DACS is authorized to declare an emergency when one exists in any matter pertaining to agriculture, and to make, adopt, and promulgate rules and issue orders, which will be effective during the term of the emergency.[66]

During the 2017 hurricane season, Hurricane Irma was the largest, most powerful hurricane ever recorded on the Atlantic Ocean, and among the strongest hurricanes ever to make direct landfall in the United States. Besides causing major devastation to Florida's coastal communities, Irma brought hurricane and tropical storm conditions to every one of Florida's 67 counties. Hurricane Irma's path coincided with some of Florida's most productive agricultural landscapes, and consequently it caused major losses to all segments of production agriculture. Total crop losses are estimated at $2,014,481,961; while total losses to production agriculture are estimated at $2,558,598,303.[67]

Effect of Proposed Changes

The bill authorizes the Commissioner of Agriculture during a state of emergency declared pursuant to s. 252.36, F.S., to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner. According to DACS, the proposed revision clarifies the Commissioner of Agriculture's authority during a state of emergency by referencing the emergency management chapter of the Florida Statues in the chapter related to DACS.[68]

**Marketing Order Notice, Nathan Mayo Building (Section 31)**

Present Situation

Before the issuance, suspension, amendment, or termination of any marketing order covered by chapter 573, F.S., or departmental actions effecting marketing orders, a notice must be posted on the Mayo Building public bulletin board in Tallahassee in addition to providing this same information on DACS' website.

Effect of Proposed Changes

The "Florida Agricultural Commodities Marketing Law" regulates the marketing of agricultural commodities through the establishment of marketing orders and agreements.[69] A marketing order is an order issued by DACS, prescribing rules governing the distribution, or handling in any manner, of agricultural commodities in the primary channel of trade during any specified period or periods.[70]

Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must be posted on a public bulletin board maintained by DACS in the Nathan Mayo Building,

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[63] s. 252.36(1)(a), F.S.
[64] s. 252.36(1)(b), F.S.
[65] s. 252.36(5)(b), F.S.
[66] s. 570.07(21), F.S.
[67] THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, *Hurricane Irma's Damage to Florida Agriculture*, http://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf (last visited Jan. 19, 2018).
[68] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 12 (Nov. 21, 2017).
[69] *See* ch. 573, F.S.
[70] s. 573.103(9), F.S.

Tallahassee, Leon County, and a copy of the notice must also be posted on the DACS website the same day.[71]

The bill removes the requirement to post notice on a public bulletin board in the Nathan Mayo Building while maintaining the requirement to post notice to the DACS website.

**Florida Seed Law (Sections 32-47)**

Present Situation

DACS regulates the sale and distribution of all seed sold in Florida pursuant to the Florida Seed Law (FSL).[72] According to DACS, technological and federal regulatory changes have created the need for Florida to update and reorganize the FSL.[73] Generally, trees and shrubs, and new seed types, are not addressed under the current law.

Effect of Proposed Changes

The bill makes several changes to this regulatory structure pursuant to recommendations from the Agricultural Feed, Seed and Fertilizer Advisory Council, which advises DACS on feed, seed and fertilizer enforcement issues.[74] DACS believes these changes will optimize regulation and decrease regulatory compliance costs within Florida's seed industry.[75] The changes also align the FSA with the provisions of the Recommended Uniform State Seed Law (RUSSL),[76] Federal Seed Act (FSA),[77] and Plant Variety Protection Act (PVPA).[78]

*Definitions (Section 32)*

Present Situation

There have been numerous technological developments in seed production. Many of the definitions in section 578.011, F.S., do not reflect these new technologies.

Effect of Proposed Changes

The bill makes numerous definitional changes to the Florida Seed Law pursuant to recommendations of the DACS Agricultural Feed, Seed and Fertilizer Advisory Council. These changes mirror technological and regulatory changes found in RUSSL, FSA, PVPA, and the requirements of neighboring states.[79]

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[71] s. 573.111, F.S.
[72] ch. 578, F.S.
[73] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).
[74] DACS Agricultural Feed, Seed and Fertilizer Advisory Council, http://www.freshfromflorida.com/About/Advisory-Councils-and-Committees/Agricultural-Feed-Seed-and-Fertilizer-Advisory-Council (last visited Jan. 19, 2018).
[75] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).
[76] In 1946, the Association of American Seed Control Officials created the Recommended Uniform State Seed Law, often referred to as "RUSSL." That document serves as a model law for the states and is reviewed and updated regularly. While RUSSL is technically a guideline, rather than a law, it serves as a general reference point for states when seed law changes occur. https://soygrowers.com/laws-regs-considerations-buying-seed/ (last visited Jan. 19, 2018).
[77] 7 U.S.C. § 1551-1611. The Federal Seed Act is a truth-in-labeling law that governs the sale of seed in interstate commerce and seed imported into the United States. The aim of the Act is to provide detailed regulations covering sale of seed on a national basis. Normally, it has no jurisdiction over seed produced and marketed within state boundaries. The federal and state seed laws contain somewhat similar requirements. If seed is labeled to comply with the Federal Seed Act and is shipped in interstate commerce, it will normally comply with the labeling requirements of the state into which it is shipped. Thus, the Act helps maintain the integrity of each state seed law; however, no state may set standards for seed moving into the state from another below the minimum required by the Federal Seed Act. https://link.springer.com/chapter/10.1007/978-1-4615-1619-4_18 (last visited Jan. 19, 2018).
[78] 7 U.S.C. ch. 57. The Plant Variety Protection Act provides legal intellectual property rights protection to breeders of new varieties of plants, which are sexually reproduced (by seed) or tuber-propagated.
[79] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 13 (Nov. 21, 2017).

*Preemption (Section 33)*

Present Situation

Currently, DACS regulates the sale and distribution of all seed sold in Florida. However, the authority to regulate seed is not expressly preempted to the state.

Effect of Proposed Changes

The bill provides that it is the intent of the Legislature to eliminate duplication of regulation of seed. The bill provides that this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed. The bill preempts the authority to regulate seed or matters relating to seed to the state. The bill prohibits a local government or political subdivision of the state from enacting or enforcing an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

*Registrations (Section 34)*

Present Situation

Currently, persons who intend to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed or mixture thereof, are required to register with DACS as a seed dealer.[80] According to DACS, seeds for trees and shrubs are not explicitly covered by the current statute and several of the provisions need updates given current advances in technology.[81]

Effect of Proposed Changes

The bill removes references to s. 578.14, F.S., relating to packet vegetable and flower seed. The bill expands the definition of tree seeds by deleting "forest" and including "shrub seeds" to the types of seeds that require registration.

The bill requires the application for registration to include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The bill removes the requirement that registration and payment receipts from DACS be written. This eliminates the need for DACS to issue registration receipts, and thus allows for electronic receipts.

The bill removes the exemption from registration requirements for agricultural experiment stations of the State University System and places it in the section of the FSL directly relating to exemptions.

The bill also provides that when packet seed is sold, offered for sale, or exposed for sale, the company who packs seed for retail sale must register and pay fees as provided.

*Label Requirements for Agricultural, Vegetable, Flower, and Tree or Shrub Seed (Section 35)*

Present Situation

Current law sets forth seed label requirements for each container of agricultural, vegetable, or flower seed sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing or

[80] s. 578.08(1), F.S.
[81] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 14 (Nov. 21, 2017).

planting purposes.[82] As with the previous section, trees and shrubs are not explicitly covered under the current law, and sections relating to new seed types are not addressed.[83]

When seeds are treated with certain substances, the current statute only requires a cautionary statement such as "Do not use for food, feed, or oil purposes," which is inconsistent with current Environmental Protection Agency (EPA) requirements and provisions of the FSA.[84]

Effect of Proposed Changes

The bill revises the labeling requirements to align with RUSSL, deletes specific terms and font requirements, adds provisions relating to coated and vegetable seeds, moves DACS' authority to prescribe uniform analysis tags, for consistency, includes additional terms to clarify requirements of all seed types, including those of trees and shrubs, allows the term, "blend," as an option for identifying products containing more than one agricultural seed component, includes lawn and turf seed under the requirements and clarifies that hybrids thereof must be labeled as hybrids.

*Forest Tree Seed (Section 36)*

Present Situation

Current law governing forest tree seed requires each container sold, offered for sale, exposed for sale, or transported within this state for sowing purposes, to meet certain labeling requirements.[85]

Effect of Proposed Changes

The bill repeals the section of law relating to labeling of forest tree seed. These requirements are replaced with expanded provisions relating to all tree and shrub seeds, and included in the aforementioned revised section of law relating to label requirements.[86]

*Exemptions (Section 37)*

Present Situation

Currently, the FSL exempts the following from the FSL labeling requirements and prohibitions:

- Seed or grain not intended for sowing or planting purposes.
- Seed in storage in, consigned to or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed shall be subject to this law.[87]

The FSL also provides an exemption from the criminal penalties of this law for persons having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed incorrectly labeled or represented.[88]

Effect of Proposed Changes

The bill adds an exemption for seed under development or maintained exclusively for research purposes. The bill revises the exemption for incorrectly labeled seed. The bill provides that if seeds

[82] s. 578.09, F.S.
[83] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 14 (Nov. 21, 2017).
[84] *Id.*
[85] s. 578.091, F.S.
[86] s. 578.09, F.S.
[87] s. 578.10(2), F.S.
[88] s. 578.10(3), F.S.

cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. The bill provides that a genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels.

According to DACS, the proposed language aligns with RUSSL and clarifies the release from liability afforded to a person who unknowingly sells mislabeled seed.[89] Additionally, the amendments clarify the limitations on criminal penalties attached to incorrectly labeled seed to require sellers to "take such other actions as may be reasonable to ensure the identity" beyond solely relying on a grower's or seed collector's declaration.[90] The modified statutory language is not likely to affect the number of criminal penalties issued.[91] Further, it exempts seeds under development or maintained for research purposes from the FSL labeling and prohibitions provisions because they are not commercially available to consumers or businesses.[92] The language regarding research purposes was expanded such that this exemption no longer solely applies to university entities.[93]

*Duties, Authority, and Rules of DACS; Stop-Sale, Stop-Use, Removal, or Hold Orders (Sections 38 & 39)*

Present Situation

Multiple references to "forest tree seed" is used throughout the sections of law that sets forth the duties, authority and rulemaking requirements of DACS relating to the FSL,[94] and the section of law that addresses stop-sale, stop-use, removal, or hold orders for violations of the FSL.[95]

Effect of Proposed Changes

The bill replaces the multiple references to "forest tree seed" with "tree or shrub seed."

*Prohibitions (Section 40)*

Present Situation

Currently, it is unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed within this state.[96]

According to DACS, given the proposed changes to seed label requirements for agricultural, vegetable, or flower seed, the prohibitions need to be modified for consistency.[97] The stop sale provisions and the requirements for certified seed labeling need further clarification.[98] The existing statute specifies seven

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[89] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 15 (Nov. 21, 2017).
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *Id.*
[94] s. 578.11, F.S.
[95] s. 578.12, F.S.
[96] s. 578.13(1), F.S.
[97] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 15 (Nov. 21, 2017).
[98] *Id.*

months as the germination-testing timeframe prior to sale.[99] The statute needs to be updated to include labeling prohibitions related to the PVPA.[100]

Effect of Proposed Changes

The bill revises the section of law relating to prohibitions to be consistent with changes throughout the bill that expand the definition of seeds to include shrubs. The bill clarifies the stop-sale provisions and the requirements for certified seed labeling. The bill removes the seven month timeframe within which the test to determine the percentage of germination required by the FSL labeling requirements must be completed as all seed types are listed in the proposed section of the bill relating to labeling requirements, and each category of seed contains a specific germination testing requirement.

*Packet Vegetable and Flower Seed (Section 41)*

Present Situation

Currently, when vegetable or flower seed are sold, offered for sale, or exposed for sale in packets of less than 8 ounces, the company who packs the seed for retail sale is required to register and pay fees as provided under s. 578.08, F.S.[101]

Effect of Proposed Changes

The bill repeals the section of the FSL relating to packet vegetable and flower seed. The bill moves the registration requirements to the revised section of the FSL relating to registrations, and the labeling information to the revised section of the FSL relating to registrations, for consistency.

According to DACS, to promote regional continuity and to align with comparable areas of RUSSL, the proposed language incorporates the 50% minimum germination standard for seed with no established standard and requires a seed count on products where seed is placed in a medium that inhibits seed identification and quantification, such as pre-potted plants.[102]

*Penalties and Administrative Fine (Section 42)*

Present Situation

Currently, DACS is authorized to enter an order imposing one or more of the following penalties against a person who violates the FSL or the rules adopted under the FSL, or who impedes, obstructs, or hinders DACS in performing its duties under the FSL:

- Imposition of an administrative fine in the Class I category pursuant to s. 570.971, F.S., for each occurrence after the issuance of a warning letter.
- Revocation or suspension of the registration as a seed dealer.

Any person who violates the provisions of the FSL is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. According to DACS, the current language could benefit from being aligned with penalty language found in other chapters.[103]

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[99] *Id.*
[100] *Id.*
[101] s. 578.14, F.S.
[102] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 16 (Nov. 21, 2017).
[103] *Id.*

Effect of Proposed Changes

The bill revises the penalty provisions in the FSL relating to circumstances by which DACS may enter an order, and the types of violations the order may be based on. The bill also revises the requirement that DACS issue a warning letter before the imposition of an administrative fine in the Class I category. According to DACS, this will allow it to issue an administrative fine for egregious first-time offenses.[104]

*Dealers' Records (Section 43)*

Present Situation

Currently, every seed dealer is required to make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold.[105] The records must at all times be made readily available for inspection, examination, or audit by DACS, and must also be maintained by persons who purchase seed for production of plants for resale. According to DACS, clarifying recordkeeping requirements and adopting similar language to that used by neighboring states would streamline the regulatory structure and enhance compliance.[106]

Effect of Proposed Changes

The bill requires each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to the FSL to keep records pursuant to the following timeframes:

- For 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled.
- For 1 year after final disposition a file sample of each lot of seed.

The bill also requires the records and samples pertaining to the shipment or shipments involved to be accessible for inspection by DACS or its authorized representative during normal business hours. According to DACS, the proposed changes seek to align Florida's records provisions with RUSSL for better clarity by reducing the seed record holding time from three years to two, by adding a one-year holding requirement for each seed lot after final disposition and by continuing to make such records and samples available for DACS inspection.[107]

*Complaints (Section 44)*

Present Situation

Current law provides a complaint process to farmers when seed fails to produce or perform as represented by the label.[108] Farmers are required to make a sworn complaint to DACS against the dealer alleging damages sustained, and the Seed Investigation and Conciliation Council (Council) assists in determining the validity of complaints.[109]

According to DACS, the current provisions only protect "farmers" and involve complaints stemming from the "label attached to the seed" without geographic limitation as to where the seed is planted.[110] However, the labeling provisions should be broadened to include all written, printed, or graphic representations, in any form, accompanying and pertaining to the seed in question.[111] The applicability

[104] *Id.*
[105] s. 578.23, F.S.
[106] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 16 (Nov. 21, 2017).
[107] *Id.* at 16&17.
[108] s. 578.26, F.S.
[109] *Id.*
[110] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 17 (Nov. 21, 2017).
[111] *Id.*

of the processes specified in this section should be clarified to limit them to complaints stemming from seed planted in Florida.[112]

Effect of Proposed Changes

The bill expands the types of complainants by replacing the term "farmer" with "buyer," revises the reference to "forest tree seed" to instead reference "tree or shrub seed," and limits complaints to those that stem from seed planted in this state. The labeling provision is broadened to include any labeling of such seed, instead of only the label attached to the seed.

The bill broadens the council's inspection authority, and prohibits the buyer from commencing legal proceedings against the dealer or asserting such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the council are transmitted to the complainant and the dealer. The bill removes the requirement that DACS, upon receipt of the findings and recommendation of the Council, transmit them to the farmer and to the dealer by certified mail, and requires DACS to mail a copy of the council's procedures to each party upon receipt of a complaint by DACS.

According to DACS, with the addition of the term "buyer," the amendments seek to expand the definition of complaints covered to include all buyers (a person who purchases certain seed in packaging of 1,000 or more) and to limit liability to seed planted in the state.[113] The changes require pursuing all administrative remedies available through the SICC prior to commencing any legal action.[114] The bill also restates that DACS is to mail a copy of the SICC's procedures to each party once a complaint has been filed.[115]

*Seed Investigation and Conciliation Council (Section 45)*

Present Situation

Current law requires the Council to assist farmers and agricultural seed dealers in determining the validity of complaints made by farmers against dealers.[116] The law establishes the process by which Council members are appointed and how it operates. According to DACS, the terms and appointment process are inconsistent with the operation of other departmental advisory councils. Currently, protections afforded under this section apply only to farmers.[117]

Effect of Proposed Changes

The bill removes the requirement that the Commissioner of Agriculture appoint a seed investigation and conciliation counsel composed of alternate members. To conform to changes made in the complaints section of the bill, the bill expands covered complainants to include all "buyers," expands the types of seed dealers by removing the term "agricultural," and expands the Council's authority to recommend settlements beyond cost damages. In addition, the bill streamlines the terms and succession of the Council councilmembers, updates the name of the Florida Seedsmen and Garden Supply Association, and clarifies the Council's inspection requirements regarding the complainant's farming operation.

Regarding terms and succession of the Council, the bill requires each member to be appointed for a term of 4 years or less and to serve until his or her successor is appointed, removes the staggered term lengths, and removes the requirement that each alternate member serve only in the absence of the member for whom she or he is an alternate.

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[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*
[116] s. 578.27, F.S.
[117] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 17 (Nov. 21, 2017).

The bill expands the council's requirement to recommend settlements when appropriate that are not restricted to cost damages, and requires council inspections of the complainant's farm operation to apply to the buyer's property, crops, plants, or trees referenced in or relating to the complaint.

*Seed in Hermetically Sealed Containers (Section 46)*

Present Situation

Hermetically sealed containers are currently addressed in s. 578.28, F.S.

Effect of Proposed Changes

The bill renumbers the section of law relating to seed in hermetically sealed containers from s. 578.28, F.S., to s. 578.092, F.S., as part of the overall reorganization of the Seed Law chapter.

*Prohibited Noxious Weed Seed (Section 47)*

Present Situation

Prohibited noxious weed seed is currently defined in s. 578.011, F.S.

Effect of Proposed Changes

Although there is a definition of prohibited noxious weed seed in current law, there is not expressed authority banning these weeds. The bill creates s. 578.29, F.S., prohibiting noxious weeds from being present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

**Florida Forest Service Commercial Driver License Examination Fee (Section 48)**

Present Situation

The Department of Financial Services' Reference Guide for State Expenditures prohibits the use of public funds to pay license or examination fees under Chapter 69I-40.002(23), F.A.C. The Florida Forest Service (FFS) has 20 different job classes that require a Class A or B Commercial Driver's License (CDL) as a condition of employment.

Effect of Proposed Changes

The bill authorizes, but does not obligate, the FFS to pay the cost of an initial commercial driver license (CDL) examination for employees whose position requires them to operate such equipment.

According to DACS, the proposed policy would allow for one initial Class A or B CDL examination for those whose job classifications require a CDL as a condition of employment. Employees failing the initial test would then be required to pay for subsequent testing themselves. The proposed statutory change would ensure that the FFS has a sufficient number of personnel with CDLs for the suppression, detection, prevention and mitigation of wildfires. Further, this program would assist in the recruitment and the retention of FFS employees.[118]

[118] *Id.* at 18.

**Concealed Weapon or Firearm License (Sections 49 & 50)**

Present Situation

Currently, DACS is authorized to issue licenses to carry concealed weapons or concealed firearms to qualified applicants.[119] Within 90 days after the date of receipt of the completed application and other required items, DACS must issue or deny the license.[120] If DACS receives criminal history information with no final disposition on a crime which may disqualify the applicant, the time limitation may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights.[121]

Current law provides that when a concealed weapon or firearm license is lost or destroyed, the license becomes automatically invalid. The person to whom the license was issued is authorized to, upon payment of $15 to DACS, obtain a duplicate, or substitute license by furnishing a notarized statement to DACS that such license has been lost or destroyed.[122]

Effect of Proposed Changes

The bill revises requirements related to the acquisition of criminal history information, replaces the notary requirement with a sworn oath when replacing a lost or destroyed license, authorizes the tax collector to print and deliver a replacement lost or destroyed license, revises the license fees that a tax collector is required to collect, and authorizes the tax collectors to provide fingerprinting and photographing services.

The bill requires DACS, if it receives incomplete criminal history information or no final disposition on a crime, which may disqualify the applicant, to expedite efforts to acquire the:

- Final disposition or proof of restoration of civil and firearm rights, or
- Confirmation that clarifying records are not available from the jurisdiction where the criminal history originated.

Further, the bill provides that ninety days after the date of receipt of the completed application, if DACS has not acquired either the final disposition or the confirmation described above, it is required to issue the license in the absence of disqualifying information. However, such license must be immediately suspended and revoked upon receipt of disqualifying information pursuant to this section.

The bill requires a statement under oath, instead of a notarized statement, when a person is replacing a lost or destroyed concealed weapon or firearm license. According to DACS, this change is needed because neither initial or renewal applications for a license are required to be notarized; therefore, requiring notarization for replacement licenses is an unnecessary step and an inconsistency in the overall process.[123]

The bill allows a tax collector to replace a concealed weapon or firearm license to a licensee whose license has been lost or destroyed upon the following conditions:

- Receipt of a statement under oath to DACS;
- Payment of required fees; and
- Approval and confirmation from DACS that a license is in good standing.

The bill also authorizes tax collectors to provide fingerprinting and photographing services, for a convenience fee of $6 each, to aid concealed weapon and firearm applicants and licensees with online initial and renewal applications. Tax collectors will retain the revenues from the convenience fees.

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[119] s. 790.06, F.S.
[120] s. 790.06(6), F.S.
[121] s. 790.06(6)(c)(3), F.S.
[122] s. 790 06(9), F.S.
[123] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 19 (Nov. 21, 2017).

**Government Impostor and Deceptive Advertisements Act (Section 51)**

Present Situation

DACS receives numerous complaints from consumers and businesses that have been scammed by companies selling free government forms or mimicking government services. The U.S. Post Office currently prohibits this type of mailing of federal government forms or program offers; however, currently, the only remedy is to throw away the offending material, which does not protect unsuspecting consumers.

Effect of Proposed Changes

The bill creates the "Government Impostor and Deceptive Advertisements Act" and provides DACS with the duty and responsibility to investigate potential violations, request and obtain information regarding potential violations, seek compliance, enforce this law, and adopt rules necessary to administer this law.

*Violations*

The bill provides that the following acts or practices constitute a violation:

- Disseminating an advertisement that:
  - Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.
  - Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.
- Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.
- Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.
- Failing to provide the disclosures as required.
- Failing to timely submit to DACS written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

*Disclosure Requirements*

The bill requires mailings, emails, or websites to contain prominent and specific disclaimers stating that the sales material are not related to any government filing and/or that the information or forms can be obtained for free or at a lesser cost from a governmental agency. Businesses are required to give consumers the name and contact information of the governmental agency.

*Penalties*

The bill authorizes any person who is substantially affected by a violation of this section to bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section must be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

The bill authorizes DACS to bring one or more of the following for a violation:

- A civil action in circuit court for the following:
  - Temporary or permanent injunctive relief to enforce this section.
  - For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation, except for failing to timely submit written responses to DACS that is received by or addressed to a state resident.
  - For websites, a fine of up to $5,000 for each day a website with content in violation, except for failing to timely submit written responses to DACS that is published and made available to the general public.
  - For violations of failing to timely submit written responses to DACS, a fine of up to $5,000 for each violation.
  - Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.
  - The recovery of court costs and reasonable attorney fees.
- An action for an administrative fine in the Class III category pursuant to s. 570.971, F.S., for each act or omission, which constitutes a violation under this section.

The bill authorizes DACS to terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section. Any person in violation, except for failing to timely submit written responses to DACS, also commits an unfair and deceptive trade practice in violation of part II of chapter 501, F.S., and is subject to the penalties and remedies imposed for such violation.

**Conforming Cross References (Section 52)**

Present Situation

Currently, the definition for "plumbing contractor" located in the chapter of law relating to contracting cross references the outdated LP gas definition for "specialty installer" that the bill deletes.

Effect of Proposed Changes

The cross reference is changed to "specialty installer" to conform to the changes consistent with the bill.

**Liquefied Petroleum Gas – Rules (Section 53)**

Present Situation

In 2011, two bills passed the legislature amending s. 527.06(3) F.S., relating to rules. The two bills did not have identical language and, therefore, caused a conflict and the need for a statutory revision "note." However, the note is outdated and no longer needed.

Effect of Proposed Changes

The bill removes superfluous implementation language from the notes section of the National Fire Protection Association provision.

B. SECTION DIRECTORY:

**Section 1** Amends s. 193.461, F.S.; relating to agricultural lands; classification and assessment.

**Section 2** Amends s. 379.361, F.S.; relating to the Apalachicola Bay Oyster Harvesting license.

**Section 3** Amends s. 487.041, F.S.; relating to payments of pesticide registration fees.

**Section 4** Amends s. 493.6105, F.S.; relating to initial application for licensure.

**Section 5** Amends s. 493.6113, F.S.; relating to renewal application for licensure.

**Section 6** Amends s. 496.415, F.S.; relating to prohibited acts.

**Section 7** Amends s. 496.418, F.S.; relating to recordkeeping and accounting.

**Section 8** Amends s. 500.459, F.S.; relating to water vending machines permitting requirements; operating standards.

**Section 9** Amends s. 501.059, F.S.; relating to telephonic sales calls.

**Section 10** Creates s. 501.6175, F.S.; relating to recordkeeping.

**Section 11** Amends s. 501.912, F.S.; revising the definition of antifreeze.

**Section 12** Amends s. 501.913, F.S.; revising the registration timeframe and submittal requirements.

**Section 13** Amends s. 501.917, F.S.; relating to inspections by DACS; sampling and analysis.

**Section 14** Amends s. 501.92, F.S.; revising the conditions under which a statement of formula may be required.

**Section 15** Amends s. 525.07, F.S.; relating to powers and duties of DACS; inspections; unlawful acts.

**Section 16** Amends s. 525.51, F.S.; relating to registration; renewal and fees; DACS expenses; cancellation or refusal to issue or renew.

**Section 17** Amends s. 526.53, F.S.; relating to enforcement; inspection and analysis; stop-sale and disposition; regulations.

**Section 18** Amends s. 527.01, F.S.; relating to LP gas definitions.

**Section 19** Amends s. 527.02, F.S.; relating to license; penalty; fees.

**Section 20** Amends s. 527.0201, F.S.; relating to qualifiers; master qualifiers; examinations.

**Section 21** Amends s. 527.021, F.S.; relating to registration of transport vehicles.

**Section 22** Amends s. 527.03, F.S.; relating to annual renewal of license.

**Section 23** Amends s. 527.04, F.S.; relating to proof of insurance required.

**Section 24** Amends s. 527.0605, F.S.; relating to LP gas bulk storage locations; jurisdiction.

**Section 25** Amends s. 527.065, F.S.; relating to notification of accidents; leak calls.

**Section 26** Amends s. 527.10, F.S.; relating to restriction on use of unsafe container or system.

**Section 27** Amends s. 527.21, F.S.; relating to definitions relating to Florida Propane Gas Education, Safety, and Research Act.

**Section 28** Amends s. 527.22, F.S.; relating to Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.

**Section 29** Amends s. 531.67, F.S.; relating to expiration of sections.

**Section 30** Amends s. 570.07, F.S.; relating to DACS; functions, powers, and duties.

**Section 31** Amends s. 573.111, F.S.; relating to notice of effective date of a marketing order.

**Section 32** Amends s. 578.011, F.S.; relating to definitions; Florida Seed Law.

**Section 33** Creates s. 578.012, F.S.; relating to preemption.

**Section 34** Amends s. 578.08, F.S.; relating to registrations.

**Section 35** Amends s. 578.09, F.S.; relating to label requirements.

**Section 36** Repeals s. 578.091, F.S.; relating to forest tree seed.

**Section 37** Amends s. 578.10, F.S.; relating to exemptions.

**Section 38** Amends s. 578.11, F.S.; relating to duties, authority, and rules of DACS.

**Section 39** Amends s. 578.12, F.S.; relating to stop-sale, stop-use, removal, or hold orders.

**Section 40** Amends s. 578.13, F.S.; relating to prohibitions.

**Section 41** Repeals s. 578.14, F.S.; relating to packet vegetable and flower seed.

**Section 42** Amends s. 578.181, F.S.; relating to penalties; administrative fine.

**Section 43** Amends s. 578.23, F.S.; relating to dealers' records to be kept available.

**Section 44** Amends s. 578.26, F.S; relating to complaint, investigation, hearings, findings, and recommendation prerequisite to legal action.

**Section 45** Amends s. 578.27, F.S.; relating to seed investigation and conciliation council; composition; purpose; meetings; duties; expenses.

**Section 46** Renumbers and amends s. 578.28, F.S.; relating to seed in hermetically sealed containers.

**Section 47** Creates s. 578.29, F.S.; relating to prohibited noxious weed seed.

**Section 48** Amends s. 590.02, F.S.; relating to Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.

**Section 49** Amends s. 790.06, F.S.; relating to license to carry concealed weapon or firearm.

**Section 50** Amends s. 790.0625, F.S.; relating to appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.

**Section 51** Creates s. 817.417, F.S.; relating to Government Imposter and Deceptive Advertising Act.

**Section 52** Amends s. 489.105, F.S.; relating to definitions.

**Section 53** Reenacts s. 527.06, F.S.; relating to rules.

**Section 54** Provides an effective date of July 1, 2018.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DACS estimates the following total average loss in revenues as a result of the bill:

| | (FY 18-19) | (FY 19-20) | (FY 20-21) |
|---|---|---|---|
| **Transfer Oyster Harvesting Licenses to City of Apalachicola** | ($79,900) | ($79,900) | ($79,900) |
| **Liquefied Petroleum Gas** (Fee Collection Loss Due to License Consolidation) | ($3,000) | ($3,000) | ($3,000) |
| **Total Revenue** | **($82,900)** | **($82,900)** | **($82,900)**[124] |

2. Expenditures:

DACS estimates the following changes in expenditures as a result of the bill:

| | (FY 18-19) | (FY 19-20) | (FY 20-21) |
|---|---|---|---|
| **Transfer Oyster Harvesting Licenses to City of Apalachicola** | ($79,000) | ($79,000) | ($79,000) |
| **Antifrezee** (Increase in Sample Purchasing) | $6,000 | $6,000 | $6,000 |
| **Gasoline and Oil Inspection** (Increased shipping costs for skimming devices) | $4,800 | $4,800 | $4,800 |
| **Brake Fluid** (Increase in Sample purchasing) | $4,370 | $4,370 | $4,370 |
| **FL Forest Service** (Commercial Driver License) | $36,000 | $36,000 | $36,000 |
| **Total Expenditures** | **($28,730)** | **($28,730)** | **($28,730)** |
| **Net Fiscal Impact to DACS** | **($54,170)** | **($54,170)** | **($54,170)**[125] |

DACS can absorb the fiscal impact within existing resources.

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[124] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2018 House Bill 553, p. 21 (Nov. 21, 2017).
[125] *Id. at 22.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

**Concealed Weapon or Firearm License**

The bill authorizes tax collectors to collect three new convenience fees. The new fees include $12 for each duplicate license issued to replace a lost or destroyed license, $6 for fingerprinting, and $6 for photographing services.

2. Expenditures:

**Apalachicola Bay Oyster Harvesting License**

Transferring administrative responsibilities of the Apalachicola Bay Oyster Harvesting license from DACS to the City of Apalachicola, and requiring the city to use or distribute proceeds from the license fees for an Apalachicola Bay oyster shell recycling program and other specified activities, will allow the City of Apalachicola to more directly control the allocation of funds for restoration activities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides additional coverage under the greenbelt law for citrus pest protection structures, increased consumer protections by strengthening provisions relating to charitable contributions, telephone solicitation, and by creating the Government Imposter and Deceptive Advertisements Act; streamlines regulations relating to liquefied petroleum gas and brake fluid sampling; removes licensing barriers by allowing persons who have served as a military firearms-instructor within the last three years of military service to obtain a Class "K" firearms instructor license; and provides greater convenience for concealed weapon applicants by increasing the availability of services at authorized tax collector offices.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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 Agriculture & Property Rights Subcommittee adopted four amendments to HB 553 and reported the bill favorably as a committee substitute. The amendments:

- Provided that screen enclosed structures used in citrus production for pest exclusion, when consistent with DACS adopted best management practices, have no separately assessable value for purposes of ad valorem taxation;
- Clarified that the presumption of impropriety is rebuttable when expenditures of a charitable organization are not properly documented and disclosed;
- Retained the language of current law pertaining to labeling requirements of agricultural, vegetable, flower, tree, or shrub seed. The line was unintentionally struck; and
- Required seed labels for agricultural seed, including lawn and turf grass seed and mixtures, to label hybrids as hybrids.

This analysis is drafted to the CS as reported favorably by the Agriculture & Property Rights Subcommittee.

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 193.461, F.S.; specifying a methodology for the assessment of certain structures used in citrus production; amending s. 379.361, F.S.; transferring authority to issue licenses for oyster harvesting in Apalachicola Bay from the department to the City of Apalachicola; revising the disposition and permitted uses of license proceeds; amending s. 487.041, F.S.; deleting obsolete provisions; deleting a requirement that all pesticide registration fees be submitted electronically; amending s. 493.6105, F.S.; revising the submission requirements for a Class "K" firearm license application; amending s. 493.6113, F.S.; revising submission requirements for a Class "K" firearm license renewal; amending s. 496.415, F.S.; prohibiting the comingling of funds in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion; amending s. 496.418, F.S.; revising recordkeeping and accounting requirements for solicitations of funds; amending s. 500.459, F.S.; revising permitting requirements and operating standards for water vending machines; amending s. 501.059, F.S.; revising the term

"telephonic sales call"; prohibiting telephone solicitors from initiating certain contact with businesses who previously communicated that they did not wish to be so contacted; creating s. 501.6175, F.S.; specifying recordkeeping requirements for commercial telephone sellers; amending s. 501.912, F.S.; revising terms; amending s. 501.913, F.S.; authorizing antifreeze brands to be registered for a specified period; deleting a provision relating to the registration of brands that are no longer in production; specifying a certified report requirement for first-time applications; amending s. 501.917, F.S.; revising department sampling and analysis requirements for antifreeze; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 501.92, F.S.; revising when the department may require an antifreeze formula for analysis; amending s. 525.07, F.S.; authorizing the department to seize skimming devices without a warrant; amending s. 526.51, F.S.; revising application requirements and fees for brake fluid brands; deleting a provision relating to the registration of brands that are no longer in production; amending s. 526.53, F.S.; revising department sampling and analysis requirements for

brake fluid; specifying that the certificate of analysis is prima facie evidence of the facts stated therein; amending s. 527.01, F.S.; revising terms; amending s. 527.02, F.S.; revising the persons subject to liquefied petroleum business licensing provisions; revising such licensing fees and requirements; revising reporting and fee requirements for certain material changes to license information; deleting a provision authorizing license transfers; amending s. 527.0201, F.S.; revising the persons subject to liquefied petroleum qualifier competency examination, registry, supervisory, and employment requirements; revising the expiration of qualifier registrations; revising the persons subject to master qualifier requirements; revising master qualifier application requirements; deleting provisions specifying that a failure to replace master qualifiers within certain periods constitutes grounds for license revocation; deleting a provision relating to facsimile transmission of duplicate licenses; amending s. 527.021, F.S.; revising the circumstances under which liquefied petroleum gas bulk delivery vehicles must be registered with the department; amending s. 527.03, F.S.; authorizing certain liquefied petroleum gas registrations to be renewed for 2 or 3 years; deleting

certain renewal period requirements; amending s. 527.04, F.S.; revising the persons required to provide the department with proof of insurance; revising the required payee for a bond in lieu of such insurance; amending s. 527.0605, F.S.; deleting provisions requiring licensees to submit a site plan and review fee for liquefied petroleum bulk storage container locations; amending s. 527.065, F.S.; revising the circumstances under which a liquefied petroleum gas licensee must notify the department of an accident; amending ss. 527.10 and 527.21, F.S.; conforming provisions to changes made by the act; amending s. 527.22, F.S.; deleting an obsolete provision; amending s. 531.67, F.S.; extending the expiration date of certain provisions relating to permits for commercially operated or tested weights or measures instruments or devices; amending s. 570.07, F.S.; authorizing the department to waive certain fees during a state of emergency; amending s. 573.111, F.S.; revising the required posting location for the issuance of an agricultural commodity marketing order; amending s. 578.011, F.S.; revising and defining terms; creating s. 578.012, F.S.; providing legislative intent; creating a preemption of local law relating to regulation of seed; amending s. 578.08,

F.S.; revising application requirements for the registration of seed dealers; conforming provisions to changes made by the act; specifying that a receipt from the department need not be written to constitute a permit; deleting an exception to registration requirements for certain experiment stations; requiring the payment of fees when packet seed is placed into commerce; amending s. 578.09, F.S.; revising labeling requirements for agricultural, vegetable, flower, tree, and shrub seeds; conforming a cross-reference; repealing s. 578.091, F.S., relating to labeling of forest tree seed; amending s. 578.10, F.S.; revising exemptions to seed labeling, sale, and solicitation requirements; amending s. 578.11, F.S.; conforming provisions to changes made by the act; making technical changes; amending s. 578.12, F.S.; conforming provisions to changes made by the act; amending s. 578.13, F.S.; conforming provisions to changes made by the act; specifying that it is unlawful to move, handle, or dispose of seeds or tags under a stop-sale notice or order without permission from the department; specifying that it is unlawful to represent seed as certified except under specified conditions or to label seed with a variety name under certain conditions; repealing s. 578.14, F.S.,

relating to packet vegetable and flower seed; amending s. 578.181, F.S.; revising penalties; amending s. 578.23, F.S.; revising recordkeeping requirements relating to seed labeling; amending s. 578.26, F.S.; conforming provisions to changes made by the act; specifying that certain persons may not commence legal proceedings or make certain claims against a seed dealer before certain findings and recommendations are transmitted by the seed investigation and conciliation council to the complainant and dealer; deleting a requirement that the department transmit such findings and recommendations to complainants and dealers; requiring the department to mail a copy of the council's procedures to both parties upon receipt of a complaint; amending s. 578.27, F.S.; removing alternate membership from the seed investigation and conciliation council; revising the terms of members of the council; conforming provisions to changes made by the act; revising the purpose of the council; revising the council's investigatory process; renumbering and amending s. 578.28, F.S.; making a technical change; creating s. 578.29, F.S.; prohibiting certain noxious weed seed from being offered or exposed for sale; amending s. 590.02, F.S.; authorizing the Florida Forest Service to pay certain employees' initial

commercial driver license examination fees; amending s. 790.06, F.S.; revising required department handling of incomplete criminal history information in relation to licensure to carry concealed firearms; revising the required furnished statement to obtain a duplicate or substitute concealed weapon or firearm license; amending s. 790.0625, F.S.; revising required tax collector collection and remittance of firearm license fees; revising the fees which a tax collector may retain; authorizing certain tax collectors to print and deliver certain replacement licenses under certain conditions; authorizing certain tax collectors to offer fingerprinting and photographing services to aid license applicants; creating s. 817.417, F.S.; providing a short title; defining terms; specifying department duties and responsibilities relating to government impostor and deceptive advertisements; requiring rulemaking by the department; specifying that it is a violation to disseminate certain misleading or confusing advertisements, to make certain misleading or confusing representations, to use content implying or leading to confusion that such content is from a governmental entity when such is not true, to fail to provide certain disclosures, and to fail to provide certain responses and answers to the

department; requiring a person offering documents that are available free of charge or at a lesser price from a governmental entity to provide a certain disclosure; providing penalties; amending s. 489.105, F.S.; conforming provisions to changes made by the act; reenacting s. 527.06(3), F.S., relating to published standards of the National Fire Protection Association; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the

methodology described in subparagraph 1.

3. Structures or improvements used in horticultural production for frost or freeze protection and screen enclosed structures used in citrus production for pest exclusion, which are consistent with the interim measures or best management practices adopted by the Department of Agriculture and Consumer Services pursuant to s. 570.93 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

Section 2. Paragraphs (b), (d), and (i) of subsection (5) of section 379.361, Florida Statutes, are amended to read:

379.361 Licenses.—

(5) APALACHICOLA BAY OYSTER HARVESTING LICENSE.—

(b) A ~~No~~ person may not ~~shall~~ harvest oysters from the Apalachicola Bay without a valid Apalachicola Bay oyster harvesting license issued by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~. This requirement does ~~shall~~ not apply to anyone harvesting noncommercial quantities of oysters in accordance with commission rules, or to any person less than 18 years old.

(d) The City of Apalachicola ~~Department of Agriculture and Consumer Services~~ shall collect an annual fee of $100 from state residents and $500 from nonresidents for the issuance of an Apalachicola Bay oyster harvesting license. The license year shall begin on July 1 of each year and end on June 30 of the following year. The license shall be valid only for the

licensee. Only bona fide residents of the state ~~Florida~~ may obtain a resident license pursuant to this subsection.

(i) The proceeds from Apalachicola Bay oyster harvesting license fees shall be deposited by the City of Apalachicola into a trust account ~~in the General Inspection Trust Fund~~ and, less reasonable administrative costs, must ~~shall~~ be used or distributed by the City of Apalachicola ~~Department of Agriculture and Consumer Services~~ for the following purposes in Apalachicola Bay:

1. An Apalachicola Bay oyster shell recycling program ~~Relaying and transplanting live oysters~~.

2. Shell planting to construct or rehabilitate oyster bars.

3. Education programs for licensed oyster harvesters on oyster biology, aquaculture, boating and water safety, sanitation, resource conservation, small business management, marketing, and other relevant subjects.

4. Research directed toward the enhancement of oyster production in the bay and the water management needs of the bay.

Section 3. Paragraphs (a), (b), and (i) of subsection (1) of section 487.041, Florida Statutes, are amended to read:

487.041 Registration.—

(1)(a) ~~Effective January 1, 2009,~~ Each brand of pesticide, as defined in s. 487.021, which is distributed, sold, or offered for sale, except as provided in this section, within this state

or delivered for transportation or transported in intrastate commerce or between points within this state through any point outside this state must be registered in the office of the department, and such registration shall be renewed biennially. Emergency exemptions from registration may be authorized in accordance with the rules of the department. The registrant shall file with the department a statement including:

1. The name, business mailing address, and street address of the registrant.

2. The name of the brand of pesticide.

3. An ingredient statement and a complete current copy of the labeling accompanying the brand of pesticide, which must conform to the registration, and a statement of all claims to be made for it, including directions for use and a guaranteed analysis showing the names and percentages by weight of each active ingredient, the total percentage of inert ingredients, and the names and percentages by weight of each "added ingredient."

(b) ~~Effective January 1, 2009,~~ For the purpose of defraying expenses of the department in connection with carrying out the provisions of this part, each registrant shall pay a biennial registration fee for each registered brand of pesticide. The registration of each brand of pesticide shall cover a designated 2-year period beginning on January 1 of each odd-numbered year and expiring on December 31 of the following

year.

~~(i) Effective January 1, 2013, all payments of any pesticide registration fees, including late fees, shall be submitted electronically using the department's Internet website for registration of pesticide product brands.~~

Section 4. Paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, is amended to read:

493.6105 Initial application for license.—

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

4. A valid DD form 214 issued by the United States Department of Defense, an acceptable form as specified by the Department of Veterans' Affairs, or other official military documentation. Such form or documentation must be issued not

more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and has served as a military firearms instructor within the last 3 years of service.

Section 5. Paragraph (d) of subsection (3) of section 493.6113, Florida Statutes, is amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(d) Each Class "K" licensee shall additionally submit:

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms

instruction; or

2. Proof of having taught no less than six 28-hour firearms instruction courses to Class "G" applicants, as specified in s. 493.6105(5), during the previous triennial licensure period.

Section 6. Subsection (19) is added to section 496.415, Florida Statutes, to read:

496.415 Prohibited acts.—It is unlawful for any person in connection with the planning, conduct, or execution of any solicitation or charitable or sponsor sales promotion to:

(19) Commingle charitable contributions with noncharitable funds.

Section 7. Section 496.418, Florida Statutes, is amended to read:

496.418 Recordkeeping and accounting ~~Records~~.—

(1) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor that collects or takes control or possession of contributions made for a charitable purpose must keep records to permit accurate reporting and auditing as required by law, must not commingle contributions with noncharitable funds as specified in s. 496.415(19), and must be able to account for the funds. When expenditures are not properly documented and disclosed by records, there exists a rebuttable presumption that the charitable organization, sponsor, professional fundraising

consultant, or professional solicitor did not properly expend such funds. Noncharitable funds include any funds that are not used or intended to be used for the operation of the charity or for charitable purposes.

(2) Each charitable organization, sponsor, professional fundraising consultant, and professional solicitor must keep for a period of at least 3 years true and accurate records as to its activities in this state which are covered by ss. 496.401-496.424. The records must be made available, without subpoena, to the department for inspection and must be furnished no later than 10 working days after requested.

Section 8. Paragraph (b) of subsection (3) and paragraph (i) of subsection (5) of section 500.459, Florida Statutes, are amended to read:

500.459 Water vending machines.—

(3) PERMITTING REQUIREMENTS.—

(b) An application for an operating permit must be made ~~in writing~~ to the department on forms provided by the department and must be accompanied by a fee as provided in subsection (4). The application must state the location of each water vending machine, the source of the water to be vended, the treatment the water will receive prior to being vended, and any other information considered necessary by the department.

(5) OPERATING STANDARDS.—

(i) The operator shall place on each water vending

machine, in a position clearly visible to customers, the following information: the name and address of the operator; ~~the operating permit number;~~ the fact that the water is obtained from a public water supply; the method of treatment used; the method of postdisinfection used; and a local or toll-free telephone number that may be called for obtaining further information, reporting problems, or making complaints.

Section 9. Paragraph (g) of subsection (1) and subsection (5) of section 501.059, Florida Statutes, are amended to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ringless direct-to-voicemail delivery, or text message to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(5) A telephone solicitor or other person may not initiate an outbound telephone call or text message to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call or text message:

(a) Made by or on behalf of the seller whose goods or

services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

Section 10. Section 501.6175, Florida Statutes, is created to read:

501.6175 Recordkeeping.—A commercial telephone seller shall keep all of the following information for 2 years after the date the information first becomes part of the seller's business records:

(1) The name and telephone number of each consumer contacted by a telephone sales call.

(2) All express requests authorizing the telephone solicitor to contact the consumer.

(3) Any script, outline, or presentation the applicant requires or suggests a salesperson use when soliciting; sales information or literature to be provided by the commercial telephone seller to a salesperson; and sales information or literature to be provided by the commercial telephone seller to a consumer in connection with any solicitation.

Within 10 days of an oral or written request by the department, including a written request transmitted by electronic mail, a commercial telephone seller must make the records it keeps pursuant to this section available for inspection and copying by the department during the department's normal business hours.

This section does not limit the department's ability to inspect and copy material pursuant to any other law.

Section 11. Section 501.912, Florida Statutes, is amended to read:

501.912 Definitions.—As used in ss. 501.91-501.923:

(1) "Antifreeze" means any substance or preparation, including, but not limited to, antifreeze-coolant, antifreeze and summer coolant, or summer coolant, that is sold, distributed, or intended for use:

(a) As the cooling liquid, or to be added to the cooling liquid, in the cooling system of internal combustion engines of motor vehicles to prevent freezing of the cooling liquid or to lower its freezing point; or

(b) To raise the boiling point of water or for the prevention of engine overheating, whether or not the liquid is used as a year-round cooling system fluid.

~~(2) "Antifreeze-coolant," "antifreeze and summer coolant," or "summer coolant" means any substance as defined in subsection (1) which also is sold, distributed, or intended for raising the boiling point of water or for the prevention of engine overheating whether or not used as a year-round cooling system fluid. Unless otherwise stated, the term "antifreeze" includes "antifreeze," "antifreeze-coolant," "antifreeze and summer coolant," and "summer coolant."~~

(2)~~(3)~~ "Department" means the Department of Agriculture

and Consumer Services.

(3)~~(4)~~ "Distribute" means to hold with an intent to sell, offer for sale, sell, barter, or otherwise supply to the consumer.

(4)~~(5)~~ "Package" means a sealed, tamperproof retail package, drum, or other container designed for the sale of antifreeze directly to the consumer or a container from which the antifreeze may be installed directly by the seller into the cooling system. However, this term~~, but~~ does not include shipping containers containing properly labeled inner containers.

(5)~~(6)~~ "Label" means any display of written, printed, or graphic matter on, or attached to, a package or to the outside individual container or wrapper of the package.

(6)~~(7)~~ "Labeling" means the labels and any other written, printed, or graphic matter accompanying a package.

Section 12. Section 501.913, Florida Statutes, is amended to read:

501.913 Registration.—

(1) Each brand of antifreeze to be distributed in this state must ~~shall~~ be registered with the department before distribution. The person whose name appears on the label, the manufacturer, or the packager shall make application annually or biennially to the department on forms provided by the department. The registration certificate expires ~~shall expire~~ 12

or 24 months after the date of issue, as indicated on the registration certificate. The registrant assumes, by application to register the brand, full responsibility for the registration, quality, and quantity of the product sold, offered, or exposed for sale in this state. ~~If a registered brand is not in production for distribution in this state and to ensure any remaining product that is still available for sale in the state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~(a) The stated brand is no longer in production;~~

~~(b) The stated brand will not be distributed in this state; and~~

~~(c) All existing product of the stated brand will be removed by the registrant from the state within 30 days after expiration of the registration or the registrant will reregister the brand for two subsequent registration periods.~~

~~If production resumes, the brand must be reregistered before it is distributed in this state.~~

(2) The completed application shall be accompanied by:

(a) Specimens or copies ~~facsimiles~~ of the label for each brand of antifreeze;

(b) An application fee of $200 for a 12-month registration or $400 for a 24-month registration for each brand of

antifreeze; and

(c) For first-time applications, a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, providing analysis showing that the antifreeze conforms to minimum standards required for antifreeze by this part or rules of the department and is not adulterated ~~A properly labeled sample of between 1 and 2 gallons for each brand of antifreeze~~.

(3) The department may analyze or inspect the antifreeze to ensure that it:

(a) Meets the labeling claims;

(b) Conforms to minimum standards required for antifreeze by this part ~~chapter~~ or rules of the department; and

(c) Is not adulterated as prescribed for antifreeze by this part ~~chapter~~.

(4)(a) If the registration requirements are met, and, if the antifreeze meets the minimum standards, is not adulterated, and meets the labeling claims, the department shall issue a certificate of registration authorizing the distribution of that antifreeze in the state for the permit period ~~year~~.

(b) If registration requirements are not met, or, if the antifreeze fails to meet the minimum standards, is adulterated, or fails to meet the labeling claims, the department shall refuse to register the antifreeze.

Section 13. Section 501.917, Florida Statutes, is amended

to read:

501.917 Inspection by department; sampling and analysis.—The department has ~~shall have~~ the right to have access at reasonable hours to all places and property where antifreeze is stored, distributed, or offered or intended to be offered for sale, including the right to inspect and examine all antifreeze and to take reasonable samples of antifreeze for analysis together with specimens of labeling. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state ~~All samples taken shall be properly sealed and sent to a laboratory designated by the department for examination together with all labeling pertaining to such samples. It shall be the duty of said laboratory to examine promptly all samples received in connection with the administration and enforcement of this act~~.

Section 14. Section 501.92, Florida Statutes, is amended to read:

501.92 Formula may be required.—The department may, if required for the analysis of antifreeze by ~~the laboratory designated by~~ the department ~~for the purpose of registration~~, require the applicant to furnish a statement of the formula of such antifreeze, unless the applicant can furnish other satisfactory evidence that such antifreeze is not adulterated or misbranded. Such statement need not include inhibitor or other

minor ingredients which total less than 5 percent by weight of the antifreeze; and, if over 5 percent, the composition of the inhibitor and such other ingredients may be given in generic terms.

Section 15. Paragraph (e) of subsection (10) of section 525.07, Florida Statutes, is redesignated as paragraph (f), and a new paragraph (e) is added to that subsection, to read:

525.07 Powers and duties of department; inspections; unlawful acts.—

(10)

(e) The department may seize without warrant any skimming device, as defined in s. 817.625, for use as evidence.

Section 16. Subsection (1) of section 526.51, Florida Statutes, is amended to read:

526.51 Registration; renewal and fees; departmental expenses; cancellation or refusal to issue or renew.—

(1)(a) Application for registration of each brand of brake fluid shall be made on forms supplied by the department. The applicant shall give his or her name and address and the brand name of the brake fluid, state that he or she owns the brand name and has complete control over the product sold thereunder in this state, and provide the name and address of the resident agent in this state. If the applicant does not own the brand name but wishes to register the product with the department, a notarized affidavit that gives the applicant full authorization

to register the brand name and that is signed by the owner of the brand name must accompany the application for registration. The affidavit must include all affected brand names, the owner's company or corporate name and address, the applicant's company or corporate name and address, and a statement from the owner authorizing the applicant to register the product with the department. The owner of the brand name shall maintain complete control over each product sold under that brand name in this state.

(b) The completed application must be accompanied by the following:

1. Specimens or copies of the label for each brand of brake fluid.

2. An application fee of $50 for a 12-month registration or $100 for a 24-month registration for each brand of brake fluid.

3. For ~~All~~ first-time applications for a brand and formula combination, ~~must be accompanied by~~ a certified report from an independent testing laboratory, dated no more than 6 months before the registration application, setting forth the analysis of the brake fluid which shows its quality to be not less than the specifications established by the department for brake fluids. ~~A sample of not less than 24 fluid ounces of brake fluid shall be submitted, in a container with a label printed in the same manner that it will be labeled when sold, and the sample~~

~~and container shall be analyzed and inspected by the department in order that compliance with the department's specifications and labeling requirements may be verified.~~

Upon approval of the application, the department shall register the brand name of the brake fluid and issue to the applicant a permit authorizing the registrant to sell the brake fluid in this state. The registration certificate expires ~~shall expire~~ 12 or 24 months after the date of issue, as indicated on the registration certificate.

(c) ~~(b) Each applicant shall pay a fee of $100 with each application.~~ A permit may be renewed by application to the department, accompanied by a renewal fee of $50 for a 12-month registration, or $100 for a 24-month registration, on or before the expiration of the previously issued permit. To reregister a previously registered brand and formula combination, an applicant must submit a completed application and all materials as required in this section to the department before the expiration of the previously issued permit. A brand and formula combination for which a completed application and all materials required in this section are not received before the expiration of the previously issued permit may not be registered with the department until a completed application and all materials required in this section have been received and approved. If the brand and formula combination was previously registered with the

department and a fee, application, or materials required in this section are received after the expiration of the previously issued permit, a penalty of $25 accrues, which shall be added to the fee. Renewals shall be accepted only on brake fluids that have no change in formula, composition, or brand name. Any change in formula, composition, or brand name of a brake fluid constitutes a new product that must be registered in accordance with this part.

~~(c) If a registered brand and formula combination is no longer in production for distribution in this state, in order to ensure that any remaining product still available for sale in this state is properly registered, the registrant must submit a notarized affidavit on company letterhead to the department certifying that:~~

~~1. The stated brand and formula combination is no longer in production;~~

~~2. The stated brand and formula combination will not be distributed in this state; and~~

~~3. Either all existing product of the stated brand and formula combination will be removed by the registrant from the state within 30 days after the expiration of the registration or that the registrant will reregister the brand and formula combination for 2 subsequent years.~~

~~If production resumes, the brand and formula combination must be~~

~~reregistered before it is again distributed in this state.~~

Section 17. Subsection (1) of section 526.53, Florida Statutes, is amended to read:

526.53 Enforcement; inspection and analysis, stop-sale and disposition, regulations.—

(1) The department shall enforce ~~the provisions of~~ this part through the department, and may sample, inspect, analyze, and test any brake fluid manufactured, packed, or sold within this state. Collected samples must be analyzed by the department. The certificate of analysis by the department shall be prima facie evidence of the facts stated therein in any legal proceeding in this state. The department has ~~shall have~~ free access during business hours to all premises, buildings, vehicles, cars, or vessels used in the manufacture, packing, storage, sale, or transportation of brake fluid, and may open any box, carton, parcel, or container of brake fluid and take samples for inspection and analysis or for evidence.

Section 18. Section 527.01, Florida Statutes, is amended to read:

527.01 Definitions.—As used in this chapter:

(1) "Liquefied petroleum gas" means any material which is composed predominantly of any of the following hydrocarbons, or mixtures of the same: propane, propylene, butanes (normal butane or isobutane), and butylenes.

(2) "Person" means any individual, firm, partnership,

corporation, company, association, organization, or cooperative.

(3) "~~Ultimate~~ Consumer" means the person last purchasing liquefied petroleum gas in its liquid or vapor state for industrial, commercial, or domestic use.

(4) "Department" means the Department of Agriculture and Consumer Services.

(5) "Qualifier" means any person who has passed a competency examination administered by the department and is employed by a licensed category I, category II, or category V business. ~~in one or more of the following classifications:~~

~~(a) Category I liquefied petroleum gas dealer.~~

~~(b) Category II liquefied petroleum gas dispenser.~~

~~(c) LP gas installer.~~

~~(d) Specialty installer.~~

~~(e) Requalifier of cylinders.~~

~~(f) Fabricator, repairer, and tester of vehicles and cargo tanks.~~

~~(g) Category IV liquefied petroleum gas dispensing unit operator and recreational vehicle servicer.~~

~~(h) Category V liquefied petroleum gases dealer for industrial uses only.~~

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the ~~ultimate~~ consumer for industrial, commercial, or domestic use; any person

leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(7) "Category II liquefied petroleum gas dispenser" means any person engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the ~~ultimate~~ consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, including maintaining a cylinder storage rack at the licensed business location for the purpose of storing cylinders filled by the licensed business for sale or use at a later date.

(8) "Category III liquefied petroleum gas cylinder exchange operator" means any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the ~~ultimate~~ consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.

(9) "Category IV dealer in appliances and equipment

~~liquefied petroleum gas dispenser and recreational vehicle servicer~~" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas ~~engaging in the business of operating a liquefied petroleum gas dispensing unit for the purpose of serving liquid product to the ultimate consumer for industrial, commercial, or domestic use, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, and whose services include the installation, service, or repair of recreational vehicle liquefied petroleum gas appliances and equipment~~.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

(11) "Category VI miscellaneous operator" means any person who is engaged in operation as a manufacturer of LP gas appliances and equipment; a fabricator, repairer, and tester of vehicles and cargo tanks; a requalifier of LP gas cylinders; or a pipeline system operator ~~Specialty installer" means any person~~

~~involved in the installation, service, or repair of liquefied petroleum or natural gas appliances and equipment, and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas, whose activities are limited to specific types of appliances and equipment as designated by department rule~~.

~~(12) "Dealer in appliances and equipment for use of liquefied petroleum gas" means any person selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum gas.~~

(12)~~(13)~~ "Manufacturer of liquefied petroleum gas appliances and equipment" means any person in this state manufacturing and offering for sale or selling tanks, cylinders, or other containers and necessary appurtenances for use in the storage, transportation, or delivery of such gas to the ~~ultimate~~ consumer, or manufacturing and offering for sale or selling apparatus, appliances, and equipment for the use of liquefied petroleum gas to the ~~ultimate~~ consumer.

(13)~~(14)~~ "Wholesaler" means any person, as defined by subsection (2), selling or offering to sell any liquefied petroleum gas for industrial, commercial, or domestic use to any person except the ~~ultimate~~ consumer.

(14)~~(15)~~ "Requalifier of cylinders" means any person involved in the retesting, repair, qualifying, or requalifying of liquefied petroleum gas tanks or cylinders manufactured under

specifications of the United States Department of Transportation ~~or former Interstate Commerce Commission~~.

(15)~~(16)~~ "Fabricator, repairer, and tester of vehicles and cargo tanks" means any person involved in the hydrostatic testing, fabrication, repair, or requalifying of any motor vehicles or cargo tanks used for the transportation of liquefied petroleum gases, when such tanks are permanently attached to or forming a part of the motor vehicle.

~~(17) "Recreational vehicle" means a motor vehicle designed to provide temporary living quarters for recreational, camping, or travel use, which has its own propulsion or is mounted on or towed by another motor vehicle.~~

(16)~~(18)~~ "Pipeline system operator" means any person who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ~~ultimate~~ customer and that serves 10 or more customers.

~~(19) "Category V liquefied petroleum gases dealer for industrial uses only" means any person engaged in the business of filling, selling, and transporting liquefied petroleum gas containers for use in welding, forklifts, or other industrial applications.~~

(17)~~(20)~~ "License period ~~year~~" means the period 1 to 3 years from the issuance of the license ~~from September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license~~.

Section 19. Section 527.02, Florida Statutes, is amended to read:

527.02 License; penalty; fees.—

(1) It is unlawful for any person to engage in this state in the activities defined in s. 527.01(6) through (11) ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category III liquefied petroleum gas cylinder exchange operator, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gas dealer for industrial uses only, LP gas installer, specialty installer, dealer in liquefied petroleum gas appliances and equipment, manufacturer of liquefied petroleum gas appliances and equipment, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ without first obtaining from the department a license to engage in one or more of these businesses. The sale of liquefied petroleum gas cylinders with a volume of 10 pounds water capacity or 4.2 pounds liquefied petroleum gas capacity or less is exempt from the requirements of this chapter. It is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, to intentionally or willfully engage in any of said activities without first obtaining appropriate licensure from the department.

(2) Each business location of a person having multiple

locations must ~~shall~~ be separately licensed and must meet the requirements of this section. Such license shall be granted to any applicant determined by the department to be competent, qualified, and trustworthy who files with the department a surety bond, insurance affidavit, or other proof of insurance, as hereinafter specified, and pays for such license the following annual license ~~original application~~ fee ~~for new licenses and annual renewal fees for existing licenses~~:

| License Category | License ~~Original Application~~ Fee Per Year | ~~Renewal Fee~~ |
|---|---|---|
| Category I liquefied petroleum gas dealer | $400 ~~$525~~ | ~~$425~~ |
| Category II liquefied petroleum gas dispenser | $400 ~~525~~ | ~~375~~ |
| Category III liquefied petroleum gas cylinder exchange unit operator | $65 ~~100~~ | ~~65~~ |

| | | | |
|---|---|---|---|
| Category IV dealer in appliances and equipment ~~liquefied petroleum gas dispenser and recreational vehicle servicer~~ | $65 ~~525~~ | ~~400~~ |
| Category V LP gas installer ~~liquefied petroleum gases dealer for industrial uses only~~ | $200 ~~300~~ | ~~200~~ |
| Category VI miscellaneous operator ~~LP gas installer~~ | $200 ~~300~~ | ~~200~~ |
| ~~Specialty installer~~ | ~~300~~ | ~~200~~ |
| ~~Dealer in appliances and equipment for use of liquefied petroleum gas~~ | ~~50~~ | ~~45~~ |

| | | |
|---|---|---|
| ~~Manufacturer of liquefied petroleum gas appliances and equipment~~ | ~~525~~ | ~~375~~ |
| ~~Requalifier of cylinders~~ | ~~525~~ | ~~375~~ |
| ~~Fabricator, repairer, and tester of vehicles and cargo tanks~~ | ~~525~~ | ~~375~~ |

(3)(a) ~~An applicant for an original license who submits an application during the last 6 months of the license year may have the original license fee reduced by one-half for the 6-month period. This provision applies only to those companies applying for an original license and may not be applied to licensees who held a license during the previous license year and failed to renew the license.~~ The department may refuse to issue an initial license to an applicant who is under investigation in any jurisdiction for an action that would constitute a violation of this chapter until such time as the investigation is complete.

(b) The department shall waive the initial license fee for 1 year for an honorably discharged veteran of the United States Armed Forces, the spouse of such a veteran, or a business entity that has a majority ownership held by such a veteran or spouse if the department receives an application, in a format prescribed by the department, within 60 months after the date of the veteran's discharge from any branch of the United States Armed Forces. To qualify for the waiver, a veteran must provide to the department a copy of his or her DD Form 214, as issued by the United States Department of Defense or another acceptable form of identification as specified by the Department of Veterans' Affairs; the spouse of a veteran must provide to the department a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and a copy of a valid marriage license or certificate verifying that he or she was lawfully married to the veteran at the time of discharge; or a business entity must provide to the department proof that a veteran or the spouse of a veteran holds a majority ownership in the business, a copy of the veteran's DD Form 214, as issued by the United States Department of Defense, or another acceptable form of identification as specified by the Department of Veterans' Affairs, and, if applicable, a copy of a valid marriage license or certificate verifying that the spouse of the veteran was lawfully married to the veteran at the time

of discharge.

(4) Any licensee submitting a material change in their information for licensing, before the date for renewal, must submit such change to the department in the manner prescribed by the department, along with a fee in the amount of $10 ~~Any person applying for a liquefied petroleum gas license as a specialty installer, as defined by s. 527.01(11), shall upon application to the department identify the specific area of work to be performed. Upon completion of all license requirements set forth in this chapter, the department shall issue the applicant a license specifying the scope of work, as identified by the applicant and defined by rule of the department, for which the person is authorized~~.

~~(5) The license fee for a pipeline system operator shall be $100 per system owned or operated by the person, not to exceed $400 per license year. Such license fee applies only to a pipeline system operator who owns or operates a liquefied petroleum gas pipeline system that is used to transmit liquefied petroleum gas from a common source to the ultimate customer and that serves 10 or more customers.~~

(5)~~(6)~~ The department shall adopt ~~promulgate~~ rules specifying acts deemed by the department to demonstrate a lack of trustworthiness to engage in activities requiring a license or qualifier identification card under this section.

~~(7) Any license issued by the department may be~~

~~transferred to any person, firm, or corporation for the remainder of the current license year upon written request to the department by the original licenseholder. Prior to approval of any transfer, all licensing requirements of this chapter must be met by the transferee. A license transfer fee of $50 shall be charged for each such transfer.~~

Section 20. Section 527.0201, Florida Statutes, is amended to read:

527.0201 Qualifiers; master qualifiers; examinations.—

(1) In addition to the requirements of s. 527.02, any person applying for a license to engage in category I, category II, or category V ~~the~~ activities ~~of a pipeline system operator, category I liquefied petroleum gas dealer, category II liquefied petroleum gas dispenser, category IV liquefied petroleum gas dispenser and recreational vehicle servicer, category V liquefied petroleum gases dealer for industrial uses only, LP gas installer, specialty installer, requalifier of cylinders, or fabricator, repairer, and tester of vehicles and cargo tanks~~ must prove competency by passing a written examination administered by the department or its agent with a grade of 70 ~~75~~ percent or above in each area tested. Each applicant for examination shall submit a $20 nonrefundable fee. The department shall by rule specify the general areas of competency to be covered by each examination and the relative weight to be assigned in grading each area tested.

(2) Application for examination for competency may be made by an individual or by an owner, a partner, or any person employed by the license applicant. Upon successful completion of the competency examination, the department shall register ~~issue a qualifier identification card to~~ the examinee.

(a) Qualifier registration automatically expires if ~~identification cards, except those issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers, shall remain in effect as long as the individual shows to the department proof of active employment in the area of examination and all continuing education requirements are met. Should~~ the individual terminates ~~terminate~~ active employment in the area of examination for a period exceeding 24 months, or fails ~~fail~~ to provide documentation of continuing education~~, the individual's qualifier status shall automatically expire~~. If the qualifier registration ~~status~~ has expired, the individual must apply for and successfully complete an examination by the department in order to reestablish qualifier status.

(b) Every business organization in license category I, category II, or category V shall employ at all times a full-time qualifier who has successfully completed an examination in the corresponding category of the license held by the business organization. A person may not act as a qualifier for more than one licensed location.

(3) Qualifier registration expires ~~cards issued to category I liquefied petroleum gas dealers and liquefied petroleum gas installers shall expire~~ 3 years after the date of issuance. ~~All category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer qualifiers holding a valid qualifier card upon the effective date of this act shall retain their qualifier status until July 1, 2003, and may sit for the master qualifier examination at any time during that time period.~~ All such ~~category I liquefied petroleum gas dealer qualifiers and liquefied petroleum gas installer~~ qualifiers may renew their qualification ~~on or before July 1, 2003,~~ upon application to the department, payment of a $20 renewal fee, and documentation of the completion of a minimum of 16 hours of approved continuing education courses, as defined by department rule, during the previous 3-year period. Applications for renewal must be made 30 calendar days before expiration. Persons failing to renew before the expiration date must reapply and take a qualifier competency examination in order to reestablish ~~category I liquefied petroleum gas dealer qualifier and liquefied petroleum gas installer~~ qualifier status. ~~If a category I liquefied petroleum gas qualifier or liquefied petroleum gas installer qualifier becomes a master qualifier at any time during the effective date of the qualifier card, the card shall remain in effect until expiration of the master qualifier certification.~~

(4) A qualifier for a business ~~organization involved in installation, repair, maintenance, or service of liquefied petroleum gas appliances, equipment, or systems~~ must actually function in a supervisory capacity of other company employees performing licensed activities ~~installing, repairing, maintaining, or servicing liquefied petroleum gas appliances, equipment, or systems~~. A separate qualifier shall be required for every 10 such employees. ~~Additional qualifiers are required for those business organizations employing more than 10 employees that install, repair, maintain, or service liquefied petroleum gas equipment and systems.~~

(5) In addition to all other licensing requirements, each category I and category V licensee ~~liquefied petroleum gas dealer and liquefied petroleum gas installer~~ must, at the time of application for licensure, identify to the department one master qualifier who is a full-time employee at the licensed location. This person shall be a manager, owner, or otherwise primarily responsible for overseeing the operations of the licensed location and must provide documentation to the department as provided by rule. The master qualifier requirement shall be in addition to the requirements of subsection (1).

(a) In order to apply for certification as a master qualifier, each applicant must have been a registered ~~be a category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer~~ qualifier for a minimum of 3 years

immediately preceding submission of the application, must be employed by a licensed category I or category V licensee ~~liquefied petroleum gas dealer, liquefied petroleum gas installer~~, or applicant for such license, ~~must provide documentation of a minimum of 1 year's work experience in the gas industry,~~ and must pass a master qualifier competency examination. Master qualifier examinations shall be based on Florida's laws, rules, and adopted codes governing liquefied petroleum gas safety, general industry safety standards, and administrative procedures. The applicant must successfully pass the examination with a grade of 70 ~~75~~ percent or above. Each applicant for master qualifier registration ~~status~~ must submit to the department a nonrefundable $30 examination fee before the examination.

(b) Upon successful completion of the master qualifier examination, the department shall issue the examinee a ~~certificate of~~ master qualifier registration ~~status which shall include the name of the licensed company for which the master qualifier is employed~~. A master qualifier may transfer from one licenseholder to another upon becoming employed by the company and providing a written request to the department.

(c) A master qualifier registration expires ~~status shall expire~~ 3 years after the date of issuance ~~of the certificate~~ and may be renewed by submission to the department of documentation of completion of at least 16 hours of approved continuing

education courses during the 3-year period; proof of employment ~~with a licensed category I liquefied petroleum gas dealer, liquefied petroleum gas installer, or applicant~~; and a $30 certificate renewal fee. The department shall define~~,~~ by rule~~,~~ approved courses of continuing education.

~~(d) Each category I liquefied petroleum gas dealer or liquefied petroleum gas installer licensed as of August 31, 2000, shall identify to the department one current category I liquefied petroleum gas dealer qualifier or liquefied petroleum gas installer qualifier who will be the designated master qualifier for the licenseholder. Such individual must provide proof of employment for 3 years or more within the liquefied petroleum gas industry, and shall, upon approval of the department, be granted a master qualifier certificate. All other requirements with regard to master qualifier certificate expiration, renewal, and continuing education shall apply.~~

(6) A vacancy in a qualifier or master qualifier position in a business organization which results from the departure of the qualifier or master qualifier shall be immediately reported to the department by the departing qualifier or master qualifier and the licensed company.

(a) If a business organization no longer possesses a duly designated qualifier, as required by this section, its liquefied petroleum gas licenses shall be suspended by order of the department after 20 working days. The license shall remain

suspended until a competent qualifier has been employed, the order of suspension terminated by the department, and the license reinstated. A vacancy in the qualifier position for a period of more than 20 working days shall be deemed to constitute an immediate threat to the public health, safety, and welfare. ~~Failure to obtain a replacement qualifier within 60 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(b) Any category I or category V licensee ~~liquefied petroleum gas dealer or LP gas installer~~ who no longer possesses a master qualifier but currently employs a ~~category I liquefied petroleum gas dealer or LP gas installer~~ qualifier as required by this section~~,~~ has ~~shall have~~ 60 days within which to replace the master qualifier. If the company fails to replace the master qualifier within the 60-day ~~time~~ period, the license of the company shall be suspended by order of the department. The license shall remain suspended until a competent master qualifier has been employed, the order of suspension has been terminated by the department, and the license reinstated. ~~Failure to obtain a replacement master qualifier within 90 days after the vacancy occurs shall be grounds for revocation of licensure or eligibility for licensure.~~

(7) The department may deny, refuse to renew, suspend, or revoke any qualifier ~~card~~ or master qualifier registration ~~certificate~~ for any of the following causes:

(a) Violation of any provision of this chapter or any rule or order of the department;

(b) Falsification of records relating to the qualifier ~~card~~ or master qualifier registration ~~certificate~~; or

(c) Failure to meet any of the renewal requirements.

(8) Any individual having competency qualifications on file with the department may request the transfer of such qualifications to any existing licenseholder by making a written request to the department for such transfer. Any individual having a competency examination on file with the department may use such examination for a new license application after making application in writing to the department. All examinations are confidential and exempt from the provisions of s. 119.07(1).

(9) If a duplicate license, qualifier ~~card~~, or master qualifier registration certificate is requested by the licensee, a fee of $10 must be received before issuance of the duplicate license or certificate ~~card~~. ~~If a facsimile transmission of an original license is requested, upon completion of the transmission a fee of $10 must be received by the department before the original license may be mailed to the requester.~~

(10) All revenues collected herein shall be deposited in the General Inspection Trust Fund for the purpose of administering the provisions of this chapter.

Section 21. Section 527.021, Florida Statutes, is amended to read:

527.021 Registration of transport vehicles.—

(1) Each liquefied petroleum gas bulk delivery vehicle owned or leased by a liquefied petroleum gas licensee must be registered with the department as part of the licensing application or when placed into service ~~annually~~.

(2) For the purposes of this section, a "liquefied petroleum gas bulk delivery vehicle" means any vehicle that is used to transport liquefied petroleum gas on any public street or highway as liquid cargo in a cargo tank, which tank is mounted on a conventional truck chassis or is an integral part of a transporting vehicle in which the tank constitutes, in whole or in part, the stress member used as a frame and is a permanent part of the transporting vehicle.

(3) ~~Vehicle registrations shall be submitted by the vehicle owner or lessee in conjunction with the annual renewal of his or her liquefied petroleum gas license, but no later than August 31 of each year.~~ A dealer who fails to register a vehicle with the department ~~does not submit the required vehicle registration by August 31 of each year~~ is subject to the penalties in s. 527.13.

(4) The department shall issue a decal to be placed on each vehicle that is inspected by the department and found to be in compliance with applicable codes.

Section 22. Section 527.03, Florida Statutes, is amended to read:

527.03 ~~Annual~~ Renewal of license.—All licenses required under this chapter shall be renewed annually, biennially, or triennially, as elected by the licensee, subject to the license fees prescribed in s. 527.02. All renewals must meet the same requirements and conditions as an annual license for each licensed year ~~All licenses, except Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses, shall be renewed for the period beginning September 1 and shall expire on the following August 31 unless sooner suspended, revoked, or otherwise terminated. Category III Liquefied Petroleum Gas Cylinder Exchange Unit Operator licenses and Dealer in Appliances and Equipment for Use of Liquefied Petroleum Gas licenses shall be renewed for the period beginning April 1 and shall expire on the following March 31 unless sooner suspended, revoked, or otherwise terminated~~. Any license allowed to expire will ~~shall~~ become inoperative because of failure to renew. The fee for restoration of a license is equal to the original license fee and must be paid before the licensee may resume operations.

Section 23. Section 527.04, Florida Statutes, is amended to read:

527.04 Proof of insurance required.—

(1) Before any license is issued, except to a category IV dealer in appliances and equipment ~~for use of liquefied~~

~~petroleum gas~~ or a category III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to such business and is issued by an insurer authorized to do business in this state for an amount not less than $1 million and that the premium on such insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $1 million, payable to the Commissioner of Agriculture ~~Governor of Florida~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department with respect to the conduct of such business and shall indemnify and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $1 million. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the

licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage as required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(2) Before any license is issued to a category ~~class~~ III liquefied petroleum gas cylinder exchange operator, the applicant must deliver to the department satisfactory evidence that the applicant is covered by a primary policy of bodily injury liability and property damage liability insurance that covers the products and operations with respect to the business and is issued by an insurer authorized to do business in this state for an amount not less than $300,000 and that the premium on the insurance is paid. An insurance certificate, affidavit, or other satisfactory evidence of acceptable insurance coverage shall be accepted as proof of insurance. In lieu of an insurance policy, the applicant may deliver a good and sufficient bond in the amount of $300,000, payable to the Commissioner of Agriculture ~~Governor~~, with the applicant as principal and a surety company authorized to do business in this state as surety. The bond must be conditioned upon the applicant's compliance with this chapter and the rules of the department with respect to the conduct of such business and must indemnify

and hold harmless all persons from loss or damage by reason of the applicant's failure to comply. However, the aggregated liability of the surety may not exceed $300,000. If the insurance policy is canceled or otherwise terminated or the bond becomes insufficient, the department may require new proof of insurance or a new bond to be filed, and if the licenseholder fails to comply, the department shall cancel the license issued and give the licenseholder written notice that it is unlawful to engage in business without a license. A new bond is not required as long as the original bond remains sufficient and in force. If the licenseholder's insurance coverage required by this subsection is canceled or otherwise terminated, the insurer must notify the department within 30 days after the cancellation or termination.

(3) Any person having a cause of action on the bond may bring suit against the principal and surety, and a copy of such bond duly certified by the department shall be received in evidence in the courts of this state without further proof. The department shall furnish a certified copy of the ~~such~~ bond upon payment to it of its lawful fee for making and certifying such copy.

Section 24. Section 527.0605, Florida Statutes, is amended to read:

527.0605 Liquefied petroleum gas bulk storage locations; jurisdiction.—

(1) The provisions of this chapter ~~shall~~ apply to liquefied petroleum gas bulk storage locations when:

(a) A single container in the bulk storage location has a capacity of 2,000 gallons or more;

(b) The aggregate container capacity of the bulk storage location is 4,000 gallons or more; or

(c) A container or containers are installed for the purpose of serving the public the liquid product.

~~(2) Prior to the installation of any bulk storage container, the licensee must submit to the department a site plan of the facility which shows the proposed location of the container and must obtain written approval of such location from the department.~~

~~(3) A fee of $200 shall be assessed for each site plan reviewed by the division. The review shall include preconstruction inspection of the proposed site, plan review, and final inspection of the completed facility.~~

(2)~~(4)~~ No newly installed container may be placed in operation until it has been inspected and approved by the department.

Section 25. Subsection (1) of section 527.065, Florida Statutes, is amended to read:

527.065 Notification of accidents; leak calls.—

(1) Immediately upon discovery, all liquefied petroleum gas licensees shall notify the department of any liquefied

petroleum gas-related accident involving a liquefied petroleum gas licensee or customer account:

(a) Which caused a death or personal injury requiring professional medical treatment;

(b) Where uncontrolled ignition of liquefied petroleum gas resulted in death, personal injury, or property damage exceeding $3,000 ~~$1,000~~; or

(c) Which caused estimated damage to property exceeding $3,000 ~~$1,000~~.

Section 26. Section 527.10, Florida Statutes, is amended to read:

527.10 Restriction on use of unsafe container or system.—No liquefied petroleum gas shall be introduced into or removed from any container or system in this state that has been identified by the department or its duly authorized inspectors as not complying with the rules pertaining to such container or system, until such violations as specified have been satisfactorily corrected and authorization for continued service or removal granted by the department. A statement of violations of the rules that render such a system unsafe for use shall be furnished in writing by the department to the ~~ultimate~~ consumer or dealer in liquefied petroleum gas.

Section 27. Subsections (3) and (17) of section 527.21, Florida Statutes, are amended to read:

527.21 Definitions relating to Florida Propane Gas

Education, Safety, and Research Act.—As used in ss. 527.20-527.23, the term:

(3) "Dealer" means a business engaged primarily in selling propane gas and its appliances and equipment to the ~~ultimate~~ consumer or to retail propane gas dispensers.

(17) "Wholesaler" or "reseller" means a seller of propane gas who is not a producer and who does not sell propane gas to the ~~ultimate~~ consumer.

Section 28. Paragraph (a) of subsection (2) of section 527.22, Florida Statutes, is amended to read:

527.22 Florida Propane Gas Education, Safety, and Research Council established; membership; duties and responsibilities.—

(2)(a) ~~Within 90 days after the effective date of this act, the commissioner shall make a call to qualified industry organizations for nominees to the council.~~ The commissioner shall appoint members of the council from a list of nominees submitted by qualified industry organizations. The commissioner may require such reports or documentation as is necessary to document the nomination process for members of the council. Qualified industry organizations, in making nominations, and the commissioner, in making appointments, shall give due regard to selecting a council that is representative of the industry and the geographic regions of the state. Other than the public member, council members must be full-time employees or owners of propane gas producers or dealers doing business in this state.

Section 29. Section 531.67, Florida Statutes, is amended to read:

531.67 Expiration of sections.—Sections 531.60, 531.61, 531.62, 531.63, 531.64, 531.65, and 531.66 shall expire July 1, 2025 ~~2020~~.

Section 30. Subsection (46) is added to section 570.07, Florida Statutes, to read:

570.07 Department of Agriculture and Consumer Services; functions, powers, and duties.—The department shall have and exercise the following functions, powers, and duties:

(46) During a state of emergency declared pursuant to s. 252.36, to waive fees by emergency order for duplicate copies or renewal of permits, licenses, certifications, or other similar types of authorizations during a period specified by the commissioner.

Section 31. Section 573.111, Florida Statutes, is amended to read:

573.111 Notice of effective date of marketing order.—Before the issuance of any marketing order, or any suspension, amendment, or termination thereof, a notice must ~~shall~~ be posted ~~on a public bulletin board to be maintained by the department in the Division of Marketing and Development of the department in the Nathan Mayo Building, Tallahassee, Leon County, and a copy of the notice shall be posted~~ on the department website ~~the same date that the notice is posted on the bulletin board~~. A ~~No~~

marketing order, or any suspension, amendment, or termination thereof, may not ~~shall~~ become effective until ~~the termination of a period of~~ 5 days after ~~from~~ the date of posting and publication.

Section 32. Section 578.011, Florida Statutes, is amended to read:

578.011 Definitions; Florida Seed Law.—When used in this chapter, the term:

(1) "Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this law.

(2) "Agricultural seed" includes the seed of grass, forage, cereal and fiber crops, and chufas and any other seed commonly recognized within the state as agricultural seed, lawn seed, and combinations of such seed, and may include identified noxious weed seed when the department determines that such seed is being used as agricultural seed ~~or field seed and mixtures of such seed~~.

(3) "Blend" means seed consisting of more than one variety of one kind, each present in excess of 5 percent by weight of the whole.

(4) "Buyer" means a person who purchases agricultural, vegetable, flower, tree, or shrub seed in packaging of 1,000 seeds or more by count.

(5) "Brand" means a distinguishing word, name, symbol,

number, or design used to identify seed produced, packaged, advertised, or offered for sale by a particular person.

(6) ~~(3)~~ "Breeder seed" means a class of certified seed directly controlled by the originating or sponsoring plant breeding institution or person, or designee thereof, and is the source for the production of seed of the other classes of certified seed ~~that are released directly from the breeder or experiment station that develops the seed. These seed are one class above foundation seed~~.

(7) ~~(4)~~ "Certified seed~~,~~" means a class of seed which is the progeny of breeder, foundation, or registered seed ~~"registered seed," and "foundation seed" mean seed that have been produced and labeled in accordance with the procedures and in compliance with the rules and regulations of any agency authorized by the laws of this state or the laws of another state~~.

(8) "Certifying agency" means:

(a) An agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or

(b) An agency of a foreign country that the United States Secretary of Agriculture has determined as adhering to procedures and standards for seed certification comparable to

those adhered to generally by seed certifying agencies under paragraph (a).

(9) "Coated seed" means seed that has been covered by a layer of materials that obscures the original shape and size of the seed and substantially increases the weight of the product. The addition of biologicals, pesticides, identifying colorants or dyes, or other active ingredients including polymers may be included in this process.

(10) ~~(5)~~ "Date of test" means the month and year the percentage of germination appearing on the label was obtained by laboratory test.

(11) ~~(6)~~ "Dealer" means any person who sells or offers for sale any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed for seeding purposes, and includes farmers who sell cleaned, processed, packaged, and labeled seed.

(12) ~~(7)~~ "Department" means the Department of Agriculture and Consumer Services or its authorized representative.

(13) ~~(8)~~ "Dormant seed" refers to viable seed, other than hard seed, which neither germinate nor decay during the prescribed test period and under the prescribed test conditions.

(14) ~~(9)~~ "Flower seed" includes seed of herbaceous plants grown for blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seed in this state.

~~(10) "Forest tree seed" includes seed of woody plants~~

~~commonly known and sold as forest tree seed.~~

(15) "Foundation seed" means a class of certified seed which is the progeny of breeder or other foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for producing foundation seed, for the purpose of maintaining genetic purity and identity.

(16) ~~(11)~~ "Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions ~~percentage of seed capable of producing normal seedlings under ordinarily favorable conditions. Broken seedlings and weak, malformed and obviously abnormal seedlings shall not be considered to have germinated~~.

(17) ~~(12)~~ "Hard seed" means seeds that remain hard at the end of a prescribed test period because they have not absorbed water due to an impermeable seed coat ~~the percentage of seed which because of hardness or impermeability did not absorb moisture or germinate under prescribed tests but remain hard during the period prescribed for germination of the kind of seed concerned~~.

(18) ~~(13)~~ "Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) Two or more inbred lines;

(b) One inbred or a single cross with an open-pollinated variety; or

(c) Two varieties or species, except open-pollinated varieties of corn (*Zea mays*).

The second generation or subsequent generations from such crosses may ~~shall~~ not be regarded as hybrids. Hybrid designations shall be treated as variety names.

(19) ~~(14)~~ "Inert matter" means all matter that is not a full seed ~~includes broken seed when one-half in size or less; seed of legumes or crucifers with the seed coats removed; undeveloped and badly injured weed seed such as sterile dodder which, upon visual examination, are clearly incapable of growth; empty glumes of grasses; attached sterile glumes of grasses (which must be removed from the fertile glumes except in Rhodes grass); dirt, stone, chaff, nematode, fungus bodies, and any matter other than seed~~.

(20) ~~(15)~~ "Kind" means one or more related species or subspecies which singly or collectively is known by one common name; e.g., corn, beans, lespedeza.

(21) "Label" means the display or displays of written or printed material upon or attached to a container of seed.

(22) ~~(16)~~ "Labeling" includes all labels and other written, printed, or graphic representations, in any form, accompanying and pertaining to any seed, whether in bulk or in containers,

and includes invoices and other bills of shipment when sold in bulk.

(23)~~(17)~~ "Lot ~~of seed~~" means a definite quantity of seed identified by a lot number or other mark ~~identification~~, every portion or bag of which is uniform within recognized tolerances for the factors that appear in the labeling~~, for the factors which appear in the labeling, within permitted tolerances~~.

(24)~~(18)~~ "Mix," "mixed," or "mixture" means seed consisting of more than one kind ~~or variety~~, each present in excess of 5 percent by weight of the whole.

(25) "Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

(26) "Noxious weed seed" means seed in one of two classes of seed:

(a) "Prohibited noxious weed seed" means the seed of weeds that are highly destructive and difficult to control by good cultural practices and the use of herbicides.

(b) "Restricted noxious weed seed" means weed seeds that are objectionable in agricultural crops, lawns, and gardens of this state and which can be controlled by good agricultural practices or the use of herbicides.

(27)~~(19)~~ "Origin" means the state, District of Columbia,

Puerto Rico, or possession of the United States, or the foreign country where the seed were grown, except for native species, where the term means the county or collection zone and the state where the seed were grown ~~for forest tree seed, with respect to which the term "origin" means the county or state forest service seed collection zone and the state where the seed were grown~~.

(28)~~(20)~~ "Other crop seed" includes all seed of plants grown in this state as crops, other than the kind or kind and variety included in the pure seed, when not more than 5 percent of the whole of a single kind or variety is present, unless designated as weed seed.

(29) "Packet seed" means seed prepared for use in home gardens and household plantings packaged in labeled, sealed containers of less than 8 ounces and typically sold from seed racks or displays in retail establishments, via the Internet, or through mail order.

(30)~~(21)~~ "Processing" means conditioning, cleaning, scarifying, or blending to obtain uniform quality and other operations which would change the purity or germination of the seed and, therefore, require retesting to determine the quality of the seed.

~~(22) "Prohibited noxious weed seed" means the seed and bulblets of perennial weeds such as not only reproduce by seed or bulblets, but also spread by underground roots or stems and which, when established, are highly destructive and difficult to~~

~~control in this state by ordinary good cultural practice.~~

(31)~~(23)~~ "Pure seed" means the seed, exclusive of inert matter, of the kind or kind and variety of seed declared on the label or tag ~~includes all seed of the kind or kind and variety or strain under consideration, whether shriveled, cracked, or otherwise injured, and pieces of broken seed larger than one-half the original size~~.

(32)~~(24)~~ "Record" includes the symbol identifying the seed as to origin, amount, processing, testing, labeling, and distribution, ~~file sample of the seed,~~ and any other document or instrument pertaining to the purchase, sale, or handling of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed. Such information includes seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

(33) "Registered seed" means a class of certified seed which is the progeny of breeder or foundation seed and is produced and handled under procedures established by the certifying agency, in accordance with this part, for the purpose of maintaining genetic purity and identity.

~~(25) "Restricted noxious weed seed" means the seed of such weeds as are very objectionable in fields, lawns, or gardens of this state, but can be controlled by good cultural practice. Seed of poisonous plants may be included.~~

(34) "Shrub seed" means seed of a woody plant that is

smaller than a tree and has several main stems arising at or near the ground.

(35)~~(26)~~ "Stop-sale" means any written or printed notice or order issued by the department to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state, directing the owner or custodian not to sell or offer for sale seed designated by the order within the state until the requirements of this law are complied with and a written release has been issued; except that the seed may be released to be sold for feed.

(36)~~(27)~~ "Treated" means that the seed has been given an application of a material or subjected to a process designed to control or repel disease organisms, insects, or other pests attacking seed or seedlings grown therefrom to improve its planting value or to serve any other purpose.

(37) "Tree seed" means seed of a woody perennial plant typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

(38)~~(28)~~ "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(39)~~(29)~~ "Variety" means a subdivision of a kind which is distinct in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other

characteristics from all other varieties of public knowledge; uniform in the sense that the variations in essential and distinctive characteristics are describable; and stable in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted ~~characterized by growth, plant fruit, seed, or other characteristics by which it can be differentiated from other sorts of the same kind; e.g., Whatley's Prolific corn, Bountiful beans, Kobe lespedeza~~.

(40)~~(30)~~ "Vegetable seed" means the seed of those crops that ~~which~~ are grown in gardens or on truck farms, and are generally known and sold under the name of vegetable seed or herb seed in this state.

(41)~~(31)~~ "Weed seed" includes the seed of all plants generally recognized as weeds within this state, and includes prohibited and restricted noxious weed seed, bulblets, ~~and~~ tubers, and any other vegetative propagules.

Section 33. Section 578.012, Florida Statutes, is created to read:

578.012 Preemption.—

(1) It is the intent of the Legislature to eliminate duplication of regulation of seed. As such, this chapter is intended as comprehensive and exclusive and occupies the whole field of regulation of seed.

(2) The authority to regulate seed or matters relating to

seed in this state is preempted to the state. A local government or political subdivision of the state may not enact or enforce an ordinance that regulates seed, including the power to assess any penalties provided for violation of this chapter.

Section 34. Section 578.08, Florida Statutes, is amended to read:

578.08 Registrations.—

(1) Every person, except as provided in subsection (4) ~~and s. 578.14~~, before selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed or mixture thereof, shall first register with the department as a seed dealer. The application for registration must include the name and location of each place of business at which the seed is sold, distributed for sale, offered for sale, exposed for sale, or handled for sale. The application must ~~for registration shall~~ be filed with the department by using a form prescribed by the department or by using the department's website and shall be accompanied by an annual registration fee for each such place of business based on the gross receipts from the sale of such seed for the last preceding license year as follows:

(a)1. Receipts of less than $500, a fee of $10.

2. Receipts of $500 or more but less than $1,000, a fee of $25.

3. Receipts of $1,000 or more but less than $2,500, a fee of $100.

4. Receipts of $2,500 or more but less than $5,000, a fee of $200.

5. Receipts of $5,000 or more but less than $10,000, a fee of $350.

6. Receipts of $10,000 or more but less than $20,000, a fee of $800.

7. Receipts of $20,000 or more but less than $40,000, a fee of $1,000.

8. Receipts of $40,000 or more but less than $70,000, a fee of $1,200.

9. Receipts of $70,000 or more but less than $150,000, a fee of $1,600.

10. Receipts of $150,000 or more but less than $400,000, a fee of $2,400.

11. Receipts of $400,000 or more, a fee of $4,600.

(b) For places of business not previously in operation, the fee shall be based on anticipated receipts for the first license year.

(2) A ~~written~~ receipt from the department of the registration and payment of the fee shall constitute a sufficient permit for the dealer to engage in or continue in the business of selling, distributing for sale, offering or exposing for sale, handling for sale, or soliciting orders for the

purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed within the state. However, the department has ~~shall have~~ authority to suspend or revoke any permit for the violation of any provision of this law or of any rule adopted under authority hereof. The registration shall expire on June 30 of the next calendar year and shall be renewed on July 1 of each year. If any person subject to the requirements of this section fails to comply, the department may issue a stop-sale notice or order which shall prohibit the person from selling or causing to be sold any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed until the requirements of this section are met.

(3) Every person selling, distributing for sale, offering for sale, exposing for sale, handling for sale, or soliciting orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed in the state other than as provided in subsection (4) ~~s. 578.14~~, shall be subject to the requirements of this section~~; except that agricultural experiment stations of the State University System shall not be subject to the requirements of this section~~.

(4) ~~The provisions of~~ This chapter does ~~shall~~ not apply to farmers who sell only uncleaned, unprocessed, unpackaged, and unlabeled seed, but shall apply to farmers who sell cleaned, processed, packaged, and labeled seed in amounts in excess of $10,000 in any one year.

(5) When packet seed is sold, offered for sale, or exposed

for sale, the company who packs seed for retail sale must register and pay fees as provided under subsection (1).

Section 35. Section 578.09, Florida Statutes, is amended to read:

578.09 Label requirements for agricultural, vegetable, flower, tree, or shrub seeds.—Each container of agricultural, vegetable, ~~or~~ flower, tree, or shrub seed which is sold, offered for sale, exposed for sale, or distributed for sale within this state for sowing ~~or planting~~ purposes must ~~shall~~ bear thereon or have attached thereto, in a conspicuous place~~,~~ a ~~label or labels containing all information required under this section,~~ plainly written or printed label or tag in the English language~~, in Century type.~~ All data pertaining to analysis shall appear on a single label. Language setting forth the requirements for filing and serving complaints as described in s. 578.26(1)(c) must ~~s. 578.26(1)(b) shall~~ be included on the analysis label or be otherwise attached to the package, except for packages containing less than 1,000 seeds by count.

(1) ~~FOR TREATED SEED.—~~ For all treated agricultural, vegetable, ~~or~~ flower, tree, or shrub seed ~~treated~~ as defined in this chapter:

(a) A word or statement indicating that the seed has been treated ~~or description of process used~~.

(b) The commonly accepted coined, chemical, or abbreviated chemical (generic) name of the applied substance or description

of the process used ~~and the words "poison treated" in red letters, in not less than 1/4-inch type~~.

(c) If the substance in the amount present with the seed is harmful to humans or other vertebrate animals, a caution statement such as "Do not use for food, feed, or oil purposes." The caution for mercurials, Environmental Protection Agency Toxicity Category 1 as referenced in 7 C.F.R. 201.31a(c)(2), and similarly toxic substances shall be designated by a poison statement or symbol.

~~(d) Rate of application or statement "Treated at manufacturer's recommended rate."~~

(d)~~(e)~~ If the seed is treated with an inoculant, the date beyond which the inoculant is not to be considered effective (date of expiration).

A label separate from other labels required by this section or other law may be used to identify seed treatments as required by this subsection.

(2) For agricultural seed, including lawn and turf grass seed and mixtures thereof: ~~AGRICULTURAL SEED.—~~

(a) ~~Commonly accepted~~ The name of the kind and variety of each ~~agricultural seed~~ component present in excess of 5 percent of the whole, and the percentage by weight of each in the order of its predominance. Where more than one component is required to be named, the word "mixed," "mixture," or "blend" must ~~the~~

~~word "mixed" shall~~ be shown conspicuously on the label. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Net weight or seed count.

(d) Origin, if known. If the origin is ~~; if~~ unknown, that fact must ~~shall~~ be stated.

(e) Percentage by weight of all weed seed.

(f) ~~The~~ Name and number of noxious weed seed per pound, if present ~~per pound of each kind of restricted noxious weed seed~~.

(g) Percentage by weight of agricultural seed which may be designated as other crop seed, other than those required to be named on the label.

(h) Percentage by weight of inert matter.

(i) For each named agricultural seed, including lawn and turf grass seed:

1. Percentage of germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if ~~when~~ present~~, if desired~~; and

3. The calendar month and year the test was completed to determine such percentages, provided that the germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(j) Name and address of the person who labeled said seed or who sells, distributes, offers, or exposes said seed for sale

within this state.

The sum total of the percentages listed pursuant to paragraphs (a),(e),(g), and (h) must be equal to 100 percent.

(3) For seed that is coated:

(a) Percentage by weight of pure seed with coating material removed. The percentage of coating material may be included with the inert matter percentage or may be listed separately.

(b) Percentage of germination. This percentage must be determined based on an examination of 400 coated units with or without seed.

In addition to the requirements of this subsection, labeling of coated seed must also comply with the requirements of any other subsection pertaining to that type of seed. ~~FOR VEGETABLE SEED IN CONTAINERS OF 8 OUNCES OR MORE.~~

~~(a) Name of kind and variety of seed.~~

~~(b) Net weight or seed count.~~

~~(c) Lot number or other lot identification.~~

~~(d) Percentage of germination.~~

~~(e) Calendar month and year the test was completed to determine such percentages.~~

~~(f) Name and address of the person who labeled said seed or who sells, distributes, offers or exposes said seed for sale~~

~~within this state.~~

~~(g) For seed which germinate less than the standard last established by the department the words "below standard," in not less than 8-point type, must be printed or written in ink on the face of the tag, in addition to the other information required. Provided, that no seed marked "below standard" shall be sold which falls more than 20 percent below the standard for such seed which has been established by the department, as authorized by this law.~~

~~(h) The name and number of restricted noxious weed seed per pound.~~

(4) For combination mulch, seed, and fertilizer products:

(a) The word "combination" followed, as appropriate, by the words "mulch - seed - fertilizer" must appear prominently on the principal display panel of the package.

(b) If the product is an agricultural seed placed in a germination medium, mat, tape, or other device or is mixed with mulch or fertilizer, it must also be labeled with all of the following:

1. Product name.

2. Lot number or other lot identification.

3. Percentage by weight of pure seed of each kind and variety named which may be less than 5 percent of the whole.

4. Percentage by weight of other crop seed.

5. Percentage by weight of inert matter.

6. Percentage by weight of weed seed.

7. Name and number of noxious weed seeds per pound, if present.

8. Percentage of germination, and hard or dormant seed if appropriate, of each kind or kind and variety named. The germination test must have been completed within the previous 12 months exclusive of the calendar month of test.

9. The calendar month and year the test was completed to determine such percentages.

10. Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within the state.

The sum total of the percentages listed pursuant to subparagraphs 3., 4., 5., and 6. must be equal to 100 percent.

(5) For vegetable seed in packets as prepared for use in home gardens or household plantings or vegetable seeds in preplanted containers, mats, tapes, or other planting devices: ~~FOR VEGETABLE SEED IN CONTAINERS OF LESS THAN 8 OUNCES.~~

(a) Name of kind and variety of seed. Hybrids must be labeled as hybrids.

(b) Lot number or other lot identification.

(c) Germination test date identified in the following manner:

1. The calendar month and year the germination test was

completed and the statement "Sell by ...(month/year)...", which may be no more than 12 months from the date of test, beginning with the month after the test date;

2. The month and year the germination test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test; or

3. The year for which the seed was packaged for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be one year after the seed was packaged for sale.

(d) ~~(b)~~ Name and address of the person who labeled the seed or who sells, ~~distributes,~~ offers, or exposes said seed for sale within this state.

(e) ~~(c)~~ For seed which germinate less than standard last established by the department~~, the additional information must be shown~~:

1. Percentage of germination, exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed ~~when present~~, if present ~~desired~~.

~~3. Calendar month and year the test was completed to determine such percentages.~~

3.~~4.~~ The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(f) ~~(d)~~ No seed marked "below standard" may ~~shall~~ be sold that falls ~~which fall~~ more than 20 percent below the established standard for such seed. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(g) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape or device, a statement to indicate the minimum number of seeds in the container.

(6) For vegetable seed in containers, other than packets prepared for use in home gardens or household plantings, and other than preplanted containers, mats, tapes, or other planting devices:

(a) The name of each kind and variety present of any seed in excess of 5 percent of the total weight in the container, and the percentage by weight of each type of seed in order of its predominance. Hybrids must be labeled as hybrids.

(b) Net weight or seed count.

(c) Lot number or other lot identification.

(d) For each named vegetable seed:

1. Percentage germination, exclusive of hard or dormant seed;

2. Percentage of hard or dormant seed, if present;

3. Listed below the requirements of subparagraphs 1. and 2., the "total germination and hard or dormant seed" may be stated as such, if desired; and

4. The calendar month and year the test was completed to determine the percentages specified in subparagraphs 1. and 2., provided that the germination test must have been completed within 9 months, exclusive of the calendar month of test.

(e) Name and address of the person who labeled the seed, or who sells, offers, or exposes the seed for sale within this state.

(f) For seed which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed.

1. No seed marked "Below Standard" may be sold if the seed is more than 20 percent below the established standard for such seed.

2. For seeds that do not have an established standard, the minimum germination standard shall be 50 percent, and no such seed may be sold that is 20 percent below this standard.

(7)~~(5)~~ For flower seed in packets prepared for use in home gardens or household plantings or flower seed in preplanted containers, mats, tapes, or other planting devices: ~~FOR FLOWER SEED IN PACKETS PREPARED FOR USE IN HOME GARDENS OR HOUSEHOLD PLANTINGS OR FLOWER SEED IN PREPLANTED CONTAINERS, MATS, TAPES,~~

~~OR OTHER PLANTING DEVICES.~~

(a) For all kinds of flower seed:

1. The name of the kind and variety or a statement of type and performance characteristics as prescribed in the rules and regulations adopted ~~promulgated~~ under the provisions of this chapter.

2. Germination test date, identified in the following manner:

a. The calendar month and year the germination test was completed and the statement "Sell by ...(month/year)...". The sell by date must be no more than 12 months from the date of test, beginning with the month after the test date;

b. The year for which the seed was packed for sale as "Packed for ...(year)..." and the statement "Sell by ...(year)..." which shall be for a calendar year; or

c. The calendar month and year the test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

~~2. The calendar month and year the seed was tested or the year for which the seed was packaged.~~

3. The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(b) For seed of those kinds for which standard testing

procedures are prescribed and which germinate less than the germination standard last established under the provisions of this chapter:

1. The percentage of germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The words "Below Standard" prominently displayed ~~in not less than 8-point type~~.

(c) For seed placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seed from the medium, mat, tape, or device, a statement to indicate the minimum number of seed in the container.

(8) ~~(6)~~ For flower seed in containers other than packets and other than preplanted containers, mats, tapes, or other planting devices and not prepared for use in home flower gardens or household plantings: ~~FOR FLOWER SEED IN CONTAINERS OTHER THAN PACKETS PREPARED FOR USE IN HOME FLOWER GARDENS OR HOUSEHOLD PLANTINGS AND OTHER THAN PREPLANTED CONTAINERS, MATS, TAPES, OR OTHER PLANTING DEVICES.~~

(a) The name of the kind and variety, and for wildflowers, the genus and species and subspecies, if appropriate ~~or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this chapter~~.

(b) Net weight or seed count.

(c) ~~(b)~~ ~~The~~ Lot number or other lot identification.

(d) For flower seed with a pure seed percentage of less than 90 percent:

1. Percentage, by weight, of each component listed in order of its predominance.

2. Percentage by weight of weed seed, if present.

3. Percentage by weight of other crop seed.

4. Percentage by weight of inert matter.

(e) For those kinds of seed for which standard testing procedures are prescribed:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. ~~(c)~~ The calendar month and year that the test was completed. The germination test must have been completed within the previous 9 months, exclusive of the calendar month of test.

(f) For those kinds of seed for which standard testing procedures are not available, the year of production or collection ~~seed were tested or the year for which the seed were packaged~~.

(g) ~~(d)~~ The name and address of the person who labeled said seed or who sells, offers, or exposes said seed for sale within this state.

~~(e) For those kinds of seed for which standard testing~~

~~procedures are prescribed:~~

~~1. The percentage germination exclusive of hard seed.~~

~~2. The percentage of hard seed, if present.~~

(h) ~~(f)~~ For ~~those~~ seed~~s~~ which germinate less than the standard last established by the department, the words "Below Standard" prominently displayed ~~in not less than 8-point type must be printed or written in ink on the face of the tag~~.

(9) For tree or shrub seed:

(a) Common name of the species of seed and, if appropriate, subspecies.

(b) The scientific name of the genus, species, and, if appropriate, subspecies.

(c) Lot number or other lot identification.

(d) Net weight or seed count.

(e) Origin, indicated in the following manner:

1. For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude or geographic description, or political subdivision, such as state or county.

2. For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous".

3. The elevation or the upper and lower limits of elevations within which the seed was collected.

(f) Purity as a percentage of pure seed by weight.

(g) For those species for which standard germination testing procedures are prescribed by the department:

1. Percentage germination exclusive of hard or dormant seed.

2. Percentage of hard or dormant seed, if present.

3. The calendar month and year test was completed, provided that the germination test must have been completed within the previous 12 months, exclusive of the calendar month of test.

(h) In lieu of subparagraphs (g)1., 2., and 3., the seed may be labeled "Test is in progress; results will be supplied upon request."

(i) For those species for which standard germination testing procedures have not been prescribed by the department, the calendar year in which the seed was collected.

(j) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

~~(7) DEPARTMENT TO PRESCRIBE UNIFORM ANALYSIS TAG.—The department shall have the authority to prescribe a uniform analysis tag required by this section.~~

The information required by this section to be placed on labels attached to seed containers may not be modified or denied in the labeling or on another label attached to the container. However,

labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice if each bag or other container is clearly identified by a lot number displayed on the bag or other container. Each bag or container that is not so identified must carry complete labeling.

Section 36. Section 578.091, Florida Statutes, is repealed.

Section 37. Subsections (2) and (3) of section 578.10, Florida Statutes, are amended to read:

578.10 Exemptions.—

(2) The provisions of ss. 578.09 and 578.13 do not apply to:

(a) ~~To~~ Seed or grain not intended for sowing or planting purposes.

(b) ~~To~~ Seed stored ~~in storage~~ in, consigned to, or being transported to seed cleaning or processing establishments for cleaning or processing only. Any labeling or other representation which may be made with respect to the unclean seed is ~~shall be~~ subject to this law.

(c) Seed under development or maintained exclusively for research purposes.

(3) If seeds cannot be identified by examination thereof, a person is not subject to the criminal penalties of this chapter for having sold or offered for sale seeds subject to

this chapter which were incorrectly labeled or represented as to kind, species, and, if appropriate, subspecies, variety, type, or origin, elevation, and, if required, year of collection unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity of the seeds to be as stated by the grower. A genuine grower's declaration of variety must affirm that the grower holds records of proof of identity concerning parent seed, such as invoice and labels ~~No person shall be subject to the criminal penalties of this law for having sold, offered, exposed, or distributed for sale in this state any agricultural, vegetable, or forest tree seed which were incorrectly labeled or represented as to kind and variety or origin, which seed cannot be identified by examination thereof, unless she or he has failed to obtain an invoice or grower's declaration giving kind and variety and origin~~.

Section 38. Section 578.11, Florida Statutes, is amended to read:

578.11 Duties, authority, and rules of the department.—

(1) The duty of administering this law and enforcing its provisions and requirements shall be vested in the Department of Agriculture and Consumer Services, which is hereby authorized to employ such agents and persons as in its judgment shall be necessary therefor. It shall be the duty of the department,

which may act through its authorized agents, to sample, inspect, make analyses of, and test agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed transported, sold, offered or exposed for sale, or distributed within this state for sowing or planting purposes, at such time and place and to such extent as it may deem necessary to determine whether said agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed are in compliance with the provisions of this law, and to notify promptly the person who transported, distributed, sold, offered or exposed the seed for sale, of any violation.

(2) The department is authorized to:

(a) ~~To~~ Enforce this chapter ~~act~~ and prescribe the methods of sampling, inspecting, testing, and examining agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed.

(b) ~~To~~ Establish standards and tolerances to be followed in the administration of this law, which shall be in general accord with officially prescribed practices in interstate commerce.

(c) ~~To~~ Prescribe uniform labels.

(d) ~~To~~ Adopt prohibited and restricted noxious weed seed lists.

(e) ~~To~~ Prescribe limitations for each restricted noxious weed to be used in enforcement of this chapter ~~act~~ and to add or subtract therefrom from time to time as the need may arise.

(f) ~~To~~ Make commercial tests of seed and to fix and

collect charges for such tests.

(g) ~~To~~ List the kinds of flower, ~~and forest~~ tree, and shrub seed subject to this law.

(h) ~~To~~ Analyze samples, as requested by a consumer. The department shall establish, by rule, a fee schedule for analyzing samples at the request of a consumer. The fees shall be sufficient to cover the costs to the department for taking the samples and performing the analysis, not to exceed $150 per sample.

(i) ~~To~~ Adopt rules pursuant to ss. 120.536(1) and 120.54 to implement ~~the provisions of~~ this chapter ~~act~~.

(j) ~~To~~ Establish, by rule, requirements governing aircraft used for the aerial application of seed, including requirements for recordkeeping, annual aircraft registration, secure storage when not in use, area-of-application information, and reporting any sale, lease, purchase, rental, or transfer of such aircraft to another person.

(3) For the purpose of carrying out ~~the provisions of~~ this law, the department, through its authorized agents, is authorized to:

(a) ~~To~~ Enter upon any public or private premises, where agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is sold, offered, exposed, or distributed for sale during regular business hours, in order to have access to seed subject to this law and the rules and regulations hereunder.

(b) ~~To~~ Issue and enforce a stop-sale notice or order to the owner or custodian of any lot of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed~~,~~ which the department finds or has good reason to believe is in violation of any provisions of this law, which shall prohibit further sale, barter, exchange, or distribution of such seed until the department is satisfied that the law has been complied with and has issued a written release or notice to the owner or custodian of such seed. After a stop-sale notice or order has been issued against or attached to any lot of seed and the owner or custodian of such seed has received confirmation that the seed does not comply with this law, she or he has ~~shall have~~ 15 days beyond the normal test period within which to comply with the law and obtain a written release of the seed. ~~The provisions of~~ This paragraph may ~~shall~~ not be construed as limiting the right of the department to proceed as authorized by other sections of this law.

(c) ~~To~~ Establish and maintain a seed laboratory, employ seed analysts and other personnel, and incur such other expenses as may be necessary to comply with these provisions.

Section 39. Section 578.12, Florida Statutes, is amended to read:

578.12 Stop-sale, stop-use, removal, or hold orders.—When agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed is being offered or exposed for sale or held in violation of any

of the provisions of this chapter, the department, through its authorized representative, may issue and enforce a stop-sale, stop-use, removal, or hold order to the owner or custodian of said seed ordering it to be held at a designated place until the law has been complied with and said seed is released in writing by the department or its authorized representative. If seed is not brought into compliance with this law it shall be destroyed within 30 days or disposed of by the department in such a manner as it shall by regulation prescribe.

Section 40. Section 578.13, Florida Statutes, is amended to read:

578.13 Prohibitions.—

(1) It shall be unlawful for any person to sell, distribute for sale, offer for sale, expose for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, ~~or forest~~ tree, or shrub, seed within this state:

(a) Unless the test to determine the percentage of germination required by s. 578.09 has ~~shall have~~ been completed ~~within a period of 7 months, exclusive of the calendar month in which the test was completed,~~ immediately prior to sale, exposure for sale, offering for sale, or transportation, except for a germination test for seed in hermetically sealed containers which is provided for in s. 578.092 ~~s. 578.28~~.

(b) Not labeled in accordance with ~~the provisions of~~ this

law, or having false or misleading labeling.

(c) Pertaining to which there has been a false or misleading advertisement.

(d) Containing noxious weed seeds subject to tolerances and methods of determination prescribed in the rules and regulations under this law.

(e) Unless a seed license has been obtained in accordance with ~~the provisions of~~ this law.

(f) Unless such seed conforms to the definition of a "lot ~~of seed~~."

(2) It shall be unlawful for a ~~any~~ person within this state to:

(a) ~~To~~ Detach, deface, destroy, or use a second time any label or tag provided for in this law or in the rules and regulations made and promulgated hereunder or to alter or substitute seed in a manner that may defeat the purpose of this law.

(b) ~~To~~ Disseminate any false or misleading advertisement concerning agricultural, vegetable, flower, ~~or forest~~ tree ,or shrub seed in any manner or by any means.

(c) ~~To~~ Hinder or obstruct in any way any authorized person in the performance of her or his duties under this law.

(d) ~~To~~ Fail to comply with a stop-sale order or to move, handle, or dispose of any lot of seed, or tags attached to such seed, held under a "stop-sale" order, except with express

permission of the department and for the purpose specified by the department ~~or seizure order~~.

(e) Label, advertise, or otherwise represent seed subject to this chapter to be certified seed or any class thereof, including classes such as "registered seed," "foundation seed," "breeder seed" or similar representations, unless:

1. A seed certifying agency determines that such seed conformed to standards of purity and identify as to the kind, variety, or species and, if appropriate, subspecies and the seed certifying agency also determines that tree or shrub seed was found to be of the origin and elevation claimed, in compliance with the rules and regulations of such agency pertaining to such seed; and

2. The seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and specified to the kind, variety, or species and, if appropriate, subspecies.

(f) Label, by variety name, seed not certified by an official seed-certifying agency when it is a variety for which a certificate of plant variety protection under the United States Plant Variety Protection Act, 7 U.S.C. 2321 et. seq., specifies sale only as a class of certified seed, except that seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the written approval of, the owner of the variety. ~~To sell, distribute for sale, offer for sale, expose~~

~~for sale, handle for sale, or solicit orders for the purchase of any agricultural, vegetable, flower, or forest tree seed labeled "certified seed," "registered seed," "foundation seed," "breeder seed," or similar terms, unless it has been produced and labeled under seal in compliance with the rules and regulations of any agency authorized by law.~~

(g) ~~(f)~~ ~~To~~ Fail to keep a complete record, including a file sample which shall be retained for 1 year after seed is sold, of each lot of seed and to make available for inspection such records to the department or its duly authorized agents.

(h) ~~(g)~~ ~~To~~ Use the name of the Department of Agriculture and Consumer Services or Florida State Seed Laboratory in connection with analysis tag, labeling advertisement, or sale of any seed in any manner whatsoever.

Section 41. Section 578.14, Florida Statutes, is repealed.

Section 42. Subsection (1) of section 578.181, Florida Statutes, is amended to read:

578.181 Penalties; administrative fine.—

(1) The department may enter an order imposing one or more of the following penalties against a person who violates this chapter or the rules adopted under this chapter or who impedes, obstructs, ~~or~~ hinders, or otherwise attempts to prevent the department from performing its duty in connection with ~~performing its duties under~~ this chapter:

(a) For a minor violation, issuance of a warning letter.

(b) For violations other than a minor violation:

1. Imposition of an administrative fine in the Class I category pursuant to s. 570.971 for each occurrence ~~after the issuance of a warning letter~~.

2. ~~(c)~~ Revocation or suspension of the registration as a seed dealer.

Section 43. Section 578.23, Florida Statutes, is amended to read:

578.23 ~~Dealers'~~ Records ~~to be kept available~~.—Each person who allows his or her name or brand to appear on the label as handling agricultural, vegetable, flower, tree, or shrub seeds subject to this chapter must keep, for 2 years, complete records of each lot of agricultural, vegetable, flower, tree, or shrub seed handled, and keep for 1 year after final disposition a file sample of each lot of seed. All such records and samples pertaining to the shipment or shipments involved must be accessible for inspection by the department or its authorized representative during normal business hours ~~Every seed dealer shall make and keep for a period of 3 years satisfactory records of all agricultural, vegetable, flower, or forest tree seed bought or handled to be sold, which records shall at all times be made readily available for inspection, examination, or audit by the department. Such records shall also be maintained by persons who purchase seed for production of plants for resale~~.

Section 44. Section 578.26, Florida Statutes, is amended

to read:

578.26 Complaint, investigation, hearings, findings, and recommendation prerequisite to legal action.—

(1)(a) When any buyer ~~farmer~~ is damaged by the failure of agricultural, vegetable, flower, ~~or forest~~ tree, or shrub seed planted in this state to produce or perform as represented by the labeling of such ~~label attached to the~~ seed as required by s. 578.09, as a prerequisite to her or his right to maintain a legal action against the dealer from whom the seed was purchased, the buyer must ~~farmer shall~~ make a sworn complaint against the dealer alleging damages sustained. The complaint shall be filed with the department, and a copy of the complaint shall be served by the department on the dealer by certified mail, within such time as to permit inspection of the property, crops, plants, or trees referenced in, or related to, the buyer's complaint by the seed investigation and conciliation council or its representatives and by the dealer from whom the seed was purchased.

(b) For types of claims specified in paragraph (a), the buyer may not commence legal proceedings against the dealer or assert such a claim as a counterclaim or defense in any action brought by the dealer until the findings and recommendations of the seed investigation and conciliation council are transmitted to the complainant and the dealer.

(c) ~~(b)~~ Language setting forth the requirement for filing

and serving the complaint shall be legibly typed or printed on the analysis label or be attached to the package containing the seed at the time of purchase by the buyer ~~farmer~~.

(d) ~~(c)~~ A nonrefundable filing fee of $100 shall be paid to the department with each complaint filed. However, the complainant may recover the filing fee cost from the dealer upon the recommendation of the seed investigation and conciliation council.

(2) Within 15 days after receipt of a copy of the complaint, the dealer shall file with the department her or his answer to the complaint and serve a copy of the answer on the buyer ~~farmer~~ by certified mail. ~~Upon receipt of the findings and recommendation of the arbitration council, the department shall transmit them to the farmer and to the dealer by certified mail.~~

(3) The department shall refer the complaint and the answer thereto to the seed investigation and conciliation council provided in s. 578.27 for investigation, informal hearing, findings, and recommendation on the matters complained of.

(a) Each party must ~~shall~~ be allowed to present its side of the dispute at an informal hearing before the seed investigation and conciliation council. Attorneys may be present at the hearing to confer with their clients. However, no attorney may participate directly in the proceeding.

(b) Hearings, including the deliberations of the seed

investigation and conciliation council, must ~~shall~~ be open to the public.

(c) Within 30 days after completion of a hearing, the seed investigation and conciliation council shall transmit its findings and recommendations to the department. Upon receipt of the findings and recommendation of the seed investigation and conciliation council, the department shall transmit them to the buyer ~~farmer~~ and to the dealer by certified mail.

(4) The department shall provide administrative support for the seed investigation and conciliation council and shall mail a copy of the council's procedures to each party upon receipt of a complaint by the department.

Section 45. Subsections (1), (2), and (4) of section 578.27, Florida Statutes, are amended to read:

578.27 Seed investigation and conciliation council; composition; purpose; meetings; duties; expenses.—

(1) The Commissioner of Agriculture shall appoint a seed investigation and conciliation council composed of seven members ~~and seven alternate members~~, one member ~~and one alternate~~ to be appointed upon the recommendation of each of the following: the deans of extension and research, Institute of Food and Agricultural Sciences, University of Florida; president of the Florida Seed ~~Seedsmen and Garden Supply~~ Association; president of the Florida Farm Bureau Federation; and the president of the Florida Fruit and Vegetable Association. The Commissioner of

Agriculture shall appoint a representative ~~and an alternate~~ from the agriculture industry at large and from the Department of Agriculture and Consumer Services. Each member shall be appointed for a term of 4 years or less and shall serve until his or her successor is appointed ~~Initially, three members and their alternates shall be appointed for 4-year terms and four members and their alternates shall be appointed for 2-year terms. Thereafter, members and alternates shall be appointed for 4-year terms. Each alternate member shall serve only in the absence of the member for whom she or he is an alternate~~. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the original appointment. The council shall annually elect a chair from its membership. It shall be the duty of the chair to conduct all meetings and deliberations held by the council and to direct all other activities of the council. The department representative shall serve as secretary of the council. It shall be the duty of the secretary to keep accurate and correct records on all meetings and deliberations and perform other duties for the council as directed by the chair.

(2) The purpose of the seed investigation and conciliation council is to assist buyers ~~farmers~~ and ~~agricultural~~ seed dealers in determining the validity of seed complaints made by buyers ~~farmers~~ against dealers and recommend a settlement, when appropriate, ~~cost damages~~ resulting from the alleged failure of

the seed to produce or perform as represented by the label of such ~~on the~~ seed ~~package~~.

(4)(a) When the department refers to the seed investigation and conciliation council any complaint made by a buyer ~~farmer~~ against a dealer, the ~~said~~ council must ~~shall~~ make a full and complete investigation of the matters complained of and at the conclusion of the ~~said~~ investigation must ~~shall~~ report its findings and make its recommendation ~~of cost damages~~ and file same with the department.

(b) In conducting its investigation, the seed investigation and conciliation council or any representative, member, or members thereof are authorized to examine the buyer's property, crops, plants, or trees referenced in or relating to the complaint ~~farmer on her or his farming operation of which she or he complains~~ and the dealer on her or his packaging, labeling, and selling operation of the seed alleged to be faulty; to grow to production a representative sample of the alleged faulty seed through the facilities of the state, under the supervision of the department when such action is deemed to be necessary; to hold informal hearings at a time and place directed by the department or by the chair of the council upon reasonable notice to the buyer ~~farmer~~ and the dealer.

(c) Any investigation made by less than the whole membership of the council must ~~shall~~ be by authority of a written directive by the department or by the chair, and such

investigation must ~~shall~~ be summarized in writing and considered by the council in reporting its findings and making its recommendation.

Section 46. Section 578.28, Florida Statutes, is renumbered as section 578.092, Florida Statutes, and amended to read:

578.092 ~~578.28~~ Seed in hermetically sealed containers.—The period of validity of germination tests is extended to the following periods for seed packaged in hermetically sealed containers, under conditions and label requirements set forth in this section:

(1) GERMINATION TESTS.—The germination test for agricultural and vegetable seed must ~~shall~~ have been completed within the following periods, exclusive of the calendar month in which the test was completed, immediately prior to shipment, delivery, transportation, or sale:

(a) In the case of agricultural or vegetable seed shipped, delivered, transported, or sold to a dealer for resale, 18 months;

(b) In the case of agricultural or vegetable seed for sale or sold at retail, 24 months.

(2) CONDITIONS OF PACKAGING.—The following conditions are considered as minimum:

(a) *Hermetically sealed packages or containers.*—A container, to be acceptable under the provisions of this

section, shall not allow water vapor penetration through any wall, including the wall seals, greater than 0.05 gram of water per 24 hours per 100 square inches of surface at 100 °F. with a relative humidity on one side of 90 percent and on the other of 0 percent. Water vapor penetration (WVP) is measured by the standards of the National Institute of Standards and Technology as: gm $H_2O$/24 hr./100 sq. in./100 °F/90 percent RH V. 0 percent RH.

(b) *Moisture of seed packaged.*—The moisture of agricultural or vegetable seed subject to the provisions of this section shall be established by rule of the department.

(3) LABELING REQUIRED.—In addition to the labeling required by s. 578.09, seed packaged under the provisions of this section shall be labeled with the following information:

(a) Seed has been preconditioned as to moisture content.

(b) Container is hermetically sealed.

(c) "Germination test valid until (month, year)" may be used. (Not to exceed 24 months from date of test).

Section 47. Section 578.29, Florida Statutes, is created to read:

578.29 Prohibited noxious weed seed.—Seeds meeting the definition of prohibited noxious weed seed under s. 578.011, may not be present in agricultural, vegetable, flower, tree, or shrub seed offered or exposed for sale in this state.

Section 48. Subsection (1) of section 590.02, Florida

Statutes, is amended to read:

590.02 Florida Forest Service; powers, authority, and duties; liability; building structures; Withlacoochee Training Center.—

(1) The Florida Forest Service has the following powers, authority, and duties to:

(a) ~~To~~ Enforce the provisions of this chapter;

(b) ~~To~~ Prevent, detect, and suppress wildfires wherever they may occur on public or private land in this state and to do all things necessary in the exercise of such powers, authority, and duties;

(c) ~~To~~ Provide firefighting crews, who shall be under the control and direction of the Florida Forest Service and its designated agents;

(d) ~~To~~ Appoint center managers, forest area supervisors, forestry program administrators, a forest protection bureau chief, a forest protection assistant bureau chief, a field operations bureau chief, deputy chiefs of field operations, district managers, forest operations administrators, senior forest rangers, investigators, forest rangers, firefighter rotorcraft pilots, and other employees who may, at the Florida Forest Service's discretion, be certified as forestry firefighters pursuant to s. 633.408(8). Other law notwithstanding, center managers, district managers, forest protection assistant bureau chief, and deputy chiefs of field

operations have ~~shall have~~ Selected Exempt Service status in the state personnel designation;

(e) ~~To~~ Develop a training curriculum for forestry firefighters which must contain the basic volunteer structural fire training course approved by the Florida State Fire College of the Division of State Fire Marshal and a minimum of 250 hours of wildfire training;

(f) Pay the cost of the initial commercial driver license examination fee for those employees whose position requires them to operate equipment requiring a license. This paragraph is intended to be an authorization to the department to pay such costs, not an obligation;

~~(f) To make rules to accomplish the purposes of this chapter;~~

(g) ~~To~~ Provide fire management services and emergency response assistance and to set and charge reasonable fees for performance of those services. Moneys collected from such fees shall be deposited into the Incidental Trust Fund of the Florida Forest Service;

(h) ~~To~~ Require all state, regional, and local government agencies operating aircraft in the vicinity of an ongoing wildfire to operate in compliance with the applicable state Wildfire Aviation Plan; ~~and~~

(i) ~~To~~ Authorize broadcast burning, prescribed burning, pile burning, and land clearing debris burning to carry out the

duties of this chapter and the rules adopted thereunder; and

(j) Make rules to accomplish the purposes of this chapter.

Section 49. Paragraph (c) of subsection (6) and subsection (9) of section 790.06, Florida Statutes, are amended to read:

790.06 License to carry concealed weapon or firearm.—

(6)

(c) The Department of Agriculture and Consumer Services shall, within 90 days after the date of receipt of the items listed in subsection (5):

1. Issue the license; or

2. Deny the application based solely on the ground that the applicant fails to qualify under the criteria listed in subsection (2) or subsection (3). If the Department of Agriculture and Consumer Services denies the application, it shall notify the applicant in writing, stating the ground for denial and informing the applicant of any right to a hearing pursuant to chapter 120.

3. In the event the department receives incomplete criminal history information or ~~with~~ no final disposition on a crime which may disqualify the applicant, the Department of Agriculture and Consumer Services must expedite efforts to acquire the final disposition or proof of restoration of civil and firearm rights, or confirmation that clarifying records are not available from the jurisdiction where the criminal history originated. Ninety days after the date of receipt of the

completed application, if the department has not acquired final disposition or proof of restoration of civil and firearm rights, or confirmation that clarifying records are not available from the jurisdiction where the criminal history originated, the department shall issue the license in the absence of disqualifying information. However, such license must be immediately suspended and revoked upon receipt of disqualifying information pursuant to this section ~~time limitation prescribed by this paragraph may be suspended until receipt of the final disposition or proof of restoration of civil and firearm rights~~.

(9) In the event that a concealed weapon or firearm license is lost or destroyed, the license shall be automatically invalid, and the person to whom the same was issued may, upon payment of $15 to the Department of Agriculture and Consumer Services, obtain a duplicate, or substitute thereof, upon furnishing a ~~notarized~~ statement under oath to the Department of Agriculture and Consumer Services that such license has been lost or destroyed.

Section 50. Subsections (5) and (8) of section 790.0625, Florida Statutes, are amended, and sections (9) and (10) are added to that section, to read:

790.0625 Appointment of tax collectors to accept applications for a concealed weapon or firearm license; fees; penalties.—

(5) A tax collector appointed under this section shall

collect and remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund and may collect and retain ~~a~~ convenience fees for the following: ~~fee of $22 for each new application and $12 for each renewal application and shall remit weekly to the department the license fees pursuant to s. 790.06 for deposit in the Division of Licensing Trust Fund.~~

(a) Twenty-two dollars for each new application.

(b) Twelve dollars for each renewal application.

(c) Twelve dollars for each duplicate license issued to replace a lost or destroyed license.

(d) Six dollars for fingerprinting.

(e) Six dollars for photographing services associated with the completion of an application submitted online.

(8) Upon receipt of a completed renewal application, a new color photograph, and ~~appropriate~~ payment of required fees, a tax collector authorized to accept renewal applications for concealed weapon or firearm licenses under this section may, upon approval and confirmation of license issuance by the department, print and deliver a concealed weapon or firearm license to a licensee renewing his or her license at the tax collector's office.

(9) Upon receipt of a statement under oath to the department, and the payment of required fees, a tax collector authorized to accept applications for concealed weapon or

firearm licenses under this section may, upon approval and confirmation from the department that a license is in good standing, print and deliver a concealed weapon or firearm license to a licensee whose license has been lost or destroyed.

(10) Tax collectors authorized to accept applications for concealed weapon or firearm licenses under this section may provide fingerprinting and photographing services to aid concealed weapon and firearm applicants and licensees with online initial and renewal applications.

Section 51. Section 817.417, Florida Statutes, is created to read:

817.417 Government Impostor and Deceptive Advertisement Act.—

(1) SHORT TITLE.—This act may be cited as the "Government Impostor and Deceptive Advertisements Act."

(2) DEFINITIONS.—As used in this section:

(a) "Advertisement" means any representation disseminated in any manner or by any means, other than by a label, for the purpose of inducing, or which is reasonably likely to induce, directly or indirectly, a purchase.

(b) "Department" means the Department of Agriculture and Consumer Services.

(c) "Governmental entity" means a political subdivision or agency of any state, possession, or territory of the United States, or the Federal Government, including, but not limited

to, a board, a department, an office, an agency, a military veteran entity, or a military or veteran service organization by whatever name known.

(3) DUTIES AND RESPONSIBILITIES.—The department has the duty and responsibility to:

(a) Investigate potential violations of this section.

(b) Request and obtain information regarding potential violations of this section.

(c) Seek compliance with this section.

(d) Enforce this section.

(e) Adopt rules necessary to administer this section.

(4) VIOLATIONS.—Each occurrence of the following acts or practices constitute a violation of this section:

(a) Disseminating an advertisement that:

1. Simulates a summons, complaint, jury notice, or other court, judicial, or administrative process of any kind.

2. Represents, implies, or otherwise engages in an action that may reasonably cause confusion that the person using or employing the advertisement is a part of or associated with a governmental entity, when such is not true.

(b) Representing, implying, or otherwise reasonably causing confusion that goods, services, an advertisement, or an offer was disseminated by or has been approved, authorized, or endorsed, in whole or in part, by a governmental entity, when such is not true.

(c) Using or employing language, symbols, logos, representations, statements, titles, names, seals, emblems, insignia, trade or brand names, business or control tracking numbers, website or e-mail addresses, or any other term, symbol, or other content that represents or implies or otherwise reasonably causes confusion that goods, services, an advertisement, or an offer is from a governmental entity, when such is not true.

(d) Failing to provide the disclosures as required in subsections (5) or (6).

(e) Failing to timely submit to the department written responses and answers to its inquiries concerning alleged practices inconsistent with, or in violation of, this section. Responses or answers may include, but are not limited to, copies of customer lists, invoices, receipts, or other business records.

(5) NOTICE REGARDING DOCUMENT AVAILABILITY.—

(a) Any person offering documents that are available free of charge or at a lesser price from a governmental entity must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in

disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

The documents offered by this advertisement are available to Florida consumers free of charge or for a lesser price from ...(insert name, telephone number, and mailing address of the applicable governmental entity).... You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being

made by an agency of the government."

(6) NOTICE REGARDING CLAIM OF LEGAL COMPLIANCE.—

(a) Any person disseminating an advertisement that includes a form or template to be completed by the consumer with the claim that such form or template will assist the consumer in complying with a legal filing or record retention requirement must provide the notice specified in paragraph (b) on advertisements as follows:

1. For printed or written advertisements, the notice must be in the same font size, color, style, and visibility as primarily used elsewhere on the page or envelope and displayed as follows:

a. On the outside front of any mailing envelope used in disseminating the advertisement.

b. At the top of each printed or written page used in the advertisement.

2. For electronic advertisements, the notice must be in the same font size, color, style, and visibility as the body text primarily used in the e-mail or web page and displayed as follows:

a. At the beginning of each e-mail message, before any offer or other substantive information.

b. In a prominent location on each web page, such as the top of each page or immediately following the offer or other

substantive information on the page.

(b) Advertisements specified in paragraph (a) must include the following disclosure:

"IMPORTANT NOTICE:

You are NOT required to purchase anything from this company and the company is NOT affiliated, endorsed, or approved by any governmental entity. The item offered in this advertisement has NOT been approved or endorsed by any governmental agency, and this offer is NOT being made by an agency of the government."

(7) PENALTIES.—

(a) Any person substantially affected by a violation of this section may bring an action in a court of proper jurisdiction to enforce the provisions of this section. A person prevailing in a civil action for a violation of this section shall be awarded costs, including reasonable attorney fees, and may be awarded punitive damages in addition to actual damages proven. This provision is in addition to any other remedies prescribed by law.

(b) The department may bring one or more of the following for a violation of this section:

1. A civil action in circuit court for:

a. Temporary or permanent injunctive relief to enforce

this section.

b. For printed advertisements and e-mail, a fine of up to $1,000 for each separately addressed advertisement or message containing content in violation of paragraphs (4)(a)-(d) received by or addressed to a state resident.

c. For websites, a fine of up to $5,000 for each day a website, with content in violation of paragraphs (4)(a)-(d), is published and made available to the general public.

d. For violations of paragraph (4)(e), a fine of up to $5,000 for each violation.

e. Recovery of restitution and damages on behalf of persons substantially affected by a violation of this section.

f. The recovery of court costs and reasonable attorney fees.

2. An action for an administrative fine in the Class III category pursuant to s. 570.971 for each act or omission which constitutes a violation under this section.

(c) The department may terminate any investigation or action upon agreement by the alleged offender to pay a stipulated fine, make restitution, pay damages to customers, or satisfy any other relief authorized by this section.

(d) Any person who violates paragraphs (4)(a)-(d) also commits an unfair and deceptive trade practice in violation of part II of chapter 501 and is subject to the penalties and remedies imposed for such violation.

Section 52. Paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is amended to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50 feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not

prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty

plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, ~~or specialty installer~~ who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems; however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 53. Subsection (3) of section 527.06, Florida Statutes, is reenacted to read:

527.06 Rules.—

(3) Rules in substantial conformity with the published standards of the National Fire Protection Association (NFPA) are deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

Section 54. This act shall take effect July 1, 2018.

## COMMERCE COMMITTEE

## CS/HB 553 by Raburn
## Department of Agriculture and Consumer Services

## AMENDMENT SUMMARY
## February 1, 2018

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**Amendment 1 by Rep. Raburn (Line 383):** makes the following changes to the Do Not Call Act:

- Defines "voicemail transmission" and includes the term in the definition of "telephonic sales call";
- Prohibits unsolicited voicemail transmissions;
- Requires a telephone solicitor to provide on the call recipient's caller ID a telephone number that is capable of receiving calls and connecting the call recipient to the telephone solicitor or seller; and
- Increases penalties to a maximum of $10,000 for administrative fines and minimum of $10,000 for civil fines.

**Amendment 2 by Rep. Beshears (Line 1266):** requires a Category I liquefied petroleum gas dealer to give notice at least five business days before rendering a consumer's liquefied petroleum gas equipment or system inoperable or discontinuing service.

**Amendment 3 by Rep. Raburn (Line 1312):** makes the following changes to the chapter of law governing the inspection and protection of livestock:

- Aligns provisions with the federal Packers and Stockyards Act, which is a federal law designed to ensure effective competition and integrity in livestock, meat, and poultry items;
- Repeals the process by which DACS notifies all licensed livestock markets of dishonored checks. According to DACS the process is no longer in use;
- Makes delay or failure to pay a livestock debt an unfair or deceptive act;
- Removes a payer's right to refuse payment of unauthorized livestock draft;
- Repeals the prohibition of a livestock market to file a complaint under the dealer in agriculture products complaint law; and
- Adds court costs and expenses to the additional payments required of a purchaser who fails to make payment for purchased livestock.

**Amendment 4 by Rep. Raburn (Line 1322):** authorizes the Commissioner of Agriculture, in a state of emergency declared by the Governor, to issue an emergency order suspending certain motor fuel laws, allowing for the sale of motor fuel at a lower cost.

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 Raburn offered the following:

**Amendment (with title amendment)**

Remove lines 383-403 and insert:

Section 9. Paragraph (g) of subsection (1) of section 501.059, Florida Statutes, is amended, a new paragraph (i) is added to that subsection, and subsection (5), paragraph (c) of subsection (8), and subsection (9) of that section are amended, to read:

501.059 Telephone solicitation.—

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

(g) "Telephonic sales call" means a telephone call, ~~or~~ text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or

services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

(i) "Voicemail transmission" means technologies that deliver a voice message directly to a voicemail application, service, or device.

(5) A telephone solicitor or other person may not initiate an outbound telephone call, ~~or~~ text message, or voicemail transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, ~~or~~ text message, or voicemail transmission:

(a) Made by or on behalf of the seller whose goods or services are being offered; or

(b) Made on behalf of a charitable organization for which a charitable contribution is being solicited.

(8)

(c) It shall be unlawful for any person who makes a telephonic sales call or causes a telephonic sales call to be made to fail to transmit or cause not to be transmitted the originating telephone number and, when made available by the telephone solicitor's carrier, the name of the telephone solicitor to any caller identification service in use by a recipient of a telephonic sales call. However, it shall not be a

violation to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telephonic sales call is placed and the seller's customer service telephone number, which is answered during regular business hours. If a telephone number is made available through a caller identification service as a result of a telephonic sales call, the solicitor must ensure that telephone number is capable of receiving phone calls and must connect the original call recipient, upon calling such number, to the telephone solicitor or to the seller on behalf of which a telephonic sales call was placed. For purposes of this section, the term "caller identification service" means a service that allows a telephone subscriber to have the telephone number and, where available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(9)(a) The department shall investigate any complaints received concerning violations of this section. If, after investigating a complaint, the department finds that there has been a violation of this section, the department or the Department of Legal Affairs may bring an action to impose a civil penalty and to seek other relief, including injunctive relief, as the court deems appropriate against the telephone solicitor. The civil penalty shall be in the Class IV ~~III~~ category pursuant to s. 570.971 for each violation and shall be

deposited in the General Inspection Trust Fund if the action or proceeding was brought by the department, or the Legal Affairs Revolving Trust Fund if the action or proceeding was brought by the Department of Legal Affairs. This civil penalty may be recovered in any action brought under this part by the department, or the department may terminate any investigation or action upon agreement by the person to pay a stipulated civil penalty. The department or the court may waive any civil penalty if the person has previously made full restitution or reimbursement or has paid actual damages to the consumers who have been injured by the violation.

(b) The department may, as an alternative to the civil penalties provided in paragraph (a), impose an administrative fine in the Class III ~~I~~ category pursuant to s. 570.971 for each act or omission that constitutes a violation of this section. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted pursuant to chapter 120.

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

Remove lines 26-29 and insert:
"telephonic sales call" to include voicemail transmissions; defining the term "voicemail transmission"; prohibiting the transmission of

voicemails to specified persons who communicate to a telephone solicitor that they would not like to receive certain voicemail solicitations or requests for donations; requiring a solicitor to ensure that if a telephone number is available through a caller identification system, that telephone number must be capable of receiving calls and must connect the original call recipient to the solicitor; revising penalties; creating s. 501.6175,

| 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 Beshears offered the following:

**Amendment (with title amendment)**

Between lines 1266 and 1267, insert:

Section 26. Subsection (3) is added to section 527.067, Florida Statutes, to read:

527.067 Responsibilities of persons engaged in servicing liquefied petroleum gas equipment and systems and consumers, end users, or owners of liquefied petroleum gas equipment or systems.—

(1) All persons engaged in the business of servicing, testing, repairing, maintaining, or installing liquefied petroleum gas equipment and systems shall initially present proof of licensure to consumers, owners, or end users prior to

working on said equipment or system and shall subsequently present proof of licensure upon the request of consumers, owners, end users, or persons who have authorized such work.

(2) Any consumer, owner, end user, or person who alters or modifies his or her LP gas equipment or system in any way shall, for informational purposes, notify the licensed dealer who next fills or otherwise services his or her LP gas system that such work has been performed. The department may promulgate rules prescribing the method of notification. Such notification shall be made within a reasonable time prior to the date the liquefied petroleum gas equipment or system is next filled or otherwise serviced in order that the equipment or system may be serviced in a safe manner.

(3) A Category I liquefied petroleum gas dealer may not render a consumer's liquefied petroleum gas equipment or system inoperable or discontinue service without providing to the consumer written or electronic notification at least five business days prior to rendering the liquefied petroleum gas equipment or system inoperable or discontinuing service. This notification does not apply in the event of a hazardous condition known to the Category I liquefied petroleum gas dealer.

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

Between lines 85 and 86, insert:

amending s. 527.067, F.S.; requiring a Category I liquefied petroleum gas dealer to give notice before rendering a consumer's liquefied petroleum gas equipment or system inoperable or discontinuing service;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 553 (2018)

Amendment No. 3

| 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 Raburn offered the following:

**Amendment (with title amendment)**

Between lines 1312 and 1313, insert:

Section 30. Section 534.47, Florida Statutes, is amended to read:

534.47 Definitions.—As used in ss. 534.48-534.54 ~~534.48-534.53~~:

(1) "Department" means the Department of Agriculture and Consumer Services.

(2) "Dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock, either on his own account or as the employee or agent of the vendor or purchaser.

(3) "Livestock" has the same meaning as in s. 585.01(13).

(4) ~~(2)~~ "Livestock market" means any location in the state where livestock is assembled and sold at public auction or on a commission basis during regularly scheduled or special sales. The term "livestock market" shall not include private farms or ranches or sales made at livestock shows, fairs, exhibitions, or special breed association sales.

(5) "Packer" means any person engaged in the business of buying livestock in commerce for purposes of slaughter, or of manufacturing or preparing meats or meat food products for sale or shipment in commerce, or of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesaler broker, dealer, or distributor in commerce.

(6) "Purchaser" means any person, partnership, firm, corporation, or other organization owning, managing, producing, or dealing in livestock, including, but not limited to, "packers" and "dealers", that buys livestock for breeding, feeding, reselling, slaughter, or other purpose.

(7) "Registered and approved livestock market" means a livestock market fully registered, bonded, and approved as a "market agency" pursuant to the Stockyards Act and governing regulations by the United States Department of Agriculture Grain Inspection, Packers, and Stockyards Administration.

(8) "Seller" means " means any person, partnership, firm, corporation, or other organization owning, managing, producing, financing, or dealing in livestock, including, but not limited to, "Registered and approved livestock market" as consignee and

"dealers", that sell livestock for breeding, feeding, reselling, slaughter, or other purpose.

(9) "Stockyards Act" means the Packers And Stockyards Act of 1921, 7 U.S.C. ss. 181-229 and the regulations promulgated pursuant to that act, 9 C.F.R. part 201.

~~(3) "Buyer" means the party to whom title of livestock passes or who is responsible for the purchase price of livestock, including, but not limited to, producers, dealers, meat packers, or order buyers.~~

Section 31. Section 534.49, Florida Statutes, is amended to read:

534.49 Livestock drafts; effect.—For the purposes of this section, a livestock draft given as payment at a livestock auction market for a livestock purchase shall not be deemed an express extension of credit to the purchaser ~~buyer~~ and shall not defeat the creation of a lien on such an animal and its carcass and all products therefrom and proceeds thereof, to secure all or a part of its sales price, as provided in s. 534.54(4).

Section 32. Section 534.50, Florida Statutes, is repealed.

Section 33. Section 534.501, Florida Statutes, is amended to read:

534.501 ~~Livestock draft;~~ Unlawful ~~to~~ delay or failure in payment.—It is ~~shall be~~ unlawful for the purchaser of livestock to delay or fail in rendering payment for livestock to any seller of cattle as provided in s. 534.54. A person who violates this section commits an unfair or deceptive act or practice as

specified in s. 501.204 ~~payment of the livestock draft upon presentation of said draft at the payor's bank. Nothing contained in this section shall be construed to preclude a payor's right to refuse payment of an unauthorized draft~~.

Section 34. Section 534.51, Florida Statutes, is repealed.

Section 35. Section 534.54, Florida Statutes, is amended to read:

534.54 Cattle or hog processors; prompt payment; penalty; lien.—

~~(1) As used in this section:~~

~~(a) "Livestock" means cattle or hogs.~~

~~(b) "Meat processor" means a person, corporation, association, or other legal entity engaged in the business of slaughtering cattle or hogs.~~

(1)~~(2)~~(a) A purchaser ~~meat processor~~ who purchases livestock from a seller must~~, or any person, corporation, association, or other legal entity who purchases livestock from a seller for slaughter, shall~~ make payment by cash or check for the purchase price of the livestock and actually deliver the cash or check to the seller or her or his representative at the location where the purchaser takes physical possession of the livestock on the day the transfer of possession occurs or shall wire transfer of funds on the business day within which the possession of said livestock is transferred. However, if the transfer of possession is accomplished after normal banking hours, said payment shall be made in the manner herein provided

not later than the close of the first business day following said transfer of possession. In the case of "grade and yield" selling, the purchaser shall make payment by wire transfer of funds or by personal or cashier's check by registered mail postmarked not later than the close of the first business day following determination of "grade and yield."

(b) All instruments issued in payment hereunder shall be drawn on banking institutions which are so located as not artificially to delay collection of funds through the mail or otherwise cause an undue lapse of time in the clearance process.

(2) ~~(3)~~ A purchaser of livestock ~~for slaughter~~ that fails to comply with (1) or artificially delays collection of funds for the payment of the livestock, shall be liable to pay the seller ~~owner~~ of the livestock, in addition to the price of the livestock:

(a) Twelve percent damages on the amount of the price.

(b) Interest on the purchase price of the livestock at the highest legal rate from and after the transfer of possession until payment is made as required by this section.

(c) ~~A~~ Reasonable attorney fees, court costs, and expenses ~~fee~~ for the prosecution of collection of the payment.

(3) ~~(4)~~ (a) Any seller ~~person, partnership, firm, corporation, or other organization~~ which sells livestock to any purchaser shall have a lien on such animal and its carcass, all products therefrom, and any and all proceeds thereof to secure all or a part of its sales price.

(b) The lien provided in this subsection shall be deemed to have attached and to be perfected upon delivery of the livestock to the purchaser without further action, and such lien shall continue in the livestock and its carcass, all products therefrom, and proceeds thereof without regard to possession thereof by the party entitled to such lien without further perfection.

(c) If the livestock or its carcass or products therefrom are so commingled with other livestock, carcasses, or products so that the identity thereof is lost, then the lien granted in this subsection shall extend to the same effect as if same had been perfected originally in all such animals, carcasses, and products with which it has become commingled. However, all liens so extended under this paragraph to such commingled livestock, carcasses, and products shall be on a parity with one another, and, with respect to such commingled carcasses or products upon which a lien or liens have been so extended under this paragraph, no such lien shall be enforceable as against any purchaser without actual knowledge thereof purchasing one or more of such carcasses or products in the ordinary course of trade or business from the party having commingled such carcasses or products or against any subsequent transferee from such purchaser, but in the event of such sale, such lien shall instead extend to the proceeds of such sale.

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

Remove line 92 and insert:
instruments or devices; amending s. 534.47, F.S.; revising definitions; amending s. 534.49, F.S.; conforming provisions to changes made by the act; repealing s. 534.50, F.S., relating to reporting and notice requirements for dishonored checks and drafts for payment of livestock purchases; amending s. 534.501, F.S.; providing that delaying or failing to make payment for certain livestock is an unfair and deceptive act; repealing s. 534.51, F.S., relating to the prohibition of the filing of complaints by certain livestock markets; amending s. 534.54, F.S.; providing that purchasers who delay or fail to render payment for purchased livestock are liable for certain fees, costs, and expenses; conforming provisions to changes made by the act; amending s. 570.07, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 553 (2018)

Amendment No. 4

| 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 Raburn offered the following:

**Amendment (with directory and title amendments)**

Between lines 1322 and 1323, insert:

(47) During a state of emergency declared pursuant to s. 252.36, to issue an emergency order temporarily suspending ss. 526.304 and 526.305, in recognition of motor fuel as an essential commodity necessary to effectuate emergency plans and aid in recovery.

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**D I R E C T O R Y A M E N D M E N T**

Remove line 1313 and insert:

Section 30. Subsections (46) and (47) are added to section 570.07,

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

Remove line 94 and insert:
and suspend of specified provisions during a state of emergency; amending s. 573.111,

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 585 Tourist Development Tax
**SPONSOR(S):** Fine and others
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 658

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Tourism & Gaming Control Subcommittee | 9 Y, 4 N | Bowen | Barry |
| 2) Ways & Means Committee | 13 Y, 4 N | Dugan | Langston |
| 3) Commerce Committee | | Bowen JB | Hamon K.W.H. |

## SUMMARY ANALYSIS

State law currently authorizes counties to levy local option tourist development taxes as a funding mechanism for a variety of tourism-related expenditures such as tourism promotion, beach and shoreline maintenance, and construction of convention centers and professional sports franchise facilities.

The bill expands the permissible uses of tourist development tax revenues by authorizing counties to use such revenues in connection with building or improving public facilities within the boundaries of the county or subcounty special taxing district, provided that the expenditure is deemed necessary to increase tourist-related business activities by the county tourist development council.

In addition, the bill adds estuary and lagoon improvements to the list of water projects (i.e., restoration of inland lakes and rivers) that are eligible recipients of tourist development tax revenues under current law.

The bill appears to have no fiscal impact on state or local government revenues.

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

The Local Option Tourist Development Act[1] authorizes counties to levy five separate taxes on transient rental[2] transactions ("tourist development taxes" or "TDT"). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from a minimum of three percent to a maximum of six percent:

- The original TDT may be levied at the rate of 1 or 2 percent (s. 125.0104(3)(c), F.S.).[3]
- An additional 1 percent tax may be levied by counties who have previously levied a TDT at the 1 or 2 percent rate for at least three years.[4]
- A high tourism impact tax may be levied at an additional 1 percent.[5]
- A professional sports franchise facility tax may be levied up to an additional 1 percent.[6]
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[7]

TDT Process

Each county that levies the original 1 or 2 percent tax is required to have a "tourist development council."[8] The tourist development council is a group of residents from the county that are appointed by the county governing authority. The tourist development council, among other duties, makes recommendations to the county governing authority for the effective operation of the special projects or for uses of the TDT revenue.

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum[9] and additional TDT levies must be authorized by a vote of the county's governing authority or by voter approval of a countywide referendum.[10] Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,[11] which must include a plan for tourist development prepared by the tourist development council.[12] The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.[13] The plan for tourist development may not be substantially amended except by

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[1] s. 125.0104, F.S.
[2] s. 125.0104(3)(a)(1), F.S. considers "transient rental" to be the rental or lease of any accommodation for a term of 6 months or less.
[3] s. 125.0104(3)(c), F.S. Sixty-three counties levy this tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, *available at* http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Dec. 19, 2017).
[4] s. 125.0104(3)(d), F.S. Fifty-one of the eligible 59 counties levy this tax. *Id.*
[5] s. 125.0104(3)(m), F.S. Five of the eight eligible counties levy this tax. *Id.*
[6] s. 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-three of the 67 eligible counties levy this additional tax. *Id.*
[7] s. 125.0104(3)(n) F.S. Twenty-nine of the eligible 65 counties levy the additional professional sports franchise facility tax. *Id.*
[8] s. 125.0104(4)(e), F.S.
[9] s. 125.0104(6), F.S.
[10] s. 125.0104(3)(d), F.S.
[11] s. 125.0104(4)(a), F.S.
[12] s. 125.0104(4), F.S.
[13] *See* s. 125.0104(4), F.S.

ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[14]

TDT Uses

Current statute prescribes the authorized uses of TDT revenues, including tourism marketing and capital construction of tourism-related facilities.[15] The permitted uses of each local option tax vary according to the particular levy. Revenues received by a county from a tax levied under s. 125.0104(3)(c) and (d), F.S. (the original 1 or 2 percent levy and the additional 1 percent levy), must be used only for purposes listed in s. 125.0104(5), F.S. These purposes are:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.[16]
- In counties with populations less than 750,000, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.
- A county located adjacent to the Gulf of Mexico or the Atlantic Ocean, except a county that receives revenue from taxes levied pursuant to s. 125.0108, F.S. may use up to 10 percent of the tax revenue received pursuant to this section to reimburse expenses incurred in providing public safety services, including emergency medical services, and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area.
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

The use of TDT revenue for any purpose not expressly authorized in statute is prohibited.[17]

TDT Administration

Section 125.0104(10), F.S., authorizes a county levying TDTs to self-administer the tax, if the county adopts an ordinance providing for the local collection and administration of the tax. A county that chooses to self-administer the taxes must choose whether to assume all responsibility for auditing the

[14] *See* s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

[15] Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf (last visited Dec. 19, 2017).

[16] In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.

[17] s. 125.0104(5)(d), F.S.

records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to the Department of Revenue.

**Proposed Changes**

The bill authorizes additional purposes for which revenues received by a county through the TDT may be expended. However it does not affect the existing process for levying a TDT or for making decisions regarding the expenditure of TDT revenues.

The bill allows counties to use TDT revenues in connection with developing or operating public facilities[18] within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council. TDT revenues may also be used for any related land acquisition, land improvement, design, and engineering costs and all other professional and related costs required to bring public facilities into service.

In addition, the bill adds estuary and lagoon improvements to the list of water projects (i.e., restoration of inland lakes and rivers) that are eligible recipients of TDT funding under current law.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 125.0104, F.S., to allow counties imposing the tourist development tax to use such tax revenue for expenditures related to public facilities needed to increase tourist-related business activities in the county.

**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:

   The bill authorizes, but does not require, affected counties to use an existing source of revenue to fund expenditures for public facilities.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

[18] "Public facilities" is defined to mean "major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities."

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the tourist development tax; amending s. 125.0104, F.S.; authorizing counties to use the tax to finance estuary or lagoon improvements; authorizing counties imposing the tax to use the tax revenues, under certain circumstances, for specified purposes and costs relating to public facilities; defining the term "public facilities"; providing an effective date.

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

Section 1. Paragraph (a) of subsection (5) of section 125.0104, Florida Statutes, is amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:

a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in

which the tax is levied;

b. Auditoriums that are publicly owned but are operated by organizations that are exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied; or

c. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied;

2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; ~~or~~

5. To finance beach park facilities, or beach, estuary, or lagoon improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, estuary, lagoon, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities; or.

6. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e). Tax revenues may be used for any related land acquisition, land improvement, design, and engineering costs and

all other professional and related costs required to bring the public facilities into service. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

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

## COMMERCE COMMITTEE

## HB 585 by Rep. Fine
## Tourist Development Tax

## AMENDMENT SUMMARY
## February 1, 2018

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**Amendment 1 by Rep. Fine (Line 20):** The amendment requires that a return-on-investment analysis must be conducted before tourist development tax revenues may be spent on a use authorized by statute.

**Amendment 2 by Rep. Fine (Line 74):** The amendment requires that a recommendation by a local tourist development council to spend tourist development tax revenues on infrastructure projects newly authorized by the bill must include an analysis by a qualified, independent expert showing the project's impact on tourism in the local area.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 585 (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 Fine offered the following:

**Amendment (with title amendment)**

Remove line 20 and insert:

that county only after conducting an objective analysis of the proposed use of revenue that determines the long term economic benefits to the county or subcounty special taxing district from incremental tourism will exceed the tax revenues expended and for the following purposes only:

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

Remove line 6 and insert:

revenues, under certain circumstances and subject to certain conditions and restrictions, for specified

Amendment No. 2

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 Fine offered the following:

**Amendment (with title amendment)**

Remove line 74 and insert:

paragraph (4)(e). Any recommendation to spend tax revenues from the tourist development tax on a use authorized by this subparagraph must be accompanied by an analysis of the anticipated impact of the public facilities on tourist-related business activities in the county or subcounty special taxing district. The analysis required by this subparagraph must be prepared and signed by an individual possessing a terminal degree in economics or other relevant field who is not currently or formerly employed or contracted by any public or private entity involved in proposing, approving, constructing or

operating the public facilities. Tax revenues may be used for any related land

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

Remove line 6 and insert:

revenues, under certain circumstances and subject to certain conditions and restrictions, for specified

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1011 Hurricane Flood Insurance
**SPONSOR(S):** Insurance & Banking Subcommittee; Cruz
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1282

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Insurance & Banking Subcommittee | 13 Y, 0 N, As CS | Lloyd | Luczynski |
| 2) Commerce Committee | | Lloyd | Hamon |

### SUMMARY ANALYSIS

The Insurance Code requires that insurance policies, depending on the type of coverage, include specific content to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. Such provisions may establish requirements regarding content, print type or size, and appearance (e.g., bold type or all capitalized text). Homeowner's property insurance policies must include the following statement in bold 18-point type:

> "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in such a policy. The windstorm portion of the homeowner's property insurance policy, which many think of as "hurricane insurance," does not cover the flood damage from rising or accumulating surface water. If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program, or from an authorized Florida flood insurer, then their flood damages will not be covered.

The bill requires a purchaser of homeowner's insurance, upon initial application for coverage, to acknowledge the following statement:

> "I UNDERSTAND THAT IF I PURCHASE A HOMEOWNER'S PROPERTY INSURANCE POLICY PROVIDING WINDSTORM COVERAGE, ALSO KNOWN AS "HURRICANE INSURANCE," THE POLICY DOES NOT INCLUDE FLOOD INSURANCE COVERAGE FOR DAMAGE FROM RISING WATER AND MY PROPERTY WILL NOT BE COVERED FOR FLOOD DAMAGE UNLESS I SEPARATELY PURCHASE FLOOD INSURANCE COVERAGE."

It also expands the required notice that appears on the face of a homeowner's property insurance policy to include notice that the policy does not include flood insurance coverage for damage related to rising water. The new requirements apply to policies issued on or after January 1, 2019, and to the first renewal of a policy in force on January 1, 2019.

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

The bill is effective January 1, 2019.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Insurance Policy Form and Content Requirements**

The Insurance Code[1] requires that insurance policies, depending on the type of coverage, include specific content to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. Such provisions may establish requirements regarding content, print type or size, and appearance (e.g., bold type or all capitalized text). Examples include the following:

- Structured settlement transfers must include a disclosure statement in no less than 14-point type with specified elements;[2]
- Life insurance policies and health insurance policies must be in a light faced type of a style in general use in a uniform size of at least 10-point type with a lowercase alphabet spacing of not less than 120 points.[3]
- Sinkhole policies must include the following statement in bold 14-point type:

  "YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM."[4]

- Homeowner's property insurance policies must include the following statement in bold 18-point type:

  "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."[5]

  If the policy includes a separate hurricane deductible, it must include the following in bold 18-point type:

  "THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."[6]

  If the policy contains a hurricane coinsurance provision, it must include the following in bold 18-point type:

  "THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU."[7]

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[1] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.
[2] s. 626.99296(3)(a)2., F.S.
[3] ss. 627.452(4) and 627.602(1)(d), F.S.
[4] s. 627.706(3), F.S.
[5] s. 627.7011(4), F.S.
[6] s. 627.701(4)(a), F.S.
[7] *Id.*

- Motor vehicle policies must include the following statement in bold 12-point type, depending on whether or how much uninsured motorist coverage is purchased:

  "You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully."[8]

- Premium finance agreements must include the following in bold 10-point type:

  "PREMIUM FINANCE AGREEMENT"

  in addition, the following in bold 8-point type:

  "NOTICE:
  1. Do not sign this agreement before you read it or if it contains any blank space.
  2. You are entitled to a completely filled-in copy of this agreement.
  3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge."[9]

## Flood Insurance

### National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968 to offer federally subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The federal government makes flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk related to new construction in floodplains.[10]

Nationally, the NFIP insured almost $1.29 trillion in assets in 2014 and $1.27 trillion in assets in 2015. Total earned premium for NFIP coverage for 2014 was $3.56 billion and for 2015 was $3.45 billion.[11]

### Private Market Flood Insurance in Florida

In response to changes to the NFIP, the 2014 Legislature created a law governing the sale of personal lines residential flood insurance.[12] For the purposes of Florida law, "flood" is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.[13]

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[8] s. 627.727(1), F.S.
[9] s. 627.839(2)(b), F.S. Also, premium finance agreements that include coverage required by the Financial Responsibility Law of 1955, ch. 324, F.S., must include the following statement in 12-point type: "proof of financial responsibility is required to be maintained continuously for a period of 3 years, pursuant to chapter 324, and the operation of a vehicle without such financial responsibility is unlawful." s. 627.848(1)(b), F.S.
[10] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last visited Jan. 7, 2018).
[11] FEMA, *Total Coverage by Calendar Year,* http://www.fema.gov/statistics-calendar-year (last visited Jan. 7, 2018).
[12] s. 627.715, F.S., and Ch. 2014-80, Laws of Fla.
[13] s. 627.715(1)(b), F.S.

The Legislature amended the law in 2015[14] and 2017.[15] Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in the base coverage of such a policy, though it may be added through an addendum.[16] In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner's property insurance policy does not cover the flood damage.[17] If the homeowner does not specifically purchase flood insurance through the NFIP or an authorized Florida flood insurer, such losses will be uninsured.

**Effect of the Bill**

The bill requires a purchaser of homeowner's insurance, upon initial application for coverage, to acknowledge the following statement:

> "I UNDERSTAND THAT IF I PURCHASE A HOMEOWNER'S PROPERTY INSURANCE POLICY PROVIDING WINDSTORM COVERAGE, ALSO KNOWN AS "HURRICANE INSURANCE," THE POLICY DOES NOT INCLUDE FLOOD INSURANCE COVERAGE FOR DAMAGE FROM RISING WATER AND MY PROPERTY WILL NOT BE COVERED FOR FLOOD DAMAGE UNLESS I SEPARATELY PURCHASE FLOOD INSURANCE COVERAGE."

It also expands the required notice that appears on the face of a homeowner's property insurance policy to include notice that the policy does not include flood insurance coverage for damage related to rising water. The bill adds Florida flood insurers to the required notice as a complement to the listing of the NFIP as a flood insurance provider. The new requirements will apply to policies issued on or after January 1, 2019, and to the first renewal of a policy in force on January 1, 2019.

B. SECTION DIRECTORY:

**Section 1:** Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

**Section 2:** Provides for the applicability of the provisions of the bill.

**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.

[14] Ch. 2015-69, Laws of Fla.
[15] Ch. 2017-142, Laws of Fla.
[16] part X, ch. 627, F.S.
[17] Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Insurers will incur form-filing costs. Flood insurers may see more consumers purchasing flood insurance coverage. Consumers may seek flood insurance coverage, thus avoiding related losses in case of covered flood damage during their policy period.

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, two amendments to the amendment, and reported the bill favorably with a committee substitute. The committee substitute makes the following changes to the bill:

- Provides for an acknowledgement of a flood insurance notice at the time of application for a policy, rather than on the face of the policy;
- Specifies that the acknowledgement must be collected upon application for a policy;
- Clarifies that the notice provision describing flood insurance considerations relevant to the policy (i.e., non-coverage of flood) to provide that a homeowner's insurance policy providing windstorm coverage does not include flood insurance coverage protecting against losses due to rising water;
- Adds Florida flood insurers to the required notice as a complement to the notice's inclusion of the NFIP as a flood insurance provider.
- Conforms cross-references;
- Clarifies the applicability portion of the bill to provide that the bill is applicable to policies issued on or after January 1, 2019, or the first renewal of a policy in force on January 1, 2019, whichever is applicable; and
- Changes the effective date to January 1, 2019, rather than July 1, 2018.

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

A bill to be entitled

An act relating to hurricane flood insurance; amending s. 627.7011, F.S.; requiring an insurer to obtain the applicant's written acknowledgement regarding the absence of flood coverage; providing and revising homeowner's insurance policy disclosure requirements; amending ss. 627.7142 and 627.715, F.S.; conforming cross-references; providing applicability; providing an effective date.

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

Section 1. Subsections (2) through (5) of section 627.7011, Florida Statutes, are renumbered as subsections (3) through (6), respectively, present subsection (4) is amended, and a new subsection (2) is added to that section, to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(2) Before initial issuance of a homeowner's insurance policy, the insurer must obtain the applicant's written acknowledgement of the following statement:

"I UNDERSTAND THAT IF I PURCHASE A HOMEOWNER'S PROPERTY INSURANCE POLICY PROVIDING WINDSTORM COVERAGE, ALSO KNOWN AS "HURRICANE INSURANCE," THE POLICY DOES NOT INCLUDE FLOOD

INSURANCE COVERAGE FOR DAMAGE FROM RISING WATER AND MY PROPERTY WILL NOT BE COVERED FOR FLOOD DAMAGE UNLESS I SEPARATELY PURCHASE FLOOD INSURANCE COVERAGE."

(5) ~~(4)~~ A homeowner's insurance policy must include in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM OR AN ADMITTED FLORIDA FLOOD INSURER. AS YOU ACKNOWLEDGED AT THE TIME OF APPLICATION, THIS POLICY DOES NOT INCLUDE FLOOD INSURANCE. FLOOD INSURANCE COVERS DAMAGE FROM RISING WATER. IF THIS POLICY PROVIDES WINDSTORM COVERAGE, ALSO KNOWN AS HURRICANE INSURANCE, IT DOES NOT COVER DAMAGE FROM RISING WATER. WITHOUT FLOOD INSURANCE ~~THIS~~ COVERAGE, YOU MAY HAVE UNCOVERED LOSSES RESULTING FROM RISING WATER. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

Section 2. Section 627.7142, Florida Statutes, is amended to read:

627.7142 Homeowner Claims Bill of Rights.—An insurer issuing a personal lines residential property insurance policy in this state must provide a Homeowner Claims Bill of Rights to a policyholder within 14 days after receiving an initial communication with respect to a claim, unless the claim follows an event that is the subject of a declaration of a state of emergency by the Governor. The purpose of the bill of rights is to summarize, in simple, nontechnical terms, existing Florida law regarding the rights of a personal lines residential property insurance policyholder who files a claim of loss. The Homeowner Claims Bill of Rights is specific to the claims process and does not represent all of a policyholder's rights under Florida law regarding the insurance policy. The Homeowner Claims Bill of Rights does not create a civil cause of action by any individual policyholder or class of policyholders against an insurer or insurers. The failure of an insurer to properly deliver the Homeowner Claims Bill of Rights is subject to administrative enforcement by the office but is not admissible as evidence in a civil action against an insurer. The Homeowner Claims Bill of Rights does not enlarge, modify, or contravene statutory requirements, including, but not limited to, ss. 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does not prohibit an insurer from exercising its right to repair

damaged property in compliance with the terms of an applicable policy or ss. 627.7011(6)(e) ~~ss. 627.7011(5)(e)~~ and 627.702(7). The Homeowner Claims Bill of Rights must state:

HOMEOWNER CLAIMS

BILL OF RIGHTS

This Bill of Rights is specific to the claims process and does not represent all of your rights under Florida law regarding your policy. There are also exceptions to the stated timelines when conditions are beyond your insurance company's control. This document does not create a civil cause of action by an individual policyholder, or a class of policyholders, against an insurer or insurers and does not prohibit an insurer from exercising its right to repair damaged property in compliance with the terms of an applicable policy.

YOU HAVE THE RIGHT TO:

1. Receive from your insurance company an acknowledgment of your reported claim within 14 days after the time you communicated the claim.

2. Upon written request, receive from your insurance company within 30 days after you have submitted a complete proof-of-loss statement to your insurance company, confirmation that your claim is covered in full, partially covered, or denied, or receive a written statement that your claim is being investigated.

3. Within 90 days, subject to any dual interest noted in

the policy, receive full settlement payment for your claim or payment of the undisputed portion of your claim, or your insurance company's denial of your claim.

4. Free mediation of your disputed claim by the Florida Department of Financial Services, Division of Consumer Services, under most circumstances and subject to certain restrictions.

5. Neutral evaluation of your disputed claim, if your claim is for damage caused by a sinkhole and is covered by your policy.

6. Contact the Florida Department of Financial Services, Division of Consumer Services' toll-free helpline for assistance with any insurance claim or questions pertaining to the handling of your claim. You can reach the Helpline by phone at...(toll-free phone number)..., or you can seek assistance online at the Florida Department of Financial Services, Division of Consumer Services' website at...(website address)....

YOU ARE ADVISED TO:

1. Contact your insurance company before entering into any contract for repairs to confirm any managed repair policy provisions or optional preferred vendors.

2. Make and document emergency repairs that are necessary to prevent further damage. Keep the damaged property, if feasible, keep all receipts, and take photographs of damage

before and after any repairs.

3. Carefully read any contract that requires you to pay out-of-pocket expenses or a fee that is based on a percentage of the insurance proceeds that you will receive for repairing or replacing your property.

4. Confirm that the contractor you choose is licensed to do business in Florida. You can verify a contractor's license and check to see if there are any complaints against him or her by calling the Florida Department of Business and Professional Regulation. You should also ask the contractor for references from previous work.

5. Require all contractors to provide proof of insurance before beginning repairs.

6. Take precautions if the damage requires you to leave your home, including securing your property and turning off your gas, water, and electricity, and contacting your insurance company and provide a phone number where you can be reached.

Section 3. Paragraph (a) of subsection (1) of section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood or excess coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section.

This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. An insurer may issue flood insurance policies, contracts, endorsements, or excess coverage on a standard, preferred, customized, flexible, or supplemental basis.

(1)(a) Except for excess flood insurance policies, policies issued under this section include:

1. Standard flood insurance, which must cover only losses from the peril of flood, as defined in paragraph (b), equivalent to that provided under a standard flood insurance policy under the National Flood Insurance Program. Standard flood insurance issued under this section must provide the same coverage, including deductibles and adjustment of losses, as that provided under a standard flood insurance policy under the National Flood Insurance Program.

2. Preferred flood insurance, which must include the same coverage as standard flood insurance but:

a. Include, within the definition of "flood," losses from water intrusion originating from outside the structure that are not otherwise covered under the definition of "flood" provided in paragraph (b).

b. Include coverage for additional living expenses.

c. Require that any loss under personal property or contents coverage that is repaired or replaced be adjusted only on the basis of replacement costs up to the policy limits.

3. Customized flood insurance, which must include coverage that is broader than the coverage provided under standard flood insurance.

4. Flexible flood insurance, which must cover losses from the peril of flood, as defined in paragraph (b), and may also include coverage for losses from water intrusion originating from outside the structure which is not otherwise covered by the definition of flood. Flexible flood insurance must include one or more of the following provisions:

a. An agreement between the insurer and the insured that the flood coverage is in a specified amount, such as coverage that is limited to the total amount of each outstanding mortgage applicable to the covered property.

b. A requirement for a deductible in an amount authorized under s. 627.701, including a deductible in an amount authorized for hurricanes.

c. A requirement that flood loss to a dwelling be adjusted in accordance with s. 627.7011(4) ~~s. 627.7011(3)~~ or adjusted only on the basis of the actual cash value of the property.

d. A restriction limiting flood coverage to the principal building defined in the policy.

e. A provision including or excluding coverage for additional living expenses.

f. A provision excluding coverage for personal property or contents as to the peril of flood.

5. Supplemental flood insurance, which may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance pursuant to this section. Supplemental flood insurance may provide, but need not be limited to, coverage for jewelry, art, deductibles, and additional living expenses.

Section 4. The amendments made by this act to s. 627.7011, Florida Statutes, apply to:

(1) Policies initially issued on or after January 1, 2019; and

(2) Policies in force on January 1, 2019, upon first renewal.

Section 5. This act shall take effect January 1, 2019.

**COMMERCE COMMITTEE**

**CS/HB 1011 by Rep. Cruz**
**Hurricane Flood Insurance**

**AMENDMENT SUMMARY**

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**Amendment 1 by Rep. Cruz (Line 19):** The amendment:

- Changes the title of the bill from "hurricane flood insurance" to "homeowner's insurance policy disclosures" to accurately reflect the subject of the bill;
- Deletes the proposed acknowledgement that would have been collected by the insurer at the time of application; and
- Revises the language of the current policy disclosure to more clearly inform the policyholder that the policy does not cover flood damages and the need to purchase separate flood insurance for that purpose.

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 Cruz offered the following:

**Amendment (with directory and title amendments)**

Remove lines 19-213 and insert:

(4) An insurer that issues a homeowner's insurance policy must include with the policy documents at initial issuance and every renewal in bold type no smaller than 18 points the following statement:

"LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE ~~FROM THE NATIONAL FLOOD INSURANCE PROGRAM~~. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR

DAMAGE RESULTING FROM FLOOD EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE ~~THIS~~ COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE ~~THESE COVERAGES~~ WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

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**D I R E C T O R Y A M E N D M E N T**

Remove lines 13-16 and insert:

Section 1. Subsection (4) of section 627.7011, Florida Statutes, is amended to read:

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

Remove lines 2-8 and insert:

An act relating to homeowner's insurance policy disclosures; amending s. 627.7011, F.S.; providing and revising homeowner's insurance policy disclosure requirements; providing

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1267 Telephone Solicitation
**SPONSOR(S):** Energy & Utilities Subcommittee; Killebrew
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 962

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Energy & Utilities Subcommittee | 12 Y, 0 N, As CS | Keating | Keating |
| 2) Commerce Committee | | Keating | Hamon |

## SUMMARY ANALYSIS

Unscrupulous persons are able to use current technology, such as auto dialers and Voice over Internet Protocol, to contact large volumes of consumers by phone and to misrepresent, or "spoof," the phone number from which they are calling, with the ultimate intent to defraud the consumer. To reduce this activity, the Federal Communications Commission (FCC), in November 2017, adopted a rule that permits providers of voice communications services to block phone calls made from certain numbers – numbers that a consumer has requested to be blocked and numbers that have not been assigned under the North American Numbering Plan (NANP) – before they reach consumers' phones.

Consistent with the FCC's rule, the bill authorizes telecommunications companies who provide voice communications services to customers in Florida to preemptively block certain phone calls from reaching a customer's phone. In particular, consistent with federal law and FCC rules, such service providers may block calls:

- When the customer to which an originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.
- Originating from a number than is not a valid NANP phone number.
- Originating from a valid NANP phone number that has not been allocated to a telephone service provider by the NANP Administrator or pooling administrator.
- Originating from a valid NANP phone number that has been allocated to a telephone service provider but is unused, as confirmed by the provider blocking the calls.

The bill provides that a service provider may not block a voice call from either of the first two categories listed above if the call is an emergency call placed to 911.

The bill permits voice service providers to rely on a phone number as reflected on a caller identification service for purposes of blocking that number.

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

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

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Present Situation**

Unwanted telephone calls, including "robocalls," are consistently among the top problems consumers cite when filing complaints with the Federal Communications Commission (FCC) each year.[1] Further, the top complaint category at the Federal Trade Commission (FTC) is unwanted telephone calls, with 5.3 million complaints lodged by consumers in 2016.[2]

A robocall is a phone call that answers with a pre-recorded message, instead of a live person, or any auto dialed phone call.[3] Inexpensive technology, such as Voice over Internet Protocol (VoIP) and auto dialers,[4] has allowed robocallers to manipulate telephone technologies to contact a large volume of consumers and to misrepresent, or "spoof," the phone number from which they are calling.[5] These calls are often intended to trick the consumer into accepting a scam sales call and to give away valuable personal information.[6]

Federal law restricts the use of auto dialers, prerecorded sales messages, spoofing, and unsolicited sales calls, text messages, or faxes. In particular, the law prohibits unsolicited, prerecorded telemarketing calls to landline home telephones, and all autodialed or prerecorded calls or text messages to wireless numbers, emergency numbers, and patient rooms at health care facilities.[7] Further, federal law prohibits any person or entity from transmitting misleading or inaccurate caller ID information with the intent to defraud, cause harm, or wrongly obtain anything of value.[8]

The National Do Not Call Program (Program), administered by the FTC in concert with the FCC, prohibits telephone solicitors from contacting a consumer who registers to participate in the Program, unless the calls are made with a consumer's prior, express permission, are informational in nature, such as those made to convey a utility outage, school closing, or flight information, or are made by a tax-exempt organization.[9]

Florida law prohibits telemarketers from making telephone sales calls or sending text messages by using auto dialers with prerecorded messages. The law also prohibits telemarketers from making unsolicited sales calls to landline home telephones or wireless phones if the phone number is included on Florida's Do Not Call List, which is administered by the Florida Department of Agriculture and Consumer Services.[10] The law does not prohibit unsolicited calls from research or survey companies seeking opinions or from charitable organizations or political candidates or parties seeking donations.[11]

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[1] Federal Communications Commission, *Stop Unwanted Calls and Texts,* https://www.fcc.gov/consumers/guides/stop-unwanted-calls-and-texts (last visited January 21, 2018).
[2] Phoning It In: Unwanted Calls Are No. 1 Complaint with FTC, The Wall Street Journal (Sept. 8, 2017), https://www.wsj.com/articles/phoning-it-in-unwanted-calls-are-no-1-complaint-with-ftc-1504879201 (last visited January 21, 2018).
[3] Federal Trade Commission, *Consumer Information: Robocalls*, https://www.consumer.ftc.gov/features/feature-0025-robocalls (last visited Jan. 21, 2018).
[4] An auto dialer is equipment that has the capacity to produce or store phone numbers using a random or sequential number generator, and to call those phone numbers. 47 U.S.C. § 227(a)(1).
[5] *Supra* notes 1 and 3. "Spoofing" occurs when a caller deliberately falsifies the information transmitted to a consumer's caller ID display to disguise the caller's identity.
[6] *Supra* notes 1 and 3.
[7] 47 U.S.C. § 227(b).
[8] 47 U.S.C. § 227(e).
[9] 47 C.F.R. § 64.1200 (2012).
[10] s. 501.059, F.S.; *see also* Florida Department of Agriculture and Consumer Services, *Florida Do Not Call*, http://www.freshfromflorida.com/Consumer-Resources/Florida-Do-Not-Call (last visited Jan. 21, 2018).
[11] *Id.*

Many robocalls and spoofed calls are made without regard to the laws in place to prevent them. As a result, the Chairman of the FCC called upon the telephone service industry to develop and implement responses that could more quickly react to this problem.[12] In response, the Robocall Strike Force (Strike Force) was created in 2016.[13] The Strike Force, which consists of representatives from the industry, issued a report on its efforts in October 2016, which included:[14]

- Steps the industry had taken to implement telephone service provider authentication of caller identification for calls made over VoIP networks;
- Methods for consumer education about robocalls and the solutions currently available to telephone subscribers on the market; and
- The industry's trial implementation of a "Do-Not-Originate" (DNO) list, a compilation of numbers known to be illegitimate, and therefore likely to be used by a robocaller, from which telephone service providers could pull numbers that it would block from being able to complete calls to subscribers.

On November 17, 2017, the FCC adopted a rule that implements the Strike Force's DNO list proposal.[15] The rule permits telephone service providers to block phone calls made from a number that appears on a DNO list before they reach customers' phones. The following types of phone numbers may be placed on the DNO list:

- An inbound services-only number that is assigned to a customer who requests that the number be blocked.
- A number that is invalid under the North American Number Plan[16] (NANP), such as a single digit repeated (000-000-0000), or one without the required number of digits.
- A number that has not yet been allocated to a telephone services provider by the NANP Administrator.
- A number that is allocated to a telephone services provider, but has not yet been assigned to a telephone customer.

According to the FCC, the use of an invalid, unallocated, or unassigned number provides a strong indication that the calling party is spoofing the caller ID to potentially defraud and harm a telephone service customer.[17]

**Effect of Proposed Changes**

The bill authorizes telecommunications companies who provide voice communications services to customers in Florida to preemptively block certain phone calls from reaching a customer's phone. In particular, consistent with federal law and FCC rules, such service providers may block calls:

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[12] Tom Wheeler, Chairman of the Federal Communications Commission, *Cutting off Robocalls* (Jul. 22, 2016), https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls (last visited Jan. 21, 2018).
[13] Federal Communications Commission, *First Meeting of Industry-Led Robocall Strike Force*, https://www.fcc.gov/news-events/events/2016/08/first-meeting-industry-led-robocall-strike-force (last visited Jan. 21, 2018).
[14] *Robocall Strike Force Report* at p. 2 (Oct. 26, 2016), available at: https://transition.fcc.gov/cgb/Robocall-Strike-Force- Final-Report.pdf (last visited Jan. 21, 2018).
[15] Federal Communications Commission, *Advanced Methods to Target and Eliminate Unlawful Robocalls*, FCC Docket No. 17-59, Report and Order and Further Notice of Proposed Rulemaking, at para. 9 (Nov. 16, 2017), *available at*: https://www.fcc.gov/document/fcc-adopts-rules-help-block-illegal-robocalls-0 (last visited Jan. 21, 2018).
[16] The NANP was created to organize the nationwide assignment of phone numbers in order to make direct dialing of long distance calls possible and to eliminate the need for operators. The NANP also pools numbers into numerical blocks of 1,000 numbers each and then allocates those numbers to service providers. *See generally*, North American Numbering Plan Administrator, *About the North American Numbering Plan*, https://www.nationalnanpa.com/about_us/abt_nanp.html (last visited Jan. 21, 2018).
[17] *Supra* note 15, at p. 8.

- When the customer to which an originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.
- Originating from a number than is not a valid NANP phone number.
- Originating from a valid NANP phone number that has not been allocated to a telephone service provider by the NANP Administrator or pooling administrator[18].
- Originating from a valid NANP phone number that has been allocated to a telephone service provider but is unused, if the provider blocking the calls: was allocated the number and confirms that the number is unused; or has obtained verification from the allocatee that the number is unused.

The bill provides that a service provider may not block a voice call from either of the first two categories listed above if the call is an emergency call placed to 911.

The bill permits telephone service providers to rely on a phone number as reflected on a caller identification service[19] for purposes of blocking that number.

B. SECTION DIRECTORY:

**Section 1.** Creates s. 365.176, F.S., to be cited as the "Florida Call-Blocking Act."

**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:

According to the FCC, the use of an invalid, unallocated, or unassigned number provides a strong indication that the calling party is spoofing the caller ID to potentially defraud and harm a telephone

[18] The bill defines "pooling administrator" as "the Thousands-Block Pooling Administrator as identified in 47 C.F.R. s. 52.20." Thousands-block number pooling is a process designed to optimize the allocation of phone numbers. Under this process, 10,000 phone numbers are assigned to an individual geographic center, then split into ten blocks of a thousand numbers each. Each block can then be assigned to a service provider by a neutral number pooling administrator. *See* 47 C.F.R. s. 52.20.

[19] The bill defines "caller identification service" as "a service that allows a telephone subscriber to have the telephone number and, if available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone."

service customer. By authorizing telephone service providers to block such calls, the bill may reduce economic harm to victims of fraudulent schemes effectuated through spoofed telephone calls.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 24, 2018, the Energy & Utilities Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a committee substitute. The strike-all amendment:

- Made technical changes to the description of the types of calls that service providers may block under the bill.
- Provided that service providers may not block certain calls otherwise subject to blocking if such calls are placed to 911.

This analysis addresses the committee substitute.

A bill to be entitled

An act relating to telephone solicitation; creating s. 365.176, F.S.; providing a short title; defining terms; authorizing telecommunication providers to block certain calls; prohibiting the blocking of certain calls; authorizing telecommunication providers to rely upon caller identification service information to determine originating numbers for the purpose of blocking such calls; providing an effective date.

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

Section 1. Section 365.176, Florida Statutes, is created to read:

365.176 Florida Call-Blocking Act.—

(1) This section may be cited as the "Florida Call-Blocking Act."

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

(a) "Caller identification service" means a service that allows a telephone subscriber to have the telephone number and, if available, the name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone.

(b) "Pooling administrator" means the Thousands-Block Pooling Administrator as identified in 47 C.F.R. s. 52.20.

(c) "Provider" means a telecommunications company that provides voice communications services to customers in this state.

(3) Consistent with authorization provided by federal law and rules of the Federal Communications Commission or its successors, providers operating in this state may block calls in the following manner:

(a) Providers may block a voice call when the subscriber to which the originating number is assigned has requested that calls purporting to originate from that number be blocked because the number is used for inbound calls only.

(b) Providers may block calls originating from the following numbers:

1. A number that is not a valid North American Numbering Plan number;

2. A valid North American Numbering Plan number that is not allocated to a provider by the North American Numbering Plan Administrator or the pooling administrator; and

3. A valid North American Numbering Plan number that is allocated to a provider by the North American Numbering Plan Administrator or pooling administrator, but is unused, so long as the provider blocking the calls is the allocatee of the number and confirms that the number is unused or has obtained verification from the allocatee that the number is unused at the time of the blocking.

Providers may not block a voice call pursuant to subparagraph 1. or subparagraph 2. if the call is an emergency call placed to 911.

(4) For purposes of blocking calls from certain originating numbers as authorized in this section, a provider may rely on caller identification service information to determine the originating number.

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