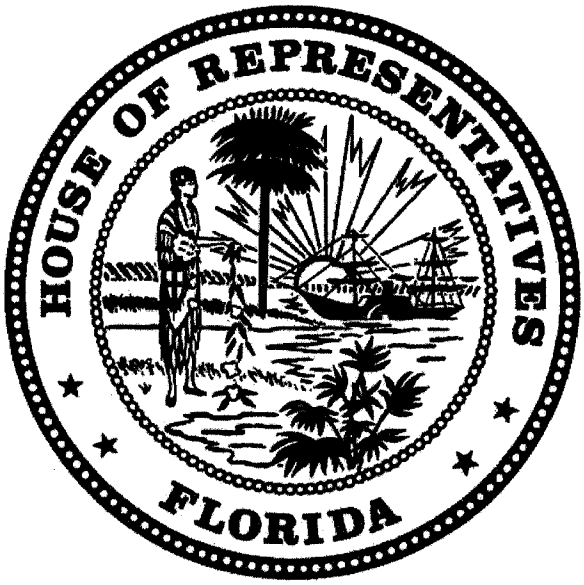

Regulatory Affairs Committee

Thursday, March 14, 2013
1:30 PM
404 HOB

Will Weatherford
Speaker

Doug Holder
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 14, 2013
404 HOB - 1:30 PM – 3:30 PM

I. Call to Order and Roll Call

II. CS/CS/HB 57 by *Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Rep. Porter*
Department of Business and Professional Regulation

III. HB 95 by *Rep. Holder*
Charitable Contributions

IV. HB 145 by *Rep. Santiago*
Letters of Credit Issued by a Federal Home Loan Bank

V. CS/HB 167 by *Insurance & Banking Subcommittee; Rep. Broxson*
Annuities

VI. CS/HB 223 by *Insurance & Banking Subcommittee; Rep. Lee*
Insurance

VII. CS/HB 335 by *Insurance & Banking Subcommittee; Rep. Boyd*
Property and Casualty Insurance Rates and Forms

VIII. HB 341 by *Rep. Ingram*
Uninsured Motorist Insurance Coverage

IX. HB 623 by *Rep. Artiles*
Wine

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4870 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Thursday, March 14, 2013 01:30 pm
End Date and Time:	Thursday, March 14, 2013 03:30 pm
Location:	404 HOB
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 57 Department of Business and Professional Regulation by Government Operations Appropriations Subcommittee, Business & Professional Regulation Subcommittee, Porter
HB 95 Charitable Contributions by Holder
HB 145 Letters of Credit Issued by a Federal Home Loan Bank by Santiago
CS/HB 167 Annuities by Insurance & Banking Subcommittee, Broxson
CS/HB 223 Insurance by Insurance & Banking Subcommittee, Lee
CS/HB 335 Property and Casualty Insurance Rates and Forms by Insurance & Banking Subcommittee, Boyd
HB 341 Uninsured Motorist Insurance Coverage by Ingram
HB 623 Wine by Artiles

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, March 13, 2013.

By request of the Chair, all Regulatory Affairs Committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 13, 2013.

NOTICE FINALIZED on 03/12/2013 16:10 by Ellinor.Martha

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 57 Department of Business and Professional Regulation
SPONSOR(S): Government Operations Appropriations Subcommittee; Business & Professional Regulation Subcommittee; Porter
TIED BILLS: **IDEN./SIM. BILLS:** SB 802

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	12 Y, 0 N, As CS	Morton	Luczynski
2) Government Operations Appropriations Subcommittee	11 Y, 0 N, As CS	Topp	Topp
3) Regulatory Affairs Committee		Morton	Hamon

SUMMARY ANALYSIS

The bill provides the Department of Business and Professional Regulation (DBPR) the authority to transfer cash it determines is not required to fund the Florida Building Code Administrators and Inspectors Board (board) to the Florida Homeowners' Construction Recovery Fund (recovery fund). However, the bill provides that the DPBR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims.

In recent years revenues to the recovery fund have been insufficient to pay all claims. In FY 2011-12, $1.8 million in claims were paid. As of January 2013, approximately 600 claims totaling $13 million were awaiting review. However, during each of the last three fiscal years the board's revenues have remained nearly twice that of its expenditures – thus accumulating a cash reserve that could be transferred to the recovery fund to pay claims.

The bill is not expected to have a fiscal impact.

The bill has an effective date of October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Business and Professional Regulation (DBPR) licenses and regulates businesses and professionals in Florida. It is structured to include separate divisions and various professional boards responsible for carrying out the DBPR's mission to license efficiently and regulate fairly.

The Florida Homeowners' Construction Recovery Fund (recovery fund) is a separate account in the Professional Regulation Trust Fund. It is used to compensate homeowners who have suffered a covered financial loss at the hands of state-licensed general, building and residential contractors. Claims are filed with the DBPR, who reviews for completeness and statutory eligibility. The DBPR then presents the claim to the Construction Industry Licensing Board (CILB) for review.

Covered losses include contractor mismanagement or misconduct causing financial harm to a customer, job abandonment and certain false written statements. Recovery is limited to the lesser of actual damages, as determined by the final judgment, or $50,000 per transaction regardless of the number of claimants. Attorney fees, court costs, interest, medical damages and punitive damages are not covered. Payments for claims against one licensee are limited to $250,000 in the aggregate or $100,000 per year.

Homeowners must take the following steps before filing a claim against the recovery fund:

1. Receive a final judgment from a court, an award in arbitration, or a final order from the Construction Industry Licensing Board directing a licensee to pay restitution. The award must specify actual damages.
2. Exhaust any alternative remedies, such as a surety bond, insurance policy or warranty.
3. Apply any recovered amounts to the damages awarded.
4. File the claim within one year after the conclusion of any civil, criminal or administrative action or award in arbitration based on the act.

If a claim is paid by the recovery fund, the contractor's license is automatically suspended. The license is suspended even if the judgment was not against him or her personally. A contractor's license may be suspended if the judgment was against a corporation if the licensee acted as its qualifying agent. The license will not be reinstated until the fund is repaid with interest – even if he or she has been discharged in bankruptcy.

Section 468.605, F.S., creates the Florida Building Code Administrators and Inspectors Board (board) within the DBPR in the interest of public health and safety to regulate the practice of building code administration and inspection in the State of Florida. The board consists of nine members appointed by the Governor and subjected to confirmation by the Senate.

The board and the recovery fund are financed by a 1.5 percent surcharge on building permits collected by local building departments. The local departments forward surcharge revenues, less 10 percent, to the DBPR, where it is divided equally between the board and the recovery fund.

The recovery fund's solvency depends on new construction permits. During the recent construction slump all revenues in the recovery fund were exhausted. In 2010, the Legislature amended the surcharge formula to attempt to improve consistency in its collection and applied it to all contractors. The Legislature also directed proceeds from the surcharge to be split evenly between the board and fund. Until then, proceeds had first funded the board, with any excess transferred to the recovery fund.

In recent years revenues to the recovery fund have been insufficient to pay all potential claims. In FY 2011-12, $1.8 million in claims was paid. In FY 2010-11, only $595,234 was paid for claims. The DBPR has received an average of 335 new claims annually for the last three years. It continues to process these claims, and, when funds are available, presents them to the Construction Industry Licensing Board for approval. As of January 2013, approximately 600 claims totaling more than $13 million were waiting review by the CILB.

The estimated revenues to the recovery fund for FY 2012-13 are $2.5 million. Under current law the department estimates that revenues will remain at approximately $2.5 million for each of the next three fiscal years. Further, the DBPR estimates that, under the current funding scheme, it will take approximately 6.5 years to fund the current backlog.

During the last three fiscal years the board has received revenues of $1.3 million in FY 2009-10, $1.6 million in FY 2010-11 and $2.1 million in FY 2011-12. In each of the last three fiscal years the board's expenditures ranged from $777,504 to $853,920 – leaving sufficient cash reserve. The cumulative totals over the last year three fiscal years indicate the board's revenues were $5.0 million and expenditures $2.3 million. The department's projections continue to show a growing cash reserve for the board in future years. Specifically, the department estimates that revenues will exceed the board's expenditures by $2.5 million to $888,708 in FY 2012-13 and $2.6 million to $891,419 in FY 2013-14.[1]

Proposed Changes

The bill gives the DBPR the authority to transfer cash it determines is not required to fund the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the bill provides that the DPBR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims.

The DBPR projects it could transfer $5 million from the board to the recovery fund in fiscal year 2013-14 and approximately $1.2 million annually in subsequent years.

The bill has an effective date of October 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 489.140, F.S., to clarify funding requirements for the Florida Homeowners' Construction Recovery Fund.

Section 2 amends s. 468.631, F.S., to authorize the department to transfer excess cash from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims from the Florida Homeowners' Construction Recovery Fund.

Section 3 provides an effective date of October 1, 2013.

[1] Department of Business and Professional Regulation, Florida Building Code Administrators and Inspectors Board, Operating Account, actual and projected revenues and expenditures for fiscal years ending June 30, 2007 through June 30, 2016, provided by the department and on file with the Government Operations Appropriations Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill is not expected to have a fiscal impact. The bill gives the DBPR discretion to transfer excess cash from the Building Code and Inspectors Board to the Florida Homeowners' Construction Recovery Fund. However, the DBPR may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims from the Florida Homeowners' Construction Recovery Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 6, 2013, the Business and Professional Regulation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed language giving the DBPR discretion to deny licensure or renewal on the basis of amounts owed under a disciplinary action or failure to comply with or satisfy all terms and conditions of a final order. The amendment also included a clarifying change to s. 489.140, F.S., to remove an incorrect reference to the old surcharge formula that funds the recovery fund.

On March 7, 2013, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provided that the department may only transfer excess cash (from the Florida Building Code Administrators and Inspectors Board to the Florida Homeowners' Construction Recovery Fund) that would not exceed the amount appropriated in the General Appropriations Act and any amount approved by the Legislative Budget Commission for the payment of claims from the Florida Homeowners' Construction Recovery Fund.

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 489.140, F.S.; clarifying funding requirements for the Florida Homeowners' Construction Recovery Fund; amending s. 468.631, F.S.; authorizing the department to transfer certain funds from the Professional Regulation Trust Fund to the Florida Homeowners' Construction Recovery Fund; providing an effective date.

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

Section 1. Section 489.140, Florida Statutes, is amended to read:

489.140 Florida Homeowners' Construction Recovery Fund.—There is created the Florida Homeowners' Construction Recovery Fund as a separate account in the Professional Regulation Trust Fund. The recovery fund shall be funded ~~out of the receipts deposited in the Professional Regulation Trust Fund from the one-half cent per square foot surcharge on building permits collected and disbursed~~ pursuant to s. 468.631.

Section 2. Subsection (1) of section 468.631, Florida Statutes, is amended to read:

468.631 Building Code Administrators and Inspectors Fund.—

(1) This part shall be funded through a surcharge, to be assessed pursuant to s. 125.56(4) or s. 166.201 at the rate of 1.5 percent of all permit fees associated with enforcement of the Florida Building Code as defined by the uniform account

criteria and specifically the uniform account code for building permits adopted for local government financial reporting pursuant to s. 218.32. The minimum amount collected on any permit issued shall be $2. The unit of government responsible for collecting permit fees pursuant to s. 125.56 or s. 166.201 shall collect such surcharge and shall remit the funds to the department on a quarterly calendar basis beginning not later than December 31, 2010, for the preceding quarter, and continuing each third month thereafter; and such unit of government shall retain 10 percent of the surcharge collected to fund the participation of building departments in the national and state building code adoption processes and to provide education related to enforcement of the Florida Building Code. There is created within the Professional Regulation Trust Fund a separate account to be known as the Building Code Administrators and Inspectors Fund, which shall deposit and disburse funds as necessary for the implementation of this part. The proceeds from this surcharge shall be allocated equally to fund the Florida Homeowners' Construction Recovery Fund established by s. 489.140 and the functions of the Building Code Administrators and Inspectors Board. The department may transfer excess cash to the Florida Homeowners' Construction Recovery Fund that it determines is not required to fund the board from the board's account within the Professional Regulation Trust Fund. However, the department may not transfer excess cash that would exceed the amount appropriated in the General Appropriations Act, and any amount approved by the Legislative Budget Commission pursuant to s. 216.181, to be used for the payment of claims

from the Florida Homeowners' Construction Recovery Fund.

Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95 Charitable Contributions
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Finance & Tax Subcommittee	16 Y, 0 N	Tarich	Langston
3) Regulatory Affairs Committee		Bauer JB	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 726, F.S. (hereinafter "Florida Uniform Fraudulent Transfer Act" or "FUFTA"), provides remedies for creditors when debtors fraudulently make transfers or incur obligations. Under FUFTA, creditors are granted a statutory remedy commonly referred to as a "clawback" action. These clawback actions allow for a debtor's fraudulently transferred property to be surrendered to the creditors and/or voided. FUFTA does not contain an exception for contributions received in good faith by charitable or religious organizations.

The federal Bankruptcy Code also gives bankruptcy trustees clawback powers against fraudulent transfers made within 2 years before the filing of a bankruptcy petition. The filing of a bankruptcy petition also stays lawsuits by creditors, including state fraudulent transfer claims. Unlike FUFTA, the Bankruptcy Code contains a specific exception for charitable contributions made to qualified religious or charitable entities or organizations by natural persons, if certain criteria are met. Thus, while charities are protected from bankruptcy trustees and creditors during a bankruptcy proceeding, they may still be subject to a creditor's FUFTA clawback action if there is no bankruptcy proceeding.

The bill first amends FUFTA by a) creating a statutory defense that protects qualified entities against clawback actions that attempt to recover charitable contributions, if the recipient organization received the contribution in good faith, and b) by defining "charitable contribution" and "qualified religious or charitable entity or organization." The bill states that a natural person's charitable contributions are fraudulent transfers if they were received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency proceeding, unless a) the transfer was made consistent with the transferor's practices in making charitable contributions, or b) the transfer was received in good faith and did not exceed 15% of the transferor's gross annual income for the year in which the transfer was made. These requirements generally parallel those found in the Bankruptcy Code's protection for charitable contributions against a bankruptcy trustee's clawback action, except that the Bankruptcy Code does not protect transfers made with actual fraud.

The bill amends various provisions of the Florida Statutes to conform and correct cross-references to FUFTA's current definition of "insider." The bill does not make any substantive changes to the definition of "insider."

The bill has no fiscal impact on state or local government, and has a private sector impact.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Uniform Fraudulent Transfer Act

According to the National Conference of Commissioners on Uniform State Laws, 43 states, the District of Columbia, and the U.S. Virgin Islands have adopted the Uniform Fraudulent Transfer Act ("UFTA")[1]. UFTA "provides a creditor with the means to reach assets that a debtor has transferred to another person to keep them from being used to satisfy a debt."[2] Florida adopted the UFTA in 1987[3] (codified at Chapter 726, F.S., "FUFTA") to provide a civil cause of action for creditors in addition to their rights under the federal Bankruptcy Code. FUFTA broadly defines "creditor" as "a person who has a claim."[4] Courts have interpreted "creditor" to include lenders, investors - seeking to hold a corporate officer liable,[5] the U.S. government seeking delinquent taxes,[6] and court-appointed receivers in Securities and Exchange Commission enforcement actions to recover assets used to defraud investors in Ponzi schemes.[7]

FUFTA provides redress to creditors by allowing them to recover transferred property when a debtor has fraudulently transferred it to third parties, or fraudulently incurred obligations, before or after a creditor's claim arises.[8] The debtor's transfer or obligation may involve actual fraud, whereby a debtor makes a transfer or incurs an obligation with the intent to hinder, delay, or defraud his or her creditors, or it may involve constructive fraud, whereby the debtor makes a transfer or incurs an obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation.[9] In both situations, FUFTA provides statutory remedies to creditors; most notably through a "clawback" action that allows a prevailing creditor to void a debtor's fraudulent transfer or obligation to a third party, and surrender the property to the creditor.[10] These remedies are generally subject to a 4-year statute of limitations, unless otherwise specified in s. 726.110, F.S.

FUFTA contains defenses to fraudulent transfers, some of which operate as exceptions and protect against a clawback.[11] The primary defense provides that "a transfer or obligation is not voidable ...against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee" (emphasis added).[12] However, since this defense mandates that "reasonably equivalent value" be exchanged, in practice FUFTA does not protect contributions by charitable organizations since they generally do not give value in exchange for such contribution. Currently, FUFTA leaves charitable organizations vulnerable to clawback actions, in that they may be ordered to turn over funds that they may have already spent. In fact, under a similar Illinois law, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of a creditor in a clawback action, and noted

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[1] Legislative Fact Sheet, at http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act (last accessed March 4, 2013).
[2] Overview of the Uniform Fraudulent Transfer Act, at http://uniformlaws.org/Act.aspx?title=Fraudulent Transfer Act (last accessed March 5, 2013).
[3] Chapter 87-79, L.O.F.
[4] Section 726.102(4), F.S.; Section 726.102(3) broadly defines "claim" as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."
[5] *Dillon v. Axxsys Int'l, Inc.*, 185 Fed. Appx. 823, 830 (11th Cir. 2006).
[6] *Harper v. U.S.*, 769 F. Supp. 362, 367 (M.D. Fla. 1991).
[7] *Wiand v. Waxenberg*, 611 F.Supp.2d 1299, 1309 (M.D. Fla. 2009).
[8] Section 726.108 F.S.
[9] Sections 726.105 and 726.106, F.S.
[10] Section 726.108 F.S.
[11] Section 726.109, F.S.
[12] *Id.*

that the fraudulent conveyance statute could not be interpreted to exclude gifts to religious groups and other charitable organizations, even though the organization received the contribution in good faith.[13]

Federal Bankruptcy Code

Like FUFTA, the federal Bankruptcy Code authorizes bankruptcy trustees (who are appointed to marshal, manage, and distribute a debtor's assets) to void certain transfers or obligations by debtors if they involve actual or constructive fraud on, or within 2 years before, the date of the debtor filing for bankruptcy ("lookback period").[14] The Bankruptcy Code provides a general defense, similar to the FUFTA defense in s. 726.109, F.S., which states that a transferee may retain a transfer that it takes for value and in good faith.[15]

Unlike the FUFTA, however, the Bankruptcy Code insulates charitable contributions[16] made by natural persons to a qualified religious or charitable entity or organization if: a) the amount of the contribution does not exceed 15% of the debtor's gross annual income for the year in which the contribution was made, or b) if the contribution does exceed 15% of the debtor's gross annual income, such contribution would still be protected if the contribution was consistent with the debtor's practices in making charitable contributions.[17] However, the Bankruptcy Code does not exempt charitable contributions made with actual intent to hinder, delay or defraud creditors (i.e., actual fraud), nor does it protect charitable donations received from non-natural persons.[18]

Generally, bankruptcy trustees have the power to step into the roles of existing creditors, under authority outside the Bankruptcy Code, such as a state UFTA, to void a debtor's transfers or obligations;[19] however, the filing of a petition for bankruptcy will preempt such an action, as well as all other federal and state claims to void a transfer of a charitable contribution as described above.[20]

Additionally, once a debtor files a bankruptcy petition, creditors are subject to the "automatic stay" provision of the Bankruptcy Code, which bars litigation and other actions, judicial or otherwise. The automatic stay prevents creditors from enforcing or collecting on claims arising before the bankruptcy petition, subject to some exceptions.[21]

Thus, once a debtor files for bankruptcy, a charitable organization that has received a contribution from the debtor is protected from creditors and is partially protected from a bankruptcy trustee's clawback action. However, if no bankruptcy is filed, the charitable organization could still be subject to a clawback action brought by creditors in a state action, such as FUFTA.

Effect of HB 95

HB 95 amends FUFTA by a) creating a statutory defense that protects qualified entities against clawback actions that attempt to recover charitable contributions, if the recipient organization received the contribution in good faith, and b) by defining "charitable contribution" and "qualified religious or charitable entity or organization."

a) The bill states that a natural person's charitable contributions are fraudulent transfers if they were received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency

[13] See, *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).
[14] 11 U.S.C. § 548(a)(1).
[15] 11 U.S.C. §548(c).
[16] "Charitable contribution" must be made by a natural person in the form of cash or a financial instrument (defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986). 11 U.S.C. § 548(3).
[17] 11 U.S.C. § 548(a)(2).
[18] 11 U.S.C. § 548(a)(1)(A).
[19] 11 U.S.C. § 544(b).
[20] 11 U.S.C. § 544(b)(2).
[21] 11 U.S.C. § 362.

proceeding, *unless* a) the transfer was consistent with the transferor's practices in making charitable contributions, or b) the transfer was received in good faith and did not exceed 15% of the transferor's gross annual income for the year in which the transfer was made.

The bill's requirements substantially parallel those found in the Bankruptcy Code's protection for charitable contributions against a bankruptcy trustee's clawback action. However, the Bankruptcy Code's exception does not protect charitable contributions made with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became on or after the date that such transfer was made or such obligation was incurred or indebted," i.e., actual fraud. The bill does not have a corresponding exclusion for charitable contributions made with actual fraud.

b) The bill defines "charitable contribution" as either cash or a "financial instrument" as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986, which includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

The bill defines a "qualified religious or charitable entity or organization" as an entity described in ss. 170(c)(1) or 170(c)(2) of the Internal Revenue Code, meaning a "state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made exclusively for public purposes," or a corporation, trust, or foundation created or organized in the United States, operating exclusively for certain purposes including religious and charitable, no part of the net earnings of which inure to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under s. 501(c)(3) of the Internal Revenue Code, by reason of attempting to influence legislation.

The bill's definitions of "charitable contributions" and "qualified religious or charitable entity or organization" are identical to those in the Bankruptcy Code.

The bill amends various provisions of the Florida Statutes to conform and correct cross-references to the definition of "insider" currently found in s. 726.102(7), F.S. The bill does not make any substantive changes to the definition of "insider." The bill also makes minor technical revisions to s. 721.05, F.S.

The bill provides that the act shall take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 726.102, F.S., relating to definitions.

Section 2: Amends s. 726.109, F.S., relating to defense, liability, and protection of transferee.

Section 3: Amends s. 213.758, F.S., relating to transfer of tax liabilities.

Section 4: Amends s. 718.704, F.S., relating to assignment and assumption of developer rights by bulk assignee; bulk buyer.

Section 5: Amends s. 721.05, F.S., relating to definitions.

Section 6: Provides an effective date of upon becoming a law.

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:

Under the bill, creditors cannot void a natural person's charitable contributions received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency proceeding, if the transfer was received in good faith and was less than 15% of the transferor's gross annual income for the year in which the transfer was made, or was consistent with the transferor's practices in making charitable contributions.

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 an action requiring the expenditure of funds, reduce the authority of counties or municipalities to raise revenues in the aggregate, or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Amendments are anticipated to clarify the following:

- Lines 46, 51, and 54 of the bill use the term "transferor," which is not currently defined in FUFTA or in the bill. Current law (s. 726.102(6), F.S.) defines "debtor" as a "person who is liable on a claim."
- To provide consistency with the federal Bankruptcy Code, which does not protect charitable contributions made with actual fraud.
- To clarify that the bill applies prospectively to charitable contributions made on or after the July 1, 2013 effective date.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to charitable contributions; amending s. 726.102, F.S.; defining the terms "charitable contribution" and "qualified religious or charitable entity or organization"; amending s. 726.109, F.S.; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer; providing exceptions; amending ss. 213.758, 718.704, and 721.05, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of section 726.102, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), and (15), respectively, and new subsections (3) and (12) are added to that section to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(12) "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

Section 2. Subsection (7) is added to section 726.109, Florida Statutes, to read:

726.109 Defenses, liability, and protection of transferee.—

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under this chapter.

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the transferor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the transferor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the transferor for the year in which the transfer of the charitable contribution was made.

Section 3. Paragraph (c) of subsection (1) of section

213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

(c) "Insider" means:

1. Any person included within the meaning of insider as used in s. 726.102~~(7)~~; or

2. A manager of, a managing member of, or a person who controls a transferor that is a limited liability company, or a relative as defined in s. 726.102~~(11)~~ of any such persons.

Section 4. Subsection (4) of section 718.704, Florida Statutes, is amended to read:

718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) By a person who would be considered an insider under s. 726.102~~(7)~~.

Section 5. Subsection (10) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(10) "Developer" includes:

(a)1. A "creating developer," which means any person who creates the timeshare plan;

2.~~(b)~~ A "successor developer," which means any person who

succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and

3.~~(c)~~ A "concurrent developer," which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

(b)~~(d)~~ The term "developer" does not include:

1. An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption exists ~~shall exist~~ that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

2. A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

3. A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

4. A person who acquires ~~has acquired~~ or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization,

conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by a developer ~~one or more developers~~ in the ordinary course of business on its ~~their~~ own behalf ~~behalves~~ or on behalf of such person.

(c) ~~(c)~~ A successor or concurrent developer is ~~shall be~~ exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7). ~~, provided that~~ This exemption does ~~shall~~ not apply to any of the successor or concurrent developer's responsibilities, duties, or liabilities with respect to the timeshare plan which ~~that~~ accrue after the date the successor or concurrent developer became a successor or concurrent developer, and ~~provided that~~ such transfer does not constitute a fraudulent transfer. ~~In addition to other provisions of law,~~ A transfer by a predecessor developer to a successor or concurrent developer shall be deemed fraudulent if the predecessor developer made the transfer:

1. With actual intent to hinder, delay, or defraud any purchaser or the division; or

2. To a person that would constitute an insider under s. 726.102 ~~(7)~~.

~~The provisions of~~ This paragraph does ~~shall~~ not ~~be construed to~~ relieve any successor or concurrent developer from the obligation to comply with the provisions of any applicable timeshare instrument.

Section 6. This act shall take effect upon becoming a law.

REGULATORY AFFAIRS COMMITTEE

HB 95 by Rep. Holder
Charitable Contributions

AMENDMENT SUMMARY
March 14, 2013

Amendment 1 by Rep. Holder (Lines 39-40): Clarifies that the bill's protection for charitable contributions does not include transfers made with actual fraud. This will provide consistency with the federal Bankruptcy Code, which does not exempt charitable contributions made with actual fraud from a trustee's clawback action.

Amendment 2 by Rep. Holder (Lines 46-55): Replaces the bill's use of the term "transferor" with "debtor."

- "Transferor" is not defined in current law or in the bill.
- However, current law defines "debtor" as "a person who is liable on a claim" and whose fraudulent transfers would be the basis for a clawback action.

Amendment 3 by Rep. Holder (Line 139): Amends the bill's effective date to July 1, 2013, and provides that the bill applies prospectively from July 1, 2013 to all charitable contributions made on or after that date.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 95 (2013)

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: Regulatory Affairs Committee

Representative Holder offered the following:

Amendment

Remove lines 39-40 and insert:

entity or organization is not a fraudulent transfer under s. 726.105(1)(b).

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 95 (2013)

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: Regulatory Affairs Committee

Representative Holder offered the following:

Amendment

Remove lines 46-55 and insert:

of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the transfer of the charitable contribution was made.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 95 (2013)

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: Regulatory Affairs Committee

Representative Holder offered the following:

Amendment

Remove line 139 and insert:

Section 6. This act shall take effect July 1, 2013, and applies to all charitable contributions made on or after that date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 145 Letters of Credit Issued by a Federal Home Loan Bank
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 558

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
3) Regulatory Affairs Committee		Bauer JB	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (act), which authorizes state and local governments to deposit public deposits with qualified public depositories (QPDs). Public deposits are funds in excess of amounts required to meet disbursement needs or expenses, and QPDs are banks, savings banks, or savings associations that meet specific criteria under the act. Qualified public depositories must secure public deposits in accordance with the act and the collateral requirements and pledging levels as set for by rule of the Chief Financial Officer (CFO). Qualified public depositories may meet this collateral requirement by pledging, depositing, or issuing eligible collateral to the CFO, or to a CFO's designee in some instances. The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the act.

The act's collateral requirements protect public deposits against loss in the event of a QPD's insolvency or default. Losses are satisfied first through the standard maximum federal deposit insurance of $250,000, and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other QPDs.

Qualified public depositories are permitted to use Federal Home Loan Bank (FHLB) letters of credit to meet collateral requirements if certain requirements are met under the act. One such condition is that obligations issued by the FHLB remain triple-A rated (the highest credit rating available) by a nationally recognized source. The three major credit rating agencies are Standard & Poor's (S&P), Fitch Ratings, and Moody's.

On August 5, 2011, S&P downgraded the credit rating of the United States' long-term sovereign debt from triple-A to AA+. Standard & Poor's also downgraded the credit rating of FHLB obligations from triple-A to AA+. While Fitch Ratings and Moody's have maintained their triple-A ratings of both U.S. sovereign debt and FHLB obligations, they have given negative outlooks in light of the current debate and uncertainty regarding U.S. fiscal and economic policy. In the event these two agencies also downgrade their credit ratings for FHLB obligations, QPDs could no longer use FHLB letters of credit as eligible collateral under current law. This would require QPDs to use other assets as replacement collateral, which in turn could affect their liquidity and lending ability.

The bill allows QPDs to continue securing and retaining FHLB letters of credit as eligible collateral in the event the other major credit agencies downgrade their ratings of FHLB obligations below triple-A. The bill permits QPDS to use FHLB letters of credit, if no longer triple-A rated, if FHLB obligations are rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the U.S.

The bill does not have an impact on the private sector, and it is not likely that the bill will have a fiscal impact on state or local government.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (act), which authorizes state and local governments to deposit funds in excess of amounts required to meet disbursement needs or expenses in a qualified public depository (QPD), which is a bank, savings bank, or savings association that meets specific criteria. Qualified public depositories must secure public deposits in accordance with the act and the collateral requirements and pledging levels as set forth by rule of the Chief Financial Officer (CFO).[1] Qualified public depositories may meet this collateral requirement by pledging, depositing, or issuing eligible collateral to the CFO, or to a CFO's designee in some instances. Eligible collateral consists of securities, Federal Home Loan Bank (FHLB) letters of credit, and cash, as designated by the act.[2] The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the act.[3]

The act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[4] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000, and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD.[5] Any remaining shortfall would then be covered by the CFO's authority to impose assessments against the other QPDs.[6]

Qualified public depositories are permitted to use Federal Home Loan Bank (FHLB) letters of credit as a collateral option, if certain requirements are met.[7] Unlike the other eligible collateral types, FHLB letters of credit do not involve a custodial arrangement and instead name the CFO as a beneficiary.[8] According to the Florida Bankers Association, FHLB letters of credit are stable, irrevocable, and cost-efficient. Additionally, the use of FHLB letters of credit provide operational efficiencies to the CFO who can directly make a demand on the FHLB letters of credit in the event of a QPD's default, without having to sell and transfer pledged securities.[9] As of October 29, 2012, 17 QPDs have pledged a total of $1.88 billion in FLHB letters of credit as collateral.[10]

One prerequisite for QPDs to use FHLB letters of credit is that obligations issued by the FHLB remain triple-A rated by a nationally recognized source.[11] Currently, FHLB letters of credit are the only eligible collateral type that the act imposes a credit rating requirement, even though other eligible collateral forms, such as Treasury bonds and other federal agency obligations, receive credit ratings.

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[1] *See* chapter 280, F.S., and chapter 69C-2, F.A.C.
[2] Sections 280.02(12) and 280.13, F.S.
[3] More information about the Bureau of Collateral Management can be found at: https://apps8.fldfs.com/cap_web/, last accessed February 26, 2013.
[4] Section 280.041(6), F.S.
[5] Section 280.08(3)(a), F.S.
[6] Section 280.08(3)(b), F.S.
[7] Section 280.13(5), F.S.
[8] Section 280.13(5)(b)4., F.S.
[9] Florida Bankers Association's analysis of HB 145, on file with the Insurance & Banking Subcommittee.
[10] Policy & Research Memorandum from the Department of Financial Services, on file with the Insurance & Banking Subcommittee.
[11] Section 280.13(5)(c), F.S.

According to Standard & Poor's (S&P), a nationally recognized source and one of the "Big Three" credit rating agencies (the other two being Moody's and Fitch Ratings):

> Credit ratings are forward-looking opinions about credit risk...[and] the ability and willingness of an issuer...to meet its financial obligations in full and on time. Credit ratings can also speak to the credit quality of an individual debt issue...and the relative likelihood that the issue may default...Each agency applies its own methodology in measuring creditworthiness and using a specific rating scale to publish its ratings opinions. Typically, ratings are expressed as letter grades that range, for example, from 'AAA' to "D" to communicate the agency's opinion of relative level of credit risk.[12]

On August 5, 2011, S&P issued an unprecedented downgrade of the U.S.'s sovereign long-term credit rating from triple-A (the highest credit rating available) to AA+ (very strong capacity to meet financial commitments). Standard & Poor's attributed its downgrade to its negative outlook of the current debate and uncertainty surrounding U.S. fiscal and economic policy.[13] Due to the FHLB System's status as a government-sponsored enterprise, its credit ratings are integrally tied to those of the U.S. Accordingly, S&P similarly lowered its credit ratings on 10 of 12 FHLBs from triple-A to AA+:

> The downgrades reflect the interplay between the sovereign rating and the entities' stand-alone credit profiles. The ratings continue to reflect our opinion that there is a very high likelihood the U.S. government would provide timely and sufficient extraordinary support to these entities in the event of financial distress.[14]

However, Moody's gave its highest ratings to long-term debt (Aaa) and short-term debt (Prime-1) issued by the FHLBs,[15] and Fitch Ratings affirmed its triple-A rating of several FHLBs.[16] In addition, both Moody's and Fitch Ratings have maintained their triple-A ratings of U.S. long-term sovereign debt, although subject to a negative outlook based on concerns over the federal deficit.[17]

In the event all nationally recognized sources downgrade their ratings of FHLB obligations below triple-A, current law would not permit QPDs to use FHLB letters of credit as eligible collateral. Consequently, QPDs would have to turn to other assets (such as Treasury notes and Fannie Mae securities) as replacement collateral, which could affect their liquidity and lending ability.

Effect of the Bill

This bill enables QPDs to continue using FHLB letters of credit as eligible collateral, in the event the other major credit agencies downgrade their ratings of FHLB obligations below triple-A. The bill permits the use of FHLB letters of credit, if no longer triple-A rated, if FHLB obligations are rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the U.S.

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[12] Standard & Poor's Credit Ratings Definitions & FAQs, at http://www.standardandpoors.com/ratings/definitions-and-faqs/en/us, last accessed February 26, 2013.

[13] *United States of America Long-Term Rating Lowered to 'AA+' Due to Political Risks, Rising Debt Burden; Outlook Negative*, S&P's press release, August 5, 2011, http://www.standardandpoors.com/ratings/articles/en/us/?assetID=1245316529563, last accessed February 26, 2013.

[14] *Credit Matters: Special Report on the U.S. Rating Downgrade and Its Global Effects*, Standard & Poor's CreditWeek, Vol. 31, No. 31, Page 19 (August 17, 2011). A copy of the article is available online at: www.standardandpoors.com/spf/swf/creditweek/data/document.pdf

[15] Federal Home Loan Banks, Office of Finance: Credit Ratings: http://www.fhlb-of.com/ofweb_userWeb/pageBuilder/credit-ratings-31, last accessed February 26, 2013.

[16] "Fitch Affirms Several Federal Home Loan Banks' 'AAA' Rating and Stable Outlook," at http://www.reuters.com/article/2011/08/16/idUS209276+16-Aug-2011+BW20110816, last accessed February 26, 2013.

[17] "Fitch Backs Away from Downgrade of U.S. Credit Rating," at http://www.reuters.com/article/2013/01/28/us-usa-rating-fitch-idUSBRE90R0WS20130128, last accessed February 26, 2013.

The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 280.13, F.S., revising circumstances under which letters of credit issued by a Federal Home Loan Bank are eligible as collateral.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   A fiscal impact to state government revenues is not likely.

2. Expenditures:

   A fiscal impact to state government expenditures is not likely.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   A fiscal impact on local government revenues is not likely.

2. Expenditures:

   A fiscal impact on local government expenditures is not likely.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The ability to continue using FHLB letters of credit as eligible collateral may be beneficial to QPDs, as FHLB letters of credit are stable, irrevocable, and cost-efficient. Additionally, there are operational efficiencies to the CFO who can directly make a demand on the FHLB letters of credit in the event of a QPD's default without having to sell and transfer pledged securities.

The Department of Financial Services does not anticipate that the bill will have a fiscal impact.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Current law authorizes the Chief Financial Officer to adopt rules to determine collateral requirements and procedures by rule, which have been set forth in chapter 69C-2, F.A.C.[18] However, it is not anticipated that the bill will require amendments to current rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[18] *See* ss. 280.04(1) and (9), F.S.

A bill to be entitled

An act relating to letters of credit issued by a Federal Home Loan Bank; amending s. 280.13, F.S.; revising circumstances under which letters of credit issued by a Federal Home Loan Bank are eligible as collateral; providing an effective date.

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

Section 1. Paragraph (c) of subsection (5) of section 280.13, Florida Statutes, is amended to read:

280.13 Eligible collateral.—

(5) Letters of credit issued by a Federal Home Loan Bank are eligible as collateral under this section provided that:

(c) Obligations issued by the Federal Home Loan Bank remain triple-A ~~triple A~~ rated by a nationally recognized source or, if no longer triple-A rated, rated by a nationally recognized source at not lower than its rating of the long-term sovereign credit of the United States.

Section 2. This act shall take effect July 1, 2013.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 167 Annuities
SPONSOR(S): Insurance & Banking Subcommittee; Broxson
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Reilly	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Reilly RGR	Hamon K.W.H.

SUMMARY ANALYSIS

Section 627.4554, F.S., provides protections for consumers 65 years of age and older in annuity transactions. The section, enacted in 2004, adopted the National Association of Insurance Commissioners' (NAIC) "Senior Protection in Annuity Transactions Model Regulation of 2003." In 2008, the Legislature amended the law to provide additional safeguards for senior consumers that are not in the NAIC's model regulation. In 2010, the Legislature also increased the unconditional refund period for senior consumers to 21 days and required insurers to attach a cover page, with specified information, to any annuity policy sold.

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most current version of the NAIC model regulation on annuity protections (the 2010 NAIC Model), while maintaining most of the provisions adopted by Florida in 2008 and 2010. The 2010 NAIC Model, which has been enacted by 25 states, including California and New York, provides annuity protections for consumers of any age; insurer review of every annuity transaction; and clarifies that insurers are responsible for compliance with annuity protection provisions, even when they contract with third parties.

The bill requires insurers to file revised contract forms with the Office of Insurance Regulation (OIR). The OIR indicates any fiscal impact associated with CS/HB 167 is insignificant and will be absorbed within current resources.

The bill is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on annuities[1]

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals and are long-term contracts that typically restrict an investor's ability to access his/her money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser. Another product, equity indexed annuities, is considered a hybrid of both fixed and variable annuities.

Annuities can be either immediate or deferred. With immediate annuities, the premium is paid in a single lump sum, and the purchaser receives an immediate and regular stream of payments for a period of time. By contrast, purchasers of deferred annuities pay one or more premiums over time (the accumulation period) and begin to receive annuity payments at a future point in time (the payout period or annuitization phase).

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).[2] Variable annuities generally involve an accumulation phase and a payout phase.

Equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

Determining whether an Annuity is a Suitable Investment for a Consumer: Suitability Issues

In 2003, the National Association of Insurance Commissioners (NAIC) adopted "Senior Protection in Annuity Transactions Model Regulation" (Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Model Regulation in s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions, requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment

[1] *See* "2008 White Paper on Annuities," Roxanne Rehm, Assistant General Counsel, Department of Financial Services in 2008. On file with staff of the Insurance & Banking Subcommittee. *See also* "Life Insurance and Annuities: A Guide for Consumers," Florida Department of Financial Services. Available at http://www.myfloridacfo.com (last accessed: January 28, 2013).

[2] The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending the annuity protections to consumers of any age.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an "objectively" reasonable basis for recommending a particular annuity product.
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy.
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services' (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer.
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information on a DFS form concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced.
- Increasing the "free look" refund period.
- Authorizing the Office of Insurance Regulation (OIR) to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information, including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.[3]

In March 2010, the NAIC revised its Model Regulation to clarify that insurers are responsible for compliance with the model's requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents.

To date, 25 states, including New York and California, have adopted the 2010 version of the NAIC's Model Regulation.[4]

Effect of the Bill

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most recent version of the NAIC's Model Regulation on protections in annuity transactions. The bill makes the following changes to this section:

- Extends the protections currently afforded senior consumers in annuity transactions to consumers of any age. However, the bill retains current law that provides a cap on surrender or deferred sales charges only for senior consumers.
- Specifies that the section applies to any recommendation made to a consumer to "purchase, exchange, or replace an annuity" by an insurer or agent that results in the recommended transaction.
- Revises definitions[5] and defines additional terms relevant to annuity transactions, including Agent, FINRA (Financial Industry Regulatory Authority), Insurer, Replacement, and Suitability Information.

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[3] Section 626.99, F.S.

[4] The American Council of Life Insurers (ACLI) reports that 25 states have adopted the 2010 version of the NAIC model as of February 6, 2013. Correspondence on file with staff of the Insurance & Banking Subcommittee.

[5] Currently, s. 627.4554, F.S., defines" annuity contract" (a fixed annuity, equity indexed annuity, fixed equity indexed annuity, or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity), but does

- Defines Suitability Information as information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the consumer's age, annual income, financial situation and needs, financial experience and objectives, financial time horizon; liquid net worth; liquidity needs, and risk tolerance.
- Specifies the DFS form (form DFS-H1-1980) to be used by agents in collecting suitability information from consumers.
- Requires agents or insurers, when recommending the purchase or exchange of annuity products that results in an insurance transaction, to have reasonable grounds[6] for believing that the recommendation is suitable for the consumer based on the consumer's suitability information and that there are reasonable grounds to believe that:
    - The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charges.
    - The consumer would benefit from the product recommended.
    - The annuity as a whole (or the transaction as a whole in the case of exchange or replacement) is suitable for the consumer based on the consumer's suitability information.
    - The exchange or replacement is suitable to the consumer after taking into account specified information.
- Specifies the DFS form (form DFS-H1-1981) to be used to provide annuity consumers with comparative information when an existing annuity is to be replaced or exchanged.
- Prohibits insurers from issuing an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity is suitable for the consumer.
- Requires that the issuance of an annuity by an insurer must be reasonable based on all the information actually known to the insurer at that time of issuance, and specifies circumstances under which an insurer or agent does not have an obligation to a consumer related to an annuity transaction, e.g., when a recommendation is based on information from the consumer that is later found to have been materially inaccurate.
- Requires agents or their representatives at the time of sale to:
    - Make a record of any recommendation made to the consumer.
    - Obtain the consumer's signed statement:
        - Documenting the consumer's refusal to provide suitability information, if applicable.
        - Acknowledging that an annuity transaction is not recommended if the transaction is not based on the insurer's or agent's recommendation, if applicable.
- Prohibits agents from dissuading, or attempting to dissuade, a consumer from truthfully responding to an insurer's request for confirmation of suitability information, from filing a complaint, or from cooperating with the investigation of a complaint.
- Clarifies that compliance with FINRA requirements constitutes compliance with s. 627.4554, F.S., and includes FINRA broker-dealer sales of variable and fixed annuities when certain conditions are met.
- Provides that insurers are responsible for ensuring compliance with the law.
- Requires insurers to establish a supervision system that is reasonably designed to achieve insurer and agent compliance with this section, which must include procedures for the review of each recommendation before issuance of an annuity; standards for agent product training; and product-specific training and training materials that explain all material features of the insurer's annuity products to its agents.
- Permits insurers to contract with a third party as to any aspect of the supervision system, but provides that insurers remain responsible for compliance.

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not define the term "annuity." The bill deletes the definition of annuity contract and defines an annuity to mean "an insurance product under state law which is individually solicited, whether classified as an individual or group annuity."

[6] Currently, insurers or agents must have an "objectively reasonable basis" for believing that the recommendation is suitable for the consumer.

- Maintains the respective authority of OIR and DFS to take reasonably appropriate action against insurers and agents or agencies for misconduct that harms a consumer. However, the bill amends current law to delete language that specifically authorizes the OIR to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.
- Specifies that a violation of s. 627.4554, F.S., does not create or imply a private cause of action.

The bill also amends s. 626.99, F.S., to:

- Increase the unconditional refund period to 21 days for all purchasers of annuities.
- Provide an alternative basis to the cash surrender value, a refund of all premiums paid, for calculating the amount of an unconditional refund.
- Require that the cover page to an annuity contract contain specified disclosures, which must be set forth in bold, 12-point type or a larger point size.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.4554, F.S., to incorporate into Florida law the 2010 amendments to NAIC's model regulation on protections in annuity transactions.

Section 2. Amends s. 626.99, F.S., to increase the unconditional refund period for all purchasers of annuities.

Section 3. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill provides for enactment of the most recent version of the NAIC model regulation on annuity protections, it will bring further uniformity to the sale of annuity products by insurers conducting business in multiple states.

D. FISCAL COMMENTS:

According to the Office of Insurance Regulation (OIR), there may be an increase in workload associated with the increased number in form re-filings based on the provisions of this bill.

However, OIR indicates any costs associated with CS/HB 167 are insignificant and can be absorbed within current resources.[7]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

To the extent that the bill extends the protections of s. 627.4554, F.S., to all purchasers of annuities and establishes additional protections, it will offer enhanced protection to all purchasers of annuities in Florida.

B. RULE-MAKING AUTHORITY:

The bill continues the rulemaking authority of the DFS and the Financial Services Commission to administer s. 627.4554, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Insurance & Banking Subcommittee considered and adopted seven amendments to the bill, which made the following changes:

- Corrected a technical error to the title of the bill.
- Specified the DFS form to be used in collecting suitability information from consumers in annuity transactions.
- Specified the DFS form to be used to provide annuity consumers with comparative information when an existing annuity is to be replaced or exchanged.
- Authorized the DFS to order agents who misappropriate funds in annuity transactions to pay restitution to victims of any age by removing a restriction that limited such remedy to cases involving senior consumers.
- Restored the rulemaking authority of the Financial Services Commission to administer s. 627.4554, F.S.
- Made technical changes to the disclosure language that must be set forth on the cover page of annuity contracts.

The bill was reported favorably as a committee substitute. The analysis reflects the committee substitute.

[7] E-mail correspondence from OIR dated February 25, 2013 on file with staff of the House Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to annuities; amending s. 627.4554, F.S.; providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers, not only to senior consumers; revising and providing definitions; revising the duties of insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; prohibiting specified charges for annuities issued to persons 65 years of age or older; amending s. 626.99, F.S.; increasing the period that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

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

Section 1. Section 627.4554, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 627.4554, F.S., for present text.)

627.4554 Annuity investments.—

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products and to establish a system for supervising such recommendations in order to ensure that the insurance needs and financial objectives of consumers are appropriately addressed at the time of the transaction.

(2) SCOPE.—This section applies to any recommendation made to a consumer to purchase, exchange, or replace an annuity by an insurer or its agent and which results in the purchase, exchange, or replacement recommended.

(3) DEFINITIONS.—As used in this section, the term:

(a) "Agent" has the same meaning as provided in s. 626.015.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(d) "Insurer" has the same meaning as provided in s. 624.03.

(e) "Recommendation" means advice provided by an insurer or its agent to a consumer which results in the purchase,

exchange, or replacement of an annuity in accordance with that advice.

(f) "Replacement" means a transaction in which a new policy or contract is to be purchased and in which it is known or should be known to the proposing insurer or its agent that by reason of such transaction an existing policy or contract will be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(g) "Suitability information" means information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including:

1. Age;

2. Annual income;

3. Financial situation and needs, including the financial resources used for funding the annuity;

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

8. Existing assets, including investment and life insurance holdings;

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

(4) EXEMPTIONS.—This section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code;

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

5. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim-

resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

1. The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; investment advisory fees; potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable, and in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.

4. In the case of an exchange or replacement of an

annuity, the exchange or replacement is suitable after taking into consideration whether the consumer:

a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

b. Would benefit from product enhancements and improvements; and

c. Has had another annuity exchange or replacement, in particular an exchange or replacement within the preceding 36 months.

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

(c) Except as provided under paragraph (d), an insurer may

not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

(d) An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However, an insurer or its agent does not have an obligation to a consumer related to an annuity transaction under paragraph (a) or paragraph (c) if:

1. A recommendation has not been made;

2. A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

3. A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

4. A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.

(e) At the time of sale, the agent or the agent's representative must:

1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);

2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and

3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form and must be provided to the consumer no later than the date of delivery of the contract or contracts.

(g) An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section.

1. Such system must include, but is not limited to:

a. Maintaining reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals;

b. Establishing standards for agent product training;

c. Providing product-specific training and training materials that explain all material features of its annuity products to its agents;

d. Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis for determining that a recommendation is suitable. Such review procedures may use a

screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria;

e. Maintaining reasonable procedures to detect recommendations that are not suitable. These may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, consumer interviews, confirmation letters, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming suitability information after the issuance or delivery of the annuity; and

f. Annually providing a report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

2. An insurer is not required to include in its supervision system agent recommendations to consumers of products other than the annuities offered by the insurer.

3. An insurer may contract for performance of a function required under subparagraph 1.

a. If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in

subparagraph 1. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis for representing that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (7) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(h) An agent may not dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of suitability information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(i) Sales made in compliance with FINRA requirements pertaining to the suitability and supervision of annuity transactions shall satisfy the requirements of this section. This paragraph applies to FINRA broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision are similar to those applied to variable annuity sales. However, this paragraph does not limit the ability of the office or the department to enforce, including investigate, the provisions of this section. For this paragraph to apply, an insurer must:

1. Monitor the FINRA member broker-dealer using

information collected in the normal course of an insurer's business; and

2. Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer in maintaining its supervision system.

(6) RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces the actual document.

(7) COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent, the office may order an insurer to take reasonably appropriate corrective action for a consumer harmed by the insurer's or its agent's violation of this section and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer for any consumer harmed by a

violation of this section by the insurance agent and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an insurance agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer 65 years of age or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn.

The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment when multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(9) RULES.—The department and the commission may adopt rules to administer this section.

Section 2. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer's guide and a policy summary before ~~prior to~~ accepting the applicant's initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for ~~a period of~~ at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, the buyer's guide and policy summary must be delivered with the policy or before ~~prior to~~ delivery of the policy.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 21 ~~14~~ days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model

Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. ~~If the prospective owner of an annuity contract is 65 years of age or older:~~

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract, or a refund of all premiums paid. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.

(c) The insurer shall attach a cover page to any annuity contract ~~policy~~ informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent and~~,~~ the department's toll-free help line~~, and any other information required by the department by rule~~. The cover page must also contain the following disclosures in bold print and at least 12-point type, if applicable:

1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO YOUR MONEY."

2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR CONTRACT FOR FURTHER DETAILS."

3. "THE INTEREST RATE APPLIED TO YOUR CONTRACT MAY BE SUBJECT TO CHANGE PERIODICALLY AND MAY INCREASE OR DECREASE, SUBJECT TO CERTAIN INTEREST RATE GUARANTEES DESCRIBED IN YOUR CONTRACT."

4. "A [PROSPECTUS AND CONTRACT SUMMARY] [BUYERS GUIDE] IS REQUIRED TO BE GIVEN TO YOU."

The cover page is part of the policy and is subject to review by the office pursuant to s. 627.410.

(d) The insurer shall provide a buyer's guide and a policy summary to a ~~any~~ prospective purchaser upon request.

Section 3. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 223 Insurance
SPONSOR(S): Insurance & Banking Subcommittee; Lee, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Regulatory Affairs Committee		Callaway	Hamon

SUMMARY ANALYSIS

Section 627.421, F.S., requires every insurance policy to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. The bill allows insurers to post certain types of insurance policies 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. Furthermore, the policy posted online cannot contain any personal identifiable information about the policyholder.

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. 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 their website and archived policies must be available to policyholders to print.

The bill has no fiscal impact on state or local government. Insurers posting policies online will save costs associated with printing and mailing insurance policies to policyholders. Insurers may incur computer reprogramming costs associated with posting policies online and any increased costs will be passed through to policyholders.

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 627.421, F.S., requires every insurance policy[1] to be mailed or delivered to the insured (policyholder) within 60 days after the insurance takes effect. Insurance policies are typically only delivered when the policy is issued and are not delivered each time the policy is renewed.

The bill allows insurers 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.[2] Property insurance policies include homeowner's, tenant's, condominium unit owner's, mobile home owner's, condominium association, and commercial business property insurance policies.[3] The policy information posted online would be more general in nature. The policy declarations page which contains personal information about the policyholder and the policy would not be posted online and would be provided to the policyholder in another manner, usually by mail.

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. Even for policies posted online, the insurer will deliver a policy declarations page to the policyholder setting out the specific coverage included in the policy. 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. 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.

In 2012, Virginia enacted similar legislation allowing insurers to post property and casualty insurance forms on the insurer's website as long as:

- the posting was easily accessible,
- expired policies were archived on the website,
- the policies posted could be downloaded and printed without charge, and
- policyholders were notified of their right to receive paper or electronic copies of the policy and any changes to it.[4]

Applicability of Federal and State Law Relating to Electronic Transactions

The Federal Electronic Signatures in Global and National Commerce Act (E-SIGN) applies to electronic transactions involving interstate commerce.[5] Insurance is specifically included in E-SIGN.[6] E-SIGN provides contracts formed using electronic signatures on electronic records will not be denied legal effect only because they are electronic. However, E-SIGN requires consumer disclosure and consent to electronic records in certain instances before electronic records will be given legal effect. Under E-SIGN, if a statute requires information to be provided or made available to a consumer in writing, the

[1] 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. (see s. 627.401, F.S.)
[2] s. 624.605, F.S.
[3] See s. 624.604, F.S., defining property insurance and s. 627.4025, F.S., defining residential property insurance.
[4] Code of Virginia, § 38.2-325; HB 133 http://leg1.state.va.us/cgi-bin/legp504.exe?121+sum+HB133 (last viewed February 3, 2013).
[5] Section 101, Electronic Signatures in Global and National Commerce Act, Pub. L. no. 106-229, 114 Stat 464 (2000). Many of the provisions of E-SIGN took effective October 1, 2000.
[6] *Id.*

use of an electronic record to provide or make the information available to the consumer will satisfy the statute's requirement of writing if the consumer affirmatively consents to use of an electronic record. The consumer must also be provided with a statement notifying the consumer of the right to have the electronic information made available in a paper format and of the right to withdraw consent to electronic records, among other notifications. E-SIGN is not likely implicated by the bill because the bill creates an exception to Florida law requiring insurance policies to be mailed or delivered to policyholders if policies are posted online.

In addition, s. 668.50, F.S., Florida's Uniform Electronic Transaction Act (UETA), is similar to the federal E-SIGN law. UETA specifically applies to insurance and provides a requirement in statute that information that must be delivered in writing to another person can be satisfied by delivering the information electronically if the parties have agreed to conduct a transaction by electronic means. The bill does not likely implicate UETA because it creates an exception to the policy delivery requirement in current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.421, F.S., relating to delivery of policy.

Section 2: Provides an effective date of July 1, 2013.

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:

Insurers posting policies online will save costs associated with printing and mailing insurance policies to policyholders. The exact amount of savings cannot be calculated as it is unknown how many insurers will opt to post policies online and how many policyholders will choose to obtain their policies online rather than by mail. However, any savings realized by insurers should be passed through to policyholders.

If insurers incur computer reprogramming costs associated with posting policies online, any increased costs will be passed through to policyholders.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Insurance & Banking Subcommittee considered the bill, adopted four amendments, and reported the bill favorably with a committee substitute. The amendments adopted made the following changes to the bill:

- Clarified only property and casualty insurance policies can be posted online.
- Removed ambiguity in the bill relating to whether an insurer can post an insurance policy online in lieu of mailing or delivering the policy to the policyholder.
- Clarified insurance policies posted online must be easily accessible on the insurer's website and clarified all expired insurance policies are to be archived on the insurer's website.
- Created grammatical consistency in two places in the bill.

The staff analysis was updated to reflect the Committee Substitute.

A bill to be entitled

An act relating to insurance; amending s. 627.421, F.S.; authorizing the posting of specified types of insurance policies and endorsements on an insurer's Internet website in lieu of mailing or delivery to the insured if the insurer complies with certain conditions; providing an effective date.

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

Section 1. Section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed or delivered to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage.

(2) In the event the original policy is delivered or is so required to be delivered to or for deposit with any vendor, mortgagee, or pledgee of any motor vehicle, and in which policy any interest of the vendee, mortgagor, or pledgor in or with reference to such vehicle is insured, a duplicate of such policy setting forth the name and address of the insurer, insurance classification of vehicle, type of coverage, limits of liability, premiums for the respective coverages, and duration of the policy, or memorandum thereof containing the same such information, shall be delivered by the vendor, mortgagee, or pledgee to each such vendee, mortgagor, or pledgor named in the

policy or coming within the group of persons designated in the policy to be so included. If the policy does not provide coverage of legal liability for injury to persons or damage to the property of third parties, a statement of such fact shall be printed, written, or stamped conspicuously on the face of such duplicate policy or memorandum. This subsection does not apply to inland marine floater policies.

(3) Any automobile liability or physical damage policy shall contain on the front page a summary of major coverages, conditions, exclusions, and limitations contained in that policy. Any such summary shall state that the issued policy should be referred to for the actual contractual governing provisions. The company may, in lieu of the summary, provide a readable policy.

(4) Notwithstanding subsections (1) and (2), property and casualty insurance policies and endorsements that do not contain personally identifiable information may be posted on the insurer's Internet website. If the insurer elects to post insurance policies and endorsements on its Internet website in lieu of mailing or delivery to insureds, the insurer must comply with the following:

(a) Each policy and endorsement must be easily accessible on the insurer's Internet website for as long as the policy and endorsement remain in force.

(b) The insurer must archive all of its expired policies and endorsements on its Internet website and make any expired policy and endorsement available upon an insured's request for at least 5 years after expiration of the policy and endorsement.

(c) Each policy and endorsement must be posted in a manner that enables the insured to print and save the policy and endorsement using a program or application that is widely available on the Internet without charge.

(d) When the insurer issues an initial policy or any renewal, the insurer must notify the insured, in the manner the insurer customarily uses to communicate with the insured, that the insured has the right to request and obtain without charge a paper or electronic copy of the insured's policy and endorsements.

(e) On each declarations page issued to the insured, the insurer must clearly identify the exact policy form and endorsement form purchased by the insured.

(f) If the insurer changes any policy form or endorsement, the insurer must notify the insured, in the manner the insurer customarily uses to communicate with the insured, that the insured has the right to request and obtain without charge a paper or electronic copy of such form or endorsement.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 335 Property and Casualty Insurance Rates and Forms
SPONSOR(S): Insurance & Banking Subcommittee; Boyd
TIED BILLS: **IDEN./SIM. BILLS:** SB 468

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	13 Y, 0 N, As CS	Callaway	Cooper
2) Government Operations Appropriations Subcommittee	11 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee		Callaway	Hamon

SUMMARY ANALYSIS

The bill exempts certain types of commercial insurance from the rate filing process and exempts most property and casualty forms from the filing and approval process.

Commercial lines insurance (commercial insurance) is insurance designed for, and bought by, a business to cover losses sustained by the business. In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms used by companies. However, insurance companies writing certain types of commercial insurance do not have to file rates with, or obtain approval of, the rates charged from the OIR.

The bill allows two new types of commercial insurance relating to medical malpractice to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with, or obtain approval of, the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility; and
- Medical malpractice for a health care practitioner who is not a dentist, physician, or surgeon.

The bill also makes changes to s. 627.062(3)(d)3., F.S., to codify changes to this statute that were enacted by the 2011 Legislature by one bill, but were allegedly in conflict with changes to the same statute enacted in 2011 in another bill.

With limited exceptions, section 627.410(1), F.S., requires every insurance policy form to be filed with the OIR and approved by the OIR before the form can be used by the insurance company. The bill exempts all property and casualty forms, except workers' compensation forms, from the filing and approval process as long as the insurer files the form with OIR in an informational filing. The informational filing must contain a certification that the form complies with all state laws and rules. If the certification provided with the informational filing is false, then the insurer is subject to regulatory action by the OIR. The informational filing must be made 30 days before the form is used. The bill does not preclude insurers from filing property and casualty forms and obtaining approval of the forms from the OIR prior to use as provided by current law.

The bill has no fiscal impact on local governments or state revenue or expenditures. The bill should result in a reduced workload for the OIR. The bill should not have a rate impact on the private sector as rates for the types of commercial insurance covered by the bill still cannot be excessive, inadequate, or unfairly discriminatory as determined by current law. Additionally, the bill allows insurers selling the types of commercial insurance listed in the bill to make pricing changes for this insurance on a more expedited basis, avoiding some of the expense incurred in a full rate filing and review process.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Commercial Insurance Rate Filings

Commercial lines insurance (commercial insurance) is insurance designed for, and bought by, a business to cover losses sustained by the business.[1] Some commercial insurance, such as workers' compensation, is required to be purchased by businesses;[2] however, most commercial insurance is purchased by businesses on a voluntary basis. The type of commercial insurance bought by a business also depends, in part, on the business type and industry.

In Florida, the Office of Insurance Regulation (OIR) regulates insurance. The OIR reviews and approves or disapproves rates charged by insurance companies and the insurance forms[3] used by companies. However, insurance companies writing the following types of commercial insurance do not have to file rates with, or obtain approval for, the rates charged from the OIR[4]:

- Excess or Umbrella Insurance,
- Surety and Fidelity Insurance,
- Boiler and Machinery Insurance and Leakage and Fire Extinguishing Equipment Insurance,
- Commercial Motor Vehicle Insurance,
- Errors and Omissions Insurance ("E & O"),
- Directors' and Officers', Employment Practices, and Management Liability Insurance,
- Intellectual Property and Patent Infringement Insurance,
- Advertising Injury and Internet Liability Insurance,
- Property risks rated under a highly protected risks rating plan,
- Fiduciary Liability,
- General Liability,
- Nonresidential Property,
- Nonresidential Multiperil,
- Excess Property,
- Burglary and Theft, and
- Other types of commercial lines insurance determined by the OIR.

Generally, rates filed with the OIR are disapproved if they are excessive, inadequate or unfairly discriminatory based on standards contained in the law.[5] Even though insurance companies charge rates for the above listed commercial insurance without the rate being approved by the OIR, the rate charged must not be excessive, inadequate, or unfairly discriminatory, the same requirement for rates filed with and approved by the OIR. The insurance company writing the commercial insurance is responsible for ensuring the rate charged meets this requirement. The OIR can examine a company's documentation supporting a rate to ensure the rate meets the requirement. If the OIR reviews a rate, the OIR uses the rate factors and standards in law that apply to property and casualty and surety insurance rates filed with the OIR to determine whether the rate charged is excessive, inadequate, or unfairly discriminatory. If the OIR determines a rate used violates the rate factors and standards, the insurer must adjust the rate to comply with the factors and standards.

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[1] http://www2.iii.org/glossary/ (defining commercial lines) (last viewed January 28, 2013).

[2] Generally, non-construction businesses employing four or more employees have to buy workers' compensation insurance. Construction businesses must buy workers' compensation insurance if the business has one or more employees.

[3] With limited exceptions, section 627.410, F.S., requires every insurance policy, application, endorsement, or rider to be filed with and approved by the OIR prior to use by the insurance company. This statute applies to all types of commercial insurance.

[4] s. 627.062(3)(d), F.S.

[5] s. 627.062(1), F.S.; s. 627.062(2)(e), F.S.

If an insurance company increases or decreases a rate for the types of commercial insurance listed above, the insurer must notify the OIR within 30 days of the effective date of the rate change and the notification must contain certain information.

Effect of Proposed Changes Relating to Commercial Insurance

The bill allows two new types of commercial insurance relating to medical malpractice to be exempt from the rate filing and approval process in current law. Thus, insurance companies writing these types of commercial insurance will not have to file with or obtain approval of the rates for these types of commercial insurance by the OIR before the insurer can charge the rate. The new types of commercial insurance exempted are:

- Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility; and
- Medical malpractice for a health care practitioner who is not a dentist, physician,[6] or surgeon.

Examples of facilities that are not hospitals, nursing homes, or assisted living facilities that are covered by medical malpractice insurance include: laboratories, imaging facilities, dialysis centers, drug and alcohol rehabilitation facilities and hospice facilities. The bill exempts medical malpractice insurance for these types of medical facilities from rate filing and approval process.

Examples of health care practitioners who are not dentists, physicians, or surgeons that are covered by medical malpractice insurance include: occupational and physical therapists, nurses, audiologists, social workers, counselors, physician assistants, pharmacists, medical testing technicians, and medical lab and pharmacy technicians. The bill exempts medical malpractice insurance for these types of medical professionals from rate filing and approval process.

The bill also makes changes to s. 627.062(3)(d)3., F.S., to codify changes to this statute that were enacted by the 2011 Legislature by one bill, but were allegedly in conflict with changes to the same statute enacted in 2011 in another bill. If two or more bills are enacted in the same session that affect the same provision in the law in conflicting ways, the version of the enactment most strongly supported by legislative intent as determined from the best evidence available (usually the version "last passed" by the Legislature) is placed in the Florida Statutes.[7] The Office of Legislative Services determines which version is placed in the Florida Statutes.

In 2011, the Legislature passed CS/CS/HB 99 which contained numerous substantive changes to the commercial insurance rate deregulation provisions in s. 627.062(3)(d), F.S. CS/CS/HB 99 passed the Legislature on May 2, 2011 (Ch. 2011-160, L.O.F.). On May 5, 2011, the Legislature passed CS/CS/CS/SB 408 (Ch. 2011-39, L.O.F.), a comprehensive property and casualty insurance reform bill. CS/CS/CS/SB 408 did not substantively change any provisions relating to commercial insurance rate deregulation, but made editorial changes to these provisions. However, the Office of Legislative Services determined the editorial changes made by CS/CS/CS/SB 408 to one provision in the commercial insurance rate deregulation statute (s. 627.062(3)(d)3., F.S.) appeared to be in conflict with the changes made to that same statute in CS/CS/HB 99. Thus, the Office of Legislative Services placed the changes made by CS/CS/CS/SB 408 into the Florida Statutes, instead of those made by CS/CS/HB 99, because CS/CS/CS/SB 408 passed last. Accordingly, the editorial changes made by CS/CS/CS/SB 408 trumped the substantive changes to the same statute made by CS/CS/HB 99 and thus the substantive changes did not take effect.[8]

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[6] The bill does not define the term "physician." However, this term is defined in various places in the Insurance Code to include medical doctors licensed under chapter 458, osteopathic physicians licensed under chapter 459, chiropractic physicians licensed under chapter 460, and podiatric physicians licensed under chapter 461 (see s. 440.13, F.S.; s. 627.6482, F.S; s. 641.60, F.S.).

[7] See preface to the Florida Statutes.

[8] See s. 11.2421, F.S., relating to the adoption of the 2012 Florida Statutes as prepared by the Office of Legislative Services. See s. 11.2422, F.S., repealing every statute enacted at or prior to the 2011 regular legislative session not included in the Florida Statutes 2012.

The bill codifies the following changes made to s. 627.062(3)(d)3., F.S., by CS/CS/HB 99 (Ch. 2011-160, L.O.F.), in lieu of the changes made by CS/CS/CS/SB 408 (Ch. 2011-39, L.O.F.):

- The bill deletes some of the information required on the notice an insurer must give the OIR when the rate changes for commercial insurance exempt from rate filing. Insurers will no longer be required to provide the OIR the amount of insurance premium written during the prior year for the type or kind of insurance subject to the rate change, but will still be required to provide the name of the insurer, the type or kind of insurance subject to the rate change, and the average statewide rate change.
- The type of data required to be retained by the insurer to support the rate charged for commercial insurance not subject to a rate filing is changed by the bill. Insurers are required to retain "actuarial data" about the commercial risks, but are no longer required to retain "underwriting files, premiums, losses, and expense statistics."
- The bill adds a two year retention period for the insurer to retain the actuarial data supporting the rate charged. Current law does not specify a retention period.
- The bill requires the insurer to incur the cost of any examination of the insurer done by OIR relating to rates charged for commercial insurance.

Form Filing and Approval for Property and Casualty Insurance Forms

With limited exceptions, s. 627.410(1), F.S., requires every insurance policy form to be filed with the OIR and approved by the OIR before the form can be used by the insurance company. The OIR, however, is also given authority in section 627.410(4), F.S., to exempt any insurance form from filing and approval if the filing and approval cannot be practicably applied or is not desirable or necessary for the protection of the public.

In 2012, using the authority granted under s. 627.410(4), F.S., the OIR issued three Orders exempting certain insurance forms from being filed and approved prior to use. The first Order, issued on April 9, 2012, applied only to commercial insurance. As findings in the Order, the OIR noted a historically high volume of commercial form filings which taxed its review resources and resulted in a lengthier period of review. The OIR further found consumers of commercial insurance products were sophisticated parties that were more experienced in insurance transactions than consumers of personal lines insurance products. Thus, for one year, the OIR exempted certain categories or kinds of commercial insurance from prior form filing and approval. The OIR Order also conditioned the use of forms not filed and approved. The primary condition required the insurer to submit the form to the OIR in an informational filing 30 days before the form was used. The informational filing was required to have a notarized certification of compliance from the insurer attesting the form complied with all applicable Florida laws.

On June 25, 2012, the OIR issued a second Order exempting forms from the prior filing and approval requirement for one year. This Order expanded the types of insurance exempted from only specified commercial insurance to all property and casualty insurance. This Order was predicated on findings by the OIR that insurers had recently filed a historically high number of property and casualty forms with the OIR due to law changes, that the current volume of form filings had taxed OIR's review resources and resulted in a lengthier period of review, and that OIR review and approval of forms before use was not practicable where the form had been diligently and thoroughly reviewed by the insurer for quality and legal sufficiency. The second Order still required insurers to submit a form to the OIR in an informational filing 30 days before the form was used with a certification of compliance.

On December 2, 2012, the OIR issued a third Order relating to form filing exemptions. This Order provided a clarification relating to the insurer's certification of compliance, but otherwise did not change the Order of June 25, 2012.

Since the first Order exempting certain forms from OIR filing and approval, the OIR has received 4,765 form filings that qualify for the exemption.[9] Out of the qualifying filings, 939 filings actually opted to be

[9] Information received from the OIR on file with the Insurance & Banking Subcommittee.

exempt from the filing and approval process.[10] Thus, to date, approximately 20% of the form filings that could have utilized the filing and approval exemption did so.

Effect of Proposed Changes Relating to Form Filing and Approval

The bill generally codifies the last OIR Order on form filing and approval exemptions. On a permanent basis, the bill exempts all property and casualty forms, except workers' compensation forms, from the filing and approval process as long as the insurer files the form with OIR in an informational filing. The informational filing must contain a certification of compliance stating the form complies with all state laws and rules. If the certification provided with the informational filing is false, then the insurer is subject to regulatory action by the OIR. The informational filing must be made 30 days before the form is used. The bill does not preclude insurers from filing property and casualty forms and obtaining approval of the forms from the OIR prior to use as provided by current law.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.062, F.S., relating to rate standards.

Section 2: Amends s. 627.410, F.S., relating to filing, approval of forms.

Section 3: Creates s. 627.4102, F.S., relating to informational filing of forms.

Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should not impact commercial insurance rates charged to the private sector because rates for the additional types of commercial insurance covered by the bill cannot be excessive, inadequate, or unfairly discriminatory based upon the standards in current law. This is the same requirement contained in current law for these types of commercial insurance.

The bill allows insurers selling the types of commercial insurance listed in the bill to make pricing changes for those types on a more expedited basis, avoiding some of the expense incurred in a rate filing and review process done through the OIR.

[10] Insurers made 74 informational filings when OIR's first Order was in effect, 688 filings when the second Order was in effect, and 183 filings since the third Order took effect.

The provision in the bill exempting property and casualty forms from the filing and approval process will enable insurers to update and use insurance forms faster than under current law.

D. FISCAL COMMENTS:

The bill has no fiscal impact on state expenditures. The bill should result in a reduced workload for the OIR because the OIR will no longer be required to review every rate filing for the additional types of commercial insurance being exempted from the filing requirement.

Also, the OIR will have a reduced workload if insurers opt to use the form filing exemption allowed by the bill, rather than filing forms with the OIR for approval before use. To date, insurers have used the exemption for 20% of the qualifying form filings.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Insurance & Banking Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The staff analysis was updated to reflect the committee substitute.

A bill to be entitled

An act relating to property and casualty insurance rates and forms; amending s. 627.062, F.S.; exempting medical malpractice insurance that covers certain providers and practitioners from specified rate filing requirements; revising provisions relating to notification of rate changes to codify the amendments made to s. 627.062(3)(d)3., F.S., by s. 1, ch. 2011-160, Laws of Florida, in lieu of the amendments made by s. 12, ch. 2011-39, Laws of Florida, and making editorial changes; amending s. 627.410, F.S.; conforming provisions to changes made by the act; creating s. 627.4102, F.S.; providing for an informational filing of certain forms that are exempt from the Office of Insurance Regulation's approval process; requiring an informational filing to include a notarized certification from the insurer and providing a statement that must be included in the certification; authorizing the office to impose sanctions for false certifications; requiring a Notice of Change In Policy Terms form to be filed with a changed renewal policy; providing for construction; providing an effective date.

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

Section 1. Paragraph (d) of subsection (3) and paragraph (e) of subsection (7) of section 627.062, Florida Statutes, are

amended to read:

627.062 Rate standards.—

(3)

(d)1. The following categories or kinds of insurance and types of commercial lines risks are not subject to paragraph (2)(a) or paragraph (2)(f):

a. Excess or umbrella.

b. Surety and fidelity.

c. Boiler and machinery and leakage and fire extinguishing equipment.

d. Errors and omissions.

e. Directors and officers, employment practices, fiduciary liability, and management liability.

f. Intellectual property and patent infringement liability.

g. Advertising injury and Internet liability insurance.

h. Property risks rated under a highly protected risks rating plan.

i. General liability.

j. Nonresidential property, except for collateral protection insurance as defined in s. 624.6085.

k. Nonresidential multiperil.

l. Excess property.

m. Burglary and theft.

n. Medical malpractice for a facility that is not a hospital, nursing home, or assisted living facility.

o. Medical malpractice for a health care practitioner who is not a dentist, physician, or surgeon.

p.~~n.~~ Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

2. Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on insurance and risks described in subparagraph 1. which are written in this state.

3. An insurer shall ~~must~~ notify the office of any changes to rates for insurance and risks described in subparagraph 1. within 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change, ~~total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change,~~ and the average statewide percentage change in rates. Actuarial data ~~Underwriting files, premiums, losses, and expense statistics~~ with regard to rates for such ~~insurance and~~ risks ~~written by an insurer~~ must be maintained by the insurer for 2 years after the effective date of changes to those rates and are subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate

factors in paragraphs (2)(b), (c), and (d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

4. A rating organization shall ~~must~~ notify the office of any changes to loss cost for insurance and risks described in subparagraph 1. within 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Actuarial data with regard to changes to loss cost for risks not subject to paragraph (2)(a) or paragraph (2)(f) must be maintained by the rating organization for 2 years after the effective date of the change and are subject to examination by the office. The office may require the rating organization to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(7) The provisions of this subsection apply only to rates for medical malpractice insurance and control to the extent of any conflict with other provisions of this section.

(e) For medical malpractice rates subject to paragraph (2)(a), the ~~each~~ medical malpractice insurer shall ~~must~~ make a rate filing under this section, sworn to by at least two

executive officers of the insurer, at least once each calendar year.

Section 2. Subsection (1) of section 627.410, Florida Statutes, is amended to read:

627.410 Filing, approval of forms.—

(1) A ~~No~~ basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, ~~or~~ group certificates issued under a master contract delivered in this state, or printed rider or endorsement form or form of renewal certificate, may not ~~shall~~ be delivered or issued for delivery in this state~~,~~ unless the form has been filed with the office by or on ~~in~~ behalf of the insurer that ~~which~~ proposes to use such form and has been approved by the office or filed pursuant to s. 627.4102. This provision does not apply to surety bonds or to policies, riders, endorsements, or forms of unique character that ~~which~~ are designed for and used with ~~relation to~~ insurance on ~~upon~~ a particular subject, ~~(~~other than as to health insurance~~)~~, or that ~~which~~ relate to the manner of distributing ~~distribution of~~ benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificateholder. For ~~As to~~ group insurance policies effectuated and delivered outside this state but covering persons resident in this state, the group certificates to be delivered or issued for delivery in this state shall be filed with the office for information purposes only.

Section 3. Section 627.4102, Florida Statutes, is created

to read:

627.4102 Informational filing of forms.—

(1) Property and casualty forms, except workers' compensation forms, are exempt from the approval process required under s. 627.410 if:

(a) The form has been electronically submitted to the office in an informational filing made through I-File 30 days before the delivery or issuance for delivery of the form within this state; and

(b) At the time the informational filing is made, a notarized certification is attached to the filing that certifies that each form within the filing is in compliance with all applicable state laws and rules. The certification must be on the insurer's letterhead and signed and dated by the insurer's president, chief executive officer, general counsel, or an employee of the insurer responsible for the filing on behalf of the insurer. The certification must expressly acknowledge that if the representations contained in the certification are found to be false, the insurer is subject to appropriate regulatory action. The certification must contain substantively the following statement: "I, ...[name]..., as ...[title]... of ...[insurer name]..., do hereby certify that this form filing has been thoroughly and diligently reviewed by me and by all appropriate company personnel, as well as company consultants, if applicable, and certify that each form contained within the filing is in compliance with all applicable Florida laws and rules. Should this certification later be deemed false, I acknowledge that ...[insurer name]... is subject to all

appropriate regulatory action by the Office of Insurance Regulation."

(2) If the filing contains a certification that does not meet the requirements of this section, the form filing, at the discretion of the office, shall be subject to prior review and approval pursuant to s. 627.410, and the period for review and approval established under s. 627.410(2) begins to run on the date the office notifies the insurer of the discovery of the inadequate certification. The office may pursue regulatory action against an insurer that submits a false certification.

(3) A Notice of Change in Policy Terms form required under s. 627.43141(2) shall be filed as a part of the informational filing for a renewal policy that contains a change. If a renewal policy that was certified requires such form, the insurer must provide a copy of the form to the named insured's agent before or upon providing the form to the named insured.

(4) This section does not preclude an insurer from electing to file any form for approval under s. 627.410 that would otherwise be exempt under this section.

Section 4. This act shall take effect July 1, 2013.

REGULATORY AFFAIRS COMMITTEE

CS/HB 335 by Rep. Boyd
Property and Casualty Insurance Rates and Forms

AMENDMENT SUMMARY
March 14, 2013

Amendment 1 by Rep. Boyd (Lines 53-56): Clarifies the types of medical facilities and physicians the bill does not exempt from the rate filing process by providing the licensing statutory reference for the facilities and physicians.

Amendment 2 by Rep. Boyd (Lines 157-178): Rewords the language on the form certification. Removes authority for the OIR to take regulatory action on insurers that falsely make representations in the form certification, but keeps language in the bill allowing the OIR to require forms not in compliance with state laws and rules to be reviewed and approved by the OIR before the insurer uses the form.

Amendment 3 by Rep. Boyd (Line 183): Requires insurers to provide a sample copy of the Notice of Change of Policy Terms (Notice) filed with the informational filing for forms to the policyholder's agent, if the Notice is required to be filed.

Amendment 4 by Rep. Boyd (Between Lines 187 and 188): Adds language making the bill's codification of the OIR Order allowing insurance form informational filings supersede and replace the Order.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 335 (2013)

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: Regulatory Affairs Committee

Representative Boyd offered the following:

Amendment

Remove lines 53-56 and insert:

n. Medical malpractice for a facility that is not a hospital licensed by ch. 395; a nursing home licensed by ch. 400, Part II; or an assisted living facility licensed by ch. 429, Part I.

o. Medical malpractice for a health care practitioner who is not a dentist licensed by ch. 466, a physician licensed by ch. 458, an osteopathic physician licensed by ch. 459, a chiropractic physician licensed by ch. 460, or a podiatric physician licensed by ch. 461.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 335 (2013)

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: Regulatory Affairs Committee

Representative Boyd offered the following:

Amendment (with title amendment)

Remove lines 157-178 and insert:

the insurer. The certification must contain the following statement, and no other language: "I, ...[name]..., as ...[title]... of ...[insurer name]..., do hereby certify that this form filing has been thoroughly and diligently reviewed by me and by all appropriate company personnel, as well as company consultants, if applicable, and certify that each form contained within the filing is in compliance with all applicable Florida laws and rules. Should a form be found to be not in compliance with Florida laws and rules, I acknowledge that the Office of Insurance Regulation shall disapprove the form."

(2) If the filing contains a form that is not in compliance with state laws and rules, the form filing, at the discretion of the office, is subject to prior review and approval pursuant to

s. 627.410, and the period for review and approval established under s. 627.410(2) begins to run on the date the office notifies the insurer of the discovery of the noncompliant form.

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

Remove lines 19-20 and insert:

certification; authorizing the office to require prior review and approval of a form that is not in compliance; requiring a Notice

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 335 (2013)

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: Regulatory Affairs Committee

Representative Boyd offered the following:

Amendment

Remove line 183 and insert:

provide a sample copy of the form to the named insured's agent before

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 335 (2013)

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: Regulatory Affairs Committee

Representative Boyd offered the following:

Amendment (with title amendment)

Between lines 187 and 188, insert:

(5) The provisions of this section supersede and replace the existing order issued by the office exempting specified property and casualty forms from the requirements of s. 627.410.

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

Remove line 23 and insert:

providing for applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 341 Uninsured Motorist Insurance Coverage
SPONSOR(S): Ingram
TIED BILLS: None **IDEN./SIM. BILLS:** SB 706

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Vanlandingham	Cooper
2) Civil Justice Subcommittee	13 Y, 0 N	Keegan	Bond
3) Regulatory Affairs Committee		Vanlandingham	Hamon

SUMMARY ANALYSIS

Uninsured Motorist (UM) coverage protects motorists against injuries caused by owners or operators of uninsured or underinsured motor vehicles. Such policies are available on a "stacked" or "non-stacked" basis. UM policies that are "stacking" extend to every resident and vehicle in a household and allow residents or others to recover the combined policy limits from each insured vehicle. "Non-stacking" policies limit coverage to the insured vehicle operated at the time of the accident.

Current law provides that UM policies are "stacked" by default, and "non-stacked" coverage must be affirmatively selected by the insured by signing a waiver of any rights to combine policy limits from multiple vehicles. However, a recent decision by Florida's First District Court of Appeal has created uncertainty whether a "non-stacking" policy waiver signed by a named insured will waive "stacking" benefits on behalf of all insureds. The court held that due to a discrepancy in the wording between two subsections of the statute, a resident relative who occupies an insured's vehicle during an accident may still claim "stacked" benefits despite any waiver signed by the named insured.

This bill restores the general effectiveness of a "non-stacking" waiver for UM coverage whereby the person buying the coverage makes an election between stacking or non-stacking coverage that is binding on the family. The result would return current insurance law to the status quo that existed before the court decision and clarify, for both insurers and insureds, the true extent of coverage offered by UM policies.

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

The legislation takes effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on "stacking" and "non-stacking" Uninsured Motorist Insurance

Uninsured Motorist (UM) coverage protects motorists against injuries caused by owners or operators of uninsured or underinsured motor vehicles. Section 627.727(1), F.S., requires insurers who offer bodily injury liability coverage also to offer UM coverage in the same amount as any policy limits applying to the bodily injury liability policy. Pursuant to the Florida Supreme Court's decision in *Mullis v. State Farm Mut. Auto. Ins. Co.*, 252 So. 2d 229 (Fla. 1971), conventional UM coverage extends not only to the named insured but also to family members, household residents, or any other lawful occupant of the insured vehicle.

Thus, conventional UM insurance "stacks." This means that if one family member purchases one UM policy for one vehicle, that coverage extends to every resident and every vehicle in the household, whether or not those residents or vehicles were covered by their own UM policies. Moreover, if a family purchases UM coverage for multiple vehicles, any resident in the household may "stack" the UM benefits and recover the combined policy limits from each insured vehicle.

However, s. 627.727, F.S., allows that an insured individual can waive this insurance, select a lower limit, or select "non-stacking" UM coverage if the named insured signs a policy waiver form approved by the Florida Office of Insurance Regulation.

"Non-stacking" UM policies typically include two critical exclusions or limitations: (1) a limitation of UM benefits to the particular insured vehicle operated at the time of the accident and not from any other vehicles insured in the household that carry this limited form of UM coverage; and (2) an exclusion of UM benefits for the insured or their resident relatives or others who are injured while occupying any vehicle owned by them for which UM coverage was not purchased.

If insurers do properly obtain a waiver and offer "nonstacked" policy limitations or exclusions for UM coverage, s. 627.727(9), F.S., also provides that the premium charged for this limited form of UM coverage must be at least 20 percent less expensive than traditional "stacked" insurance.

The First District Court of Appeal's decision in *Traveler's Com. Ins. Co. v. Harrington*

A recent decision by Florida's First District Court of Appeal has created uncertainty whether a "non-stacking" policy waiver extends beyond the named insured to include resident relatives who occupy an insured's vehicle during an accident. In *Traveler's Com. Ins. Co. v. Harrington*, 86 So. 3d 1274 (Fla. 1st DCA 2012), a daughter was injured while riding as a passenger in a vehicle insured by her mother. The mother insured three vehicles in all, with both liability and UM policies, but the mother had expressly accepted and endorsed a "non-stacking" limitation. The *Harrington* court held that while the "non-stacking" limitation applied to the mother, it did not apply to the daughter, who had not signed the waiver and thus had not knowingly accepted the policy limitation.

In reaching that conclusion, the court focused on the construction of s. 627.727(9), F.S., as contrasted with s. 627.727(1), F.S. Under s. 627.727(1), F.S., UM coverage must be provided with a policy for liability coverage unless there is a knowing rejection of the UM coverage. Section 627.727(1), F.S., further refers to a "written rejection . . . on behalf of all insureds," and specifies that an approved form be used when UM coverage is selected at a lower limit than the liability coverage. The subsection also provides that: "If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds."

Section 627.727(9), F.S., likewise requires that an approved form be used when non-stacking coverage is selected. However, unlike subsection (1), which makes an election-of-coverage-limits binding on all insureds, subsection (9) provides for non-stacking elections: "If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations."

In light of the differing language describing the different waivers in ss. 627.727(1) and (9), F.S., the court reasoned that the subsection (9) waiver of "stackable" coverage must be personally made by the insured who claims such benefits. This is in contrast to the subsection (1) waiver of coverage (at the liability limit), which may be made "on behalf of all insureds." The court concluded that the Legislature's use of different language in separate parts of the statute suggests that different meanings were intended, and that when language is used in one part of a statute but omitted in another part it should not be inferred that such language was intended where it has been omitted.

For this reason, the *Harrington* court determined that the mother's waiver of "stacked" UM coverage did not extend to her daughter. Thus, the daughter was entitled to "stack" the UM coverage limits from all three insured automobiles to pay medical bills for the bodily injuries she suffered during the accident as an occupant of an insured vehicle, notwithstanding her mother's express rejection of such "stacking" benefits.

Possible effects of the *Harrington* decision

As a result of the court's decision in *Harrington*, policy waivers signed by a named insured selecting "non-stacked" UM coverage may be ineffective as to other vehicle occupants who have not personally signed the waiver.

The result would appear to leave few options to insurers seeking to offer "non-stacked" coverage, as attempts to get consent for a waiver from all persons who potentially could claim UM benefits would present clear administrative difficulties. Insurers generally do not know what other persons are likely to be passengers in an insured automobile, nor do they obtain signatures from such persons on the underlying insurance policy or associated waivers. If insurers were to require named insureds to obtain such consents as a condition of policy renewal, it is likely that few insureds could predict every person who would ride as a passenger in their vehicle during the policy term, let alone gain those persons' consent for policy waivers in advance.

This uncertainty as to the extent of potential liability under "non-stacking" UM policies may present difficulties to insurers seeking to accurately assess their underwriting risk with regard to such policies. One potential result is higher premiums, as insurers seek to recover costs from payouts that previously would have been excluded or limited by "non-stacking" policy waivers.

Because such waivers may still offer insurers at least some limitations on liability, it is unclear whether the holding in *Harrington* would prevent insurers from offering "non-stacked" coverage altogether. However, s. 627.727(9), F.S., mandates that "non-stacking" policies must be offered at a premium at least 20 percent less than traditional "stacked" insurance. If insurers believe they can no longer offer such a discount for "non-stacked" policies, the market for such policies may dissolve. If that outcome were to occur, Florida consumers seeking UM coverage would be limited to more expensive "stacked" policies that provide more benefits at a higher price.

Effect of HB 341

HB 341 amends s. 627.727(9), F.S., to clarify that if a named insured signs a "non-stacking" waiver, "it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations on behalf of all insureds." The addition of the phrase "on behalf of all insureds" mirrors the language of s. 627.727(1), F.S., thus removing the statutory ambiguity cited by the *Harrington* court as the basis for its decision.

By removing this ambiguous difference in the language of ss. 627.727(1) and (9), F.S., it is likely this statutory change would remove the uncertainty that has resulted from the *Harrington* case and restore the general effectiveness of "non-stacking" waivers for UM coverage. This would return Florida insurance law to the status quo that existed before the *Harrington* decision and clarify, for both insurers and insureds, the true extent of coverage offered by UM policies.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.727, F.S., to clarify that specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector. The bill may have an indirect impact on the private sector, see Fiscal Comments.

D. FISCAL COMMENTS:

HB 341 may allow insurers to more accurately assess their underwriting risk with regard to "non-stacking" uninsured motorist insurance policies. Moreover, to the extent that insurers would no longer need to recover costs from new payouts under the Harrington decision, the bill may prevent UM insurance premiums from rising. For this reason, it is also possible that HB 341 could prevent the availability of "non-stacked" UM insurance from deteriorating, as s. 627.727(9), F.S., mandates that such "non-stacked" coverage may only be offered at a 20 percent price discount relative to the cost of traditional "stacked" coverage.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to uninsured motorist insurance coverage; amending s. 627.727, F.S.; providing that, under certain circumstances, specified persons who elect non-stacking limitations on their uninsured motorist insurance coverage are conclusively presumed to have made an informed, knowing acceptance of the limitations on behalf of all insureds; providing an effective date.

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

Section 1. Subsection (9) of section 627.727, Florida Statutes, is amended to read:

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

(9) Insurers may offer policies of uninsured motorist coverage containing policy provisions, in language approved by the office, establishing that if the insured accepts this offer:

(a) The coverage provided as to two or more motor vehicles shall not be added together to determine the limit of insurance coverage available to an injured person for any one accident, except as provided in paragraph (c).

(b) If at the time of the accident the injured person is occupying a motor vehicle, the uninsured motorist coverage available to her or him is the coverage available as to that motor vehicle.

(c) If the injured person is occupying a motor vehicle

which is not owned by her or him or by a family member residing with her or him, the injured person is entitled to the highest limits of uninsured motorist coverage afforded for any one vehicle as to which she or he is a named insured or insured family member. Such coverage shall be excess over the coverage on the vehicle the injured person is occupying.

(d) The uninsured motorist coverage provided by the policy does not apply to the named insured or family members residing in her or his household who are injured while occupying any vehicle owned by such insureds for which uninsured motorist coverage was not purchased.

(e) If, at the time of the accident the injured person is not occupying a motor vehicle, she or he is entitled to select any one limit of uninsured motorist coverage for any one vehicle afforded by a policy under which she or he is insured as a named insured or as an insured resident of the named insured's household.

In connection with the offer authorized by this subsection, insurers shall inform the named insured, applicant, or lessee, on a form approved by the office, of the limitations imposed under this subsection and that such coverage is an alternative to coverage without such limitations. If this form is signed by a named insured, applicant, or lessee, it shall be conclusively presumed that there was an informed, knowing acceptance of such limitations <u>on behalf of all insureds</u>. When the named insured, applicant, or lessee has initially accepted such limitations, such acceptance shall apply to any policy which renews, extends,

changes, supersedes, or replaces an existing policy unless the named insured requests deletion of such limitations and pays the appropriate premium for such coverage. Any insurer who provides coverage which includes the limitations provided in this subsection shall file revised premium rates with the office for such uninsured motorist coverage to take effect prior to initially providing such coverage. The revised rates shall reflect the anticipated reduction in loss costs attributable to such limitations but shall in any event reflect a reduction in the uninsured motorist coverage premium of at least 20 percent for policies with such limitations. Such filing shall not increase the rates for coverage which does not contain the limitations authorized by this subsection, and such rates shall remain in effect until the insurer demonstrates the need for a change in uninsured motorist rates pursuant to s. 627.0651.

Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Wine
SPONSOR(S): Artiles and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 658

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	7 Y, 3 N	Collins	Luczynski
2) Regulatory Affairs Committee		Collins	Hamon

SUMMARY ANALYSIS

The bill amends s. 564.05, F.S., to allow the sale of wine in individual containers that hold no more than six gallons. Currently, the sale of wine is prohibited in individual containers that hold more than one gallon.

The bill has no impact on state funds.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Beverage Law restricts the size of the containers in which alcoholic beverages may be sold at retail. The provisions of the Beverage Law apply to the sale of malt beverages, distilled spirits and wine.

Malt Beverages and Beer

Section 563.06(6), F.S., provides that malt beverages, including beer, may not be sold in individual containers that exceed thirty-two ounces.[1] Despite the size limitation, an exception exists for the sale of malt beverages in bulk. Specifically, the sale of malt beverages in a container that holds at least one gallon is not limited to a specific container size.[2]

A violation of the section is a first degree misdemeanor.[3]

Distilled Spirits

Section 565.10, F.S., provides that distilled spirits may not be sold in individual containers that exceed 1.75 liters. There is no exception to the size limitation for distilled spirits.

A violation of the section is a third degree felony.[4]

Wine

Section 564.05, F.S., provides that wine may not be sold in individual containers that exceed one gallon. Like with malt beverages, an exception to the container size limitation exists for the sale of wine. Specifically, qualified distributors and manufacturers are permitted to sell wine to other qualified distributors or manufacturers in any size container.[5]

A violation of the section is a second degree misdemeanor.[6]

Effect of Proposed Changes

The bill amends s. 564.05, F.S., to allow the sale of wine in individual containers that hold up to six gallons of alcohol. The sale of wine in a container that holds more than six gallons is a violation of the section, and is a second degree misdemeanor.

B. SECTION DIRECTORY:

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[1] Section 563.06(6), Florida Statutes.
[2] Id.
[3] Section 563.06(7), Florida Statutes.
[4] Section 562.45(1), Florida Statutes
[5] Section 564.05, Florida Statutes.
[6] Id.

Section 1: amends s. 564.05, F.S., to allow wine to be sold in individual containers that hold no more than six gallons.

Section 2: provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Wine excise taxes collected pursuant to s. 564.06, F.S., are paid per gallon. Thus, the change in the maximum wine container size does not directly or indirectly affect the Division of Alcoholic Beverages and Tobacco regarding the collection of excise taxes.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is expected to have most of its impact in the hospitality industry, as bars and restaurants will be able to reduce cost and waste associated with spoiled wine.

Moreover, there may be a benefit to the private sector in being able to purchase larger size containers of wine, especially if a bulk rate is available.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of sales 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

A bill to be entitled

An act relating to wine; amending s. 564.05, F.S.; increasing the maximum allowable capacity for individual containers of wine sold in this state; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is amended to read:

564.05 Limitation of size of individual wine containers; penalty.—It is unlawful for any person to sell within this state any wine in individual containers holding more than 6 gallons ~~1 gallon~~ of such wine. However, ~~Provided, that~~ qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Any person convicted of a violation of this section commits ~~shall be guilty of~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2013.

REGULATORY AFFAIRS COMMITTEE

HB 623 by Rep. Artiles
Wine

AMENDMENT SUMMARY
March 14, 2013

Amendment 1 by Rep. Artiles (Strike-all amendment): Retains the provisions of the bill, and makes the following changes:

- Allows for the sale of wine in reusable containers that hold 5.16 gallons.
- Provides that all wine containers sold or offered for sale for off-premises consumption must be in the unopened original container, except as provided in s. 564.09.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 623 (2013)

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: Regulatory Affairs Committee

Representative Artiles offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 564.05, Florida Statutes, is amended to read:

564.05 Limitation of size of individual wine containers; penalty.-It is unlawful for any person to sell within this state any wine in individual containers holding more than 1 gallon of such wine, unless such wine is in reusable containers holding 5.16 gallons. However, ~~Provided that~~ qualified distributors and manufacturers may sell to other qualified distributors or manufacturers such wine in any size containers. Except as provided in s. 564.09, all wine sold or offered for sale by licensed vendors to be consumed off the premises shall be in the unopened original container. Any person convicted of a violation of this section commits ~~shall be guilty of~~ a

misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 2. This act shall take effect July 1, 2013.

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

Remove everything before the enacting clause and insert:

An act relating to wine; amending s. 564.05, F.S.; providing an exception to the maximum allowable capacity for individual containers of wine sold in this state; providing that, except as provided in s. 564.09, all wine containers sold or offered for sale at retail for consumption off the premises shall be in the original container; providing an effective date.