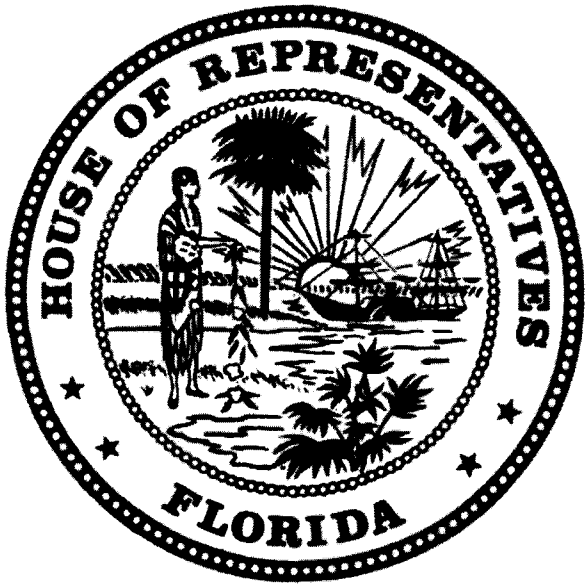

Regulatory Affairs Committee

Thursday, March 6, 2014
9:30 AM
404 HOB

Will Weatherford
Speaker

Doug Holder
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Regulatory Affairs Committee

Start Date and Time:	Thursday, March 06, 2014 09:30 am
End Date and Time:	Thursday, March 06, 2014 11:30 am
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

CS/HB 151 Security of Protected Consumer's Information by Business & Professional Regulation Subcommittee, Fitzenhagen

CS/CS/HB 255 Discriminatory Insurance Practices by Civil Justice Subcommittee, Insurance & Banking Subcommittee, Gaetz

CS/HB 271 Workers' Compensation by Government Operations Appropriations Subcommittee, Cummings

HB 291 Warranty Associations by Santiago

CS/CS/HB 321 Title Insurance by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Passidomo

HB 7009 Security for Public Deposits by Insurance & Banking Subcommittee, Moraitis

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 5, 2014.

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 5, 2014.

NOTICE FINALIZED on 03/04/2014 16:09 by Ellinor.Martha

The Florida House of Representatives

Regulatory Affairs Committee

Will Weatherford
Speaker

Doug Holder
Chair

AGENDA

March 6, 2014
404 HOB
9:30 AM – 11:30 AM

I. Call to Order and Roll Call

II. CS/HB 151 by *Business & Professional Regulation Subcommittee; Rep. Fitzenhagen*
Security of a Protected Consumer's Information

III. CS/CS/HB 255 by *Civil Justice Subcommittee; Insurance & Banking Subcommittee; Rep. Gaetz*
Discriminatory Insurance Practices

IV. CS/HB 271 by *Government Operations Appropriations Subcommittee; Rep. Cummings*
Workers' Compensation

V. HB 291 by *Rep. Santiago*
Warranty Associations

VI. CS/CS/HB 321 by *Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Rep. Passidomo*
Title Insurance

VII. HB 7009 by *Insurance & Banking Subcommittee; Rep. Moraitis*
Security for Public Deposits

VIII. ADJOURNMENT

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 151 Security of a Protected Consumer's Information
SPONSOR(S): Business & Professional Regulation Subcommittee; Fitzenhagen and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professional Regulation Subcommittee	11 Y, 0 N, As CS	Brown-Blake	Luczynski
2) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
3) Regulatory Affairs Committee		Brown-Blake	Hamon K.W.H.

SUMMARY ANALYSIS

Current law provides consumers with procedures to request "security freezes" on consumer records that may have been compromised as a result of identity theft. Security freezes prohibit consumer reporting agencies (Equifax, Experian, and TransUnion) from releasing a credit report, subject to specified exemptions. This procedure presumes that the consumer has an existing credit file and history, and may not address the issue of identity theft committed against minors and other persons who may be represented by a guardian, and who do not have a credit history or are unable to request security freezes on their own.

While parents typically apply for a Social Security number for their child shortly after birth, a credit reporting agency does not create a credit report or history until an application for credit is received. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years. A recent study conducted by ID Analytics estimated that more than 140,000 instances of identity fraud are perpetrated on minors in the United States each year.

The bill creates a mechanism to protect the personal information of protected consumers, which is an individual less than sixteen years of age or a person represented by a guardian or other advocate which includes but is not limited to:

- minors with court appointed guardians in child abuse, abandonment, or neglect judicial proceedings;
- persons of any age with developmental disabilities who have been appointed a guardian advocate;
- minors with court appointed guardians;
- minors in a criminal proceeding if the minor is a victim of or witness to certain offenses;
- persons of any age with an intellectual disability who have a court appointed advocate in certain criminal proceedings; and
- certain other protected individuals of any age who are court appointed a guardian.

The newly-created section provides definitions, procedures, requirements, damages, and limitations regarding security freezes on a protected consumer's credit record. The bill also requires consumer reporting agencies to provide consumers with a written summary of rights.

The bill has no fiscal impact on state or local funds. The bill may have a positive impact on the private sector by providing additional safeguards for minors under age sixteen and other persons represented by a guardian or advocate.

The bill has an effective date of September 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit reports and credit reporting agencies

Credit reporting agencies (also known as credit bureaus) are entities that collect and disseminate information about consumers to be used for credit evaluation and other permissible purposes, such as employment or background checks for professional licenses. The three major credit reporting companies in the U.S. are Equifax, TransUnion, and Experian.

Current federal law and security freezes

In 1970, Congress enacted the federal Fair Credit Reporting Act (FCRA), which regulates the collection, dissemination, and use of consumer credit information, is enforced by the Federal Trade Commission, and provides a private cause of action for consumers. The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting recipients to those who have a legitimate need for it; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.

Consumer reports are used by financial institutions, insurance companies, employers, and other entities in making eligibility decisions affecting consumers. Information included in consumer reports generally may include consumers' credit history and payment patterns, as well as demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).

In 2003, Congress passed the Fair and Accurate Credit Transactions Act (FACTA) to enhance FCRA and to require credit bureaus to provide one free report every 12 months. FACTA added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.

FCRA (as amended by FACTA) states that a consumer, or any individual acting on behalf of or as a personal representative of a consumer, may assert a good-faith suspicion that he or she has been a victim of identity theft. This requires the credit bureau to place an "initial fraud alert" on the consumer's credit file for at least 90 days at no charge.[1] According to the FTC, this initial fraud alert makes it harder for identity thieves to open more accounts in a consumer's name, since the existence of a fraud alert requires businesses to verify a consumer's identity before issuing credit.[2] In addition, FCRA requires credit bureaus to block the reporting of information contained in a credit file resulting from an alleged identity theft.[3] Consumers can also file an identity theft report (which consists of an affidavit and a police report) to the three credit bureaus in order to obtain an extended fraud alert placed on the credit report.

Both FCRA and FACTA provide that states may enact laws with respect to the collection, distribution, or use of any information on a consumer, or for the prevention or mitigation of identity theft, so long as these state laws are not inconsistent with the federal acts.[4] Security freeze legislation is one example of allowable state laws.

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[1] 15 U.S.C. § 1681c-1.
[2] FTC Consumer Information: Place a Fraud Alert, http://www.consumer.ftc.gov/articles/0275-place-fraud-alert (last accessed on December 10, 2013).
[3] 15 U.S.C. §1681c-2.
[4] 15 U.S.C. §1681t(1).

Forty-nine states (including Florida) and the District of Columbia have enacted laws allowing any consumer to freeze their credit reports, and four states that have laws that will grant security freezes to identify theft victims.[5] A security freeze restricts a consumer-reporting agency from releasing a credit report or any information from the report without authorization from the consumer. A freeze also requires authorization to change information—such as the consumer's name, date of birth, Social Security number, and address—in a consumer report. A security freeze remains on a credit report until the consumer removes it. Generally, a person can "thaw" or temporarily remove the freeze to open a new credit account or a new loan. To do this, a consumer provides the consumer-reporting agency with special personal identifying number (PIN), which is required to verify the consumer's identity. States have created exemptions for specified organizations that still can access credit report information even if a freeze is in place. Typically, these organizations include law enforcement agencies, child support enforcement, insurance, and subsidiaries and affiliates of companies that have existing accounts with the consumer.

Current Florida law

Florida consumers have a statutory right to have security freeze placed on their consumer reports by sending a written request by certified mail to a credit reporting agency.[6] A "security freeze" is a notice placed in a consumer report that prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained in the report to a third party without the express authorization of the consumer.[7] Any disclosure by a consumer reporting agency to a resident of the state must include a written summary of all rights the consumer has, including the right to place a security freeze on his or her consumer report.[8] A credit reporting agency may charge a fee, not to exceed $10, when a consumer elects to place, temporarily lift, or remove a security freeze on his or her credit report. However, the law prohibits a consumer-reporting agency from charging a fee to a consumer age 65 or older or to a victim of identity theft for the placement or removal of a security freeze.

In addition to any other penalties or remedies provided under law, a person who is aggrieved by a violation of the provisions of s. 501.005, F.S., may bring a civil action as authorized by s. 501.005(16), F.S., as follows:

- Any person who willfully fails to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer is liable to that consumer for actual damages sustained by the consumer as a result of the failure of not less than $100 and not more than $1,000, plus the cost of the action together with reasonable attorney's fees.
- Any person who is negligent in failing to comply with any requirement imposed under s. 501.005, F.S., with respect to any consumer, is liable to that consumer for any actual damages sustained by the consumer because of the failure of not less than $100 and not more than $1,000.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for actual damages sustained by the consumer or damages of not less than $100 and not more than $1,000, whichever is greater, and 2) the consumer reporting agency for actual damages or $1,000, whichever is greater.

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[5] Consumers Union, *Consumers Union's Guide to Security Freeze Protection, available at* http://defendyourdollars.org/document/guide-to-security-freeze-protection (last visited December 12, 2013).

[6] Section 501.005, F.S.

[7] Section 501.005(1), F.S. Additionally, s. 501.005(12), F.S., allows for the release of information that would otherwise be protected by a security freeze to the existing creditors of the consumer, persons who have been granted access to the information according to law, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide credit reports to consumers on their request, to persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified entities.

[8] Section 501.005(17), F.S.

- Section 501.005(16), F.S., allows for the assessment of punitive damages for willful violations of s. 501.005, F.S.
- Upon a finding by the court that an unsuccessful pleading, motion or other paper filed in connection with an action under s. 501.005, F.S., was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees that are reasonable in relation to the work performed in responding to the pleading, motion, or other paper.

Identity Theft & Children

A recent study by AllClear ID, based on 27,000 American children, found that more than 10% of children are victims of identity theft, mostly among children ages 5 and younger.[9] While the current statutory security freeze process is commonly used by adults, it is often not able to be utilized by minor consumers and consumers who are represented by a guardian or other advocate. Unlike the average adult, most minors and consumers represented by a guardian or other advocate do not have existing credit files. While parents typically apply for a Social Security number for their child shortly after birth, credit bureaus do not create credit files until an individual uses his or her Social Security number to apply for credit for the first time. When a credit file is created for a first-time credit applicant, the credit bureaus will verify the Social Security number, but not the name and date of birth assigned to it when issued. An identity thief will typically apply for credit with a child's Social Security number, but with a different name and date of birth. As a result, the identity theft may go undetected for years.[10] In addition, even when parents do detect that their child's identity has been compromised, consumer reporting agencies generally do not administer security freezes for consumers who do not have existing credit files. As a spokesman for TransUnion and Equifax explained, a security freeze "applies to a credit file, not a social security number."[11]

In addition, s. 817.568, F.S., addresses criminal use of personal identification and includes a provision specifically addressing minors:

> (6) Any person who willfully and without authorization fraudulently uses personal identification information concerning an individual who is less than 18 years of age without first obtaining the consent of that individual or of his or her legal guardian commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.
>
> (7) Any person who is in the relationship of parent or legal guardian, or who otherwise exercises custodial authority over an individual who is less than 18 years of age, who willfully and fraudulently uses personal identification information of that individual commits a felony of the second-degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Effect of Proposed Changes

The bill creates s. 501.0051, F.S., as the "Keeping I.D. Safe (KIDS) Act" to authorize a representative of a minor consumer younger than sixteen years of age, or a guardian or other advocate of a consumer pursuant to chs. 39, 393, 744, or 914, F.S.,[12] to place a security freeze on that consumer's credit report. The bill also directs credit reporting agencies to create a credit record for the protected consumer in the event that the consumer does not yet have a credit report file. The security freeze prohibits consumer reporting agencies from releasing the consumer report or record or any information contained within the

[9] AllClear ID Alert Network, Child Identity Theft: Report 2012, available on https://www.allclearid.com/child/child-id-theft-statistics-2012 (last accessed December 10, 2013).
[10] *Id.*
[11] http://bucks.blogs.nytimes.com/2011/09/21/why-its-not-easy-to-freeze-your-childs-credit-file/ (Last accessed on December 10, 2013).
[12] Chapter 39, F.S., relates to proceedings relating to children; ch. 393, F.S., relates to developmental disabilities; ch. 744, F.S., relates to guardianships; and ch. 914, F.S., relates to witnesses and criminal proceedings, including guardian ad litems.

report or record without the authorized consent of the protected consumer's representative, except in certain specific circumstances.

Definitions

The bill defines the terms: "consumer reporting," "consumer reporting agency," "protected consumer," "record," "representative," "security freeze," sufficient proof of authority," and "sufficient proof of identification." Except as noted below, the following definitions are identical to the current definitions in s. 501.005, F.S.

- "Consumer report" has the same meaning as provided in 15 U.S.C. 1681a(d), which is defined as any written, oral or other communication by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing a consumer's eligibility for credit or insurance, employment, or any other purpose authorized under 15 U.S.C. 1681(b).
- "Consumer reporting agency" has the same meaning as provided in 15 U.S.C. 1681a(f), which is defined as any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- "Protected consumer" is defined as a person less than sixteen years of age at the time a security freeze request is made, or a person represented by a guardian or other advocate pursuant to chs. 39, 393, 744, or 914, F.S.
- "Record" is defined as a compilation of information that 1) identifies a protected consumer, and 2) is created by a consumer reporting agency for the purpose of complying with requirements set forth in the bill.
- "Representative" is defined as the parent or legal guardian of a protected consumer, including a guardian ad litem.
- "Security freeze" is defined as a notice placed on either 1) the protected consumer's consumer report, which prohibits a consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the representative, or 2) the protected consumer's record, which prohibits the consumer reporting agency from releasing the protected consumer's record, in the event that a consumer reporting agency does not have an existing consumer report pertaining to the protected consumer.
- "Sufficient proof of authority" is defined as documentation that shows that a representative has authority to act on behalf of a protected consumer, such as a court order, valid power of attorney, or a written notarized statement signed by a representative that expressly describes the authority of the representative to act on behalf of the protected consumer, or for proof of authority for a representative who is a parent, a certified or official copy of a birth certificate of the protected consumer.
- "Sufficient proof of identification" is defined as documentation that identifies a protected consumer or a representative of a protected consumer, such as a social security card, a certified or official copy of a birth certificate, a copy of a valid driver license, or government-issued photo identification.

Creating a Security Freeze

The bill provides the procedure to be used in the event that a representative, guardian or other advocate wants to place a security freeze on a protected consumer's consumer report or record. Specifically, to place a security freeze on a consumer report or record, the representative must:

- Submit a request to the consumer reporting agency in the manner prescribed by that agency;

- Provide the agency with sufficient proof of authority and identification; and
- Pay the agency a fee.

If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when it receives the security freeze request, the agency must create a record for the protected consumer and place a security freeze on that newly-created record. The record may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or eligibility for other financial services.

The security freeze must be placed within thirty days after the consumer reporting agency confirms the authenticity of the security freeze request.

Moreover, within ten business days of the consumer reporting agency placing the security freeze, it is required to send the representative written confirmation of the implementation of the security freeze. It must also provide the representative with a unique personal identifier and instructions for removing the security freeze.

Effects on Credit Score, Credit History, and Credit Rating

The bill provides that a consumer reporting agency may not state or otherwise imply that a security freeze reflects a negative credit score, history, or rating.

Removing a Security Freeze

The bill also provides procedures to be used in the event that a representative wants to remove the security freeze. A consumer reporting agency may only remove a security freeze:

- Upon request of a representative;
- Upon request of a protected consumer; or
- If the security freeze was instituted due to a material misrepresentation of fact; however, the consumer reporting agency must first notify the representative and protected consumer in writing before removing the security freeze.

If the removal of a security freeze is requested by the representative, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification and authority;
- The unique personal identifier; and
- Payment of a fee.

If the removal of a security freeze is requested by the protected consumer, he or she must provide the consumer reporting agency with the following:

- Sufficient proof of identification; and
- Documentation that the authority for the protected consumer's representative to act on behalf of the protected consumer is no longer valid.
- Payment of a fee.

The security freeze must be removed within thirty days after receiving the request for removal.[13]

[13] Unlike the bill, s. 501.005(6), F.S., allows for temporary lifts of a security freeze and requires consumer reporting agencies to remove a security freeze within *3 business days* of receiving a written request for a temporary lift.

Exemptions from Section

The bill provides that the provisions of s. 501.0051, F.S., do not apply to the use of consumer credit information by:

- A state agency acting within its lawful investigative or regulatory authority;
- A state or local law enforcement agency investigating a crime or conducting a criminal background check;
- Any person administering a credit file monitoring subscription, to which the protected consumer or representative, on behalf of the protected consumer, has subscribed;
- Any person, for the purpose of providing the protected consumer's consumer report upon the consumer's or representative's request;
- Any person with a court order for the release of consumer credit information;
- An insurance company, for the purpose of settling or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;
- A consumer reporting agency's database or file which consists entirely of information concerning, and is used exclusively for: 1) criminal record information, 2) personal loss history information, 3) fraud prevention or detection, 4) tenant screening, 5) employment screening, 6) personal insurance policy information, or 7) noncredit information used for insurance purposes;
- A check services company that issues authorizations, for the purpose of approving or processing checks, electronic funds transfers, or similar methods of payment;
- A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or other negative information regarding a protected consumer to an inquiring financial institution, for limited purposes;
- A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple agencies, and that does not maintain a permanent database of credit information from which new reports are produced;
- A fraud prevention services company issuing reports to prevent or investigate fraud; or
- A person or entity, its affiliates, or a collection agency acting on behalf of the person or entity and with which the protected consumer has an existing account, requesting information on the protected consumer's consumer report for the purposes of reviewing or collecting the account.

Fees

The bill authorizes consumer reporting agencies to charge a representative who elects to place or remove a security freeze a "reasonable fee," which may not exceed ten dollars. The bill also authorizes consumer reporting agencies to charge a protected consumer who elects to remove a security freeze a "reasonable fee," which may not exceed ten dollars.

Additionally, consumer reporting agencies are granted the ability to charge a representative a "reasonable fee," not to exceed ten dollars, to be imposed if the representative fails to retain the original personal identifier granted when the security freeze was placed, and the agency has to reissue that original personal identifier.

However, the bill does not allow for a consumer reporting agency to charge the representative any fee if the representative submits, at the time the security freeze is requested, a copy of an investigative report, incident report, or other complaint with a law enforcement agency indicating the protected consumer is a victim of identity theft.

Changes to a Protected Consumer's Consumer Record

If a security freeze is in effect, the bill requires a consumer reporting agency to send written confirmation to a protected consumer's representative of a change to the protected consumer's name, address, date of birth, or social security number in his or her consumer record, within thirty days after the change is posted to the consumer record.

However, written confirmation is not required to be made regarding technical corrections of a protected consumer's information. Technical corrections include name and street abbreviations, complete spellings, or transposition of numbers or letters.

In the case of an address change, the written confirmation must be sent to the representative and to the protected consumer's new and former addresses.

Violations of the Security Freeze

In the event that a consumer reporting agency violates the security freeze by releasing credit information without proper authorization, the bill provides that the consumer reporting agency is required to notify the representative, in writing, within five business days after discovering or being notified of the release of information.

Moreover, the bill provides for fines and damages, in certain circumstances. Specifically:

- A credit reporting agency that willfully fails to comply with the security freeze provisions is subject to a $500 administrative fine, issued pursuant to ch. 120, F.S., by the Department of Agriculture and Consumer Services.
- Anyone who obtains a record or report under false pretenses, or knowingly without a permissible purpose, is liable to: 1) the representative and the protected consumer for the greater of $1,000 or the actual damages sustained by the protected consumer as a result of the failure, and 2) the consumer reporting agency for actual damages or $1,000, whichever is greater.

Written Summary of Rights

The bill requires consumer reporting agencies to provide consumers with written summary of rights, including the right to sue under the new statute. Additionally, the bill amends the terms of the summary of rights to include that a representative has a right to place a security freeze on the consumer report of person that he or she is legally authorized to care for, pursuant to the provisions in s. 501.0051, F.S. Moreover, the summary of rights must indicate that if no consumer report exists for the protected consumer, that the representative has a right to request that a record be created and that a security freeze be placed on that consumer record.

B. SECTION DIRECTORY:

Section 1: identifies the bill as the "Keeping I.D. Safe (KIDS) Act."

Section 2: creates s. 501.0051, F.S., to provide definitions, procedures, requirements, exemptions, enforcement and damages, and limitations regarding security freezes on a protected consumer's credit record; creates written disclosure requirements for consumer reporting agencies pertaining to consumer rights associated with a security freeze, and includes a disclaimer involving protected consumer security freezes.

Section 3: provides an effective date of September 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. The Department of Agriculture and Consumer Services anticipates using existing resources to investigate alleged violations of the provisions of this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will expand consumer protections to individuals under the age of sixteen and certain protected adults and minors as set forth in chs. 39, 393, 744, or 914, F.S., and will help protect these specific groups from identity theft and fraudulent credit use.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 9, 2014, the Business & Professional Regulation Subcommittee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute.

The proposed committee substitute made the following changes to the filed version of the bill:

- Identified the act as the "Keeping I.D. Safe (KIDS) Act";

- Removed the word "custodial" from the definition of "representative";
- Added a certified or official copy of a birth certificate of the protected consumer to the definition of "sufficient proof of authority" for a representative who is a parent of the protected consumer;
- Removed language that allowed a consumer report to be created after a security freeze was initiated;
- Removed language requiring a consumer reporting agency to provide a copy of a protected consumer's consumer report to the protected consumer or representative and the ability to charge a fee for the copy. Further removes language detailing what a representative or a protected consumer needed to submit in order to get the copy of the report;
- Clarified that when a protected consumer requests to remove a security freeze, he or she must pay a fee not to exceed $10 to the consumer reporting agency;
- Added clarifying language indicating that a consumer reporting agency shall notify the representative and protected consumer in writing before removing a security freeze that was instituted due to a material misrepresentation of fact;
- Removed the word "custodial" from the term "custodial parent" in the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the act; and
- Clarified the notice that must be provided to representatives regarding their right to pursue civil remedies for violations of the act.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to the security of a protected consumer's information; providing a short title; creating s. 501.0051, F.S.; providing definitions; authorizing the representative of a protected consumer to place a security freeze on a protected consumer's consumer report or record; specifying the procedure to request a security freeze; requiring a consumer reporting agency to establish a record if the protected consumer does not have an existing consumer report; prohibiting the use of a consumer record for certain purposes; requiring a consumer reporting agency to place, and to provide written confirmation of, a security freeze within a specified period; prohibiting a consumer reporting agency from stating or implying that a security freeze reflects a negative credit history or rating; requiring a consumer reporting agency to remove a security freeze under specified conditions; specifying the procedure to remove a security freeze; providing applicability; authorizing a consumer reporting agency to charge a fee for placing or removing a security freeze and for reissuing a unique personal identifier; prohibiting a fee under certain circumstances; requiring written notification upon the change of specified information in a protected consumer's consumer report or record;

providing exceptions; requiring a consumer reporting agency to notify a representative and provide specified information if the consumer reporting agency violates a security freeze; providing penalties and civil remedies; providing written disclosure requirements for consumer reporting agencies relating to a protected consumer's security freeze; providing an effective date.

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

Section 1. This act may be cited as the "Keeping I.D. Safe (KIDS) Act."

Section 2. Section 501.0051, Florida Statutes, is created to read:

501.0051 Protected consumer report security freeze.—

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

(a) "Consumer report" has the same meaning as provided in 15 U.S.C. s. 1681a(d).

(b) "Consumer reporting agency" has the same meaning as provided in 15 U.S.C. s. 1681a(f).

(c) "Protected consumer" means a person younger than 16 years of age at the time a security freeze request is made or a person represented by a guardian or other advocate pursuant to chapter 39, chapter 393, chapter 744, or chapter 914.

(d) "Record" means a compilation of information that:

1. Identifies a protected consumer; and

2. Is created by a consumer reporting agency exclusively for the purpose of complying with this section.

(e) "Representative" means the parent or legal guardian of a protected consumer, including a guardian appointed pursuant to s. 914.17.

(f) "Security freeze" means:

1. A notice placed on a protected consumer's consumer report which prohibits a consumer reporting agency from releasing the consumer report, the credit score, or any information contained within the consumer report to a third party without the express authorization of the representative; or

2. If a consumer reporting agency does not have a consumer report pertaining to the protected consumer, a notice placed on the protected consumer's record which prohibits the consumer reporting agency from releasing the protected consumer's record except as provided in this section.

(g) "Sufficient proof of authority" means documentation showing that a representative has authority to act on behalf of a protected consumer. The term includes, but is not limited to, a court order, a copy of a valid power of attorney, or a written notarized statement signed by a representative which expressly describes the authority of the representative to act on behalf of the protected consumer. For proof of authority for a representative who is a parent, the term also includes, but is

not limited to, a certified or official copy of a birth certificate of the protected consumer.

(h) "Sufficient proof of identification" means documentation identifying a protected consumer or a representative of a protected consumer. The term includes, but is not limited to, a copy of a social security card, a certified or official copy of a birth certificate, a copy of a valid driver license, or a copy of a government-issued photo identification.

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

(a) Submitting a request to a consumer reporting agency in the manner prescribed by that agency;

(b) Providing the agency with sufficient proof of authority and sufficient proof of identification of the representative; and

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

(3) If a consumer reporting agency does not have a consumer report pertaining to a protected consumer when the consumer reporting agency receives a request for a security freeze under subsection (2), the consumer reporting agency shall create a record for the protected consumer and place a security freeze on the record. A record may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation,

personal characteristics, or eligibility for other financial services.

(4) A consumer reporting agency shall place a security freeze on a consumer report or record within 30 days after confirming the authenticity of a security freeze request made in accordance with this section.

(5) The consumer reporting agency shall send a written confirmation of the security freeze to the representative within 10 business days after instituting the security freeze on the consumer report or record and shall provide the representative with instructions for removing the security freeze and a unique personal identifier to be used by the representative when providing authorization for removal of the security freeze.

(6) A consumer reporting agency may not state or imply to any person that a security freeze reflects a negative credit score, a negative credit history, or a negative credit rating.

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

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

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

a. Sufficient proof of identification of the

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

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

c. A fee as authorized under this section.

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

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

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

c. A fee as authorized under this section.

(b) If the security freeze was instituted due to a material misrepresentation of fact. A consumer reporting agency that intends to remove a security freeze under this paragraph shall notify the representative and protected consumer in writing before removing the security freeze.

(8) This section does not apply to the use of a protected consumer's consumer report or record by the following persons or for the following reasons:

(a) A state agency acting within its lawful investigative or regulatory authority.

(b) A state or local law enforcement agency investigating a crime or conducting a criminal background check.

(c) A person administering a credit file monitoring

subscription service to which the protected consumer or the representative, on behalf of the protected consumer, has subscribed.

(d) A person providing the protected consumer's consumer report or record to the protected consumer or the representative upon the request of the protected consumer or representative.

(e) Pursuant to a court order lawfully entered.

(f) An insurance company for use in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

(g) A consumer reporting agency's database or file that consists entirely of information concerning, and used exclusively for, one or more of the following:

1. Criminal record information.

2. Personal loss history information.

3. Fraud prevention or detection.

4. Tenant screening.

5. Employment screening.

6. Personal insurance policy information.

7. Noncredit information used for insurance purposes.

(h) A check services company issuing authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment.

(i) A deposit account information service company issuing reports regarding account closures due to fraud, substantial overdrafts, automatic teller machine abuse, or similar negative information regarding a protected consumer to an inquiring

financial institution, as defined in s. 655.005 or in federal law, for use only in reviewing a representative's request for a deposit account for the protected consumer at the inquiring financial institution.

(j) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies and that does not maintain a permanent database of credit information from which new consumer reports are produced. However, such consumer reporting agency shall honor any security freeze placed or removed by another consumer reporting agency.

(k) A fraud prevention services company issuing reports to prevent or investigate fraud.

(l) A person or entity, or its affiliates, or a collection agency acting on behalf of the person or entity and with which the protected consumer has an existing account, requesting information in the protected consumer's consumer report or record for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

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

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

the original unique personal identifier provided by the consumer reporting agency and the agency must reissue the unique personal identifier or provide a new unique personal identifier to the representative.

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

(10) If a security freeze is in effect, a consumer reporting agency must send written confirmation to a protected consumer's representative of a change to any of the following official information in the protected consumer's consumer report or record within 30 days after the change is posted:

(a) The protected consumer's name.

(b) The protected consumer's address.

(c) The protected consumer's date of birth.

(d) The protected consumer's social security number.

Written confirmation is not required for technical corrections of a protected consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation must be sent to the representative and to

the protected consumer's new address and former address.

(11) If a consumer reporting agency violates a security freeze placed in accordance with this section by releasing information subject to a security freeze without proper authorization, the consumer reporting agency shall, within 5 business days after discovering or being notified of the release of information, notify the representative of the protected consumer in writing. The notice shall state the specific information released and provide the name, address, and other contact information of the recipient of the information.

(12) A consumer reporting agency that willfully fails to comply with any requirement imposed under this section is subject to an administrative fine in the amount of $500, imposed by the Department of Agriculture and Consumer Services pursuant to the administrative procedures established in chapter 120.

(13) In addition to any other penalties or remedies provided under law, the following persons who are aggrieved by a violation of this section may bring a civil action as follows:

(a) A person who obtains a protected consumer's consumer report or record from a consumer reporting agency under false pretenses or who knowingly obtains a protected consumer's consumer report or record without a permissible purpose is liable to the representative and protected consumer for actual damages sustained by the protected consumer or $1,000, whichever is greater.

(b) A person who obtains a protected consumer's consumer

report or record from a consumer reporting agency under false pretenses or who knowingly obtains a protected consumer's consumer report or record without a permissible purpose is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

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

(a) If you are the parent or legal guardian of a minor younger than 16 years of age or a guardian or advocate of an incapacitated, disabled, or protected person under chapter 39, chapter 393, chapter 744, or chapter 914, Florida Statutes, you have the right to place a security freeze on the consumer report of the person you are legally authorized to care for. If no consumer report exists, you have the right to request that a record be created and a security freeze be placed on the record.

A record with a security freeze is intended to prevent the opening of credit accounts until the security freeze is removed.

(b) YOU SHOULD BE AWARE THAT USING A SECURITY FREEZE TO CONTROL ACCESS TO THE PERSONAL AND FINANCIAL INFORMATION IN A CONSUMER REPORT OR RECORD MAY DELAY, INTERFERE WITH, OR PROHIBIT THE TIMELY APPROVAL OF ANY SUBSEQUENT REQUEST OR APPLICATION REGARDING A NEW LOAN, CREDIT, MORTGAGE, INSURANCE, GOVERNMENT SERVICES OR PAYMENTS, RENTAL HOUSING, EMPLOYMENT, INVESTMENT, LICENSE, CELLULAR PHONE, UTILITIES, DIGITAL SIGNATURE, INTERNET CREDIT CARD TRANSACTION, OR OTHER SERVICES, INCLUDING AN EXTENSION OF CREDIT AT POINT OF SALE.

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

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

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

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

4. Payment of a fee.

(d) A consumer reporting agency must, within 30 days after receiving the above information, authorize the removal of the security freeze.

(e) A security freeze does not apply to a person or entity, or its affiliates, or a collection agency acting on

behalf of the person or entity and with which the protected consumer has an existing account, which requests information in the protected consumer's consumer report or record for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

(f) You have the right to bring a civil action as authorized by section 501.0051, Florida Statutes, which governs the security of protected consumer information.

Section 3. This act shall take effect September 1, 2014.

REGULATORY AFFAIRS COMMITTEE
CS/HB 151 by Rep. Fitzenhagen
Security of a Protected Consumer's Information

AMENDMENT SUMMARY
March 6, 2014

Amendment 1 by Rep. Fitzenhagen (lines 245-249): Clarifies that the Department of Agriculture and Consumer Services shall investigate complaints received concerning violations of this section and, if a violation is found, bring an action to impose an administrative penalty. Includes a corresponding amendment to the title.

Amendment 2 by Rep. Fitzenhagen (lines 251): Clarifies language related to the process for bringing a civil action by persons who are aggrieved by a violation.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 151 (2014)

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 Fitzenhagen offered the following:

Amendment (with title amendment)

Remove lines 245-249 and insert:

(12) The Department of Agriculture and Consumer Services shall investigate any complaints received concerning violations of this section. If, after investigating any complaint, the department finds that there has been a violation of this section, the department may bring an action to impose an administrative penalty. A consumer reporting agency that willfully fails to comply with any requirement imposed under this section is subject to an administrative penalty in the amount of $500 for each violation, imposed by the department. An administrative proceeding that could result in the entry of an order imposing an administrative penalty must be conducted in

accordance with chapter 120. The administrative penalty shall be deposited in the General Inspection Trust Fund.

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

Remove lines 30-31 and insert:

violates a security freeze; requiring the Department of Agriculture and Consumer Services to investigate complaints regarding the violation of a security freeze; providing penalties and civil remedies for the violation of a security freeze; providing written disclosure

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 151 (2014)

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 Fitzenhagen offered the following:

Amendment

Remove line 251 and insert:

provided under law, persons who are aggrieved by a

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 255 Discriminatory Insurance Practices
SPONSOR(S): Civil Justice Subcommittee; Insurance & Banking Subcommittee; Gaetz and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 424

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 1 N, As CS	Salzverg	Cooper
2) Civil Justice Subcommittee	8 Y, 2 N, As CS	Bond	Bond
3) Regulatory Affairs Committee		Salzverg	Hamon

SUMMARY ANALYSIS

Current insurance law prohibits certain unfair insurance trade practices, such as misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices, and authorizes the state Office of Insurance Regulation with the authority to enforce the prohibition.

Additionally, an insurer may not deny coverage, increase any premium, or otherwise discriminate against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This prohibition is not tied to the unfair trade practice provisions in the insurance law and thus lacks specific administrative enforcement authority for the Office of Insurance Regulation.

This bill amends the insurance laws to specify that it is an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to discriminate against an applicant or insured because of the lawful ownership of firearms or ammunition. However, an insurance company may charge a supplemental premium should the value of the firearms exceed the standard policy coverage.

This bill also prohibits an insurance company from disclosing an insured's or applicant's ownership or possession of a firearm or ammunition to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim. Disclosure from the company to the agent is authorized where necessary for the purpose of excess coverage.

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

The bill takes effect July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Firearm Ownership and Possession, Generally

Current law at s. 790.338(7), F.S., prohibits an insurer from denying coverage, increasing any premium, or otherwise discriminating against any insured or applicant on the basis of the lawful ownership or possession of a firearm or ammunition. This provision does not prevent an insurer from considering the fair market value of firearms or ammunition in the setting of premiums for scheduled personal property coverage.[1] Although unrelated parts of the bill creating subsection (7) were struck down in a legal challenge, the subsection relating to firearms still remains valid law today.[2] An issue with the current law is that it seemingly lacks specific administrative enforcement authority to take action against any insurers which violate the proscribed behavior. However, the law appears enforceable in a civil action by an insured or an applicant against an insurance company that violates the prohibition.

Regulation of Insurance Companies by the State

Currently, the Office of Insurance Regulation (OIR) is tasked with enforcement of Florida laws relating to the operation of insurance companies, including rate-setting proposed by insurers.[3] Additionally, OIR in reviewing rate filings must make sure insurers do not practice unfair methods of competition or unfair or deceptive acts as outlined by current law.[4] Such unfair practices include, but are not limited to: misrepresentations and false advertising, false statements, unlawful rebates, or unfair discriminatory practices.

Current law specifically prohibits insurers from knowingly making or permitting unfair discrimination between individuals of the same actuarially supportable class when setting a rate for an insurance policy. For example, insurers may not take into account an insured's or applicant's past claim for abuse or any actions taken for treatment of abuse when underwriting, issuing, reissuing, or terminating a policy or paying a claim.[5]

OIR encounters discriminatory practices in the following ways:[6]

- In proposed rate filings, which OIR will not approve if the rate reflects unfair discrimination in the setting of the rate or issuance of the policy.
- When a complaint is made to OIR via the Division of Consumer Services of the Department of Financial Services. The alleged discriminatory practice is examined by the Bureau of Market Investigations within OIR and corrective action may be pursued.
- From constituent calls to public officials and offices, which are passed along to OIR. In turn, these concerns are referred to the Bureau of Market Investigations.

For personal lines property or personal lines automobile insurance, insurers will provide coverage for liability and for property loss. Inquiring into whether an insured party or applicant lawfully owns or

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[1] Section 790.338(7), F.S., as created by HB 155, ch. 2011-112, Laws of Florida.
[2] *Wollschlaeger v. Farmer*, 880 F.Supp.2d 1251 (S.D. Fla., 2012).
[3] Section 627.062, F.S.
[4] Section 626.9541, F.S.
[5] Section 626.9541(1)(g)(1), F.S.
[6] Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

possesses a firearm or ammunition is not common practice within the insurance industry in Florida when determining liability coverage in setting rates.[7] Insurers generally provide property loss coverage for firearms in two ways. Firearms and ammunition may be covered as a part of the standard policy or as a "rider." A rider covers specific property loss in excess of the coverage amount found in usual insurance policies. Disclosure of the insured or applicant's firearms is necessary to catalog the property being covered by the rider. Often this information is shared with parties within the insurance company structure when issuing and servicing a policy, such as: independent adjusters, insurance agents, managing general agents, and customer service representatives, which could be labeled as third party or affiliated entities.[8]

Effect of the Bill

This bill amends s. 626.9541, F.S., to make it an unfair discriminatory practice for a personal lines property or personal lines automobile insurer to refuse to issue, reissue, or renew a policy, to cancel or otherwise terminate a policy, or to charge a discriminatory rate based on an insured's or applicant's or such person's household member's lawful use, possession, or ownership of a firearm or ammunition.

The bill does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm, ammunition, or a firearm collection whose value exceeds the standard policy coverage.

The bill also prohibits a personal lies property or personal lines automobile insurer from disclosing an insured's or applicant's or such person's household member's ownership or possession of a firearm or ammunition to a third party or affiliated entity unless the insurer discloses to the insured or applicant a specific need to disclose the information and the insured or applicant expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

One effect of the bill is to provide a specific enforcement mechanism pertaining to insurance practices and disclosure of firearms or ammunition, while still allowing insurers to offer property loss coverage of firearms and ammunition through the use of a rider. Additionally, the bill does not prevent the sharing of gun or ammunition ownership information by insurers for purposes of underwriting and issuing a policy containing a rider. By amending the unfair discriminatory practices section of the Florida Statutes, the Office of Insurance Regulation will be able to absorb enforcement of these new provisions into their current regulatory scheme.

B. SECTION DIRECTORY:

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

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[7] Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

[8] According to representatives of the Florida insurance industry, as provided to the staff of the Insurance & Banking Subcommittee on January 20, 2014.

2. Expenditures:

   This bill does not appear to have any impact on state expenditures. The OIR has stated that enforcement of this bill would be absorbed into their current operations, with only minimal, if any additional workload.[9]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers: The bill should not have a substantial economic impact on Florida policyholders. Any consumers that were denied coverage or their coverage was cancelled in the past because of their lawful possession of a firearm or ammunition will now be able to acquire personal lines of property and automobile insurance without their lawful ownership of a firearm or ammunition being unfairly taken into account in the setting of the rate. Additionally, Florida policyholders who were charged a higher rate for their policies because of their lawful ownership of a firearm or ammunition may see a reduction in their policy premiums, reflecting the insurers' inability to charge a higher rate because of a firearm or ammunition. The bill does not impede an individual's ability to obtain a rider with their insurance policy for property loss coverage of a firearm.

Insurance Providers: This bill should have little, if any, impact on the information insurers request when issuing, reissuing, or canceling a policy. Only one insurance company in Florida is known to have inquired whether a specific type of firearm (assault rifles) was owned by the applicant before issuing them a policy.[10] Consequently, since such information is not used in determining liability, restricting the disclosure of such information should not pose a problem to insurers. Additionally, the bill does not impede an insurer's ability to offer a rider for property loss coverage of firearms or ammunition.

This bill may have an indeterminate amount of administrative costs on insurers in revising their notice and disclosure practices to comply with the bill. However, insurers may be able to reduce those costs by not having to obtain specific consent from the applicant or insured to share information regarding ownership or possession of firearms or ammunition, if such disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim.

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 or funds; reduce the authority that counties or municipalities have

[9] Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

[10] Information obtained from the Office of Insurance Regulation, January 15, 2014. On file with the Insurance & Banking Subcommittee staff.

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:

The bill uses the limiting terms "personal lines property" insurer and "personal lines automobile insurer" in describing the types of insurance products to which this newly created law applies. While there is no statutory definition or description of the terms "personal lines," "personal lines property insurer," or "personal lines automobile insurer" in the bill or current statute, the terms are apparently commonly used by persons in the insurance industry.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the Insurance & Banking Subcommittee met and passed HB 255 with a strike all amendment. This amendment included the same or similar provisions that were in the bill relating to rates and disclosure regarding firearms. It also clarified that an insurer is not prevented from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure firearms. It also allowed disclosure of firearm ownership when necessary to quote or bind coverage, continue coverage, or adjust a claim. Finally, for the purposes of providing insurance coverage, it did not prevent the sharing of information between an insurance company and its agent when separate riders have been requested by a policyholder or applicant.

On February 19, 2014, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The bill prohibits discrimination related to the ownership or possession of a firearm, the amendment added ammunition. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to discriminatory insurance practices; amending s. 626.9541, F.S.; providing that unfair discrimination on the basis of firearm or ammunition ownership in the provision of personal lines property or personal lines automobile insurance is a discriminatory insurance practice; clarifying that insurers are not prevented from charging supplemental premiums or sharing information between an insurer and its agent if a separate rider has been requested; providing an effective date.

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

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

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

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

(g) Unfair discrimination.—

1. Knowingly making or permitting ~~any~~ unfair discrimination between individuals of the same actuarially supportable class and equal expectation of life, in the rates charged for a ~~any~~ life insurance or annuity contract, in the

dividends or other benefits payable thereon, or in any other term or condition ~~of the terms and conditions~~ of such contract.

2. Knowingly making or permitting ~~any~~ unfair discrimination between individuals of the same actuarially supportable class, as determined at the ~~original~~ time of initial issuance of the coverage, and essentially the same hazard, in the amount of premium, policy fees, or rates charged for a ~~any~~ policy or contract of accident, disability, or health insurance, in the benefits payable thereunder, in ~~any of~~ the terms or conditions of such contract, or in any other manner ~~whatever~~.

3. For a health insurer, life insurer, disability insurer, property and casualty insurer, automobile insurer, or managed care provider to underwrite a policy, or refuse to issue, reissue, or renew a policy, refuse to pay a claim, cancel or otherwise terminate a policy, or increase rates based upon the fact that an insured or applicant who is also the proposed insured has made a claim or sought or should have sought medical or psychological treatment in the past for abuse, protection from abuse, or shelter from abuse, or that a claim was caused in the past by, or might occur as a result of, any future assault, battery, or sexual assault by a family or household member upon another family or household member as defined in s. 741.28. A health insurer, life insurer, disability insurer, or managed care provider may refuse to underwrite, issue, or renew a policy based on the applicant's medical condition, but may ~~shall~~ not consider whether such condition was caused by an act of abuse.

For purposes of this section, the term "abuse" means the occurrence of one or more of the following acts:

a. Attempting or committing assault, battery, sexual assault, or sexual battery;

b. Placing another in fear of imminent serious bodily injury by physical menace;

c. False imprisonment;

d. Physically or sexually abusing a minor child; or

e. An act of domestic violence as defined in s. 741.28.

This subparagraph does not prohibit a property and casualty insurer or an automobile insurer from excluding coverage for intentional acts by the insured if such exclusion is ~~does~~ not ~~constitute~~ an act of unfair discrimination as defined in this paragraph.

4. For a personal lines property or personal lines automobile insurer to:

a. Refuse to issue, reissue, or renew a policy; cancel or otherwise terminate a policy; or charge an unfairly discriminatory rate in this state based on the lawful use, possession, or ownership of a firearm or ammunition by the insurance applicant, insured, or a household member of the applicant or insured. This sub-subparagraph does not prevent an insurer from charging a supplemental premium that is not unfairly discriminatory for a separate rider voluntarily requested by the insurance applicant to insure a firearm or a

firearm collection whose value exceeds the standard policy coverage.

b. Disclose the lawful ownership or possession of firearms of an insurance applicant, insured, or household member of the applicant or insured to a third party or an affiliated entity of the insurer unless the insurer discloses to the applicant or insured the specific need to disclose the information, and the applicant or insured expressly consents to the disclosure, or the disclosure is necessary to quote or bind coverage, continue coverage, or adjust a claim. For purposes of underwriting and issuing insurance coverage, this sub-subparagraph does not prevent the sharing of information between an insurance company and its licensed insurance agent if a separate rider has been voluntarily requested by the policyholder or prospective policyholder to insure a firearm or a firearm collection whose value exceeds the standard policy coverage.

Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 271 Workers' Compensation
SPONSOR(S): Government Operations Appropriations Subcommittee; Cummings and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 444

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

SUMMARY ANALYSIS

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of determining non-compliance. SWOs require the employer to cease all business operations. Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. SWOs remain in effect until the employer secures appropriate coverage and the DFS issues (1) an order releasing the SWO (for employers that have paid the assessed penalty) or (2) an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS).

The bill amends provisions related to SWOs and associated penalties as follows:

- Increases from 5 to 10 business days after receipt of a written request from the DFS the time within which an employer must produce requested business records or be subject to an SWO.
- Authorizes the DFS to issue an order of conditional release from an SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment on the assessed penalty *and* agrees to pay the remainder of the penalty pursuant to a payment agreement schedule or to pay the remaining penalty in full.
- Credits the initial payment of premium made by the employer to secure coverage against the assessed penalty for employers that have not previously been issued an SWO. Provides for assessment of the $1,000 penalty even when the calculated penalty after the credit is applied is less than $1,000.
- Reduces the look-back period for failure to comply with coverage requirements from 3 to 2 years and increases the penalty multiplier from 1.5 to 2 times the amount of unpaid premiums.

Generally, workers' compensation benefits are payable at 66 2/3 percent of the employee's average weekly wage (AWW) up to the maximum weekly benefit for the year of injury. To address a court decision concerning the proper calculation of the compensation rate, the bill allows such benefits to be paid at either 66 2/3 or 66.67 percent of the employee's AWW.

The bill changes the methodology for calculating the Workers' Compensation Special Disability Trust Fund (SDTF) assessment. It requires the DFS to calculate the assessment based upon the net premiums written by carriers, the amount of premiums calculated by the DFS for self-insured employers, and the anticipated fund balance and expenses of the SDTF. The bill also reduces the statutory rate cap on the SDTF from 4.52 to 2.5 percent.

The DFS indicates that the bill has a negligible, yet indeterminate fiscal impact on revenues deposited into the Workers' Compensation Administration Trust Fund. The changes to the penalty calculation formula will likely result in increased fines in some cases and decreased fines in other cases. Allowing certain benefits to be paid at either 66 2/3 or 66.67 percent of the employee's AWW will have a minimal fiscal impact. The DFS indicates that revising the SDTF assessment calculations and rate cap will allow the Division of Workers' Compensation to draw down the fund balance of the SDTF and pay approved reimbursement requests that are awaiting payment, without increasing the SDTF assessment rate for Calendar Year 2015. The change in the SDTF assessment calculations and rate cap will eliminate the generation of excess revenue (of approximately $2.2 million) that would otherwise be deposited into the SDTF, which is not needed for the payment of claims.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Whether an employer is required to have workers' compensation insurance depends upon the employer's industry (construction, non-construction, or agricultural) and the number of employees. Construction industry employers with 1 or more employees are required to have workers' compensation insurance.[1] Non-construction industry employers with 4 or more employees are required to have workers' compensation insurance. Agricultural employers with more than 5 regular employees and 12 or more employees at one time for seasonal agricultural labor who work more than 30 days are required to have workers' compensation insurance.[2]

Failure to Comply with Coverage Requirements[3]

If an employer fails to comply with workers' compensation coverage requirements, the Department of Financial Services (DFS) must issue a stop-work order (SWO) within 72 hours of determining non-compliance. SWOs, which require the employer to cease all business operations, remain in effect until the employer secures appropriate coverage and the DFS issues (1) an order releasing the SWO (for employers that have paid the assessed penalty) or (2) an order of conditional release (for employers that have agreed to pay the penalty in installments pursuant to a payment agreement schedule with the DFS). Additionally, employers are assessed a penalty equal to 1.5 times what the employer would have paid in workers' compensation premiums for all periods of non-compliance during the preceding 3-year period or $1,000, whichever is greater. Thus, for penalty calculation purposes, the employer must provide 3 years of payroll records. The DFS informs that employers are often unable to quickly provide all records required to calculate the penalty. Until the DFS has calculated the penalty, the SWO remains in effect and the employer cannot conduct business.

SWOs are issued for the following violations: failure to obtain workers' compensation insurance that meets the requirements of Chapter 440, F.S.; materially understating or concealing payroll; materially misrepresenting or concealing employee duties to avoid paying the proper premium; materially misrepresenting or concealing information pertinent to the calculation of an experience modification factor; and failure to produce business records within 5 business days after receiving a written request for such records from the DFS. For fiscal year 2012-2013, 2,444 SWOs were issued.[4] As a condition of release from an SWO, the DFS may require an employer to file periodic reports for up to 2 years to show the employer's continued compliance with coverage requirements.

The bill amends provisions relating to SWOs and calculation of the assessed penalty as follows:

- Increases from 5 to 10 business days after receipt of a written request from the DFS the time within which an employer must produce requested business records or be subject to an SWO.
- Reduces the look-back period for failure to comply with coverage requirements from 3 to 2 years and increases the penalty multiplier from 1.5 to 2 times the amount of unpaid premiums.
- Authorizes the DFS to issue an order of conditional release from an SWO to an employer that has secured appropriate coverage if the employer pays $1,000 as a down payment on the assessed penalty *and* agrees to pay the remainder of the penalty in periodic installments pursuant to a payment agreement schedule with the DFS or to pay the remaining penalty in full. Provides for immediate reinstatement of the SWO if the employer does not pay the penalty in full or enter into a payment agreement with the DFS within 28 days after service of the SWO upon the employer.

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[1] Section 440.02(17)(b)2, F.S.
[2] Section 440.02(17)(c)2, F.S.
[3] *See* s. 440.107, F.S.
[4] "2013 Florida Division of Workers' Compensation Results and Accomplishments." Available at: http://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/Default.htm (Last accessed: March 3, 2014).

- Credits the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, against the penalty for employers that have not previously been issued an SWO. Requires employers to provide the DFS with documentation that the employer has secured the payment of compensation and proof of payment to the carrier. See the section below entitled "Employee Leasing Companies" for documentation required for the credit to be applied when the employer has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company. Provides for assessment of the $1,000 penalty against the employer even when the calculated penalty after the credit is applied is less than this amount.
- Repeals reporting requirements for a probationary period to demonstrate an employer's continued compliance with coverage requirements.

Employee Leasing Companies

In a traditional employee leasing arrangement, an employee leasing company will enter into an arrangement with an employer (the client company) under which all or most of its client workforce is employed by the leasing company and then leased to the client company. The Board of Employee Leasing Companies within the Department of Business and Professional Regulation licenses and regulates employee leasing companies under part XI, ch. 468, F.S. The term "employee leasing" is defined as "...an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client."[5] The law excludes temporary help arrangements from the definition of employee leasing.

As mentioned earlier, the bill credits the initial payment of premium paid to secure coverage against the penalty amount when the employer has not previously been issued an SWO. For the credit to be applied when the employer has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the bill requires the employer to provide the DFS with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company.

Workers' Compensation Indemnity Benefits

Workers' compensation indemnity (monetary) benefits are payable to employees who miss at least 8 days of work due to a covered (compensable) injury. However, the benefits are payable retroactively from the first day of disability (to include compensation for the first 7 days missed) to employees who miss more than 21 days of work due to a compensable injury.[6] In most cases, indemnity benefits are payable at 66 2/3 percent of the employee's average weekly wage (AWW) up to the maximum weekly benefit for the year of injury. For example, s. 440.15(1)(a), F.S., provides for permanent total disability benefits to be paid at 66 2/3 percent of the employee's AWW up to the maximum weekly benefit established by the workers' compensation law.[7]

In *Escambia County School District v. Vickery-Orso*,[8] the employer calculated the compensation rate for an employee with a permanent total disability by multiplying the AWW by .66667. This resulted in the employer paying more than 66 2/3 percent of the AWW (a weekly benefit of $529.48 rather than $529.47, when rounded to cents). The Judge of Compensation Claims (JCC), however, determined that the appropriate multiplier was .6667 (AWW x .6667), which resulted in a weekly benefit of $529.50. The JCC ordered the employer to pay this benefit amount and awarded associated penalties, interest, costs, and fees to the employee. On Appeal, the First District Court of Appeal held that the JCC erred

[5] Section 468.520(4), F.S.

[6] Section 440.12(1), F.S.

[7] The maximum weekly compensation rate for work-related injuries and illnesses occurring on or after January 1, 2014 is $827.00. See Informational Bulletin DFS-03-2013 (December 19, 2013). Available at: http://www.myfloridacfo.com/division/wc/pdf/DFS-03-2013.pdf (Last accessed: January 3, 2014).

[8] 109 So.3d 1242 (2013).

in requiring the employer to pay a greater benefit because the employer had not paid less than the compensation rate (66 2/3 percent of the AWW) required by statute.

The bill addresses the *Escambia* decision by authorizing employers to pay compensation at either 66 2/3 percent or 66.67 percent of the AWW. The latter calculation produces a slightly higher compensation rate for injured employees and removes the need for employers/carriers that have been paying benefits at 66.67 percent of the AWW to incur reprogramming costs.

Workers' Compensation Special Disability Trust Fund

The Workers' Compensation Special Disability Trust Fund (SDTF) was originally established to encourage employers to hire workers with pre-existing permanent physical impairments. Specifically, the SDTF will reimburse employers (or their carriers) for excess workers' compensation benefits they have provided to an employee with a pre-existing impairment who is subsequently injured in a workers' compensation accident. As a step in the reimbursement process, the SDTF determines whether claims are eligible to receive reimbursements in addition to performing audits and processing reimbursement requests. Claims are only eligible for reimbursement if the injury occurred before January 1, 1998, any injuries on or after that date are not eligible. Due to this eligibility requirement, the fund balance of the SDTF is currently in run-off.[9] However, reimbursements can be sought for claims that meet the eligibility requirements. After a claim has been accepted, a request for reimbursement of additional expenses may be submitted annually.

Revenues deposited into the SDTF are generated through annual assessments on premiums for carriers and self-insured employers. The current assessment rate formula is calculated by the DFS using the previous three calendar years of SDTF expenditures. Current statute provides that the assessment rate must produce an amount equal to the average of the sum of disbursements during the immediate past three calendar years and two times the disbursements of the most recent calendar year. The current assessment rate is capped at 4.52 percent. This current formula and rate cap were established during a time of growth in SDTF reimbursements. The number of reimbursement requests and total dollar amount of expenditures from the SDTF are currently decreasing. Due to both of these figures becoming more predictable, the Division can more accurately estimate the expenditures for each calendar year.

The bill amends provisions relating to the Workers' Compensation Special Disability Trust Fund and calculation of the assessed rate as follows:

- Revises the assessment rate calculation for the Workers' Compensation Special Disability Trust Fund by providing that the rate calculation will be based upon net premiums written by carriers, the amount of premiums calculated by the DFS for self-insured employers, and the anticipated fund balance and expenses of the Workers' Compensation Special Disability Trust Fund.
- Reduces the statutory rate cap on the Workers' Compensation Special Disability Trust Fund from 4.52 percent to 2.5 percent.

The bill is effective July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.107, F.S., relating to the authority of the DFS to enforce employer compliance with workers' compensation coverage requirements.
Section 2. Amends s. 440.15, F.S., relating to compensation for disability.
Section 3. Amends s. 440.16, F.S., relating to compensation for death.
Section 4. Amends s. 440.49, F.S., relating to the Workers' Compensation Special Disability Trust Fund.
Section 5. Provides an effective date of July 1, 2014.

[9] Department of Financial Services bill analysis (January 29, 2014) on file with the Insurance & Banking Subcommittee.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The DFS indicates that revising the SDTF assessment calculations and rate cap will allow the Division to draw down the fund balance of the SDTF and pay approved reimbursement requests that are awaiting payment, without increasing the SDTF assessment rate for Calendar Year 2015. The change in the SDTF assessment calculations and rate cap will eliminate the generation of excess revenue (of approximately $2.2 million) that would otherwise be deposited into the SDTF, which is not needed for the payment of claims. [10]

2. Expenditures:

Currently, reimbursements that are scheduled for payment during the calendar year are $57,178,000.[11] With the revision of the assessment rate calculation and rate cap, the Division expects to draw down the fund balance of the SDTF by $27,747,775 for a one-time, additional distribution of reimbursement requests that are awaiting payment. This brings the total reimbursement amount for the 2014 calendar year to $84,925,775 million.

The DFS estimates that after all 2014 reimbursements are paid, the SDTF fund balance will be approximately $80.6 million as of December 31, 2014.[12] The year-end fund balance of the SDTF along with projected 2015 revenues will ensure sufficient funds are available for the payment of reimbursements in future years.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring employers to whom SWOs have been issued to supply two years of payroll records (rather than three years) for penalty calculation purposes decreases the regulatory burden on such employers. Employers that can more readily provide the required records will have their penalty calculated more quickly by the DFS and can take the steps necessary to be released from the SWO and return to work.

With the decreased look-back period, the amount of some fines assessed may decrease, even though the multiplier has been increased. In other cases, the increased penalty multiplier will increase the penalty, even though the look-back period has been shortened.

For employers that have not previously been issued an SWO, crediting the initial payment of premium made to secure coverage against the assessed penalty will decrease the amount of the penalty to be paid by the employer.

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[10] Department of Financial Services bill analysis (January 29, 2014) on file with the Insurance & Banking Subcommittee.
[11] Email correspondence with the Department of Financial Services (February 13, 2014) on file with the Insurance & Banking Subcommittee.
[12] Email correspondence with the Department of Financial Services (February 17, 2014) on file with the Insurance & Banking Subcommittee.

The DFS indicates that changing the assessment calculation will benefit the private sector by allowing the department to draw down the fund balance of the SDTF to pay approved reimbursement requests that are awaiting payment, without increasing the SDTF assessment rate. In addition, reducing the statutory assessment cap of 4.52 percent to 2.5 percent lowers the maximum assessment that could be applied to employers.

D. FISCAL COMMENTS:

According to information provided by the DFS, amending the penalty assessed against employers that do not comply with workers' compensation coverage requirements will have a negligible impact on the Workers' Compensation Administration Trust Fund. The DFS states that providing for a 66.67 percent compensation rate reflects current carrier claims payment procedures.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2014, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment;

- Revises the assessment rate calculation for the Workers' Compensation Special Disability Trust Fund providing that the rate calculation will be based upon net premiums written by carriers, the amount of premiums calculated by the DFS for self-insured employers, and the anticipated fund balance and expenses of the Workers' Compensation Special Disability Trust Fund.
- Reduces the statutory rate cap on the Workers' Compensation Special Disability Trust Fund from 4.52% to 2.5%.

This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to workers' compensation; amending s. 440.107, F.S.; revising powers of the Department of Financial Services relating to compliance with and enforcement of workers' compensation coverage requirements; revising requirements for the release of stop-work orders; revising penalties; amending ss. 440.15 and 440.16, F.S.; revising rate formulas related to the determination of compensation for disability and death; amending s. 440.49, F.S.; revising provisions relating to the assessment rate of the Special Disability Trust Fund; reducing the assessment rate limitation; providing an effective date.

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

Section 1. Paragraphs (a), (d), and (e) of subsection (7) of section 440.107, Florida Statutes, are amended to read:

440.107 Department powers to enforce employer compliance with coverage requirements.—

(7)(a) Whenever the department determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under

subsection (5) within 10 ~~5~~ business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within 72 hours. The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with the coverage requirements of this chapter, paid a penalty of $1,000 as a down payment, and ~~has~~ agreed to remit periodic payments of the remaining penalty amount pursuant to a payment agreement

schedule with the department or pay the remaining penalty amount in full. If an order of conditional release is issued, failure by the employer to pay the penalty in full or enter into a payment agreement with the department within 28 days after service of the stop-work order upon the employer, or to meet any term or condition of such penalty payment agreement, shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. ~~The department may require an employer who is found to have failed to comply with the coverage requirements of s. 440.38 to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed 2 years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection.~~

(d)1. In addition to any penalty, stop-work order, or injunction, the department shall assess against any employer who has failed to secure the payment of compensation as required by this chapter a penalty equal to 2 ~~1.5~~ times the amount the employer would have paid in premium when applying approved manual rates to the employer's payroll during periods for which it failed to secure the payment of workers' compensation required by this chapter within the preceding 2-year ~~3-year~~ period or $1,000, whichever is greater. For employers who have not been previously issued a stop-work order, the department

must allow the employer to receive a credit for the initial payment of the estimated annual workers' compensation policy premium, as determined by the carrier, to be applied to the penalty. Before applying the credit to the penalty, the employer must provide the department with documentation reflecting that the employer has secured the payment of compensation pursuant to s. 440.38 and proof of payment to the carrier. In order for the department to apply a credit for an employer that has secured the payment of compensation by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written attestation by a representative from the employee leasing company that the employer has entered into an employee leasing contract, the dollar amount attributable to the initial payment of the estimated workers' compensation premium for the employer, and proof of payment to the employee leasing company. The $1,000 penalty shall be assessed against the employer even if the calculated penalty after the credit has been applied is less than $1,000.

2. Any subsequent violation within 5 years after the most recent violation shall, in addition to the penalties set forth in this subsection, be deemed a knowing act within the meaning of s. 440.105.

(e) When an employer fails to provide business records sufficient to enable the department to determine the employer's payroll for the period requested for the calculation of the

penalty provided in paragraph (d), for penalty calculation purposes, the imputed weekly payroll for each employee, corporate officer, sole proprietor, or partner shall be the statewide average weekly wage as defined in s. 440.12(2) multiplied by 2 ~~1.5~~.

Section 2. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and paragraph (a) of subsection (4) of section 440.15, Florida Statutes, is amended to read:

440.15 Compensation for disability.—Compensation for disability shall be paid to the employee, subject to the limits provided in s. 440.12(2), as follows:

(1) PERMANENT TOTAL DISABILITY.—

(a) In case of total disability adjudged to be permanent, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance of such total disability. No compensation shall be payable under this section if the employee is engaged in, or is physically capable of engaging in, at least sedentary employment.

(2) TEMPORARY TOTAL DISABILITY.—

(a) Subject to subsection (7), in case of disability total in character but temporary in quality, 66 2/3 or 66.67 percent of the average weekly wages shall be paid to the employee during the continuance thereof, not to exceed 104 weeks except as provided in this subsection, s. 440.12(1), and s. 440.14(3). Once the employee reaches the maximum number of weeks allowed, or the employee reaches the date of maximum medical improvement,

whichever occurs earlier, temporary disability benefits shall cease and the injured worker's permanent impairment shall be determined.

(4) TEMPORARY PARTIAL DISABILITY.—

(a) Subject to subsection (7), in case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn postinjury, as compared weekly; however, weekly temporary partial disability benefits may not exceed an amount equal to 66 2/3 or 66.67 percent of the employee's average weekly wage at the time of accident. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn postinjury, the department may by rule provide for payment of the initial installment of temporary partial disability benefits to be paid as a partial week so that payment for remaining weeks of temporary partial disability can coincide as closely as possible with the postinjury employer's work week. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment. Benefits shall be payable under this subsection only if overall maximum medical improvement has not been reached and the medical conditions resulting from the accident create restrictions on the injured

employee's ability to return to work.

Section 3. Paragraph (b) of subsection (1) and subsection (3) of section 440.16, Florida Statutes, are amended to read:

440.16 Compensation for death.—

(1) If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:

(b) Compensation, in addition to the above, in the following percentages of the average weekly wages to the following persons entitled thereto on account of dependency upon the deceased, and in the following order of preference, subject to the limitation provided in subparagraph 2., but such compensation shall be subject to the limits provided in s. 440.12(2), shall not exceed $150,000, and may be less than, but shall not exceed, for all dependents or persons entitled to compensation, 66 2/3 or 66.67 percent of the average wage:

1. To the spouse, if there is no child, 50 percent of the average weekly wage, such compensation to cease upon the spouse's death.

2. To the spouse, if there is a child or children, the compensation payable under subparagraph 1. and, in addition, 16 2/3 percent on account of the child or children. However, when the deceased is survived by a spouse and also a child or children, whether such child or children are the product of the union existing at the time of death or of a former marriage or marriages, the judge of compensation claims may provide for the

payment of compensation in such manner as may appear to the judge of compensation claims just and proper and for the best interests of the respective parties and, in so doing, may provide for the entire compensation to be paid exclusively to the child or children; and, in the case of death of such spouse, 33 1/3 percent for each child. However, upon the surviving spouse's remarriage, the spouse shall be entitled to a lump-sum payment equal to 26 weeks of compensation at the rate of 50 percent of the average weekly wage as provided in s. 440.12(2), unless the $150,000 limit provided in this paragraph is exceeded, in which case the surviving spouse shall receive a lump-sum payment equal to the remaining available benefits in lieu of any further indemnity benefits. In no case shall a surviving spouse's acceptance of a lump-sum payment affect payment of death benefits to other dependents.

3. To the child or children, if there is no spouse, 33 1/3 percent for each child.

4. To the parents, 25 percent to each, such compensation to be paid during the continuance of dependency.

5. To the brothers, sisters, and grandchildren, 15 percent for each brother, sister, or grandchild.

(3) Where, because of the limitation in paragraph (1)(b), a person or class of persons cannot receive the percentage of compensation specified as payable to or on account of such person or class, there shall be available to such person or class that proportion of such percentage as, when added to the

total percentage payable to all persons having priority of preference, will not exceed a total of said 66 2/3 or 66.67 percent, which proportion shall be paid:

(a) To such person; or

(b) To such class, share and share alike, unless the judge of compensation claims determines otherwise in accordance with the provisions of subsection (4).

Section 4. Paragraphs (b) and (c) of subsection (9) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(9) SPECIAL DISABILITY TRUST FUND.—

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals as defined in s. 628.6011, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund pursuant to department rule.

2. The department shall estimate annually in advance the amount necessary for the administration of this subsection and the maintenance of this fund pursuant to this paragraph ~~and shall make such assessment in the manner hereinafter provided~~.

By July 1 of each year, the department shall calculate the assessment rate, which shall be based upon the net premiums written by carriers, the amount of premiums calculated by the department for self-insured employers, and the anticipated balance and expenses of the Special Disability Trust Fund for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year. Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.

~~2. The annual assessment shall be calculated to produce during the next calendar year an amount which, when combined with that part of the balance anticipated to be in the fund on December 31 of the current calendar year which is in excess of $100,000, is equal to the average of:~~

~~a. The sum of disbursements from the fund during the immediate past 3 calendar years, and~~

~~b. Two times the disbursements of the most recent calendar year.~~

~~c. Such assessment rate shall first apply on a calendar year basis for the period beginning January 1, 2012, and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1, 2012. The assessment rate effective January 1, 2011, shall also apply to the interim period from July 1, 2011, through December 31, 2011, and shall be included in workers' compensation rate filings, whether regular or amended, approved by the office~~

~~which become effective on or after July 1, 2011. Thereafter, the annual assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the office which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.~~

~~Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers.~~

~~3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the department for the Special Disability Trust Fund in accordance with such regulations as the department prescribes.~~

3.~~4.~~ The Chief Financial Officer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate

assessed may ~~shall~~ not exceed 2.50 ~~4.52~~ percent.

Section 5. This act shall take effect July 1, 2014.

REGULATORY AFFAIRS COMMITTEE

CS/HB 271 by Rep. Cummings
Workers' Compensation

AMENDMENT SUMMARY
March 6, 2014

Amendment 1 by Rep. Cummings (Lines 87-93): Clarifies documentation that employers that obtain workers' compensation insurance through a licensed employee leasing company after being issued a stop-work order must submit to the Department of Financial Services to receive a credit for their initial estimated workers' compensation expense against the penalty assessed for failure to have workers' compensation coverage.

Amendment 2 by Rep. Nelson (Line 43): Requires stop-work order information to made available on the Division of Workers' Compensation (DWC) website for at least 5 years. The amendment codifies current practice of the DWC.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 271 (2014)

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 Cummings offered the following:

Amendment

Remove lines 87-93 and insert:

workers' compensation for leased employees by entering into an employee leasing contract with a licensed employee leasing company, the employer must provide the department with a written confirmation by a representative from the employee leasing company of the dollar or percentage amount attributable to the initial estimated workers' compensation expense for leased employees and

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 271 (2014)

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 Nelson offered the following:

Amendment (with title amendment)

Remove line 43 and insert:

worksite. Information related to an employer's stop-work order shall be made available on the Division of Workers' Compensation website and updated daily. The information shall remain on the website for no less than 5 years. The order shall remain in effect until the department

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

Remove line 6 and insert:

requirements; providing for stop-work order information to be available on the Division of Workers' Compensation website; revising requirements for the release of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 291 Warranty Associations
SPONSOR(S): Santiago
TIED BILLS: None **IDEN./SIM. BILLS:** SB 496

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 0 N	Cooper	Cooper
2) Civil Justice Subcommittee	11 Y, 0 N	Aziz	Bond
3) Regulatory Affairs Committee		Cooper	Hamon K.W.H.

SUMMARY ANALYSIS

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Current law requires every motor vehicle service agreement and home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. The bill allows both these contracts to be transmitted electronically, subject to the warranty holder requesting mail delivery instead. The bill also adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties.

The bill also changes the financial requirements of service warranty associations. Current law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the association's obligations under service warranties sold in Florida. In addition, service warranty associations are required to maintain a specified writing ratio of gross written premiums to net assets. Currently, an association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer. The bill expands the exception to the minimum writing ratio for service warranty associations and for insurers providing first dollar coverage to those associations and it repeals one of the three requirements for those insurers so associations purchasing insurance can be exempt from the required writing ratio.

The bill has no fiscal impact on state or local government. Regarding the electronic transmission provisions of the bill, the fiscal impact on the warranty associations and consumers is indeterminate because it is unknown how many associations will opt to email or how many policyholders will agree to participate.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 634, F.S., governs the regulation of warranty associations, which are motor vehicle service agreement companies, home warranty associations and service warranty associations. Motor vehicle service agreements provide vehicle owners with protection when the manufacturer's warranty expires. Home warranty associations indemnify warranty holders against the cost of repairs or replacement of any structural component or appliance in a home. Service warranty contracts for consumer electronics and appliances allow consumers to extend the product protection beyond the manufacturer's warranty terms.

While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the OIR. The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Electronic Delivery of Service Agreements and Warranties

Section 634.121(6), F.S., requires every motor vehicle service agreement to be mailed or delivered to the purchaser within 45 days after the purchase of the agreement. Section 634.312(2), F.S., requires every home warranty to be mailed or delivered to the purchaser within 45 days after the purchase of the warranty. The delivery required by current law is typically hand delivery and not electronic delivery.

The bill allows motor vehicle service agreement companies to deliver motor vehicle service agreements by electronic transmission. Similarly, the bill allows electronic transmission of home warranties by insurers or home warranty associations. The bill further specifies electronic transmission of a motor vehicle service agreement constitutes delivery of the agreement to the purchaser and specifies the same for electronic transmission of home warranties. If a motor vehicle service agreement is transmitted to the purchaser electronically, then the transmission must include a notice to the purchaser indicating the purchaser has a right to receive the agreement by mail instead of electronic transmission. If the purchaser notifies the company that he or she does not agree to electronic transmission of the motor vehicle service agreement, a paper copy of the agreement must be provided to the purchaser. The bill contains the same provisions relating to notice and provision of a paper copy of the warranty for home warranties.

The bill adds a delivery requirement for service warranties. Unlike motor vehicle service agreements and home warranties, current law does not require service warranties to be delivered to the purchaser. The bill adds the same delivery requirement for service warranties that is contained in current law for motor vehicle service agreements and home warranties and allows electronic delivery of service agreements to the warranty holder under the same parameters required for electronic delivery of motor vehicle service agreements and home warranties. Thus, under the bill, the parameters for electronic delivery of motor vehicle service agreements, home warranties, and service warranties are consistent and the same.

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.[1] 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 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 allows state law to preempt the E-SIGN law in certain circumstances. State law addressing electronic transmission can preempt E-SIGN if the state law is an enactment of the Uniform Electronic Transactions Act (UETA) as adopted by the National Conference of Commissioners on Uniform State Laws. Alternatively, a state law that is not an enactment of UETA but is not inconsistent with E-SIGN and does not give greater legal status or effect to a specific form of technology or signature can preempt E-SIGN.[2] Florida adopted the substantive provisions of UETA in 2000 and has not substantively changed the provisions since they were adopted.[3] Thus, the Florida adoption of UETA should preempt E-SIGN. Section 668.50, F.S., Florida's Uniform Electronic Transaction Act (FUETA), is Florida's adoption of UETA. FUETA applies to electronic records and electronic signatures relating to a transaction and has limited exceptions.[4]

Although UETA and E-SIGN overlap in some areas, they differ on some consumer protection issues. E-SIGN focuses on regulating the manner of consent to deal electronically, while UETA focuses on how the parties are to comply with state consumer protection laws.[5] By adopting the official version of UETA, states can modify, limit, or supersede some E-SIGN provisions, including its consumer protection issues, which includes E-SIGN's requirement of consumer disclosure and affirmative consent for electronic records.[6]

FUETA should apply to the electronic transmission of motor vehicle service agreements, home warranties, and service warranties allowed under the bill. One provision of FUETA provides if parties have agreed to conduct a transaction by electronic means and a provision of law requires a person to deliver information in writing to another person, that delivery requirement is satisfied if the information is delivered in an electronic record capable of retention by the recipient.[7] Furthermore, whether parties have agreed to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.[8]

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[1] Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, § 101,114 Stat. 464 (2000). Many of the provisions of E-SIGN took effect on October 1, 2000.
[2] 15 U.S.C. § 7002.
[3] http://www.uniformlaws.org/Act.aspx?title=Electronic Transactions Act (last viewed January 28, 2014); http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx (last viewed January 28, 2014) and Fla. S. Comm. on Utils. & Comms., CS/CS/SB 1334 (2000) Staff Analysis (final July 27, 2000) *available at* http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2000&billnum=1334 (last viewed January 28, 2014) indicating on page 10 that "the bill is identical to the act recommended by the National Commissioners for Uniform State Laws except for provisions that were added to conform to Florida law and provisions added to subsection (11) requiring a first time notary to complete certain training requirements." Although Florida's adoption of the UETA has been amended five times since adoption in 2000, none of the amendments were substantive.
[4] Section 668.50(3), F.S.
[5] Patricia Brumfield Fry, *A Preliminary Analysis of Federal and State Electronic Commerce Laws*, available at http://uniformlaws.org/Narrative.aspx?title=UETA%20and%20Preemption%20Article (last viewed January 3, 2014).
[6] http://www.ncsl.org/issues-research/telecom/uniform-electronic-transactions-acts.aspx (last viewed January 3, 2014).
[7] Section 668.50(8)(a), F.S.
[8] Section 668.50(5)(b), F.S.

Emailing a service agreement or warranty to the agreement or warranty holder could fall under this provision of FUETA, in part, because in order to email the agreement or warranty, the agreement or warranty holder must provide an email address to the insurer or warranty association which could be construed to mean the parties have agreed to conduct a transaction by electronic means. If this is the case, then current law requiring delivery of a motor vehicle service agreement or home warranty by mail or other delivery may be satisfied by emailing the agreement or warranty. The consent of the agreement or warranty holder to receive the agreement or warranty by email would not be required in this case because under FUETA, consent is not required when the parties agree to conduct a transaction electronically. Additionally, the bill requires the insurer or warranty association to notify the agreement or warranty holder when the agreement or warranty is emailed that the holder can elect to receive the agreement or warranty by mail in lieu of email. Once this notice is given, an agreement or warranty holder's action to not elect to receive the agreement or warranty by mail may be construed to mean the parties have agreed to conduct a transaction by electronic means and thus, under FUETA, consent is not required for electronic delivery of the agreement or warranty to the holder.

Although service warranties do not have a delivery requirement in current law, one is provided in the bill. Thus, providing service warranties electronically without consent of the warranty holder could be possible under FUETA using the same analysis that applies to motor vehicle service agreements and home warranties.

In addition, another provision of FUETA provides if a Florida law other than FUETA requires a record to be sent or transmitted by a certain method, the record must be sent or transmitted by the method provided in the other law.[9] This provision may allow a motor vehicle service agreement or home warranty to be emailed to the agreement or warranty holder if the current law requiring delivery of the agreement or warranty to the holder is amended to allow electronic delivery, as the bill proposes, because the amended law allowing electronic delivery of the agreement or warranty may control over FUETA. This same analysis could apply to service warranties under the bill because the bill requires delivery of these warranties and allows for electronic delivery of them.

Financial Requirements for Service Warranty Associations

The bill changes one of the financial requirements service warranty associations must have in order to keep its license. Current Florida law allows a service warranty association to demonstrate financial responsibility by securing contractual liability insurance from an authorized insurer which covers the service warranty association's obligations under service warranties sold in Florida. There are two kinds of insurance policies that are permitted: (1) an insurance policy that pays only when the service warranty association fails to pay its obligations under the service warranties; and (2) a policy that pays claims under the association's service warranties from the first dollar. In addition, Florida law requires service warranty associations to maintain a writing ratio of gross written premiums to net assets of seven-to-one, meaning for every one dollar of net assets held by the association, the association can write seven dollars of premium. Under current Florida law a service warranty association can avoid this minimum writing ratio by securing an insurance policy providing first dollar coverage from an insurer that maintains a minimum capital surplus of $100 million, maintains an "A" or higher rating, and is not affiliated with the service warranty association it insures.[10]

The bill expands the exception to the minimum writing ratio for service warranty associations. Under the bill, associations utilizing an insurance policy that pays only when the service warranty association fails to pay its obligations can avoid the writing ratio as long as the insurer issuing the policy to the association maintains a minimum capital surplus of $200 million and an "A" or higher rating. The surplus requirement for insurers issuing both kinds of insurance policies for service warranty associations helps ensure there should be more than adequate capital in the insurance companies to honor all obligations of the insured association under service warranties sold in Florida.

[9] Section 668.50(8)(b)(2), F.S.
[10] The rating is from A.M. Best Company. However, an equivalent rating by another national rating service acceptable to the OIR is also allowed by statute.

For insurers providing first dollar coverage to service warranty associations, the bill repeals one of the three requirements for these insurers so the service warranty association purchasing insurance from the insurer can be exempt from the writing ratio required by law. The requirement that the insurer providing the first dollar coverage not be affiliated with the service warranty association it insures is repealed. These insurers must still maintain a minimum surplus of $100 million and maintain an "A" or higher rating.

B. SECTION DIRECTORY:

Section 1. Amends s. 634.121, F.S., relating to forms, required procedures, and provisions for motor vehicle service agreement companies.

Section 2. Amends s. 634.312, F.S., relating to forms, required provisions, and procedures for home warranty associations.

Section 3. Amends s.634.406, F.S., relating to financial requirements for service warranty associations.

Section 4. Amends s. 634.414, F.S., relating to forms and required provisions for service warranty associations.

Section 5. Provides an effective date of July 1, 2014.

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:

Warranty associations emailing service warranties will save costs associated with printing and mailing the warranties to warranty holders. The exact amount of savings cannot be calculated as it is unknown how many warranty associations will opt to deliver their warranties by email and how many warranty purchasers will choose to obtain their warranty by email rather than by mail. However, any savings realized by warranty associations should be passed through to the warranty purchasers.

If warranty associations incur computer reprogramming costs connected with emailing warranties or service agreements, any increased costs may be passed through to the warranty purchasers.

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

A bill to be entitled

An act relating to warranty associations; amending ss. 634.121 and 634.312, F.S.; authorizing electronic transmission of service agreements and home warranties; providing requirements for electronic transmission; providing notice requirements; amending s. 634.406, F.S.; revising criteria authorizing premiums of certain service warranty associations to exceed their specified net assets limitations; revising requirements relating to contractual liability policies that insure warranty associations; amending s. 634.414, F.S.; providing requirements for the delivery of service warranty contracts; providing notice requirements; providing an effective date.

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

Section 1. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions.—

(6) Each service agreement, which includes a copy of the application form, must be mailed, ~~or~~ delivered, or electronically transmitted to the agreement holder within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of

his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.

Section 2. Subsection (2) of section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures.—

(2) Subject to the insurer's or home warranty association's requirement as to payment of premium, every home warranty must ~~shall~~ be mailed, ~~or~~ delivered, or electronically transmitted to the warranty holder within ~~not later than~~ 45 days after the effectuation of coverage, and the application is part of the warranty contract document. Electronic transmission of a home warranty constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the home warranty via United States mail rather than electronic transmission. If the warranty holder communicates to the home warranty association electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the home warranty shall be provided to the warranty holder.

Section 3. Subsections (6) and (7) of section 634.406, Florida Statutes, are amended to read:

634.406 Financial requirements.—

(6) An association that ~~which~~ holds a license under this part ~~and which does not hold any other license under this chapter~~ may allow its premiums for service warranties written under this part to exceed the ratio to net assets limitations of this section if the association meets all of the following:

(a) Maintains net assets of at least $750,000.

(b) Uses ~~Utilizes~~ a contractual liability insurance policy approved by the office that:

1. ~~which~~ Reimburses the service warranty association for 100 percent of its claims liability and is issued by an insurer that maintains a policyholder surplus of at least $100 million; or

2. Complies with subsection (3) and is issued by an insurer that maintains a policyholder surplus of at least $200 million.

(c) The insurer issuing the contractual liability insurance policy:

~~1. Maintains a policyholder surplus of at least $100 million.~~

1.~~2.~~ Is rated "A" or higher by A.M. Best Company or an equivalent rating by another national rating service acceptable to the office.

~~3. Is in no way affiliated with the warranty association.~~

2.~~4.~~ In conjunction with the warranty association's filing of the quarterly and annual reports, provides, on a form prescribed by the commission, a statement certifying the gross

written premiums in force reported by the warranty association and a statement that all of the warranty association's gross written premium in force is covered under the contractual liability policy, regardless of whether ~~or not~~ it has been reported.

~~(7) A contractual liability policy must insure 100 percent of an association's claims exposure under all of the association's service warranty contracts, wherever written, unless all of the following are satisfied:~~

~~(a) The contractual liability policy contains a clause that specifically names the service warranty contract holders as sole beneficiaries of the contractual liability policy and claims are paid directly to the person making a claim under the contract;~~

~~(b) The contractual liability policy meets all other requirements of this part, including subsection (3) of this section, which are not inconsistent with this subsection;~~

~~(c) The association has been in existence for at least 5 years or the association is a wholly owned subsidiary of a corporation that has been in existence and has been licensed as a service warranty association in the state for at least 5 years, and:~~

~~1. Is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file either of Form~~

~~10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and publicly traded or is the wholly owned subsidiary of a corporation that is listed and traded on a recognized stock exchange; is listed in NASDAQ (National Association of Security Dealers Automated Quotation system) and publicly traded in the over-the-counter securities market; is required to file Form 10-K, Form 100, or Form 20-G with the United States Securities and Exchange Commission; or has American Depository Receipts listed on a recognized stock exchange and is publicly traded;~~

~~2. Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~3. Has and maintains at all times a minimum net worth of not less than $10 million as evidenced by audited financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles and submitted to the office annually; and~~

~~4. Is authorized to do business in this state; and~~

~~(d) The insurer issuing the contractual liability policy:~~

~~1. Maintains and has maintained for the preceding 5 years, policyholder surplus of at least $100 million and is rated "A" or higher by A.M. Best Company or has an equivalent rating by another rating company acceptable to the office;~~

~~2. Holds a certificate of authority to do business in this~~

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

~~state and is approved to write this type of coverage; and~~

~~3. Acknowledges to the office quarterly that it insures all of the association's claims exposure under contracts delivered in this state.~~

~~If all the preceding conditions are satisfied, then the scope of coverage under a contractual liability policy shall not be required to exceed an association's claims exposure under service warranty contracts delivered in this state.~~

Section 4. Subsection (4) is added to section 634.414, Florida Statutes, to read:

634.414 Forms; required provisions.—

(4) Each service warranty contract must be mailed, delivered, or electronically transmitted to the warranty holder within 45 days after the date of purchase. Electronic transmission of a service warranty contract constitutes delivery to the warranty holder. The electronic transmission must notify the warranty holder of his or her right to receive the contract via United States mail rather than electronic transmission. If the warranty holder communicates to the service warranty company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the contract shall be provided to the warranty holder.

Section 5. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 321 Title Insurance
SPONSOR(S): Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Passidomo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 570

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	13 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Reilly RJR	Hamon K.W.H.

SUMMARY ANALYSIS

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies), against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks including title defects or liens that are not identified as exceptions.

The bill legislatively addresses a 2013 decision of the Florida Supreme Court (*Tiara Condominium Association v. Marsh & McClennan*) that limits the "economic loss rule" to product liability cases. The economic loss rule limits parties to a contract that suffer only economic damages to recovery under the contract, and precludes recovery under tort law. Prior to *Tiara Condominium*, the economic loss rule had been applicable to title insurance. Thus, although the case did not involve a dispute under a title insurance policy, the decision, in effect, may allow insureds under title insurance policies that suffer only economic damages to seek recovery in contract and tort. The bill reinstates application of the economic loss rule to title insurance by providing that only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or certain other instruments (e.g., closing protection letters) issued by a title insurer.

The bill also:

- Clarifies that title insurance agents and title insurance agencies must be both licensed by the Department of Financial Services (DFS) and appointed by each title insurer they represent.
- Specifies that the pre-application work experience by which a person may qualify to take the title insurance agent examination must have been earned for duties performed under the supervision of a licensed title insurance agent, title insurer, or attorney.
- Extends, after October 1, 2014, current limitations on names that may be adopted by title insurance agents to title insurance agents and title insurance agencies. Additionally, prohibits use of the words "title company" in a name unless followed by the word "agent" or "agency" in the same size and type as the words preceding them. Provides the limitations do not apply in certain circumstances.
- Removes the requirement that applications for licensure as a title agent or title insurance agency be submitted on "printed" DFS forms.
- Deletes an obsolete provision requiring title insurance agencies to post a surety bond with the DFS prior to obtaining a license.
- Changes the required annual reporting date for information relating to revenue, loss, and expenditure data that is maintained by title insurance agencies and insurers licensed to do business in Florida from March 31 to May 31.
- Removes references to "guarantees of title" and "binders." The former have not been authorized in Florida for many years, while the latter are not used by the title insurance industry.

The bill has no fiscal impact on state or local government. As the bill limits losses arising under title insurance policies to policy terms, it is likely that the cost of title insurance to consumers will remain fairly stable. It should also assist title insurers in maintaining reserves sufficient to pay the claims of all policyholders.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Overview of Title Insurance

Title insurance insures owners of real property (owner's policy) or others having an interest in real property against loss by encumbrance, defective title, invalidity, or adverse claim to title.[1] Title insurance is a policy issued by a title insurer that, after evaluating a search of title, would insure against certain covered risks including forgery, fraud, liens and encumbrances on a title. It is usually taken out by the purchaser of property or an entity that is loaning money on a mortgage.

Purchasers of real property and lenders utilize title insurance to protect themselves against claims by others that claim to be the rightful owner of the property. Most lenders require title insurance when they underwrite loans for real property. Title insurance provides a duty to defend related to adverse claims against title, and also promises to indemnify the policyholder for damage to the lender's security interest created by a cloud on title, unmarketable title, or adverse title that was not discovered by the insurer.[2]

Regulation in Florida

Historically, a single regulatory entity, the Department of Insurance, promulgated title insurance rates and regulated title insurance agents. Under current law, two entities provide regulatory oversight of the title insurance industry in Florida: the Department of Financial Services (DFS), which regulates title insurance agents, and the Office of Insurance Regulation (OIR), which regulates title insurers, including licensing and promulgation of rates. Title insurance forms must be filed and approved by the OIR prior to usage[3] and premium rates charged by title insurers are specified by rule by the Financial Services Commission (FSC).[4] Title insurers may petition the OIR for an order authorizing a specific deviation from the adopted premium.[5]

In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[6] Pursuant to s. 627.782, F.S., the FSC is mandated to adopt a rule specifying the premium to be charged by title insurers for the respective types of title insurance contracts and, for policies issued through agents or agencies, the percentage of such premium required to be retained by the title insurer, which shall not be less than 30 percent. The FSC must review the premium not less than once every three years.

Title insurers and title insurance agencies are required to submit to the OIR, on or before March 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry. The bill changes the annual reporting date for this information from March 31 to May 31.

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[1] Section 624.608, F.S. Title insurance is also insurance of owners and secured parties of the existence, attachment, perfection and priority of security interests in personal property under the Uniform Commercial Code.

[2] See, e.g., the website of the American Land Title Association (ALTA), http://www.alta.org (Last accessed: January 6, 2014). ALTA is the national trade association of the abstract and title insurance industry. There are currently six basic ALTA policies of title insurance: Lenders, Lenders Leasehold, Owners, Owners Leasehold, Residential, and Construction Loan Policies.

[3] Section 627.777, F.S.

[4] Section 627.782, F.S.

[5] Section 627.783, F.S.

[6] Section 627.786, F.S.

Title Insurance Agencies
Title insurance agencies must be licensed by the DFS and are separately appointed[7] by each title insurer they represent. Prior to obtaining a license, a title insurance agency is required to post a surety bond of at least $35,000 to the benefit of appointing title insurers.

Before a title insurance agency can be appointed by a title insurer, the agency must obtain: (1) a fidelity bond of at least $50,000, acceptable to the title insurer; (2) errors and omissions insurance in an amount acceptable to the title insurer, but which must provide coverage of at least $250,000 per claim and an aggregate limit with a deductible no greater than $10,000; and (3) a surety bond of at least $35,000 made payable to the title insurer or title insurers appointing the title insurance agency.[8]

The bill deletes obsolete language requiring that securities be deposited with the DFS (or a surety bond be posted) before a title insurance agency may be licensed, as title insurance agencies are required to obtain a surety bond payable to a title insurer before they can be appointed by the insurer.

Title Insurance Agents
Title insurance agents must be licensed by the DFS and are separately appointed by each title insurer they represent.

The bill clarifies that title insurance may be sold only by a licensed *and* appointed title insurance agent. For title agents employed by a title insurance agency (rather than a title insurer), the bill clarifies that the agency must also be licensed *and* appointed.

To be licensed as a title insurance agent, a person must qualify for and pass a written examination given by the DFS. To be eligible to take the examination,[9] a person must have completed certain educational or work requirements before applying for licensure. Specifically, within 4 years before the date of the application, the person must have completed a 40-hour classroom course in title insurance or have had at least 12 months of experience in responsible title insurance duties while working in the title insurance industry as a substantially full-time employee.[10]

The bill specifies that the title insurance work experience by which an applicant may qualify to take the title insurance agent examination must have been earned for duties performed under the supervision of a licensed title insurance agent, title insurer, or attorney. It also removes language that required applications for licensure as a title insurance agent or title insurance agency to be submitted on "printed" forms.

Prohibitions on Names Adopted by Title Insurance Agents[11]
Under s. 626.8413, F.S., title insurance agents are prohibited[12] from adopting a name that contains the words "title insurance," "title guaranty," or "title guarantee" unless followed by the word "agent" or "agency" in the same size and type as the words preceding them.

Beginning October 2, 2014, the bill makes this section applicable to both title insurance agents and title insurance agencies to enable consumers to readily know whether they are working with a title insurer or an agent. In addition, for those agencies that are initially being licensed after October 1, 2014, the words "title company" may not be used in a name unless followed by the word "agent" or "agency" in the same size and type as the words preceding them. The bill specifies that these limitations on name

[7] An appointment is the authority given by an insurer to a licensee to transact insurance on the insurer's behalf.
[8] Section 626.8419, F.S.
[9] The examination must test the applicant's ability, competence, and knowledge of title insurance and real property transactions and the duties and responsibilities of licensees. In addition to title insurance, topics to be covered on the test include abstracting, title searches, examination of title, closing procedures, and escrow handling. *See* s. 626.241, F.S.
[10] Section 626.8417, F.S.
[11] Section 626.841, F.S., defines the term title insurance agent to mean "a person appointed in writing by a title insurer to issue and countersign commitments or policies of title insurance in its behalf."
[12] After October 1, 1985.

do not apply to a title insurer acting as an agent for another title insurer when both insurers hold active certificates of authority to transact title insurance business in Florida and are acting under the names designated on such certificates of authority.

Title Insurance and the Economic Loss Rule

Traditionally, contract law and tort law (including negligence and malpractice) are separate in their application: contract law enforces expectancy interests created by an agreement between the parties; tort law compensates people for personal injury or property damage caused by tortious conduct, without regard to contract.

The division between the two areas of law matters in the results attainable: contract law limits recovery to expectation damages (damages reasonably expected to flow from the contractual breach); tort law allows all damages proximately resulting from tortious conduct.

The economic loss rule was developed by courts to more accurately draw the distinction between contract and tort law. This common law rule provides that, where there is a contract between parties and a person harmed by wrongful conduct suffers only economic damages (that is, there is no personal injury involved), the lawsuit must proceed under contract law. Where the economic loss rule applies, the person harmed cannot sue in tort law.

The economic loss rule has long been recognized in Florida.[13] It is firmly established in products liability cases, where it is based on the notion that tort law imposes a duty on manufacturers to take reasonable care so that their products will not harm persons or property, but imposes no duty for manufacturers to ensure their products will meet the economic expectations of purchasers.[14] Prior to the Florida Supreme Court's (Supreme Court) decision last year in *Tiara Condominium Association v. Marsh & McClennan*,[15,16] the rule had been expanded beyond products liability and applied in various other areas, including title insurance.

Tiara Condominium concerned a dispute between an insured and its insurance broker regarding coverage under a windstorm insurance policy. In its decision, the Supreme Court reviewed the development of the economic loss rule in Florida. Determining that there had been an unprincipled expansion of the rule beyond products liability, the court returned the economic loss rule to its origins, holding the rule applicable only to products liability cases, and receding from prior case law.

The bill legislatively addresses *Tiara Condominium* with respect to title insurance by providing that only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or an instrument issued by a title insurer pursuant to s. 627.786(3), F.S.

Title insurance is unique from other lines of insurance in that insured's pay a one-time premium for a policy that continues to provide coverage and never expires. Title insurance forms, which are filed and approved by the OIR prior to usage, specify insurer responsibilities in the event title defects are not identified in the policy. As the bill limits losses arising from the breach of a duty arising under a title insurance policy (and certain other instruments issued by title insurers) to the terms of the contract, it is likely that the cost of title insurance to consumers will remain fairly stable. It should also assist title insurers in maintaining reserves sufficient to pay the claims of all policyholders, as the insurer's maximum exposure on each policy will be limited by the terms of the policy for which premium was paid.

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[13] *See*, Florida *Power and Light Co. v. Westinghouse Elec. Corp*, 510 So.2d 899 (Fla. 1987).

[14] *See Monsanto Agricultural Products v. Edenfeld*, 426 So.2d 574 (Fla. 1st DCA 1982).

[15] 110 So.3d 399 (Fla. 2013).

[16] For an overview of the economic loss rule and discussion of *Tiara Condominium, see* Munyon *et al.*, *Tort and Contract Actions: Strange Bedfellows No More in the Wake of Tiara Condominium*, The Florida Bar Journal, December 2013, at pages 41-43.

Miscellaneous
The bill removes references to "guarantees of title" and "binders." The former have not been authorized in Florida for many years, while the latter are not used by the title insurance industry.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.8412, F.S., relating to required licenses and appointments.
Section 2. Amends s. 626.8413, F.S., relating to limitations on title insurance agent names.
Section 3. Amends s. 626.8417, F.S., relating to title insurance agent licensure.
Section 4. Amends s. 626.8418, F.S., relating to application for title insurance agency license.
Section 5. Amends s. 626.8419, F.S., relating to the appointment of title insurance agencies.
Section 6. Amends s. 626.8437, F.S., relating to the denial, suspension, revocation, or refusal to renew the license or appointment of a title insurance agent or title insurance agency by the DFS.
Section 7. Amends s. 627.778, F.S., relating to limits of risk under title insurance policies.
Section 8. Amends s. 627.782, F.S., relating to the adoption of rates.
Section 9. Amends s. 627.7845, F.S., relating to the determination of insurability.
Section 10. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   According to the DFS, there will be no impact to state revenues.[17]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

[17] Email correspondence with DFS on file with the Government Operations Appropriations Subcommittee.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Limiting liability under a title insurance policy for the breach of a duty arising under the contract to policy terms will likely help keep the cost of title insurance to consumers fairly stable. It will also assist insurers in maintaining reserves sufficient to pay claims of all policyholders as the maximum exposure on each policy will be limited to that for which premium was paid.

D. FISCAL COMMENTS:

There is no fiscal impact on state or local government.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2014, the Insurance & Banking Subcommittee considered and adopted a strike-all amendment to the bill. The amendment clarified that only contract remedies are available for the breach of a duty which arises solely from the terms of a contract of title insurance or specified other instruments issued by title insurers, and made various technical changes to the bill. The analysis has been updated to reflect these changes.

On February 11, 2014, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made various technical changes to the bill. In addition, the amendment changed the reporting date for information relating to revenue, loss, and expenditure data, which is maintained by title insurance agencies and insurers licensed to do business in Florida, from March 31 to May 31. This analysis is drafted to the committee substitute as passed by the Government Operations Appropriations Subcommittee.

A bill to be entitled

An act relating to title insurance; amending s. 626.8412, F.S.; specifying that only a licensed and appointed agent or agency is authorized to sell title insurance; amending s. 626.8413, F.S.; providing additional limitations on the name that a title agent or agency may adopt; providing applicability; amending s. 626.8417, F.S.; conforming provisions to changes made by the act; amending s. 626.8418, F.S.; revising the application requirements for a title insurance agency license; deleting certain bonding requirements and procedures; amending s. 626.8419, F.S.; conforming provisions to changes made by the act; amending s. 626.8437, F.S.; revising terms relating to grounds for actions against a licensee or appointee; amending s. 627.778, F.S.; limiting the remedies available for the breach of duty arising from a title insurance contract; amending s. 627.782, F.S.; revising the date by which certain information relating to title insurance rates must be submitted to the Office of Insurance Regulation by title insurance agencies and insurers; amending s. 627.7845, F.S.; revising terms relating to determination of insurability and preservation of evidence of title search and examination; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 626.8412, Florida Statutes, is amended to read:

626.8412 License and appointments required.—

(1) Except as otherwise provided in this part:

(a) Title insurance may be sold only by a licensed and appointed title insurance agent employed by a licensed and appointed title insurance agency or employed by a title insurer.

Section 2. Section 626.8413, Florida Statutes, is amended to read:

626.8413 Title insurance agents; certain names prohibited.—After October 1, 2014 ~~1985~~, a title insurance agent or title insurance agency may ~~as defined in s. 626.841 shall~~ not adopt a name that ~~which~~ contains the words "title insurance," "title company," "title guaranty," or "title guarantee~~,~~" unless such words are followed by the word "agent" or "agency" in the same size and type as the words preceding it ~~them~~. This section does not apply to a title insurer acting as an agent for another title insurer if both insurers hold active certificates of authority to transact title insurance business in this state and both are acting under the names designated on such certificates.

Section 3. Section 626.8417, Florida Statutes, is amended to read:

626.8417 Title insurance agent licensure; exemptions.—

(1) A person may not act as a title insurance agent ~~as~~

~~defined in s. 626.841~~ until a valid title insurance agent's license has been issued to that person by the department.

(2) An application for license as a title insurance agent shall be filed with the department on ~~printed~~ forms furnished by the department.

(3) The department may ~~shall~~ not grant or issue a license as a title insurance agent to an ~~any~~ individual who is found by the department ~~it~~ to be untrustworthy or incompetent, who does not meet the qualifications for examination specified in s. 626.8414, or who does not meet the following qualifications:

(a) Within the 4 years immediately preceding the date of the application for license, the applicant must have completed a 40-hour classroom course in title insurance, 3 hours of which are ~~shall be~~ on the subject matter of ethics, as approved by the department, or must have had at least 12 months of experience in responsible title insurance duties, under the supervision of a licensed title insurance agent, title insurer, or attorney while working in the title insurance business as a substantially full-time, bona fide employee of a title insurance agency, title insurance agent, title insurer, or attorney who conducts real estate closing transactions and issues title insurance policies but who is exempt from licensure under subsection (4) ~~pursuant to paragraph (4)(a)~~. If an applicant's qualifications are based upon the periods of employment at responsible title insurance duties, the applicant must submit, with the license application ~~for license on a form prescribed by the department~~, an ~~the~~

affidavit of the applicant and of the employer affirming ~~setting forth~~ the period of such employment, that the employment was substantially full time, and giving a brief abstract of the nature of the duties performed by the applicant.

(b) The applicant must have passed any examination for licensure required under s. 626.221.

(4)~~(a)~~ Title insurers or attorneys duly admitted to practice law in this state and in good standing with The Florida Bar are exempt from the provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements.

(5)~~(b)~~ An insurer may designate a corporate officer of the insurer to occasionally issue and countersign binders, commitments, and policies of title insurance ~~policies, or guarantees of title~~. The ~~A~~ designated officer is exempt from the provisions of this chapter relating ~~with regard~~ to title insurance licensing and appointment requirements while the officer is acting within the scope of the designation.

(6)~~(c)~~ If an attorney owns ~~or attorneys own~~ a corporation or other legal entity that ~~which~~ is doing business as a title insurance agency, other than an entity engaged in the active practice of law, the agency must be licensed and appointed as a title insurance agent.

Section 4. Section 626.8418, Florida Statutes, is amended to read:

626.8418 Application for title insurance agency license.—

Before ~~Prior to~~ doing business in this state as a title insurance agency, ~~a title insurance agency must meet all of the following requirements:~~

~~(1)~~ the applicant must file with the department an application for a license as a title insurance agency, on ~~printed~~ forms furnished by the department, which ~~that~~ includes all of the following:

(1)~~(a)~~ The name of each majority owner, partner, officer, and director of the title insurance agency.

(2)~~(b)~~ The residence address of each person required to be listed under subsection (1) ~~paragraph (a)~~.

(3)~~(c)~~ The name of the title insurance agency and its principal business address.

(4)~~(d)~~ The location of each title insurance agency office and the name under which each agency office conducts or will conduct business.

(5)~~(e)~~ The name of each title insurance agent to be in full-time charge of a title insurance ~~an~~ agency office and specification of which office.

(6)~~(f)~~ Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code.

~~(2) The applicant must have deposited with the department securities of the type eligible for deposit under s. 625.52 and having at all times a market value of not less than $35,000. In~~

~~place of such deposit, the title insurance agency may post a surety bond of like amount payable to the department for the benefit of any appointing insurer damaged by a violation by the title insurance agency of its contract with the appointing insurer. If a properly documented claim is timely filed with the department by a damaged title insurer, the department may remit an appropriate amount of the deposit or the proceeds that are received from the surety in payment of the claim. The required deposit or bond must be made by the title insurance agency, and a title insurer may not provide the deposit or bond directly or indirectly on behalf of the title insurance agency. The deposit or bond must secure the performance by the title insurance agency of its duties and responsibilities under the issuing agency contracts with each title insurer for which it is appointed. The agency may exchange or substitute other securities of like quality and value for securities on deposit, may receive the interest and other income accruing on such securities, and may inspect the deposit at all reasonable times. Such deposit or bond must remain unimpaired as long as the title insurance agency continues in business in this state and until 1 year after termination of all title insurance agency appointments held by the title insurance agency. The title insurance agency is entitled to the return of the deposit or bond together with accrued interest after such year has passed, if no claim has been made against the deposit or bond. If a surety bond is unavailable generally, the department may adopt~~

~~rules for alternative methods to comply with this subsection. With respect to such alternative methods for compliance, the department must be guided by the past business performance and good reputation and character of the proposed title insurance agency. A surety bond is deemed to be unavailable generally if the prevailing annual premium exceeds 25 percent of the principal amount of the bond.~~

Section 5. Paragraphs (a), (b), and (c) of subsection (1) of section 626.8419, Florida Statutes, are amended to read:

626.8419 Appointment of title insurance agency.—

(1) The title insurer engaging or employing the title insurance agency must file with the department, on forms furnished by the department, an application certifying that the proposed title insurance agency meets all of the following requirements:

(a) The title insurance agency has ~~must have~~ obtained a fidelity bond in an amount of at least~~, not less than~~ $50,000, acceptable to the insurer appointing the agency. If a fidelity bond is unavailable generally, the department shall ~~must~~ adopt rules for alternative methods to comply with this paragraph.

(b) The title insurance agency must have obtained errors and omissions insurance in an amount acceptable to the insurer appointing the agency. The amount of the coverage must be at least ~~may not be less than~~ $250,000 per claim and an aggregate limit with a deductible no greater than $10,000. If errors and omissions insurance is unavailable generally, the department

shall ~~must~~ adopt rules for alternative methods that ~~to~~ comply with this paragraph.

(c) ~~Notwithstanding s. 626.8418(2),~~ The title insurance agency must have obtained a surety bond in an amount of at least ~~not less than~~ $35,000 made payable to the title insurer or title insurers appointing the agency. The surety bond must be for the benefit of any appointing title insurer damaged by a violation by the title insurance agency of its contract with the appointing title insurer. If the surety bond is payable to multiple title insurers, the surety bond must provide that each title insurer is to be notified if ~~in the event~~ a claim is made upon the surety bond or the bond is terminated.

Section 6. Subsections (3) and (4) of section 626.8437, Florida Statutes, are amended to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(3) Willful misrepresentation of any title insurance policy~~, guarantee of title, binder,~~ or commitment, or willful deception with regard to any such policy~~, guarantee, binder,~~ or commitment, done either in person or by any form of

dissemination of information or advertising.

(4) Demonstrated lack of fitness or trustworthiness to represent a title insurer in the issuance of its commitments or ~~,binders,~~ policies of title insurance~~, or guarantees of title~~.

Section 7. Subsection (3) is added to section 627.778, Florida Statutes, to read:

627.778 Limit of risk.—

(3) Only contractual remedies are available for a breach of a duty which arises solely from the terms of a contract of title insurance or an instrument issued pursuant to s. 627.786(3).

Section 8. Subsection (8) of section 627.782, Florida Statutes, is amended to read:

627.782 Adoption of rates.—

(8) Each title insurance agency and insurer licensed to do business in this state and each insurer's direct or retail business in this state shall maintain and submit information, including revenue, loss, and expense data, as the office determines necessary to assist in the analysis of title insurance premium rates, title search costs, and the condition of the title insurance industry in this state. Such ~~This~~ information shall ~~must~~ be transmitted to the office annually by May ~~March~~ 31 of the year after the reporting year. The commission shall adopt rules relating to ~~regarding~~ the collection and analysis of the data from the title insurance industry.

Section 9. Subsection (2) of section 627.7845, Florida Statutes, is amended to read:

627.7845 Determination of insurability required; preservation of evidence of title search and examination.—

(2) The title insurer shall cause the evidence of the determination of insurability and the reasonable title search or search of the records of a Uniform Commercial Code filing office to be preserved and retained in its files or in the files of its title insurance agent or agency for at least ~~a period of not less than~~ 7 years after the title insurance commitment or~~,~~ title insurance policy~~, or guarantee of title~~ was issued. The title insurer or its agent or agency must produce the evidence required to be maintained under ~~by~~ this subsection at its offices upon the demand of the office. Instead of retaining the original evidence, the title insurer or its ~~the title insurance~~ agent or agency may, in the regular course of business, establish a system under which all or part of the evidence is recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process that ~~which~~ accurately reproduces or forms a durable medium for reproducing the original.

Section 10. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7009 PCB IBS 14-01 Security for Public Deposits
SPONSOR(S): Insurance & Banking Subcommittee, Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee	11 Y, 0 N	Bauer	Cooper
1) Regulatory Affairs Committee		Bauer	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. QPDs 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).QPDs may meet these collateral requirements by pledging, depositing, or issuing eligible collateral to the CFO, based on their financial condition and public deposit volume. The Department of Financial Services, as headed by the CFO, administers a collateral management program which ensures compliance with the Act.

The bill makes the following changes to the Act:

- Provides several clarifying changes to reflect the current banking industry and regulatory environment,
- Minimizes regulatory burden on QPDs and streamlines compliance requirements,
- Clarifies regulatory requirements for failed QPDs and their acquiring institutions,
- Adjusts the two highest collateral pledge levels to ease regulatory burden for small and moderate-sized QPDs,
- Repeals the Qualified Public Depository Oversight Board, which has been largely inactive since its creation in 2001,
- Eases an existing ministerial notice requirement for public depositors, so that they are still protected from loss arising from a QPD's failure, and
- Makes a number of technical, conforming changes throughout the Act.

The bill may have a positive 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, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Security for Public Deposits Act

Chapter 280, Florida Statutes, is the Florida Security for Public Deposits Act (the Act). Public deposits are moneys of enumerated state and local governments, and include time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposits, but do not include moneys in deposit notes, securities, mutual funds, and similar investments.[1] Unless exempted, all public deposits must be made in a qualified public depository (QPD).[2] A qualified public depository is any bank, savings bank, or savings association[3] that:

- Is organized and exists under the laws of the United States, the laws of this state or any other state or territory of the United States;
- Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.
- Has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.
- Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- Meets all the requirements of the Act, including a deposit of eligible collateral with the CFO; and
- Has been designated by the Chief Financial Officer (CFO) as a qualified public depository.[4]

Currently, there are 167 active QPDs in this state.[5] The Department of Financial Services (DFS), through its Division of Treasury and Bureau of Collateral Management, administers the Act's reporting and collateral pledging requirements through its uniform, statewide Public Deposits Program and Collateral Administration Section.[6] QPDs must comply with several reporting requirements under the Act:

- Monthly reports, which include a QPD's average balance of public deposit accounts for purposes of determining its collateral amounts as well as information relating to its capital adequacy,
- Quarterly reports (reports of condition and income or call reports), and
- Annual reports verifying a QPD's name, address, tax identification number, account balances, and so forth, and request confirmation from their QPD(s).[7]

In addition, the Act gives the CFO authority to take action against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.

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[1] Section 280.02(23), F.S. "Public depositors" are the official custodians for a governmental unit who is responsible for handling public deposits, and the enumerated state and local entities listed in the definition in "public deposit" parallel the definition of "governmental unit" (with the exception of state universities, which is addressed in this bill).

[2] Section 280.03(1)(b) and (3), F.S.

[3] Although the Act does not define either "savings association" or "savings bank," state and federal banking laws define "savings association" to include savings banks. Section 665.0211, F.S.; 12 U.S.C. § 1813(3).

[4] Section 280.02(26), F.S.; Rule 69C-2.005, Florida Administrative Code.

[5] DFS Collateral Management, Active Qualified Public Depository List, at: https://apps8.fldfs.com/CAP_Web/PublicDeposits/ActiveQPDDisplayList.aspx (last accessed December 17, 2013).

[6] *Id.*

[7] Section 280.16(1), F.S.

Collateral Requirements & Pledging Levels

Before a QPD accepts or retains a public deposit, it must deposit eligible collateral with an approved custodian in an amount determined according to statutory guidelines and DFS rules.[8] The Act's collateral requirements protect public deposits (both principal and accrued interest) against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[9] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[10] 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 remaining shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[11] The DFS has administered the program for over thirty years with no losses ever realized by participating governmental units.[12]

Each QPD is required to secure public deposits by pledging collateral at a level commensurate with the volume of its public deposits (which are reported monthly, quarterly, and annually to the CFO) and its financial condition. A QPD's financial condition is determined by considering factors such as nationally recognized financial rating services information and established financial performance guidelines.[13] DFS rules set forth collateral requirements and numerical parameters (a quarterly average financial ranking scale of 0 to 100) for the entry, withdrawal, collateral pledging levels.[14] The rule provides:

> Institutions with a ranking of:
> 1. 20 or more may join the Public Deposits program.
> 2. 0 - 15 must withdraw from the Program. However, an institution may choose to meet the following conditions as an alternative to withdrawing:
> a. Establish a maximum amount of public deposits the institution may hold, which is mutually agreed upon by and between the Chief Financial Officer and the institution.
> b. Deposit into an account in the Chief Financial Officer's name eligible collateral equal to 200% of the amount of public deposits agreed to in (a) above.
> c. Submit each month, or whenever requested by the Chief Financial Officer, a certified report listing all public deposits held for the credit of all public depositors.
> 3. 0 - 20 must deposit collateral into a custodial account established in the Chief Financial Officer's name.
> 4. 0 - 29 must pledge collateral at a 125% level, unless paragraph 2 applies.
> 5. 30 - 69 may pledge collateral at a 50% level.
> 6. 70 and above (four-quarter average) may pledge collateral at a 25% level.
> 7. Institutions less than three years old must pledge collateral at a 125% level unless paragraph 2 applies.

The most financially stable QPDs are only required to pledge 25% of the average monthly balance of their public deposits.[15] Meanwhile, collateral pledging levels increase to 50%, 125%, and 200% of a QPD's public deposits as its financial condition ranking decreases. The CFO has authority to require a 125% collateral pledging level for any QPD with a decreased capital account, a violation of the Act, or evidence of factors such as unsound management practices or unstable market conditions that may affect the QPD's

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[8] Section 280.04(2), F.S.; Chapter 69C-2, Florida Administrative Code (Procedures for Administering the Florida Security for Public Deposits Act).
[9] Section 280.041(6), F.S.
[10] With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act on July 21, 2010, the standard maximum deposit insurance amount was permanently raised to $250,000. *See* 12 U.S.C. § 1821(a)(1)(E). Depository institutions engaged in the business of receiving deposits other than trust funds may apply for FDIC insurance. 12 U.S.C. § 1815(a)(1).
[11] Section 280.07, F.S.
[12] DFS bill analysis (dated December 23, 2013), on file with the Insurance & Banking Subcommittee staff.
[13] Currently, the DFS uses FIS and IDC rating services: https://apps8.fldfs.com/CAP_Web/PublicDeposits/intro_major.aspx
[14] Section 280.04(1), F.S.; see also Rules 69C-2.006 and 69C-2.024, Fla. Admin. Code.
[15] Section 280.04(2)(b), F.S.

solvency.[16] The least financially stable QPDs must either withdraw from the public deposits program and return public deposits in an orderly fashion, or enter into an alternative deposit agreement and deposit collateral amounts equal to 200% of public deposits held into an account designated by the CFO and restrict its public deposits.[17]

The DFS has indicated that the two highest collateral pledge levels (125% and 200%) have raised regulatory and industry concerns for several small to moderately-sized QPDs.[18] In some instances, the 200% pledge level can exacerbate a struggling institution's condition by forcing it to either adversely affect its liquidity and cash reserves by having to seek additional collateral assets such as securities or letters of credit, or be forced to withdraw from the program and return public deposits. The latter option can trigger a loss of confidence within the QPD's community and possibly a "run" on the QPD's deposits, and thus further impact the QPD's safety and soundness.

QPD Oversight Board

The 2001 amendments to the Act created a six-member Qualified Public Depository Oversight Board (Board) for the purpose of safeguarding the integrity of the Public Deposits Program and preventing the need for loss assessments that could be imposed on all QPDs upon the default or insolvency of any one QPD.[19] The Act gives the CFO authority to identify representative QPDs for potential board member selection and to provide data to the board in order for it to fulfill its duties.[20] Board members are authorized to establish standards in matters regarding financial condition, collateral pledge levels, and so forth; make recommendations to the CFO for exceptions to such standards; issuing decisions on alternative participation agreements referred by the CFO, make recommendations for penalties and corrective actions for program violations; study program areas referred by the CFO; and making assessments on QPDs for the costs of implementing standards when the costs exceed the program's resources.[21] Official actions of the Board are subject to the CFO's approval and existing resources.[22]

However, since the Board's inception, the Board has convened only once. According to the Auditor General's 2011 operational audit:

> While a Board was appointed and an initial meeting was held in December 2001, Bureau staff stated that the Board members had questioned the liability of the represented QPDs in carrying out decisions affecting competitor QPDs and voiced their reluctance to participate in making recommendations as part of their responsibility. Subsequent to this initial meeting, no further Board meetings have taken place.

The Auditor General recommended that the DFS pursue legislative changes in order to effectuate the reestablishment of an active Board.[23] In its follow-up audit, the Auditor General recommended that the DFS pursue its stated legislative goal to establish an advisory committee in lieu of an oversight board.[24]

Effect of the Bill

Section 1. Definitions in the Act

The bill updates several definitions in s. 280.12, F.S.:

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[16] Rule 69C-2.010(6), Fla. Admin. Code.
[17] Sections 280.02(2) and 280.11, F.S. and Rule 69C-2.024(3)(b), Fla. Admin. Code.
[18] According to the DFS, only 2.1% of all program collateral is pledged at the two highest levels. E-mail from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff.
[19] Chapter 2001-230, Laws of Florida; Section 280.071, F.S.
[20] Section 280.05(1-2), F.S.
[21] Section 280.071(10), F.S.
[22] Section 280.071(11), F.S.
[23] Auditor General Report No. 2010-049 (November 2009).
[24] Auditor General Report No. 2012-008 (September 2011).

The bill removes the word "immediately" from the definition of "alternative participation agreement" in s. 280.12(2), F.S. Currently, a QPD with a financial condition ranking of 15 or less must either "immediately" withdraw from the public deposits program or enter into a restricted alternative participation agreement. In practice, however, a QPD can take several months or longer to withdraw from the program depending on the time needed for certificates of deposits to mature or other contractually required banking services for a public depositor. The Division of Treasury also publishes notice in the Florida Administrative Register the names of any QPD that elects to withdraw from the program as a safeguard to allow any unidentified public depositors of such QPD to withdraw their public deposits.[25]

The bill amends the definition of "average *monthly* balance" in s. 280.02(4), F.S., to remove the qualifier "before deducting deposit insurance" from the calculation of a QPD's average monthly balance of public deposits held during any 12 calendar months. Currently, a QPD's collateral requirement involves several factors, but is typically a function of its average daily balance, or *uninsured* public deposits multiplied by its collateral pledging level.[26] However, the most financially stable QPDs, while only required to pledge 25% of its "average *monthly* balance" of public deposits, must include deposit insurance in their collateral calculation. Accordingly, this requirement can negatively impact QPDs with public deposits that are substantially or completely covered by FDIC deposit insurance.[27] For example, a QPD that has averaged $4 million in gross public deposits (with all such deposits covered by FDIC insurance), has a collateral requirement of $1 million (i.e., $4 million average monthly balance times 25%), instead of the Act's minimum collateral requirement of $100,000.[28]

The bill amends the current defined term "capital account" in s. 280.04(6), F.S., to add "tangible equity capital" as an alternative term to reflect the current bank regulatory environment more accurately.[29] Tangible equity reflects the total equity capital of a QPD, minus intangible assets such as goodwill, and is calculated from an institution's quarterly call report (also known as reports of condition and income). The bill also amends "capital account" to remove reference to the Thrift Financial Report, which was previously filed by savings banks and savings and loan associations. With the enactment of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, the Office of Thrift Supervision (formerly the primary federal regulator for savings banks and savings and loans associations), was merged into other federal banking agencies on July 21, 2011.[30] Since then, the Office of the Comptroller of the Currency has assumed primary federal regulatory responsibility over savings banks and savings and loans associations, in addition to nationally-chartered banks. In addition, effective with the first quarterly report of 2012, the Thrift Financial Report is no longer used by savings banks or savings and loans associations.[31] These institutions now file the same Consolidated Reports of Condition and Income (call report) referenced in s. 280.16(6), F.S., and filed by all insured commercial banks.

The bill adds "state university" to the list of state and local entities that define "governmental unit" in s. 280.02(14), F.S., which comprises the list of entities whose public moneys are entitled to the Act's protection. This will create consistency with the definition of "public deposit," which are the public moneys of the state, any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court.[32]

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[25] E-mail from the DFS (received December 4, 2013), on file with the Insurance & Banking Subcommittee staff.

[26] See the Act's definition of "average *daily* balance" in s. 280.04(3), F.S., which excludes deposit insurance in determining collateral amounts at the 125% pledging level for newer or less financially stable QPDs.

[27] *Id.*

[28] Section 280.04(2)(e), F.S.

[29] E-mail from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff. For example, the Florida Financial Institutions Codes (chs. 655-667, F.S.), define "capital accounts" as "the aggregate value of unimpaired capital stock based on the par value of the shares, plus any unimpaired surplus and undivided profits or retained earnings of a financial institution. For the purposes of determining insolvency or imminent insolvency, the term does not include allowances for loan or lease loss reserves, intangible assets, subordinated debt, deferred tax assets, or similar assets." Section 655.005(1)(d), F.S.

[30] 12 U.S.C. §§ 5412-5413.

[31] Agency Information Collection Activities; Submission for OMB Review; Joint Comment Request, 76 FR 39,981 (July 7, 2011).

[32] Section 280.02(23), F.S.

The bill eliminates the definition of "oversight board," due to the bill's repeal of the QPD Oversight Board provision in the Act (s. 280.071, F.S.).

The bill eliminates a clause within the definition of "public deposit" regarding a requirement of banks, savings banks, and savings association to maintain reserves. Reserve requirements are the amount of funds that a depository institution must hold in reserve against specified deposit liabilities, and are determined in accordance with the Federal Reserve's Regulation D.[33] This reserve requirement is no longer needed within the definition of "public deposit," as the Federal Reserve no longer requires depository institutions to maintain reserves against certain types of bank accounts, whether such accounts involve public deposits or not. Since December 27, 1990, the reserve requirement for "nonpersonal time deposits" has been 0%. Nonpersonal time deposits are defined, in part, as "[a] time deposit, including an MMDA or any other savings deposit, representing funds in which any beneficial interest is held by a depositor which is not a natural person."[34] Governmental units are not considered to be natural persons by the Federal Reserve,[35] so a QPD has a 0% reserve requirement for a governmental unit's certificates of deposit ("CD"), savings accounts, or money market deposit accounts ("MMDA"). According to the DFS, eliminating the reserve requirement will provide consistency with the Act's current definition of "public deposit" which includes nonnegotiable CDs, as well as clarity that it includes public moneys held in savings accounts and MMDAs.[36]

Section 2. – Public deposits to be secured; clarification of exemption

Current law exempts a number of moneys and public deposits from the requirements and protections of the Act. One exemption involves public deposits "which are fully secured under federal regulations."[37] This exemption was added in 1998 to address public deposit accounts of a Florida governmental unit that was required to be collateralized under both state law and federal regulation. However, public housing authorities are required by the U.S. Department of Housing and Urban Development (HUD) to have their public deposits collateralized with only HUD-approved investments, which generally only allow certain eligible collateral such as U.S. Treasury and agency securities.[38] This has resulted in some QPDs having to collateralize local housing authorities' public deposits under both Florida and federal programs. The "fully secured under federal regulations" language was added in 1998 to provide relief to these QPDs and in anticipation of other federal regulatory agencies adding collateralization requirements. However, this 1998 language has created ambiguity among the industry about whether depositing public funds with any depository institution, whether a QPD or not, with FDIC deposit insurance (a matter of federal regulation) was sufficient to qualify for this exemption. Accordingly, the DFS has expressed that adding the phrase "pursuant to a collateral requirement" would provide clarification as to the actual intent of the exemption.

Section 3. - Reduction of pledge levels

The bill reduces the numerical parameters for the current 125% and 200% pledge levels to 110% and 150%, respectively, in s. 280.04, F.S. The DFS has indicated that if these adjustments were adopted, Florida would still have the highest pledge level (150%) among the states with centrally administered public deposit programs,[39] thus ensuring the safety of public deposits.

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[33] Board of Governors of the Federal Reserve Requirements, "Reserve Requirements," at http://www.federalreserve.gov/monetarypolicy/reservereq.htm (last accessed December 18, 2013). Regulation D is codified at C.F.R. Title 12, Chapter II, Subchapter A, Part 204.

[34] *Id.* See also 12 C.F.R. §204.2(f).

[35] Regulation D defines "natural person" as either an individual or a sole proprietorship, and does not include a corporation owned by an individual, a partnership or other association. 12 C.F.R. §204.2(g).

[36] E-mail from the DFS (received December 4, 2013), on file with the Insurance & Banking Subcommittee staff.

[37] Section 280.03(3)(e), F.S.

[38] *See* HUD Public and Indian Housing Notice 02-13; *see also* Notice PIH 96-33.

[39] E-mail from the DFS (received November 20, 2013), on file with the Insurance & Banking Subcommittee staff.

Section 4. – Powers and duties of the CFO

Because the bill repeals the QPD Oversight Board (see section 6, below), the bill repeals provisions of s. 280.05, F.S., that give the CFO authority over the Board.

Section 5. Grounds for suspension or disqualification of a QPD

The bill amends s. 280.051, F.S., to make conforming changes to the current definition of capital accounts (which the bill renames as "tangible equity capital"), and clarifies that failure to execute a "collateral control agreement" prior to the use of a custodian is a ground for suspension or disqualification. Currently, this section and DFS rule use the term "public depository pledge agreement,"[40] but the DFS renamed this form to "Collateral Control Agreement" in 2001.[41]

Section 6. Repeal of the QPD Oversight Board

The bill repeals s. 280.071, F.S., regarding the QPD Oversight Board.

Sections 7 and 8. Defaulted or insolvent QPDs

Current law requires the CFO to notify all public depositors (who have complied with s. 280.17, F.S.) in the event of a QPD's default or insolvency. The bill provides an exception to this notice requirement in s. 280.085, F.S., when a defaulting or insolvent QPD's public deposits are acquired by another bank, savings bank, or savings association. The DFS has proposed this language since the vast majority of bank failures result in another insured depository institution acquiring all deposited funds (insured and uninsured), and therefore eliminating any risk of loss to depositors.[42]

Current law provides that in the event that a QPD is merged into, acquired by, or consolidated with a non-QPD bank, savings bank, or savings association, the resulting institution automatically becomes a QPD and assumes the former institution's contingent liability and public deposits, and must provide notice to the CFO regarding its decision to remain or withdraw in the program within specified time limits.[43] The bill provides that any bank, savings bank, or savings association that acquires some or all of a defaulted or insolvent QPD is also subject to this requirement. This language was proposed by the DFS to provide certainty that any non-QPD bank that acquires a failed QPD would automatically be subject to the Act

Section 9. Withdrawal from the public deposits program

The bill corrects a cross-reference in s. 280.11(3), F.S. (regarding a QPD's mandated withdrawal from the public deposits program), which currently references a non-existent s. 280.05(1)(b), F.S. The bill provides that a QPD which is required to withdraw from the public deposits program pursuant to s. 280.05(17), F.S., which will refer to the CFO's authority to suspend or disqualify any QPD in violation of the Act.[44]

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[40] Rule 69C-2.009(1)(b), Fla. Admin. Code; Public Depository Pledge Agreement - Form DI4-1001 (revised March 1997).
[41] Form DFS-J1-1001, Revised June 2001. DFS Collateral Management, at https://apps8.fldfs.com/CAP_Web/PublicDeposits/intro_definitions.aspx (last accessed Dec. 9, 2013).
[42] E-mail from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff. According to information provided by the DFS (received November 30, 2013), 32 QPDs have failed since February 2009. However, all of them have been acquired by other institutions. Once any failed bank is formally closed by its primary bank regulator and resolved by the Federal Deposit Insurance Corporation (acting as a receiver or a conservator), the FDIC conducts an inventory and evaluation of the failed bank to determine appropriate resolution options to offer to potential bidders. For more information on bank failures and resolution structures, see "Anatomy of a Bank Failure," by Ragalevsky and Ricardi, *The Banking Law Journal* (Dec. 2009).
[43] Section 280.10, F.S.
[44] Currently, this provision is s. 280.05(20), F.S., but is renumbered to s. 280.05(17) by the bill.

Section 10. Reporting requirements of QPDs

The bill also removes the requirement in s. 280.16(1)(e), F.S., that QPDs submit their call reports to the CFO. However, depository institutions are already required under federal law to submit their call reports to the Federal Financial Institutions Examination Council (FFIEC)[45], and all call reports are already publicly available through the FFIEC's website.[46] Accordingly, the DFS has recommended that this reporting requirement be eliminated from the Act.[47]

Section 11. Requirements for public depositors; notice to public depositors and governmental units; loss of protection

The bill streamlines certain reporting requirements for public depositors' annual report to the CFO. Public depositors are required to confirm certain public deposit information (account numbers, federal employer identification number, etc.) with the CFO. The bill eliminates the requirement in s. 280.17(5), F.S., for public depositors to obtain confirmation directly from their QPDs for purposes of preparing annual reports to the CFO.

Additionally, every public depositor is required to submit annually to the CFO a public deposit identification and deposit form,[48] which the Act currently requires as a condition for protection from loss to public depositors.[49] However, the DFS has noted that in the event of a QPD's default or insolvency, it is already required by the Act to coordinate with the Office of Financial Regulation (OFR) or the receiver of the QPD (generally, the FDIC) to "ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit insurance applicable to such deposits."[50] Additionally, the Act provides that the CFO must validate claims on public deposits accounts. Therefore, the DFS is already required to validate claims of loss by coordinating with OFR and/or the FDIC independent of the existence or utilization by a public depositor of the ID and Acknowledgment form. However, the current requirement for the form may lead to situations where a governmental unit is deprived of the program's protection simply due to an inadvertent oversight to file this form (or may have otherwise reported the information to the DFS outside of the form). Accordingly, the DFS has recommended that this ministerial reporting requirement for public depositors, while still required, should not prove fatal to a public depositor if the QPD has otherwise classified, reported, and collateralized the public deposit account.

B. SECTION DIRECTORY:

Section 1: Amends s. 280.02, F.S., relating to definitions.

Section 2: Amends s. 280.03. F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 3: Amends s. 280.04, F.S., relating to collateral for public deposits; general provisions.

Section 4: Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.

Section 5: Amends s. 280.051, F.S., relating to grounds for suspension or disqualification of a qualified public depository.

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[45] 12 U.S.C. § 324 (State member banks); 12 U.S.C. §1817 (State nonmember banks); 12 U.S.C. §161 (National banks); and 12 U.S.C. §1464 (Savings associations). The FFIEC is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau, along with advisory state agency representatives. "About the FFIEC," at http://www.ffiec.gov/about.htm (last accessed December 18, 2013).

[46] The FFIEC Central Data Repository's Public Data Distribution website, at https://cdr.ffiec.gov/public/ (last accessed Dec. 9, 2013).

[47] E-mail from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff.

[48] Section 280.17(6), F.S. This form has been adopted by DFS rule. Form DFS-J1-1295(June 1998).

[49] Section 280.17(8), F.S.

[50] Section 280.08(2), F.S.

Section 6: Repeals s. 280.071, F.S., relating to qualified public depository oversight board; purpose; identifying representative qualified public depositories; member selection; responsibilities.

Section 7: Amends s. 280.085, F.S., relating to notice to claimants.

Section 8: Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 9: Amends s. 280.11, F.S., relating to withdrawal from public deposits program; return of pledged collateral.

Section 10: Amends s. 280.16, F.S., relating to requirements of qualified public depositories; confidentiality.

Section 11: Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.

Section 12: Provides an effective date of July 1, 2014.

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's reduction of the two highest collateral pledge levels may have a positive impact on small and moderate sized QPDs. Additionally, the bill's clarifications of reporting and other compliance requirements may have an indeterminate positive effect on the private sector.

D. FISCAL COMMENTS:

The DFS reports that the bill will not have any fiscal impact, and programming changes to their Collateral Administration Program computer system should be absorbed with existing information technology resources.[51]

Public depositors that fail to comply with the reporting requirements for identification of their moneys as public deposits would not lose their protection from loss, if a failed qualified public depository had nonetheless classified, reported, and collateralized the money as public deposits.

[51] E-mail from the DFS (received December 16, 2013), on file with the Insurance & Banking Subcommittee staff.

Local governments and other units of Florida government that participate in the public deposits program would no longer be required to request bank account confirmation data from their QPDs. The estimated administrative cost of such requests is negligible.

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.

Enactment of this legislation will necessitate amendment of existing rules for the purpose of conforming language. Chapter 69C-2, F.A.C., which provides procedures for administering the Act, would have to be amended to conform definitions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to security for public deposits; amending s. 280.02, F.S.; revising definitions; amending s. 280.03, F.S.; clarifying provisions exempting public deposits from state security requirements; amending s. 280.04, F.S.; revising the collateral-pledging level for public deposits; amending s. 280.05, F.S.; conforming provisions to changes made by the act; amending s. 280.051, F.S.; updating terms; repealing s. 280.071, F.S., relating to the Qualified Public Depository Oversight Board; amending s. 280.085, F.S.; providing that a notice of the default or insolvency of a qualified public depository is not required under certain circumstances; amending s. 280.10, F.S.; requiring information from a nonqualified bank, savings bank, or savings association that acquires public depository by default or insolvency; amending s. 280.11, F.S.; conforming cross-references; amending s. 280.16, F.S.; deleting certain provisions relating to required reports and forms; amending s. 280.17, F.S.; revising notice requirements for public depositors; revising restrictions on loss protection provisions in certain circumstances in which a public depositor fails to comply with the notice requirements; providing an effective date.

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

Section 1. Section 280.02, Florida Statutes, is amended to read:

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

(1) "Affiliate" means an entity that is related through a parent corporation's controlling interest. The term also includes a ~~any~~ financial institution holding company or a ~~any~~ subsidiary or service corporation of such holding company.

(2) "Alternative participation agreement" means an agreement of restrictions that a qualified public depository completes as an alternative to ~~immediately~~ withdrawing from the public deposits program due to financial condition.

(3) "Average daily balance" means the average daily balance of public deposits held during the reported month. The average daily balance shall ~~must~~ be determined by totaling, by account, the daily balances held by the depositor and ~~then~~ dividing the total by the number of calendar days in the month. Deposit insurance is then deducted from each account balance and the resulting amounts are totaled to obtain the average daily balance.

(4) "Average monthly balance" means the average monthly balance of public deposits held~~, before deducting deposit insurance,~~ by the depository during any 12 calendar months. The average monthly balance of the previous 12 calendar months shall

~~must~~ be determined by adding the average daily balance ~~before deducting deposit insurance~~ for the reported month and the average daily balances ~~before deducting deposit insurance~~ for the 11 months preceding that month and dividing the total by 12.

(5) "Book-entry form" means that securities are not represented by a paper certificate but represented by an account entry on the records of a depository trust clearing system or, in the case of United States Government securities, a Federal Reserve Bank.

(26)~~(6)~~ "Capital account" or "tangible equity capital" means total equity capital, as defined on the balance-sheet portion of the Consolidated Reports of Condition and Income (call report)~~ or the Thrift Financial Report~~, less intangible assets, as submitted to the regulatory banking authority.

(7) "Collateral-pledging level~~,~~" ~~for qualified public depositories,~~ means the percentage of collateral required to be pledged by a qualified public depository as provided under ~~in~~ s. 280.04 ~~by a financial institution~~.

(8) "Current month" means the month immediately following the month for which the monthly report is due from qualified public depositories.

(9) "Custodian" means the Chief Financial Officer or a ~~any~~ bank, savings association, or trust company that:

(a) Is organized and existing under the laws of this state, any other state, or the United States;

(b) Has executed all forms required under this chapter or

any rule adopted hereunder;

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter; and

(d) Has been approved by the Chief Financial Officer to act as a custodian.

(10) "Default or insolvency" includes, without limitation, the failure or refusal of a qualified public depository to pay a ~~any~~ check or warrant drawn upon sufficient and collected funds by a ~~any~~ public depositor or to return a ~~any~~ deposit on demand or at maturity together with interest as agreed; the issuance of an order by a ~~any~~ supervisory authority restraining such depository from making payments of deposit liabilities; or the appointment of a receiver for such depository.

(11) "Effective date of notice of withdrawal or order of discontinuance" pursuant to s. 280.11(3) means that date which is set out as such in any notice of withdrawal or order of discontinuance from the Chief Financial Officer.

(12) "Eligible collateral" means securities, Federal Home Loan Bank letters of credit, and cash, as designated in s. 280.13.

(13) "Financial institution" means, including, but not limited to, an association, bank, brokerage firm, credit union, industrial savings bank, savings and loan association, trust company, or other type of financial institution organized under

the laws of this state or any other state of the United States and doing business in this state or any other state, in the general nature of the business conducted by banks and savings associations.

(14) "Governmental unit" means the state or any county, school district, community college district, state university, special district, metropolitan government, or municipality, including any agency, board, bureau, commission, and institution of any of such entities, or any court.

(15) "Loss to public depositors" means loss of all principal and all interest or other earnings on the principal accrued or accruing as of the date the qualified public depository was declared in default or insolvent.

(16) "Market value" means the value of collateral calculated pursuant to s. 280.04.

(17) "Operating subsidiary" means the qualified public depository's 100-percent owned corporation that has ownership of pledged collateral. The operating subsidiary may not have ~~no~~ powers beyond those that its parent qualified public depository may itself exercise. The use of an operating subsidiary is at the discretion of the qualified public depository and must meet the Chief Financial Officer's requirements.

~~(18) "Oversight board" means the qualified public depository oversight board created in s. 280.071 for the purpose of safeguarding the integrity of the public deposits program and preventing the realization of loss assessments through~~

~~standards, policies, and recommendations for actions to the Chief Financial Officer.~~

(18)~~(19)~~ "Pledged collateral" means securities or cash held separately and distinctly by an eligible custodian for the benefit of the Chief Financial Officer to be used as security for Florida public deposits. This includes maturity and call proceeds.

(19)~~(20)~~ "Pledgor" means the qualified public depository and, if one is used, operating subsidiary.

(20)~~(21)~~ "Pool figure" means the total average monthly balances of public deposits held by all qualified public depositories during the immediately preceding 12-month period.

(21)~~(22)~~ "Previous month" means the month or months immediately preceding the month for which a monthly report is due from qualified public depositories.

(22)~~(23)~~ "Public deposit" means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which ~~that~~ are placed on deposit in a bank, savings bank, or savings association ~~and for which the bank, savings bank, or savings association is required to maintain reserves~~. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable

certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not ~~considered~~ public deposits and are ~~shall~~ not ~~be~~ subject to ~~the provisions of~~ this chapter.

(23) ~~(24)~~ "Public depositor" means the official custodian of funds for a governmental unit who is responsible for handling public deposits.

(24) ~~(25)~~ "Public deposits program" means the Florida Security for Public Deposits Act contained in this chapter and any rule adopted under this chapter.

(25) ~~(26)~~ "Qualified public depository" means a ~~any~~ bank, savings bank, or savings association that:

(a) Is organized and exists under the laws of the United States or~~,~~ the laws of this state or any other state or territory of the United States.

(b) Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.

(c) Has deposit insurance pursuant to ~~under the provision of~~ the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq.

(d) Has procedures and practices for accurate identification, classification, reporting, and collateralization

of public deposits.

(e) Meets all the requirements of this chapter.

(f) Has been designated by the Chief Financial Officer as a qualified public depository.

(26) ~~(27)~~ "Reported month" means the month for which a monthly report is due from qualified public depositories.

(27) ~~(28)~~ "Required collateral" of a qualified public depository means eligible collateral having a market value equal to or in excess of the amount required under ~~pursuant to~~ s. 280.04.

(28) ~~(29)~~ "Chief Financial Officer's custody" is a collateral arrangement governed by a contract between a designated Chief Financial Officer's custodian and the Chief Financial Officer. This arrangement requires that collateral ~~to~~ be in the Chief Financial Officer's name in order to perfect the security interest.

(29) ~~(30)~~ "Triggering events" are events set out in s. 280.041 which give the Chief Financial Officer the right to:

(a) Instruct the custodian to transfer securities pledged, interest payments, and other proceeds of pledged collateral not previously credited to the pledgor.

(b) Demand payment under letters of credit.

Section 2. Paragraph (e) of subsection (3) of section 280.03, Florida Statutes, is amended to read:

280.03 Public deposits to be secured; prohibitions; exemptions.—

(3) The following are exempt from the requirements of, and protection under, this chapter:

(e) Public deposits that ~~which~~ are fully secured by a collateral requirement under federal regulations.

Section 3. Subsections (1) and (2) of section 280.04, Florida Statutes, are amended to read:

280.04 Collateral for public deposits; general provisions.—

(1) The Chief Financial Officer shall determine the collateral requirements and collateral-pledging ~~collateral pledging~~ level for each qualified public depository following procedures established by rule. These procedures must ~~shall~~ include numerical parameters for 25-percent, 50-percent, 110-percent ~~125-percent~~, and 150-percent ~~200-percent~~ pledge levels based on nationally recognized financial rating services information and established financial performance guidelines.

(2) A qualified public depository may not accept or retain any public deposit ~~which is~~ required to be secured unless it deposits ~~has deposited~~ with the Chief Financial Officer eligible collateral at least equal to the greater of:

(a) The average daily balance of public deposits that does not exceed the lesser of its tangible equity capital ~~account~~ or 20 percent of the pool figure multiplied by the depository's collateral-pledging level, plus the greater of:

1. One hundred ten ~~twenty-five~~ percent of the average daily balance of public deposits in excess of its tangible

equity capital ~~accounts~~; or

2. One hundred ten ~~twenty-five~~ percent of the average daily balance of public deposits in excess of 20 percent of the pool figure.

(b) Twenty-five percent of the average monthly balance of public deposits.

(c) One hundred ten ~~twenty-five~~ percent of the average daily balance of public deposits if the qualified public depository:

1. Has been established for less than 3 years;

2. Has experienced material decreases in its tangible equity capital ~~accounts~~; or

3. Has an overall financial condition that is materially deteriorating.

(d) One ~~Two~~ hundred fifty percent of an established maximum amount of public deposits which ~~that~~ has been mutually agreed upon by and between the Chief Financial Officer and the qualified public depository.

(e) Minimum required collateral of $100,000.

(f) An amount as required in special instructions from the Chief Financial Officer to protect the integrity of the public deposits program.

Section 4. Present subsections (1), (2), (3), and (16) of section 280.05, Florida Statutes, are amended, and present subsections (4) through (15) and (17) through (20) are renumbered as subsections (1) through (12) and (14) through

(17), respectively, to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

~~(1) Identify representative qualified public depositories and furnish notification for the qualified public depository oversight board selection pursuant to s. 280.071.~~

~~(2) Provide data for the qualified public depository oversight board duties pursuant to s. 280.071 regarding:~~

~~(a) Establishing standards for qualified public depositories and custodians.~~

~~(b) Evaluating requests for exceptions to standards and alternative participation agreements.~~

~~(c) Reviewing and recommending action for qualified public depository or custodian violations.~~

~~(3) Review, implement, monitor, evaluate, and modify all or any part of the standards, policies, or recommendations of the qualified public depository oversight board~~.

(13)~~(16)~~ Require the filing of the following reports, which the Chief Financial Officer shall process as provided:

(a) Qualified public depository monthly reports and schedules. The Chief Financial Officer shall review the reports of each qualified public depository for material changes in tangible equity capital ~~accounts~~ or changes in name, address, or

type of institution; record the average daily balances of public deposits held; and monitor the collateral-pledging levels and required collateral.

(b) Quarterly regulatory reports from qualified public depositories. The Chief Financial Officer shall analyze qualified public depositories ranked in the lowest category based on established financial condition criteria.

(c) Qualified public depository annual reports and public depositor annual reports. The Chief Financial Officer shall compare public deposit information reported by qualified public depositories and public depositors. Such comparison shall be conducted for qualified public depositories that ~~which~~ are ranked in the lowest category based on established financial condition criteria of record on September 30. Additional comparison processes may be performed as public deposits program resources permit.

(d) Any related documents, reports, records, or other information deemed necessary by the Chief Financial Officer in order to ascertain compliance with this chapter.

Section 5. Subsections (2), (6), and (12) of section 280.051, Florida Statutes, are amended to read:

280.051 Grounds for suspension or disqualification of a qualified public depository.—A qualified public depository may be suspended or disqualified or both if the Chief Financial Officer determines that the qualified public depository has:

(2) Submitted reports containing inaccurate or incomplete

information regarding public deposits or collateral for such deposits, tangible equity capital ~~accounts~~, or the calculation of required collateral.

(6) Failed to furnish the Chief Financial Officer with prompt and accurate information, or failed to allow inspection and verification of any information, dealing with public deposits or dealing with the exact status of its tangible equity capital ~~accounts~~, or ~~any~~ other financial information that the Chief Financial Officer determines necessary to verify compliance with this chapter or any rule adopted pursuant to this chapter.

(12) Failed to execute or have the custodian execute a collateral control ~~public depository pledge~~ agreement before ~~prior to~~ using a custodian.

Section 6. Section 280.071, Florida Statutes, is repealed.

Section 7. Section 280.085, Florida Statutes, is amended to read:

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice must ~~shall~~ direct all public depositors having claims or demands against the Public Deposits Trust Fund occasioned by the default or insolvency to file their claims with the Chief Financial Officer within 30 days after the date of the notice.

(2) A ~~No~~ claim against the Public Deposits Trust Fund is binding on the fund only if ~~unless~~ presented within 30 days after the date of the notice.

(3) This section does not affect any proceeding to:

(a) Enforce any real property mortgage, chattel mortgage, security interest, or other lien on property of a qualified public depository that is in default or insolvency; or

(b) Establish liability of a qualified public depository that is in default or insolvency to the limits of any federal or other casualty insurance protection.

(4) The notice required in subsection (1) is not required if the default or insolvency of a qualified public depository is resolved in a manner in which all Florida public deposits are acquired by another insured bank, savings bank, or savings association.

Section 8. Present subsections (3) through (6) of section 280.10, Florida Statutes, are renumbered as subsection (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

280.10 Effect of merger, acquisition, or consolidation; change of name or address.—

(3) If the default or insolvency of a qualified public depository results in acquisition of all or part of its Florida public deposits by a bank, savings bank, or savings association that is not a qualified public depository, the bank, savings bank, or savings association acquiring the Florida public

deposits is subject to subsection (1).

Section 9. Subsection (3) of section 280.11, Florida Statutes, is amended to read:

280.11 Withdrawal from public deposits program; return of pledged collateral.—

(3) A qualified public depository which is required to withdraw from the public deposits program pursuant to s. 280.05(17) ~~280.05(1)(b)~~ shall not receive or retain public deposits after the effective date of withdrawal. The contingent liability, required collateral, and reporting requirements of the withdrawing depository shall continue until the effective date of withdrawal. Notice of withdrawal (order of discontinuance) from the Chief Financial Officer shall be mailed to the qualified public depository by registered or certified mail. Penalties incurred because of withdrawal from the public deposits program shall be the responsibility of the withdrawing depository.

Section 10. Section 280.16, Florida Statutes, is amended to read:

280.16 Requirements of qualified public depositories; confidentiality.—

(1) In addition to any other requirements specified in this chapter, qualified public depositories shall:

(a) Take the following actions for each public deposit account:

1. Identify the account as a "Florida public deposit" on

the deposit account record with the name of the public depositor or provide a unique code for the account for such designation.

2. When the form prescribed by the Chief Financial Officer for acknowledgment of receipt of each public deposit account is presented to the qualified public depository by the public depositor opening an account, the qualified public depository shall execute and return the completed form to the public depositor.

3. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor due to a change of account name, account number, or qualified public depository name on an existing public deposit account, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

4. When the acknowledgment of receipt form is presented to the qualified public depository by the public depositor on an account existing before July 1, 1998, the qualified public depository shall execute and return the completed form to the public depositor within 45 calendar days after such presentation.

(b) Within 15 days after the end of each calendar month, or when requested by the Chief Financial Officer, submit to the Chief Financial Officer a written report, under oath, indicating the average daily balance of all public deposits held by it during the reported month, required collateral, a detailed

schedule of all securities pledged as collateral, selected financial information, and any other information ~~that~~ the Chief Financial Officer deems ~~determines~~ necessary to administer this chapter.

(c) Provide to each public depositor annually by~~, not later than~~ October 30~~,~~ the following information on all open accounts identified as a "Florida public deposit" for that public depositor as of September 30, to be used for confirmation purposes: the federal employer identification number of the qualified public depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type, and actual account balance on deposit. Any discrepancy found in the confirmation process must ~~shall~~ be reconciled before November 30.

(d) Submit to the Chief Financial Officer annually by~~, not later than~~ November 30~~,~~ a report of all public deposits held for the credit of all public depositors at the close of business on September 30. Such annual report must ~~shall~~ consist of public deposit information in a report format prescribed by the Chief Financial Officer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Chief Financial Officer.

~~(e) Submit to the Chief Financial Officer not later than the date required to be filed with the federal agency:~~

~~1. A copy of the quarterly Consolidated Reports of~~

~~Condition and Income, and any amended reports, required by the Federal Deposit Insurance Act, 12 U.S.C. ss. 1811 et seq., if such depository is a bank; or~~

~~2. A copy of the Thrift Financial Report, and any amended reports, required to be filed with the Office of Thrift Supervision if such depository is a savings and loan association.~~

(2) The following forms must be made under oath:

(a) The agreement of contingent liability.

(b) Collateral control agreements and letter of credit agreements.

(3) Any information contained in a report of a qualified public depository required under this chapter or any rule adopted under this chapter, together with any information required of a financial institution that is not a qualified public depository, is ~~shall~~, if made confidential by any law of the United States or of this state, ~~be considered~~ confidential and exempt from ~~the provisions of~~ s. 119.07(1) and not subject to dissemination to anyone other than the Chief Financial Officer under ~~the provisions of~~ this chapter.~~;~~ However, ~~it is the responsibility of~~ each qualified public depository and each financial institution from which information is required shall ~~to~~ inform the Chief Financial Officer of information that is confidential and the law providing for the confidentiality of that information, and the Chief Financial Officer does not have a duty to inquire into whether information is confidential.

Section 11. Section 280.17, Florida Statutes, is amended to read:

280.17 Requirements for public depositors; notice to public depositors and governmental units; loss of protection.—In addition to any other requirement specified in this chapter, public depositors shall comply with the following:

(1)(a) Each official custodian of moneys that meet the definition of a public deposit under s. 280.02 shall ensure such moneys are placed in a qualified public depository unless the moneys are exempt under the laws of this state.

(b) Each depositor, asserting that moneys meet the definition of a public deposit ~~provided in s. 280.02~~ and are not exempt under the laws of this state, is responsible for any research or defense required to support such assertion.

(2) ~~Beginning July 1, 1998,~~ Each public depositor shall take the following actions for each public deposit account:

(a) Ensure that the name of the public depositor is on the account or certificate or other form provided to the public depositor by the qualified public depository in a manner sufficient to identify that the account is a Florida public deposit.

(b) Execute a form prescribed by the Chief Financial Officer for identification of each public deposit account and obtain acknowledgment of receipt on the form from the qualified public depository at the time of opening the account. Such public deposit identification and acknowledgment form shall be

replaced with a current form as required in subsection (3). A public deposit account existing before July 1, 1998, must have a form completed before September 30, 1998.

(c) Maintain the current public deposit identification and acknowledgment form as a valuable record. Such form is mandatory for filing a claim with the Chief Financial Officer upon default or insolvency of a qualified public depository.

(3) Each public depositor shall review the Chief Financial Officer's published list of qualified public depositories and ascertain the status of depositories used. ~~A public depositor shall,~~ For status changes of depositories, a public depositor shall:

(a) Execute a replacement public deposit identification and acknowledgment form, as described in subsection (2), for each public deposit account when there is a merger, acquisition, name change, or other event which changes the account name, account number, or name of the qualified public depository.

(b) Move and close public deposit accounts when an institution is not included in the authorized list of qualified public depositories or is shown as withdrawing.

(4) If ~~Whenever~~ public deposits are in a qualified public depository that has been declared to be in default or insolvent, each public depositor shall:

(a) Notify the Chief Financial Officer immediately by telecommunication after receiving notice of the default or insolvency from the receiver of the depository with subsequent

written confirmation and a copy of the notice.

(b) Submit to the Chief Financial Officer for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

2. A completed public deposit identification and acknowledgment form, as described in subsection (2).

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act.

(5) Each public depositor shall confirm annually that public deposit information as of the close of business on September 30 has been provided by each qualified public depository and is in agreement with public depositor records. Such confirmation must ~~shall~~ include the federal employer identification number of the qualified public depository, the name on the deposit account record, the federal employer identification number on the deposit account record, and the account number, account type, and actual account balance on deposit. ~~Public depositors shall request such confirmation information from qualified public depositories on or before the fifth calendar day of October and shall allow until October 31 to receive such information.~~ Any discrepancy found in the confirmation process must ~~shall~~ be resolved ~~reconciled~~ before November 30.

(6) Each public depositor shall submit by~~, not later than~~ November 30~~,~~ an annual report to the Chief Financial Officer which includes ~~shall include~~:

(a) The official name, mailing address, and federal employer identification number of the public depositor.

(b) Verification that confirmation of public deposit information as of September 30, as described in subsection (5), has been completed.

(c) Public deposit information in a report format prescribed by the Chief Financial Officer. The manner of required filing may be as a signed writing or electronic data transmission, at the discretion of the Chief Financial Officer.

(d) Confirmation that a current public deposit identification and acknowledgment form, as described in subsection (2), has been completed for each public deposit account and is in the possession of the public depositor.

(7) Notices relating to the public deposits program shall be mailed to public depositors and governmental units from a list developed annually from:

(a) Public depositors that filed an annual report under subsection (6).

(b) A governmental unit ~~units~~ existing on September 30 which ~~that~~ had no public deposits but filed an annual report stating "no public deposits~~"~~."

(c) A governmental unit ~~units~~ established during the year that filed an annual report as a new governmental unit or

otherwise furnished in writing to the Chief Financial Officer its official name, address, and federal employer identification number.

(8) If a public depositor does not comply with this section on each public deposit account, the protection from loss provided in s. 280.18 is not effective as to that public deposit account. However, the protection from loss provided in s. 280.18 remains effective if a public depositor fails to present the form prescribed by the Chief Financial Officer for identification of public deposit accounts and the Chief Financial Officer determines that the defaulting or insolvent depository had classified, reported, and collateralized the account as a public deposit account.

Section 12. This act shall take effect July 1, 2014.