



---

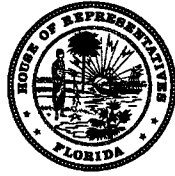
# **Regulatory Affairs Committee**

**Wednesday, February 17, 2016**

**9:30 AM**

**Sumner Hall (404 HOB)**

## **MEETING PACKET**



# The Florida House of Representatives

## Regulatory Affairs Committee

Steve Crisafulli  
Speaker

Jose Diaz  
Chair

### AGENDA

February 17, 2016

404 HOB 9:30 AM – 12:00 PM

- I. Call to Order and Roll Call
- II. CS/HB 285 by *Business & Professions Subcommittee; Rep. Ray*  
Natural Gas Fuel Fleet Vehicle Rebate Program
- III. HB 303 by *Rep. Burton*  
Unlicensed Activity Fees
- IV. CS/HB 445 by *Insurance & Banking Subcommittee; Rep. Stevenson*  
Viatical Settlements
- V. CS/CS/HB 641 by *Agriculture & Natural Resources Appropriations Subcommittee; Business & Professions Subcommittee; Rep. Trumbull*  
Department of Agriculture and Consumer Services
- VI. HB 643 by *Rep. Trumbull*  
Pub. Rec./Department of Agriculture and Consumer Services
- VII. CS/CS/HB 651 by *Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Rep. Beshears*  
Department of Financial Services
- VIII. CS/HB 659 by *Insurance & Banking Subcommittee; Rep. Santiago*  
Automobile Insurance

February 17, 2016

Page 2

- IX. CS/HB 743 by *Business & Professions Subcommittee; Reps. Latvala and Burgess*  
Mobile Homes
- X. CS/CS/HB 1025 by *State Affairs Committee; Energy & Utilities Subcommittee; Reps. Antone and B. Cortes*  
Public Records/Utility Security Information
- XI. CS/HB 1303 by *Insurance & Banking Subcommittee; Rep. S. Jones*  
Insurance Agents
- XII. HB 7073 by *Rulemaking Oversight & Repeal Subcommittee; Rep. Ray*  
Ratification of Rules/Florida Workers' Compensation Health Care Provider  
Reimbursement Manual/DFS
  
- XIII. ADJOURNMENT

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Regulatory Affairs Committee

**Start Date and Time:** Wednesday, February 17, 2016 09:30 am  
**End Date and Time:** Wednesday, February 17, 2016 12:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.50 hrs

#### Consideration of the following bill(s):

CS/HB 285 Natural Gas Fuel Fleet Vehicle Rebate Program by Business & Professions Subcommittee, Ray  
HB 303 Unlicensed Activity Fees by Burton  
CS/HB 445 Viatical Settlements by Insurance & Banking Subcommittee, Stevenson  
CS/CS/HB 641 Department of Agriculture and Consumer Services by Agriculture & Natural Resources Appropriations Subcommittee, Business & Professions Subcommittee, Trumbull  
HB 643 Pub. Rec./Department of Agriculture and Consumer Services by Trumbull  
CS/CS/HB 651 Department of Financial Services by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Beshears  
CS/HB 659 Automobile Insurance by Insurance & Banking Subcommittee, Santiago  
CS/HB 743 Mobile Homes by Business & Professions Subcommittee, Latvala, Burgess  
CS/CS/HB 1025 Public Records/Utility Security Information by State Affairs Committee, Energy & Utilities Subcommittee, Antone, Cortes, B.  
CS/HB 1303 Insurance Agents by Insurance & Banking Subcommittee, Jones, S.  
HB 7073 Ratification of Rules/Florida Workers' Compensation Health Care Provider Reimbursement Manual/DFS by Rulemaking Oversight & Repeal Subcommittee, Ray

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., Tuesday, February 16 2016.

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., Tuesday, February 16, 2016.

**NOTICE FINALIZED on 02/15/2016 4:17PM by Ellinor.Martha**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 285 Natural Gas Fuel Fleet Vehicle Rebate Program  
**SPONSOR(S):** Business & Professions Subcommittee; Ray  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 90

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	13 Y, 0 N	Lolley	Massengale
3) Regulatory Affairs Committee		Whittier <i>gzw</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

In 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (program) within the Department of Agriculture and Consumer Services (DACS) to “help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state.”

Chapter 2013-198, L.O.F., directs the Legislature to appropriate \$6 million each fiscal year, beginning in the 2013-2014 fiscal year, and each year thereafter, through the 2017-2018 fiscal year from the General Revenue Fund (GR) to DACS to award rebates for the following eligible costs:

- The conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle or
- The purchase or lease of a natural gas fuel fleet motor vehicle.

Specifically, DACS must award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of \$25,000 per vehicle up to a total of \$250,000 per applicant per fiscal year, on a first-come, first-served basis.

DACS reports the following approximate unexpended balances by fiscal year since the program's inception:

- 2013-2014: \$2,128,397,
- 2014-2015: \$769,348, and
- 2015-2016: \$2,206,006 (as of February 3, 2016).

The bill allows any unexpended funds remaining for the fiscal year to be used by DACS to award additional rebates of \$25,000 for each vehicle that has not received a rebate under the program, up to an additional \$250,000 per applicant. Government applicants are to receive preference on a first-come, first-served basis and remaining funds will be available to eligible commercial applicants on a first-come, first-served basis. Unexpended funds return to GR at the end of each fiscal year.

The awarding of any additional rebates will begin in 2017. The provisions of the bill should lower the amount of any unexpended balance, if any, in the 2016-2017 and 2017-2018 fiscal years.

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### ***Natural Gas Fuel***

During the past several years, exploration has uncovered a supply of natural gas in the United States, resulting in a reduction in the price of natural gas and an increased interest in natural gas-powered vehicles, fuel plants, and refueling infrastructure.

With regard to pollutants, natural gas is the cleanest of the fossil fuels.<sup>1</sup> The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse gas emissions;
- Smog, air quality, and acid rain;
- Industry and electric generation emissions; and
- Pollution from the transportation sector.<sup>2</sup>

When compared using equivalent units of measure, natural gas is less expensive per gallon than traditional fuels. In October 2015, the U.S. Department of Energy reported the national average prices for the following:

- Gasoline at \$2.35 a gallon;
- Diesel at \$2.59 a gallon; and
- Compressed natural gas (CNG) for a gasoline gallon equivalent at \$2.09.<sup>3</sup>

In 2013, Florida had approximately 32 CNG fueling stations;<sup>4</sup> 61 in 2014;<sup>5</sup> 67 in 2015,<sup>6</sup> and now there are approximately 74 CNG fueling stations in the state.<sup>7</sup>

##### ***Natural Gas Fuel Fleet Vehicle Rebate Program***

In 2013, the Legislature created the Natural Gas Fuel Fleet Vehicle Rebate Program (program) within the Department of Agriculture and Consumer Services (DACS), the purpose of which was to "help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."<sup>8</sup>

<sup>1</sup> Swarthmore College, *Comparison Against Other Fossil Fuels*, Environmental Studies Capstone, 2010, available at <http://www.swarthmore.edu/environmental-studies-capstone/comparison-against-other-fossil-fuels> (last visited Feb. 14, 2016).

<sup>2</sup> NaturalGas.Org, <http://www.naturalgas.org/environment/naturalgas/> (last visited Feb. 14, 2016).

<sup>3</sup> United States Department of Energy, *Clean Cities Alternative Fuel Price Report*, Oct 2015, pp. 5-6, available at <http://www.afdc.energy.gov/publications/> (last visited Feb. 14, 2016).

<sup>4</sup> Email from Dale Calhoun, Executive Director, Florida Natural Gas Association, RE: CNG Fueling Stations (Mar. 1, 2013).

<sup>5</sup> Isabel Lane, *Florida's natural gas vehicle incentive program creates 200% growth in fueling stations*, BioFuels Digest, (Oct. 6, 2014), available at <http://www.biofuelsdigest.com/bdigest/2014/10/06/floridas-natural-gas-vehicle-incentive-program-creates-200-growth-in-fueling-stations/>.

<sup>6</sup> Email from Dale Calhoun, Executive Director, Florida Natural Gas Association, RE: CNG Fueling Stations (Oct. 29, 2015).

<sup>7</sup> Email from Dale Calhoun, Executive Director, Florida Natural Gas Association, RE: CNG Fueling Stations (Mar. 14, 2016).

<sup>8</sup> s. 377.810(1), F.S.

Section 377.810, F.S., provides the following pertinent definitions under the program:

- "Conversion costs" means the excess cost associated with retrofitting a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle.
- "Eligible costs" means the cost of conversion or the incremental cost incurred by an applicant in connection with an investment in the conversion, purchase, or lease lasting at least 5 years, of a natural gas fuel fleet vehicle placed into service on or after July 1, 2013. The term does not include costs for project development, fueling stations, or other fueling infrastructure.
- "Incremental costs" means the excess costs associated with the purchase or lease of a natural gas fuel fleet motor vehicle as compared to an equivalent diesel- or gasoline-powered motor vehicle.
- "Fleet vehicles" means three or more motor vehicles registered in this state and used for commercial business or governmental purposes.
- "Natural gas fuel" means any:
  - Liquefied petroleum gas product,
  - Compressed natural gas product, or
  - Combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S.

The term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.<sup>9</sup>

The Legislature appropriated \$6 million beginning in the 2013-2014 fiscal year and each year thereafter through the 2017-2018 fiscal year from the General Revenue Fund to DACS to award rebates for the eligible costs of conversion or retrofitting of a diesel- or gasoline-powered motor vehicle to a natural gas fuel-powered motor vehicle or the incremental costs associated with the purchase or lease of a natural gas fuel fleet motor vehicle.<sup>10</sup> Specifically, DACS must award rebates for up to 50 percent of the eligible costs of a natural gas fuel fleet vehicle or bi-fuel natural gas fuel operating system placed into service on or after July 1, 2013. An applicant is eligible to receive a maximum rebate of \$25,000 per vehicle up to a total of \$250,000 per applicant per fiscal year, on a first-come, first-served basis. Forty percent of the annual allocation must be reserved for governmental applicants and 60 percent for commercial applicants.<sup>11</sup>

The law requires DACS to determine and publish on its website, on an ongoing basis, the amount of available funding for rebates remaining in each fiscal year<sup>12</sup> and to provide an annual assessment of the use of the rebate program during the previous year to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability (OPPAGA) by October 1.<sup>13</sup>

### **Effect of Proposed Changes**

The bill allows any unexpended funds each fiscal year to be used by DACS to award additional rebates of \$25,000 for each vehicle up to an additional \$250,000 per applicant. Between June 1 and June 30 of each fiscal year, eligible applicants may apply for additional funds for vehicles that have not already received a rebate. Additional applications will be held and reviewed after all applications from applicants who have not reached the maximum rebate are received and reviewed.

<sup>9</sup> s. 377.810(2), F.S.

<sup>10</sup> Chapter 2013-198, L.O.F., provides that "[b]eginning in the 2013-2014 fiscal year and each year thereafter through the 2017-2018 fiscal year, the sum of \$6 million in recurring funds is appropriated in each fiscal year from the General Revenue Fund to the Department of Agriculture and Consumer Services for the purpose of funding the natural gas fuel fleet vehicle rebate program created by this act."

<sup>11</sup> s. 377.810(3) and (4)(b), F.S.

<sup>12</sup> s. 377.810(6), F.S.

<sup>13</sup> s. 377.810(7), F.S.



The additional rebates will be awarded after June 30 on a first-come, first-served basis, determined by the date the application is received. Governmental applicants have preference and the remaining unexpended funds may be used by commercial applicants. The 40/60 percentage reservation for government and commercial applicants will not apply to the awarding of additional rebates. The awarding of additional rebates will begin at the end of the 2016-2017 fiscal year.

The bill also removes an obsolete rulemaking deadline and makes technical corrections to two definitions.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 377.810, F.S.; authorizing the Department of Agriculture and Consumer Services to award additional rebates under the Natural Gas Fuel Fleet Vehicle Rebate Program.

**Section 2.** Provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill allows the unexpended balance remaining in the program for the fiscal year to be used by DACS to award additional rebates of \$25,000 for each vehicle up to an additional \$250,000 per applicant.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill authorizes eligible governmental applicants to have preference to receive unencumbered funds for an additional maximum rebate of \$25,000 per vehicle up to a total of \$250,000 on a first-come, first-served basis.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may result in increased savings for commercial entities using vehicles powered by natural gas fuel; an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel; and an increase in natural gas fueling infrastructure across the state to meet the additional demand created by natural gas-powered vehicles.

**D. FISCAL COMMENTS:**

In accordance with Chapter 2013-198, L.O.F., the Legislature appropriated \$6 million beginning in the 2013-2014 fiscal year and each year thereafter through the 2017-2018 fiscal year from the General Revenue Fund to DACS to award the rebates. Unexpended funds return to GR at the end of each fiscal year.

DACS reports the following unexpended balances by fiscal year since the inception of the program:

- 2013-2014: \$2,128,397,
- 2014-2015: \$769,348, and
- 2015-2016: \$2,206,006 (as of February 3, 2016).<sup>14</sup>

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

Current rulemaking authority for the program is provided in s. 377.810(5), F.S. DACS will need to adopt rules to implement the awarding of additional rebates. The bill removes an obsolete deadline in this subsection.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On October 21, 2015, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarifies the process that will be used by DACS to determine the order of preference for awarding the additional rebates; and
- Removes an obsolete rulemaking date and makes technical corrections to two statutory definitions.

This staff analysis is drafted to reflect the committee substitute.

---

<sup>14</sup> Florida Department of Agriculture and Consumer Services, Office of Energy, <http://www.freshfromflorida.com/Divisions-Offices/Energy/Natural-Gas-Fuel-Fleet-Vehicle-Rebate> (last visited Feb. 14, 2016).



27 | vehicle as compared to an equivalent diesel- or gasoline-powered  
28 | motor vehicle.

29 |       (3) NATURAL GAS FUEL FLEET VEHICLE REBATE.—The department  
30 | shall award rebates for eligible costs as defined in this  
31 | section. Forty percent of the annual allocation shall be  
32 | reserved for governmental applicants, with the remaining funds  
33 | allocated for commercial applicants. A rebate may not exceed 50  
34 | percent of the eligible costs of a natural gas fuel fleet  
35 | vehicle with a dedicated or bi-fuel natural gas fuel operating  
36 | system placed into service on or after July 1, 2013. An  
37 | applicant is eligible to receive a maximum rebate of \$25,000 per  
38 | vehicle up to a total of \$250,000 per fiscal year. Between June  
39 | 1 and June 30, applicants that have received the maximum rebate  
40 | of \$250,000 during the fiscal year may submit additional  
41 | applications in accordance with department rules. Additional  
42 | applications shall be held and reviewed after all program  
43 | applications from applicants that have not reached the maximum  
44 | rebate of \$250,000 per fiscal year are received and reviewed.  
45 | Those applicants may apply for additional funds for vehicles  
46 | during the fiscal year that did not receive a rebate. An  
47 | applicant is eligible to receive an additional maximum rebate of  
48 | \$25,000 per vehicle up to a total of \$250,000. All of the  
49 | unexpended balance remaining for the fiscal year may be used by  
50 | the department to award the additional rebates described in this  
51 | section. Upon conclusion of the June application period, the  
52 | department shall determine the rebate eligibility of each

53 applicant in accordance with this section and department rules.  
 54 Eligible governmental applicants shall have preference and will  
 55 receive funding on a first-come, first-served basis according to  
 56 the date the application is received. Any remaining unencumbered  
 57 funds shall be awarded to eligible commercial applicants on a  
 58 first-come, first-served basis according to the date the  
 59 application is received. All natural gas fuel fleet vehicles  
 60 eligible for the rebate must comply with applicable United  
 61 States Environmental Protection Agency emission standards.

62 (5) RULES.—The department shall adopt rules to implement  
 63 and administer this section ~~by December 31, 2013,~~ including  
 64 rules relating to the forms required to claim a rebate under  
 65 this section, the required documentation and basis for  
 66 establishing eligibility for a rebate, procedures and guidelines  
 67 for claiming a rebate, and the collection of economic impact  
 68 data from applicants.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 303 Unlicensed Activity Fees  
**SPONSOR(S):** Burton  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 394

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N	Brown-Blake	Anstead
2) Government Operations Appropriations Subcommittee	10 Y, 0 N	Topp	Topp
3) Regulatory Affairs Committee		Brown-Blake	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The Department of Business and Professional Regulation (Department) licenses and regulates businesses and professionals in Florida. The Department's mission is to license efficiently and regulate fairly.

The Department is required to investigate persons practicing a profession without being licensed to do so. The costs of investigation of unlicensed activity are covered with an unlicensed activity fee of \$5 per licensee upon initial licensure and biennial renewal. The funds are collected by the Department and placed in a fund for each specified profession.

The bill would require the Department to waive unlicensed activity fee under certain circumstances.

The bill prohibits the Department from requiring payment of the unlicensed activity fee if, at the beginning of the fiscal year, the profession's unlicensed activity account balance totals more than twice the cost of that profession's expenses for unlicensed activity investigations from the preceding two fiscal years combined. If a professional board meets these requirements, all of the licensees licensed by that board are exempt from paying the unlicensed activity fee for that renewal period. A profession that has a deficit in its operating account or is projected to have such a deficit within the next five years must continue to obtain the unlicensed activity fee from its licensees for each renewal cycle.

The bill is anticipated to significantly reduce unlicensed activity fee revenue to the Department's Professional Regulation Trust Fund. The reduction in fee revenue is estimated to be \$1,564,735 in Fiscal Year 2016-2017, \$1,624,715 in Fiscal Year 2017-2018, and \$1,568,735 in Fiscal Year 2018-2019.

The bill has no fiscal impact on local government.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

The Department licenses and regulates businesses and professionals in Florida. The Department includes separate divisions and various professional boards that are responsible for carrying out the Department's mission to license efficiently and regulate fairly.

The Department is required to investigate persons practicing a profession without being licensed to do so.<sup>1</sup> Section 455.01(6), F.S., defines "professions" as "any activity, occupation, profession, or vocation regulated by the [D]epartment in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation." The Division of Professions houses the:

- Board of Architecture and Interior Design;
- Florida Board of Auctioneers;
- Barbers' Board;
- Florida Building Code Administrators and Inspectors Board;
- Construction Industry Licensing Board;
- Board of Cosmetology;
- Electrical Contractors' Licensing Board;
- Board of Employee Leasing Companies;
- Board of Landscape Architecture;
- Board of Pilot Commissioners;
- Board of Professional Engineers;
- Board of Professional Geologists;
- Board of Veterinary Medicine;
- Home inspection services licensing program; and
- Mold-related services licensing program.

Each individual profession is required to cover the costs of investigation and enforcement.<sup>2</sup> The Department imposes an unlicensed activity fee of \$5 per licensee upon initial licensure and biennial renewal to fund efforts to combat unlicensed activity.<sup>3</sup>

The Department has indicated that some professions have enough funds to cover the costs of unlicensed activity investigation and enforcement without collecting unlicensed activity fees every renewal cycle. The following chart illustrates that some boards collect more in unlicensed activity fees than is used to cover the costs, while maintaining a large board account balance:

	ULA Fee Revenue 2014 and 2015 Total	ULA Expenditures 2014 and 2015 Total	ULA Account Balance July 1, 2014
Barber's Board	\$103,407	\$103,486	\$270,739
Board of Cosmetology	\$1,242,594	\$427,937	\$2,352,799

<sup>1</sup> s. 455.2281, F.S.

<sup>2</sup> s. 455.2281, F.S.

<sup>3</sup> s. 455.2281, F.S.



## Effect of the Bill

The bill prohibits the Department from requiring payment of the unlicensed activity fee during a license renewal for a profession if, at the beginning of the fiscal year prior to the renewal, the profession's unlicensed activity account balance totals more than twice the cost of that profession's unlicensed activity enforcement from the preceding two fiscal years combined. If a professional board meets these requirements, all of the licensees licensed by that board are exempt from paying the unlicensed activity fee for that renewal period.

A profession that has a deficit in its operating account or is projected to have a deficit within the next 5 years must continue to obtain the unlicensed activity fee from its licensees for each renewal cycle.

### B. SECTION DIRECTORY:

**Section 1** amends s. 455.2281, F.S., prohibiting the Department of Business and Professional Regulation from imposing an unlicensed activity fee in certain circumstances.

**Section 2** provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Department indicates that they will have a reduction in unlicensed activity fee revenue of approximately \$1,564,735 in Fiscal Year 2016-2017, \$1,624,715 in Fiscal Year 2017-2018, and \$1,568,735 in Fiscal Year 2018-2019.<sup>4</sup> There will be a corresponding reduction in the 8% service charge sent to General Revenue of approximately \$125,179 in Fiscal Year 2016-2017, \$129,977 in Fiscal Year 2017-2018, and \$125,499 in Fiscal Year 2018-2019.

There is no adverse impact on the operating accounts of any profession/board as the proposed fee waiver targets those professions with a specified surplus balance in their unlicensed activity accounts.

The bill has no fiscal impact on local government.

<b>Professional Regulation Trust Fund</b>			
	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Beginning Balance	51,561,943	59,405,441	61,993,255
Estimated Revenue	80,733,880	74,567,686	79,363,825
Impact of HB 303	(1,564,735)	(1,624,715)	(1,568,735)
<b>TOTAL Revenue</b>	<b>130,731,088</b>	<b>132,348,412</b>	<b>139,788,345</b>
Estimated Expenditures	(71,325,647)	(70,355,157)	(71,723,987)
<b>Estimated Year-end Balance</b>	<b>59,405,441</b>	<b>61,993,255</b>	<b>68,064,358</b>

<sup>4</sup> Email from Department of Business and Professional Regulation staff regarding fiscal impact of CS/HB 303 (Jan. 25, 2016 on file with Government Operations Appropriations Subcommittee).

Profession / Board	Projected to qualify for Unlicensed Activity Fee Waiver <sup>5</sup>		
	2016-17	2017-18	2018-19
Board of Accountancy	No	No	No
Board of Architecture and Interior Design	No	No	No
Asbestos Unit	Yes	Yes	Yes
Athlete Agents	Yes	No	Yes
Board of Auctioneers	No	No.	No
Barber's Board	No	No	No
Building Code Admin & Inspectors	No	Yes	No
Community Association Managers	No	No	No
Construction Industry Licensing Board	No	No	No
Board of Cosmetology	Yes	Yes	Yes
Electrical Contractors Licensing Board	No	No	No
Board of Employee Leasing	No	No	No.
Board of Professional Engineers	No	No	Yes
Board of Professional Geologists	No	No	No
Board of Pilot Commissioners	No	No	No
Home Inspections	No	No	Yes
Board of Landscape Architects	No	Yes	No
Mold Related Service	No	No	No
Real Estate Appraisal Board	Yes	No	Yes
Real Estate Commission	Yes	Yes	Yes
Talent Agents	No	No	No
Board of Veterinary Medicine	No	Yes	No

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce licensee expenditures for renewal of licenses for certain professions by \$5 per license renewal.

D. FISCAL COMMENTS:

None.

<sup>5</sup> Email from Department of Business and Professional Regulation staff to Government Operations Appropriations Subcommittee staff, (February 2, 2016, on file with Government Operations Appropriations Subcommittee).

### 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:

N/A

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

N/A

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
 2           An act relating to unlicensed activity fees; amending  
 3           s. 455.2281, F.S.; prohibiting the Department of  
 4           Business and Professional Regulation from imposing a  
 5           specified fee in certain circumstances; providing for  
 6           applicability of the waiver; providing an effective  
 7           date.

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

10  
 11           Section 1. Section 455.2281, Florida Statutes, is amended  
 12           to read:

13           455.2281 Unlicensed activities; fees; disposition.— In  
 14           order to protect the public and to ensure a consumer-oriented  
 15           department, it is the intent of the Legislature that vigorous  
 16           enforcement of regulation for all professional activities is a  
 17           state priority. All enforcement costs should be covered by  
 18           professions regulated by the department. Therefore, the  
 19           department shall impose, upon initial licensure and each  
 20           subsequent renewal thereof, a special fee of \$5 per licensee,  
 21           ~~Such fee shall be~~ in addition to all other fees imposed,  
 22           ~~collected from each licensee to and shall~~ fund efforts to combat  
 23           unlicensed activity. However, the department may not impose this  
 24           special fee on a license renewal for any profession whose  
 25           unlicensed activity account balance, at the beginning of the  
 26           fiscal year before the renewal, totals more than twice the total

27 of the expenditures for unlicensed activity enforcement efforts  
 28 in the preceding 2 fiscal years. This waiver applies to all  
 29 licensees within the profession, and assessment of the special  
 30 fee may not begin or resume until the renewal cycle subject to  
 31 the waiver has ended for all of the licensees in that  
 32 profession. This waiver does not apply to a profession that has  
 33 a deficit in its operating account or that is projected to have  
 34 such a deficit in the next 5 fiscal years. Any profession  
 35 regulated by the department which offers services that are not  
 36 subject to regulation when provided by an unlicensed person may  
 37 use funds in its unlicensed activity account to inform the  
 38 public of such situation. The board with concurrence of the  
 39 department, or the department when there is no board, may  
 40 earmark \$5 of the current licensure fee for this purpose, if  
 41 such board, or profession regulated by the department, is not in  
 42 a deficit and has a reasonable cash balance. A board or  
 43 profession regulated by the department may authorize the  
 44 transfer of funds from the operating fund account to the  
 45 unlicensed activity account of that profession if the operating  
 46 fund account is not in a deficit and has a reasonable cash  
 47 balance. The department shall make direct charges to this fund  
 48 by profession and may ~~shall~~ not allocate indirect overhead. The  
 49 department shall seek board advice regarding enforcement methods  
 50 and strategies prior to expenditure of funds; however, the  
 51 department may, without board advice, allocate funds to cover  
 52 the costs of continuing education compliance monitoring under s.


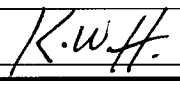
53 455.2177. The department shall directly credit, by profession,  
 54 revenues received from the department's efforts to enforce  
 55 licensure provisions. The department shall include all financial  
 56 and statistical data resulting from unlicensed activity  
 57 enforcement and from continuing education compliance monitoring  
 58 as separate categories in the quarterly management report  
 59 provided for in s. 455.219. The department may ~~shall~~ not charge  
 60 the account of any profession for the costs incurred on behalf  
 61 of any other profession. With the concurrence of the applicable  
 62 board and the department, any balance that remains in ~~For~~ an  
 63 unlicensed activity account, ~~a balance which remains~~ at the end  
 64 of a renewal cycle may, ~~with concurrence of the applicable board~~  
 65 ~~and the department,~~ be transferred to the operating fund account  
 66 of that profession.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 445 Viatical Settlements  
**SPONSOR(S):** Insurance & Banking Subcommittee; Stevenson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 650

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 1 N, As CS	Bauer	Luczynski
2) Appropriations Committee	22 Y, 0 N	Keith	Leznoff
3) Regulatory Affairs Committee		Bauer 	Hamon 

### SUMMARY ANALYSIS

An *insurable interest* exists for purposes of life insurance when a policyholder has a reasonable expectation that he or she will benefit from the continued life and health of the insured person. In Florida, it is recognized that an individual has an insurable interest as to his or her own life, body, and health, and that other persons with a “love and affection” or pecuniary relationship to the insured (such as family members or a corporate employer) also have valid insurable interests. It has long been recognized in American jurisprudence that life insurance policies purchased without an insurable interest (i.e., on strangers) violate public policy, because they constitute a mere wager on human lives that creates a perverse desire for the early death of the insured. In some instances, life insurance policyholders may wish to sell their policies to third parties as a way to obtain cash for medical expenses or other needs. In these transactions, known as *viatical settlements*, companies called *viatical settlement providers* (VSPs) purchase the policy from the insured (*the viator*) for more than its cash surrender value, but less than the face value of the policy. In 1996, Florida established a regulatory framework of the viatical settlement industry in the Viatical Settlement Act in part X, ch. 626, F.S. (“the Act”), which is administered by the Office of Insurance Regulation (OIR). The Act requires VSPs to comply with licensure, annual reporting, anti-fraud, transactional, and disclosure provisions, and sets forth administrative, criminal, and civil penalties for violations of the Act.

In the early 2000s, a related product known as “stranger-originated life insurance” (also known as STOLI) emerged. While STOLI initially appears similar to legitimate viatical settlements, STOLI is a scheme designed to procure life insurance on individuals, often using fraudulent means, such as misrepresentation, falsification, or omission of material facts in the life insurance application, so that an assignment or sale of a policy functions as a subterfuge that circumvents the insurable interest requirement. While various provisions in the Act and the Insurance Code currently prohibit practices that may involve STOLI, they do not specifically address STOLI.

The bill amends the Act to specifically define STOLI as a “fraudulent viatical settlement act,” to prohibit STOLI as a practice that lacks an insurable interest in the insured at the time of policy origination, and to make STOLI void and unenforceable. Additionally, the bill:

- Increases maximum administrative fines that the OIR may impose for certain violations, increases the \$100,000 deposit requirement to \$250,000, and creates new felony offenses for certain viatical settlement practices;
- Establishes new disclosure and annual reporting requirements and conflicts of interest prohibitions for VSPs;
- Requires VSPs to file their advertising and marketing materials with the OIR prior to entering into viatical contracts and to maintain documentation of compliance with their anti-fraud plans;
- Increases the non-contestability period from two years to five years, subject to certain exceptions; and
- Requires VSPs to provide certain documentation to insurers for verification of coverage, prior to entering into a viatical settlement contract.

The bill has an indeterminate positive fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund, as it increases administrative fines for violations of the Act. In addition, the bill has an indeterminate fiscal impact to state expenditures of the OIR, as it requires the OIR to review VSPs’ advertising materials. The Criminal Justice Impact Conference met on January 29, 2016, and determined the impact of the bill on the Department of Corrections’ prison beds to be insignificant. While the bill increases regulatory requirements and administrative fines on VSPs, the bill may have a positive effect on consumers and life insurers by strengthening consumer protections and reducing fraudulent life insurance claims and litigation.

The bill has an effective date of July 1, 2016.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0445d.RAC.DOCX

**DATE:** 2/12/2016



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Life Insurance and the Insurable Interest Requirement**

Life insurance allows an individual to set aside money in the present (through the payment of premiums) to provide some measure of financial security for his or her surviving beneficiaries upon his or her premature death. The proceeds allow survivors to pay off debts and other expenses and provide a source of income to replace that lost by the death of the insured.<sup>1</sup> Life insurance dates to ancient Rome where burial clubs covered the cost of members' funeral expenses and provided monetary benefits to survivors. Modern life insurance became commercially important in the 15<sup>th</sup> century Mediterranean mercantile economies and through its introduction to England in the 16<sup>th</sup> century. Although it served a legitimate purpose of risk avoidance and mitigation, life insurance drew a strong appeal to the gambling instincts of middle-class individuals with no financial interest in the lives of popes, princes, and other prominent people and who took out insurance policies on these strangers' lives as mere wagers. To put an end to the use of life insurance contracts as wagering devices, the British Parliament enacted the Life Assurance Act of 1774, holding that any life insurance contract without an *insurable interest* in the life of the insured would be null and void.<sup>2</sup>

In the late 19<sup>th</sup> century, the U.S. Supreme Court defined "insurable interest" as "a reasonable expectation of advantage or benefit from the continuance of [the insured's] life"; in other words, an insurable interest is found when an individual has a greater interest in the survival of the insured than in the insured's death.<sup>3</sup> Subsequently, most American courts recognized the insurable interest requirement for life insurance policies, finding that life insurance policies purchased without an insurable interest violate public policy because they constitute a mere wager that creates a sinister desire for the early death of the insured.<sup>4</sup> Today, it is recognized that an individual has an insurable interest as to his or her own life, body, and health. In addition, an insurable interest is founded on a "love and affection" interest for persons related by blood or law; as to other persons, a lawful and substantial economic interest in the continued life, health, or bodily safety of the insured person,<sup>5</sup> such as corporate-owned insurance on the life of an officer or director. These recognized interests are intended to ensure life insurance's purpose as a financial protection tool, rather than a wagering device.

Florida's insurable interest requirement is codified at s. 627.404, F.S., which lists nine exclusive categories in which an insurable interest as to life, health, or disability insurance are recognized, including the "own life, body and health," "love and affection," and "substantial pecuniary advantage" grounds mentioned above.<sup>6</sup> The statute requires that an insurable interest exist at the time the insurance contract is made, but need not exist after the inception date of coverage under the contract. Thereafter, life insurance is an asset that may be freely sold, transferred, or devised, which is consistent with the parties' freedom to contract for the assignment or non-assignment of policies in s. 627.422, F.S.

---

<sup>1</sup> OFFICE OF INSURANCE REGULATION, *Life Insurance*, <http://www.floridair.com/Sections/LandH/Life/default.aspx> (last viewed Feb. 4, 2016).

<sup>2</sup> Susan Lorde Martin, *Betting on the Lives of Strangers: Life Settlements, STOLI, and Securitization*, 13 U. PA. J. BUS. L. 173, 174 (2010); OFFICE OF INSURANCE REGULATION, *Report of Commissioner Kevin M. McCarty: Stranger-Originated Life Insurance and the Use of Fraudulent Activity to Circumvent the Intent of Florida's Insurable Interest Law* (Jan. 2009), ("2009 OIR Report"), p. 6.

<sup>3</sup> *Warnock v. Davis*, 104 U.S. 775, 779 (1881); *Connecticut Mut. Life Ins. Co. v. Schaefer*, 94 U.S. 457, 460 (1876).

<sup>4</sup> *Id.*; *Aetna Life Ins. Co. v. France*, 94 U.S. 561 (1876) and *Grigsby v. Russell*, 222 U.S. 149 (1911).

<sup>5</sup> OFFICE OF INSURANCE REGULATION, *Report of Commissioner Kevin M. McCarty: Stranger-Originated Life Insurance and the Use of Fraudulent Activity to Circumvent the Intent of Florida's Insurable Interest Law* (Jan. 2009), ("2009 OIR Report"), p. 7.

<sup>6</sup> These grounds were added to s. 627.404, F.S., by the Florida Legislature in 2008. Ch. 2008-36, Laws of Fla.

## Viatical Settlements: The Secondary Market of Life Insurance

In some instances, life insurance policyholders seek to sell their policies to third parties (usually private, individual investors) as a way to obtain cash for medical expenses or other needs. In these transactions, known as “viatical settlements,” companies called *viatical settlement providers* would usually purchase the policy from the insured (*the viator*) for more than its cash surrender value, but less than the face value of the policy. The settlement is usually based upon the projected life expectancy of the insured, the amount of built-up cash in the policy, and other criteria, and is often negotiated by a *viatical settlement broker* on the viator’s behalf. The purchaser of the policy then pays the premiums to sustain the policy until the insured’s death; as a result, the sooner the viator was the expected to die, the higher the settlement offer is likely to be.

Viatical settlements emerged during the HIV/AIDS epidemic in the 1980s, enabling terminally ill patients with short life expectancies who could no longer work and afford the policy premiums to sell their life insurance policies at a cash discount to pay for high medical care expenses. In the early days of the epidemic, AIDS patients generally died within months of their diagnoses, resulting in fairly quick, significant returns to investors,<sup>7</sup> who in those days were typically senior individuals who risked their savings in what was represented as a safe investment and marketed as a compassionate way to help dying patients. However, innovations in AIDS treatment in the early 1990s significantly improved life expectancies of AIDS patients, sometimes even outliving their investors, which disrupted mortality assumptions and diminished investor returns. As a result, some viatical settlement providers stopped brokering new viatical settlements, while others engaged in fraudulent practices, such as pyramid schemes.<sup>8</sup>

Because investors’ expectations of returns can trigger the application of state and federal securities law, viatical settlements are widely treated as a hybrid transaction implicating both insurance law and securities law. *Insurance* law applies to protect the policy owner or viator in the “front-end” transaction with the viatical settlement provider through licensing, disclosure reporting, and other requirements. On the other hand, *securities* law applies to the “back-end” transaction to protect investors in viatical settlement investments by state securities regulators, and in some circumstances, the U.S. Securities and Exchange Commission.<sup>9</sup>

In response to increasing concerns over consumer protection in the viatical settlement market, several state insurance regulators (through the National Association of Insurance Commissioners (NAIC)) and the National Association of Insurance Legislators (NCOIL)<sup>10</sup> developed model state legislation regulating the “front-end” transaction of viatical settlements in 1993 and 2007, respectively.

### *Regulation of Viatical Settlements in Florida*

In 1996, Florida enacted the Viatical Settlement Act (codified as part X, ch. 626, F.S.; “the Act”)<sup>11</sup> as a regulatory framework for viatical settlement providers (VSPs) and viatical settlement brokers by the Department of Insurance, the predecessor agency to the current Office of Insurance Regulation

---

<sup>7</sup> Kelly J. Bozanic, *An Investment to Die For: From Life Insurance to Death Bonds, the Evolution and Legality of the Life Settlement Industry*, 113 PENN. ST. L. REV. 229, 233-234 (2008).

<sup>8</sup> OFFICE OF INSURANCE REGULATION, *Secondary Life Insurance Market Report to the Florida Legislature* (Dec. 2013) (“2013 OIR Report”), p. 9.

<sup>9</sup> GOVERNMENT ACCOUNTABILITY OFFICE, Report to the Special Committee on Aging, U.S. Senate: Life Insurance Settlements, GAO-10-775 (Jul. 2010), p. 9, at <http://www.gao.gov/assets/310/306966.pdf>.

<sup>10</sup> The NAIC is the standard-setting and regulatory support organization created and governed by the chief insurance departments that regulate the conduct and solvency of insurers in their respective states or territories. NAIC, *About the NAIC*, [http://www.naic.org/index\\_about.htm](http://www.naic.org/index_about.htm) (last visited Feb. 4, 2016).

<sup>11</sup> Ch. 96-336, Laws of Fla.

(OIR).<sup>12</sup> The Act sets forth requirements for licensure, annual reporting, certain minimum disclosures to viators, transactional procedures, adoption of anti-fraud plans, and administrative, civil, and criminal penalties. The Act also provides the OIR with examination and enforcement authority over VSPs and brokers; review and approval authority over the viatical settlement contracts and forms; rulemaking authority; and provided that a violation of the Act is an unfair trade practice under the Insurance Code. The Act does not authorize the OIR to regulate the rate or amount paid as consideration for a viatical settlement contract.<sup>13</sup>

Since its inception, the Act has been substantively amended seven times to enhance consumer protections and to address changes in the viatical settlement industry.<sup>14</sup> For example, prior to July 1, 2005, viaticals in Florida were regulated exclusively as insurance. In 2005, following numerous consumer complaints and findings of investor harm in the “back-end transaction,” the Legislature amended the Act to provide that *viatical settlement investments* are securities under the Florida Securities and Investor Protection Act (ch. 517, F.S.), which is enforced by the Office of Financial Regulation (OFR) and triggers requirements of full and fair disclosure to investors and a securities dealer license from the OFR.<sup>15</sup> The 2005 legislation also provides that a person or firm who offers or attempts to negotiate a viatical settlement between an insured (viator) and a VSP for compensation is a *viatical settlement broker* who must be licensed with the Department of Financial Services (DFS) as a life insurance agent with a proper appointment from a VSP. Viatical settlement brokers owe a fiduciary duty to the viator.<sup>16</sup>

Since the inception of the Act, the viatical settlement market has evolved both in terms of the types of policies transacted by viatical settlement providers and the type of investors.

- “Life settlements” are offered to non-terminally ill insureds that no longer want, need, or can afford their policies and as an alternative to exercising a redemption or accelerated death benefit clause in their policies. However, the Act treats life settlements the same as viatical settlements for purposes of regulation.<sup>17</sup>
- Additionally, instead of the private individuals who invested in viaticals during the HIV/AIDS epidemic, institutional investors (such as investment banks and hedge or pension funds) now often invest in large blocks of policies sold as a portfolio in the secondary market.<sup>18</sup> In 2013, the Legislature directed the OIR to review Florida law and regulations to determine whether there were adequate protections for purchasers of life insurance policies in the secondary life insurance market.<sup>19</sup> Following a public hearing conducted by the OIR, in which both life insurers and institutional investors participated, the OIR published a report, concluding that adequate protections for institutional purchasers in the secondary life insurance market existed and that their recommendations did not warrant legislative action at the time.<sup>20</sup>

---

<sup>12</sup> Following the 2003 governmental reorganization, authority over the Act was transferred to the OIR. Ch. 2003-261, Laws of Fla. Additionally, the Act requires *life expectancy providers* to register with the OIR. Life expectancy providers determine life expectancies or mortality ratings for viatical settlements. ss. 626.9911(4) and 626.99175, F.S.

<sup>13</sup> s. 626.9926, F.S.

<sup>14</sup> Excluding reviser’s bills and the 2003 governmental reorganization bill. See chs. 98-164; 99-212; 2000-344; 2001-207; 2001-247; 2005-237; and 2007-148, Laws of Fla.

<sup>15</sup> Ch. 2005-237, Laws of Fla.

<sup>16</sup> ss. 626.9911(9) and 626.9916, F.S.

<sup>17</sup> The 2000 legislation amended the definition of “viator,” who is the owner of a life insurance policy seeking to enter into a viatical settlement contract, to remove language restricting such policy to one “insuring the life of an individual with a catastrophic or life-threatening illness.” See ch. 2000-344, Laws of Fla.

<sup>18</sup> 2013 OIR REPORT, p. 13. One participant in the 2013 OIR hearing observed that institutional investors primarily participate in the securitization of life settlements, or the nominal “tertiary” market, which feeds liquidity into the secondary life insurance market (i.e., the subsequent trading after the policy is first sold). *Id.* at Appendix A, Transcript of Public Hearing, pp. 125-126.

<sup>19</sup> Ch. 2013-40, §6, Laws of Fla. (2013 General Appropriations Act, p. 316).

<sup>20</sup> 2013 OIR REPORT, pp. 50-51.

## Stranger-Originated Life Insurance (STOLI)

Another evolution of the viatical settlement market is a practice known as “stranger-originated (or stranger-owned) life insurance” (STOLI), which emerged in the 2000s. In a STOLI transaction, an individual (typically a senior) is encouraged to take out insurance on his or her own life, sometimes in the millions of dollars, and then assigns the policy to an investor or group of investors (the “stranger”) who pay the individual a large cash settlement in exchange for the ownership rights to the policy, including the right to receive the proceeds upon the insured’s death.

On the surface, STOLI may appear similar to legitimate viatical or life settlements in that a third party buys a policy from an insured in which they have no insurable interest. However, the critical difference is that in legitimate settlements, an insured initially buys life insurance in a good-faith intent to protect valid insurable interests (i.e., to protect family members or a business from the risk of a premature death), but subsequently decides to sell the policy to a third party due to a change in circumstances that may not warrant the policy (such as divorce, death of an intended beneficiary, or the need for immediate cash due to illness or other loss).

Unlike legitimate viaticals, STOLI lacks an insurable interest at the time of the contract, thereby violating public policy against wagering on the lives of others. The life insurance policy is not acquired in good faith in that the parties intend at the outset that the *investors* (who lack an insurable interest in the insured) receive the proceeds, directly or indirectly.<sup>21</sup> STOLI is a scheme designed to procure life insurance on individuals, often using fraudulent means, such as misrepresentation, falsification, or omission of material facts in the life insurance application, so that an assignment or sale of a policy functions as a subterfuge that circumvents the insurable interest requirement. As the Uniform Law Commission noted:

Those who benefit from STOLI transactions (typically investors in the secondary markets) claim that it is an appropriate use of life insurance consistent with applicable legal principles, including the free transferability of assets. Others, including life insurers, oppose the use of STOLI on the ground that it is a perversion of the life insurance asset and leads to the moral hazard concerns that insurable interest doctrines were intended to mitigate.<sup>22</sup>

STOLI also differs from legitimate viatical settlements with the following common characteristics:

- Typically targets senior citizens who are induced with gifts, promises of free insurance, or monetary gain;
- Commonly financed through non-recourse “premium finance loans”;
- Commonly structured through the use of an irrevocable trust, making it difficult for the life insurance company to know that the policy has been sold;
- Premiums are paid for two years (i.e., the contestable period); and
- Often involves misrepresentation, falsification, or omission of material facts (also known as “cleansheeting”) in the life insurance application and inflated underwriting practices, such as the applicant’s net worth, in order to obtain a policy with a high face value.

According to the OIR, STOLI impacts consumers (both individual investors and insureds) and insurers in a number of ways:<sup>23</sup>

---

<sup>21</sup> AALU, NAIFA, and ACLI, *STOLI: The Problem and the Appropriate State Response*, p. 4, on file with the Insurance & Banking Subcommittee staff.

<sup>22</sup> UNIFORM LAW COMMISSION, *Insurable Interest Amendment to the Uniform Trust Code Summary*, at <http://www.uniformlaws.org/ActSummary.aspx?title=Insurable%20Interests%20Amendment%20to%20the%20Uniform%20Trust%20Code> (last visited Feb. 4, 2015).

<sup>23</sup> Office of Insurance Regulation, Agency Analysis of 2016 House Bill 445 (“OIR Agency Analysis”), p. 6 (Nov. 15, 2015); Additionally, s. 626.9923, F.S., requires VSPs to disclose certain risks to viators, such as tax and Medicaid eligibility consequences.

- Seniors may exhaust their life insurance purchasing capability and not be able to protect their own family or business.
- The incentives, especially cash payments, used to lure seniors to participate in STOLI schemes are taxable as ordinary income.
- Seniors may subject themselves or their estates to potential liability in the event the life insurance policy is rescinded by an insurer who discovers fraud.
- Seniors may encounter unexpected tax liability from the sale of the life insurance policy.<sup>24</sup>
- The “free” insurance is not free and may be subject to tax based on the economic value of the coverage.
- Seniors have to give the purchaser, and subsequent purchasers, access to their medical records when they sell their life insurance policy in the secondary market so that investors know the health status of the insured. The investors want to know the “status” of their investment and how close they are to getting paid.
- STOLI may lead to an increase in life insurance rates for the over-65 population.
- If STOLI practices continue to proliferate, the U.S. Congress may remove the tax-free status of life insurance proceeds, or may provide for federal regulatory oversight of the viatical settlement industry.

### *Legislative, Regulatory, and Litigation Approaches to STOLI*

Over 30 states currently prohibit STOLI, generally through some combination of the NAIC and NCOIL model acts, in addition to common law or statutory insurable interest laws. STOLI has resulted in significant litigation, criminal and regulatory enforcement actions, both nationally and in Florida.<sup>25</sup>

Below are several legal grounds currently available to the OIR and life insurers in STOLI transactions:

- *Grounds for disciplinary action under the Act:* Currently, the Act authorizes the OIR to impose fines between \$2,500 to \$10,000, or to suspend, revoke, deny, or refuse to renew the license of any VSP found to be engaging in certain acts, such as fraudulent or dishonest practices, dealing in bad faith with viators, or violating any provision of the Act or the Insurance Code. The OIR may also impose cease and desist orders and immediate final orders for violations of the Act.<sup>26</sup>
- *Misrepresentation on an application:* Currently, s. 627.409, F.S., provides that misrepresentation, omission, concealment of fact, or incorrect statements on an application for an insurance contract “may prevent recovery” in certain cases. However, this remedy is viewed as inadequate, because there are no criminal penalties and the only civil penalty available is an action for rescission by the life insurer.
- *Agent regulation:* Various provisions of the Insurance Code authorize the DFS to suspend or revoke the license or appointment of licensees, agencies, or appointees on various grounds, such as using fraudulent or dishonest practices in the conduct of business under the license.<sup>27</sup>
- *Unfair Insurance Trade Practices Act:* Section 626.9541, F.S., lists several unfair methods of competition and unfair or deceptive acts or practices. Each violation of this statute can result in fines ranging from \$5,000 to \$75,000, depending on the willfulness and particular violation. In addition, “twisting” and “churning” are first-degree misdemeanors, while willfully submitting false signatures on an application is a third-degree felony.<sup>28</sup> While VSPs are subject to this statute by way of s. 626.9927, F.S., and STOLI transactions do share some components of these

<sup>24</sup> See IRS Rev. Ruls. 09-13 and 09-14, regarding taxation of proceeds from settlements as capital gains ordinary income and taxation on a post-settlement basis.

<sup>25</sup> For a listing of OIR enforcement actions, see OIR, *Viatical Criminal, Civil and Regulatory Actions*, [http://www.florid.com/sections/landh/viaticals/ccr\\_actions.aspx](http://www.florid.com/sections/landh/viaticals/ccr_actions.aspx) (last visited Feb. 4, 2015) and 2013 OIR Report, *Appendix C: Florida Regulatory and Enforcement Actions Pertaining to Viatical Settlement Providers*.

<sup>26</sup> ss. 626.9914 and 626.99272, F.S.

<sup>27</sup> ss. 626.611, 626.6115, 626.6215, and 626.621, F.S.

<sup>28</sup> s. 626.9541, F.S.

practices, the statute was written for the initial sale of an insurance policy to an insured and not specifically for STOLI, making it difficult and unwieldy for the OIR to apply the provisions to secondary sales of life insurance policies.<sup>29</sup>

- *Insurable Interest Litigation by Life Insurers*: Insurers and investors have relied on two dueling statutes which are not in the Act.
  - As noted above, Florida expanded its insurable interest statute, s. 627.404, F.S., in 2008 to clarify when an insurable interest may be validly recognized for life insurance purposes. Life insurers have relied on this statute in filing suit to rescind the policies subsequently transferred in a STOLI transaction for a lack of insurable interest at the time of the policy.
  - However, another statute, s. 627.455, F.S., requires insurers to include an incontestability clause in their policies that bars a challenge to the policy after it has been in force for two years. Securities intermediaries (acting for the institutional investors) have relied on this statute as a kind of statute of limitations to seek dismissal of insurers' rescission cases, arguing that a tardy challenge is barred regardless whether the policy was made with an insurable interest at inception.
  - In separate cases, the U.S. District Court for the Southern District of Florida reached different interpretations on the interplay of these statutes.<sup>30</sup> These appeals were consolidated to the U.S. Court of Appeals for the Eleventh Circuit, which noted that there are no cases decided by Florida courts that specifically address whether a party can challenge an insurance policy as being void ab initio for lack of an insurable interest if the challenge is made after the two-year contestability period, and if so, whether the individual with the required insurable interest must procure the policy in good faith. As a result, the Eleventh Circuit certified questions to the Florida Supreme Court last year for a determination of Florida law on the conflict between these two statutes.<sup>31</sup>

However, current law does not specifically define STOLI, nor does it have a specific *regulatory* prohibition on STOLI or policies lacking an insurable interest at inception.

### **Effect of the Bill**

The bill increases the OIR's regulatory authority over the Act in areas that the OIR believes are necessary to protect Florida consumers by clarifying fraudulent acts, prohibited practices, explicitly prohibiting STOLI transactions, requiring increased disclosures to viators, and increasing transparency of VSPs' operations. These provisions are largely based on a combination of model viatical settlement legislation from the NAIC and the NCOIL. The bill focuses on the "front-end" transaction by viatical settlement providers, not the "back-end" (securities regulation).

### *Definitions (Section 1)*

As stated by the OIR, many activities described in this bill are already prohibited by current laws addressing fraud and illegal activities,<sup>32</sup> although, as noted above, many of these current laws may be ineffective or difficult to enforce. The bill addresses the historical prohibition on wagering on the lives of strangers by making "stranger-originated life insurance practices" and "fraudulent viatical acts" violations of the Act in section 3 of the bill, relating to the OIR's administrative authority over the Act.

---

<sup>29</sup> OIR Agency Analysis, p. 2.

<sup>30</sup> *Pruco Life Ins. V. Brasner*, 2011 WL 134056 (S.D. Fla. Jan. 7, 2011), and *Pruco Life Ins. Co. v. U.S. Bank*, 2013 WL 4496506 (S.D. Fla. Aug. 20, 2013).

<sup>31</sup> *Pruco Life Ins. Co. v. Wells Fargo Bank, N.A.*, 780 F.3d 1327 at 1336 (11th Cir. C.A. 2015). The appeal, currently pending at the Florida Supreme Court (Case No. SC15-382), is scheduled for oral argument on March 10, 2016, and will go back to the Eleventh Circuit for final disposition.

<sup>32</sup> OIR Agency Analysis, p. 2.

Section 1 of the bill creates the following definitions in s. 626.9911, F.S.:

- *Business of viatical settlements*: an activity involved in offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of, or acquiring in other manner, an interest in a life insurance policy by means of a viatical settlement contract.
- *Fraudulent viatical settlement act* includes a comprehensive list, including preparing false or fraudulent material information or the concealment of material information related to a viatical settlement contract or life insurance policy; perpetuating or preventing the detection of a fraud; prohibitions on the use of trusts or in STOLI transactions; and the failure to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer or its authorized representatives in connection with the issuance of a policy.
- *Stranger-originated life insurance practice* is an act, practice, arrangement, or agreement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. This includes the creation of a trust or other entity that has the appearance of an insurable interest to initiate policies for investors.
  - Section 13 of the bill creates s. 626.99289, F.S., to make any contract, agreement, arrangement, or transaction that is entered into for the furtherance of a STOLI practice void and unenforceable.

Section 1 amends the following current definitions in s. 626.9911, F.S.:

- *Related form*: Related forms are any forms created by or on behalf of a VSP licensee, such as powers of attorney or a release of medical information form. Currently, the Act defines these to mean forms which a viator is required to sign. The bill adds insureds as persons required to sign these forms.
- *Viatical settlement contract*: Viatical settlement contracts are written agreements between a VSP, or its related provider trust, and the viator as the agreement to transfer ownership or change the beneficiary designation of a life insurance policy at a later date, and includes specified information. The bill amends this definition to include the sale of an interest in a trust or other entity if such entity was formed or used for the purpose of acquiring life insurance contracts that insure the life of a person residing in Florida. It also clarifies that a "viatical settlement contract" does not include accelerated death provisions in a life insurance policy or loan or advance from the issuer of the policy to the policy owner. This is consistent with the current definition of "viatical settlement provider," which excludes life and health insurers that have lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificateholders.
- *Viatical settlement provider*: The bill deletes the exclusion of, "other licensed lending institution," from the definition of a "viatical settlement provider," as it could be interpreted to be a premium finance company or some other entity with little or no regulatory oversight.

### *Annual Statement Filings (Section 2)*

Section 2 of the bill amends s. 626.9913, F.S., to require a VSP to include additional information in their annual statement filings to the OIR. The bill codifies the language that is currently collected by the OIR to ensure VSPs consistently provide this information,<sup>33</sup> and adds a requirement for providers to submit total commissions or compensation, including across jurisdictions and on a yearly basis. Previously, the OIR sought to collect this information from VSPs through a proposed rule; however, the proposed

---

<sup>33</sup> *Id.* at p. 2.

rule was successfully challenged as an invalid exercise of legislative authority.<sup>34</sup> The bill authorizes the Financial Services Commission<sup>35</sup> to adopt rules to implement this section.

The bill increases the deposit requirement for VSPs to \$250,000, from \$100,000, which has not been increased since the Act's adoption in 1996.<sup>36</sup> Additionally, the bill also deletes obsolete language pertaining to surety bond requirements and deposits.

#### *Grounds for Administrative Action against VSPs (Section 3)*

Section 3 of the bill amends s. 626.9914, F.S., to add "fraudulent viatical settlement act" to the list of grounds for suspension, revocation, denial or non-renewal of a VSP license. The bill also increases maximum administrative fines for non-willful violations of this section from \$2,500 to \$10,000 and willful violations from \$10,000 to \$25,000. These new caps match the maximum fines that OIR can assess against a VSP pursuant to s. 626.99272(2), F.S., for any violations of the entire Act, not just the enumerated grounds in s. 626.9914, F.S.

The bill also expands the prohibition in s. 626.9914(1)(i), F.S., on VSPs from employing any person who materially influences the licensee's conduct and who fails to meet the requirements of the Act, to apply to contractors as well.

#### *Disclosures to Viators (Section 5)*

Section 5 of the bill creates s. 626.99185, F.S., to establish new requirements for a VSP to disclose certain amounts paid to any broker along with a reconciliation of the difference between the gross offer and the net proceeds.<sup>37</sup> A viatical settlement provider, prior to executing a viatical contract, is required to obtain a signed and dated copy of this disclosure statement and any amended disclosure statement from the broker or viator. This new section also requires the VSP to maintain the statement for copying and inspection by the OIR pursuant to its examination authority in s. 626.9922(2), F.S.

#### *Prohibited Practices & Conflicts of Interest (Section 8)*

Section 8 of the bill creates s. 626.99273, F.S., titled "prohibited practices and conflicts of interest," which is based on the NAIC Model Act. This section prohibits a broker from sharing common control with or receiving funds from the VSP. It also requires VSPs to file their advertising and marketing materials to the OIR prior to entering into any viatical contracts. The advertising and marketing materials along with insurance agents, insurers, brokers and VSPs are prohibited from stating or implying that the life insurance is free for any period of time, which is currently an unfair insurance trade practice in s. 626.9541(1)(n), F.S. The bill's definition and prohibition of "fraudulent viatical settlement acts" also includes a violation of subsections (1) or (2), relating to conflicts of interest, which in turn are grounds for administrative action by the OIR. The bill also provides authority to the Financial Services Commission to adopt rules to implement this section.

#### *Prohibited Practices – Criminal Penalties (Section 9)*

Section 9 of the bill amends the criminal penalties statute of the Act, s. 626.99275, F.S., to criminalize:

- Knowingly entering into a viatical settlement contract before the application for or the issuance of a life insurance policy that is the subject of a viatical settlement contract, or during the five-

<sup>34</sup> *LISA v. Fin. Serv. Comm'n*, Case No. 09-0386RP (Fla. DOAH May 7, 2009); *partly affirmed in Office of Ins. Reg. v. LISA*, 31 So. 3d 953 (Fla. 1st DCA 2010).

<sup>35</sup> Pursuant to s. 20.121(3), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OIR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OIR's regulatory authority

<sup>36</sup> The NAIC model viatical settlement act requires a \$250,000 deposit.

<sup>37</sup> Currently, s. 626.99181, F.S., requires viatical settlement *brokers* to disclose their compensation to the viator.



year incontestability period of s. 626.9987, F.S., unless the viator provides a sworn affidavit and accompanying documentation in accordance with s. 626.9987, F.S.;

- Knowingly issuing, soliciting, marketing or promoting the purchase of a life insurance policy for the purposes of or emphasis on selling the policy; or
- Engaging in any fraudulent viatical settlement act.

Depending on the value of the insurance policy, these violations constitute a felony of the first, second, or third degrees.

#### *Incontestability Period, Notice to Insurers, & Verification of Coverage (Sections 10 and 12)*

Currently, the Act contains a contestability statute (s. 626.99287, F.S.), which provides that viatical settlements entered into within two years after the issuance of the insurance policy are generally void and unenforceable by either party, except in certain circumstances warranting a hardship exception, such as a viator's certification of a life-threatening illness or death of a viator's spouse. In these cases, the VSP submits the request to the insurer, who must "timely" respond. This provision does not preclude an insurer from contesting the validity of any policy on the grounds of fraud.

Section 12 of the bill amends s. 626.99287, F.S., to increase the incontestability period from 2 years to five years, thus requiring certain conditions be met within a 5-year period before applying for or entering into a life insurance policy that is the subject of a viatical settlement contract, and requires that the viator provide a sworn affidavit and accompanying documentation certifying to the VSP that one or more of these conditions were met during the 5-year period. The bill preserves the consumer's ability under current law to viaticate a policy at any time for specified changes in life circumstances, such as the death of a spouse, a divorce, or a disability. The bill also creates an exception to incontestability if, after more than 2 years from entering into a viatical settlement contract, at all times during the policy's issuance, the viator certifies that: (a) policy premiums have been funded exclusively with unencumbered assets; (b) no agreement with another party has been entered into to purchase the policy; and (c) the insured and the policy have not been evaluated for settlement. In other words, the bill permits a viatical settlement after two years from the policy's issuance when the consumer purchases the policy with his or her own funds.

Section 10 of the bill creates a notification to insurer statute (new s. 626.99276, F.S.), which clarifies the responsibilities of all parties involved in a viatical settlement and outlines the documents that must be submitted to the insurer as well as responsibilities of the insurer when dealing with the viatication of a policy. This section requires a viatical settlement provider to give notice to an insurer, including a copy of a sworn affidavit and documentation certifying that certain conditions have been met (as required by s. 626.99287, F.S., of the bill), if either the viator submits a request to the insurer for verification of coverage, or if the viatical settlement provider submits a request to transfer the policy or certificate to the provider. In response to a request for verification of coverage or transfer of policy, the section prohibits an insurer from requiring that the viator, insured, provider, or broker sign any disclosures or forms not specifically approved by the OIR for viatical settlement contracts. The section also requires that upon receipt of a request of a change of ownership or beneficiary, the insurer respond in writing within 30 days.

#### *Anti-Fraud Plan Recordkeeping (Section 11)*

Section 11 of the bill amends the anti-fraud statute (s. 626.99278, F.S.), to require licensed VSPs to maintain documentation of their compliance with their anti-fraud plan, documentation pertaining to material inconsistencies between medical records and insurance applications, and documentation of their reporting to the Division of Insurance Fraud. The documentation must be maintained in accordance with s. 626.9922, F.S., which requires licensees to maintain books and records for at least 3 years after the death of the insured and must be made available to the OIR or DFS for inspection during reasonable business hours.

### *Void and Unenforceable Contracts, Agreements, Arrangements, & Transactions (Section 13)*

Section 13 of the bill creates s. 626.99289, F.S., to make any contract, agreement, arrangement, or transaction that is entered into for the furtherance of a "STOLI practice" (as defined in section 1 of the bill) void and unenforceable.

### *Cross-References (Sections 4, 6, and 7)*

Sections 4, 6, and 7 of the bill amend ss. 626.99175, 626.9924, and 626.99245, F.S., respectively, to delete obsolete provisions and to correct cross-references.

## B. SECTION DIRECTORY:

**Section 1.** Amends s. 626.9911, F.S., relating to definitions.

**Section 2.** Amends s. 626.9913, F.S., relating to viatical settlement provider license continuance; annual report; fees; deposit.

**Section 3.** Amends s. 626.9914, F.S., relating to suspension, revocation, denial, or nonrenewal of viatical settlement provider license; grounds; administrative fine.

**Section 4.** Amends s. 626.99175, F.S., relating to life expectancy providers; registration required; denial, suspension, revocation.

**Section 5.** Creates s. 626.99185, F.S., relating to disclosures to viator of disbursement.

**Section 6.** Amends s. 626.9924, F.S., relating to viatical settlement contracts; procedures; rescission.

**Section 7.** Amends s. 626.99245, F.S., relating to conflict of regulation of viaticals.

**Section 8.** Creates s. 626.99273, F.S., relating to prohibited practices and conflicts of interest.

**Section 9.** Amends s. 626.99275, F.S., relating to prohibited practices; penalties.

**Section 10.** Creates s. 626.99276, F.S., relating to notification to insurer required.

**Section 11.** Amends s. 626.99278, F.S., relating to viatical provider anti-fraud plan.

**Section 12.** Amends s. 626.99287, F.S., relating to contestability of viaticated policies.

**Section 13.** Creates s. 626.99289, F.S., relating to void and unenforceable contracts, agreements, arrangements, and transactions.

**Section 14.** Provides an effective date of July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill has an indeterminate positive fiscal impact on state revenues deposited into the Insurance Regulatory Trust Fund, as it increases administrative fines for violations of the Act. Specifically, the bill increases maximum administrative fines for non-willful violations of s. 626.9914, F.S., from \$2,500 to \$10,000, and willful violations of the same statute from \$10,000 to \$25,000.

#### 2. Expenditures:

The bill has an indeterminate fiscal impact to state expenditures of the OIR. Specifically, the bill requires the OIR to review additional forms and advertising materials of VSP's. As there are currently no rules concerning viatical advertising, the OIR states that it is not possible to anticipate the volume of advertising materials the OIR may receive or the time staffing resources will have to expend reviewing such advertising.<sup>38</sup>

In addition, the DFS noted that its investigations in viatical settlements primarily result from STOLI transactions, and that the bill's prohibition on STOLI transactions may significantly reduce their

viatical-related investigative caseload. The DFS also noted that the bill may be effective in reducing multiple loopholes and devices used to commit fraud in the viatical industry.<sup>39</sup>

The Criminal Justice Impact Conference met on January 29, 2016, and determined the bill's creation of new felony offenses in s. 626.99275, F.S., will have an insignificant impact on the Department of Corrections' prison beds. These new offenses would apply to persons who knowingly enter into a viatical settlement contract in violation of the incontestability period and who do not meet the exceptions, for knowingly issuing or promoting the purchase of a life insurance policy for the purpose of or with an emphasis on selling the policy, or engaging in a fraudulent settlement act.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill increases regulatory requirements and administrative fines on viatical settlement providers. However, the bill may benefit consumers and life insurers by reducing the volume of lawsuits and fraudulent or speculative claims paid out by insurers, which could reduce overall premium costs.<sup>40</sup>

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

The bill is silent as to if or how it applies to policies issued or viaticated before the effective date of July 1, 2016. However, s. 624.21, F.S., provides that each amendment to the Insurance Code<sup>41</sup> (which includes the Act) shall be construed to operate prospectively, unless a contrary legislative intent is specified. This is consistent with the constitutional principle that unless the Legislature states otherwise, legislation is presumed only to operate prospectively, especially when retroactive application would impair existing rights. Even where the Legislature expressly states intent for a statute to apply retroactively, courts will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.<sup>42</sup>

State and federal appellate courts in California have held that the California 2009 anti-STOLI law (which, like this bill, established a statutory definition of STOLI and classified such transactions as fraudulent acts) does not apply retroactively to policies written or to beneficial interests transferred

---

<sup>39</sup> Department of Financial Services, Agency Analysis of 2016 House Bill 445, p. 3 (Jan. 6, 2016).

<sup>40</sup> *Id.*

<sup>41</sup> Section 624.01, F.S., provides that chs. 624-632, 634-636, 641-642, 648, and 651 constitute the Florida Insurance Code.

<sup>42</sup> *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

before the law took effect.<sup>43</sup> Similarly, the New York Court of Appeals held that New York law existing prior to anti-STOLI legislation (enacted in 2009) applied in a 2010 STOLI challenge.<sup>44</sup>

Under these principles (and regardless of how the Florida Supreme Court interprets the insurable interest and contestability statutes or how the Eleventh Circuit Court of Appeals adjudicates the parties' rights and obligations in *Pruco*), it is unlikely a court would uphold retroactive application of subsequently enacted anti-STOLI legislation such as this bill.

#### B. RULE-MAKING AUTHORITY:

The bill provides rulemaking authority to the Financial Services Commission regarding annual reporting, advertising and marketing, and conflicts of interest requirements (sections 2 and 8 of the bill).

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Insurance & Banking Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Amends the definition of "stranger-originated life insurance practice" to include the creation of a *non-trust entity* that has the appearance of an insurable interest to initiate policies for investor, which violates insurable interest laws and the prohibition against wagering on human life.
- Clarifies viatical settlement providers' new annual reporting requirements in s. 626.9913, F.S., so that certain policy data must be reported for *each year of the most recent 5 years*, and not one aggregate filing for that 5 year period, and total proceeds or compensation paid to policy owners should be reported *for the most recent calendar year*.
- Increases the minimum deposit requirement in s. 626.9913(3), F.S., from \$100,000 to \$250,000;
- Expands the prohibition in s. 626.9914(1)(i), F.S., on viatical settlement providers from employing any person who materially influences the licensee's conduct and who fails to meet the requirements of the Act, to apply to contractors as well.
- Replaces the undefined term life insurance "producers" in new s. 626.99273, F.S., with the term "agent," which is defined in s. 626.015(2), F.S., as including producers. As a result, the bill prohibits agents (and other entities) from representing to applicants or policyholders that insurance is free or without cost for any period of time.
- Restores the contestability statute, s. 626.99287, F.S., and amends it to include the new 5-year incontestability period and exceptions in the original bill's s. 626.99275, F.S. (prohibited practices; penalties), clarifies an existing exception, and
- Makes conforming changes to cross-references.

This analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

---

<sup>43</sup> *Lincoln Life & Annuity Co. of N.Y. v. Berck*, 2011 WL 1878855 (Cal. Ct. App. 2011), *review denied* Aug. 31, 2011; *Wells Fargo Bank, N.A. v. American Nat. Ins. Co.*, 493 Fed.Appx. 838 (9th Cir. 2012).

<sup>44</sup> *Kramer v. Phoenix Life Ins. Co.*, 15 N.Y. 3d. 539 at 549, n. 5 (2010).

1                                   A bill to be entitled  
2       An act relating to viatical settlements; amending s.  
3       626.9911, F.S.; revising definitions; defining the  
4       terms "business of viatical settlements," "fraudulent  
5       viatical settlement act," and "stranger-originated  
6       life insurance practice"; amending s. 626.9913, F.S.;  
7       requiring additional information in an annual  
8       statement filed by viatical settlement provider  
9       licensees; revising deposit requirements for viatical  
10      settlement provider licensees; deleting an obsolete  
11      provision regarding a deposit requirement; authorizing  
12      the Financial Services Commission to adopt rules;  
13      amending s. 626.9914, F.S.; adding an act that  
14      warrants the imposition of administrative penalties  
15      against viatical settlement provider licensees;  
16      increasing the amount of administrative fines that may  
17      be imposed by the Office of Insurance Regulation  
18      against licensees for certain violations; amending s.  
19      626.99175, F.S.; deleting an obsolete provision;  
20      deleting an exception from registration requirements  
21      for life expectancy providers; creating s. 626.99185,  
22      F.S.; requiring viatical settlement providers to  
23      provide viators with a disclosure statement before or  
24      concurrently with a viator's execution of a viatical  
25      settlement contract; providing requirements and  
26      procedures for such disclosure statements; amending s.

27 | 626.9924, F.S.; correcting cross-references relating  
 28 | to a requirement to provide specified documents with a  
 29 | notice that a policy has or will become a viaticated  
 30 | policy; amending s. 626.99245, F.S.; conforming a  
 31 | cross-reference; creating s. 626.99273, F.S.;  
 32 | prohibiting certain practices and conflicts of  
 33 | interest relating to viatical settlement contracts or  
 34 | insurance policies; requiring a viatical settlement  
 35 | provider to file certain promotional, advertising, and  
 36 | marketing materials with the office before entering  
 37 | into viatical settlement contracts; prohibiting  
 38 | certain references relating to the cost of life  
 39 | insurance policies in such materials and other  
 40 | specified statements and representations; authorizing  
 41 | the commission to adopt rules; amending s. 626.99275,  
 42 | F.S.; prohibiting a person from entering into a  
 43 | viatical settlement contract before a specified date  
 44 | except under specified circumstances, from issuing,  
 45 | soliciting, marketing, or otherwise promoting the  
 46 | purchase of a policy under certain circumstances, and  
 47 | from engaging in a fraudulent viatical settlement act;  
 48 | providing criminal penalties for a violation of such  
 49 | prohibitions; creating s. 626.99276, F.S.; requiring  
 50 | specified affidavits and other documentation to be  
 51 | provided to an insurer for requests to verify coverage  
 52 | and to transfer a policy or certificate to a viatical

53 settlement provider; prohibiting insurers from  
 54 requiring certain forms that have not been approved by  
 55 the office to be signed as a condition of responding  
 56 to such requests; requiring insurers to respond in  
 57 writing during a specified period to properly  
 58 completed requests to change the ownership or  
 59 beneficiary of a policy; amending s. 626.99278, F.S.;  
 60 providing requirements for licensed viatical  
 61 settlement providers to maintain specified  
 62 documentation relating to anti-fraud plans and  
 63 procedures, material inconsistencies between medical  
 64 records and insurance applications, and reporting of  
 65 specified fraudulent acts and prohibited practices;  
 66 amending s. 626.99287, F.S.; revising the period  
 67 during which certain viatical settlement contracts are  
 68 void and unenforceable; revising exceptions to such  
 69 contracts being void and unenforceable; creating s.  
 70 626.99289, F.S.; providing that certain contracts,  
 71 agreements, arrangements, and transactions relating to  
 72 stranger-originated life insurance practices are void  
 73 and unenforceable; providing an effective date.

74  
 75 Be It Enacted by the Legislature of the State of Florida:

76  
 77 Section 1. Section 626.9911, Florida Statutes, is amended  
 78 to read:

79 626.9911 Definitions.—As used in this act, the term:

80 (1) "Business of viatical settlements" means an activity  
 81 involved in the offering, soliciting, negotiating, procuring,  
 82 effectuating, purchasing, investing, monitoring, tracking,  
 83 underwriting, selling, transferring, assigning, pledging, or  
 84 hypothecating of, or acquiring in other manner, an interest in a  
 85 life insurance policy by means of a viatical settlement  
 86 contract.

87 (2) "Financing entity" means an underwriter, placement  
 88 agent, lender, purchaser of securities, or purchaser of a policy  
 89 or certificate from a viatical settlement provider, credit  
 90 enhancer, or any entity that has direct ownership in a policy or  
 91 certificate that is the subject of a viatical settlement  
 92 contract, but whose principal activity related to the  
 93 transaction is providing funds or credit enhancement to effect  
 94 the viatical settlement or the purchase of one or more  
 95 viaticated policies and who has an agreement in writing with one  
 96 or more licensed viatical settlement providers to finance the  
 97 acquisition of viatical settlement contracts. The term does not  
 98 include a nonaccredited investor or other natural person. A  
 99 financing entity may not enter into a viatical settlement  
 100 contract.

101 (3) "Fraudulent viatical settlement act" means an act or  
 102 omission committed by a person who, knowingly or with the intent  
 103 to defraud for the purpose of depriving another of property or  
 104 for pecuniary gain, commits or allows an employee or agent to



105 commit an act specified in this subsection.

106 (a) Presenting, causing to be presented, or preparing with

107 the knowledge or belief that it will be presented to or by

108 another person false or concealed material information as part

109 of, in support of, or concerning a fact material to:

110 1. An application for the issuance of a viatical

111 settlement contract or an insurance policy;

112 2. The underwriting of a viatical settlement contract or

113 an insurance policy;

114 3. A claim for payment or benefit pursuant to a viatical

115 settlement contract or an insurance policy;

116 4. Premiums paid on an insurance policy;

117 5. Payments and changes in ownership or beneficiary made

118 in accordance with the terms of a viatical settlement contract

119 or an insurance policy;

120 6. The reinstatement or conversion of an insurance policy;

121 7. The solicitation, offer, effectuation, or sale of a

122 viatical settlement contract or an insurance policy;

123 8. The issuance of written evidence of a viatical

124 settlement contract or an insurance policy; or

125 9. A financing transaction.

126 (b) Employing a plan, financial structure, device, scheme,

127 or artifice to defraud related to viaticated policies.

128 (c) Engaging in a stranger-originated life insurance

129 practice.

130 (d) Failing to disclose upon request by an insurer that

131 the prospective insured has undergone a life expectancy  
 132 evaluation by a person other than the insurer or its authorized  
 133 representatives in connection with the issuance of the policy.

134 (e) Perpetuating a fraud or preventing the detection of a  
 135 fraud by:

136 1. Removing, concealing, altering, destroying, or  
 137 sequestering from the office the assets or records of a licensee  
 138 or other person engaged in the business of viatical settlements;

139 2. Misrepresenting or concealing the financial condition  
 140 of a licensee, financing entity, insurer, or other person;

141 3. Transacting in the business of viatical settlements in  
 142 violation of laws requiring a license, certificate of authority,  
 143 or other legal authority to transact such business; or

144 4. Filing with the office or the equivalent chief  
 145 insurance regulatory official of another jurisdiction a document  
 146 that contains false information or conceals information about a  
 147 material fact from the office or other regulatory official.

148 (f) Embezzlement, theft, misappropriation, or conversion  
 149 of moneys, funds, premiums, credits, or other property of a  
 150 viatical settlement provider, insurer, insured, viator,  
 151 insurance policyowner, or other person engaged in the business  
 152 of viatical settlements or insurance.

153 (g) Recklessly entering into, negotiating, brokering, or  
 154 otherwise dealing in a viatical settlement contract, the subject  
 155 of which is a life insurance policy that was obtained based on  
 156 information that was falsified or concealed for the purpose of

157 defrauding the policy's issuer, viatical settlement provider, or  
 158 viator. As used in this paragraph, the term "recklessly" means  
 159 acting or failing to act in conscious disregard for the relevant  
 160 facts or risks, and which disregard involves a gross deviation  
 161 from acceptable standards of conduct.

162 (h) Facilitating the viator's change of residency state to  
 163 avoid the provisions of this act.

164 (i) Facilitating or causing the creation of a trust with a  
 165 non-Florida situs or other nonresident entity for the purpose of  
 166 owning a life insurance policy covering a Florida resident to  
 167 avoid the provisions of this act.

168 (j) Facilitating or causing the transfer of the ownership  
 169 of an insurance policy covering a Florida resident to a trust  
 170 with a non-Florida situs or other nonresident entity to avoid  
 171 the provisions of this act.

172 (k) Applying for or obtaining a loan that is secured  
 173 directly or indirectly by an interest in a life insurance  
 174 policy.

175 (l) Violating s. 626.99273(1) or (2).

176 (m) Attempting to commit, assisting, aiding, or abetting  
 177 in the commission of or conspiring to commit an act or omission  
 178 specified in this subsection.

179 (4)(2) "Independent third-party trustee or escrow agent"  
 180 means an attorney, certified public accountant, financial  
 181 institution, or other person providing escrow services under the  
 182 authority of a regulatory body. The term does not include any

183 person associated, affiliated, or under common control with a  
 184 viatical settlement provider or viatical settlement broker.

185 ~~(5)(3)~~ "Life expectancy" means an opinion or evaluation as  
 186 to how long a particular person is to live, or relating to such  
 187 person's expected demise.

188 ~~(6)(4)~~ "Life expectancy provider" means a person who  
 189 determines, or holds himself or herself out as determining, life  
 190 expectancies or mortality ratings used to determine life  
 191 expectancies under any of the following circumstances:

192 (a) On behalf of a viatical settlement provider, viatical  
 193 settlement broker, life agent, or person engaged in the business  
 194 of viatical settlements. ~~+~~

195 (b) In connection with a viatical settlement investment,  
 196 pursuant to s. 517.021(24). ~~+~~ ~~or~~

197 (c) On residents of this state in connection with a  
 198 viatical settlement contract or viatical settlement investment.

199 ~~(7)(5)~~ "Person" has the meaning specified in s. 1.01.

200 ~~(8)(6)~~ "Related form" means any form, created by or on  
 201 behalf of a licensee, which a viator or insured is required to  
 202 sign or initial. The forms include, but are not limited to, a  
 203 power of attorney, a release of medical information form, a  
 204 suitability questionnaire, a disclosure document, or any  
 205 addendum, schedule, or amendment to a viatical settlement  
 206 contract considered necessary by a provider to effectuate a  
 207 viatical settlement transaction.

208 ~~(9)(7)~~ "Related provider trust" means a titling trust or

209 other trust established by a licensed viatical settlement  
 210 provider or financing entity for the sole purpose of holding the  
 211 ownership or beneficial interest in purchased policies in  
 212 connection with a financing transaction. The trust must have a  
 213 written agreement with a licensed viatical settlement provider  
 214 or financing entity under which the licensed viatical settlement  
 215 provider or financing entity is responsible for insuring  
 216 compliance with all statutory and regulatory requirements and  
 217 under which the trust agrees to make all records and files  
 218 relating to viatical settlement transactions available to the  
 219 office as if those records and files were maintained directly by  
 220 the licensed viatical settlement provider. This term does not  
 221 include an independent third-party trustee or escrow agent or a  
 222 trust that does not enter into agreements with a viator. A  
 223 related provider trust is ~~shall be~~ subject to all provisions of  
 224 this act that apply to the viatical settlement provider who  
 225 established the related provider trust, except s. 626.9912,  
 226 which does ~~shall~~ not apply ~~be applicable~~. A viatical settlement  
 227 provider may establish up to ~~no more than~~ one related provider  
 228 trust, and the sole trustee of such related provider trust shall  
 229 be the viatical settlement provider licensed under s. 626.9912.  
 230 The name of the licensed viatical settlement provider shall be  
 231 included within the name of the related provider trust.

232 (10)-(8) "Special purpose entity" means an entity  
 233 established by a licensed viatical settlement provider or by a  
 234 financing entity, which may be a corporation, partnership,

235 trust, limited liability company, or other similar entity formed  
 236 solely to provide, either directly or indirectly, access to  
 237 institutional capital markets to a viatical settlement provider  
 238 or financing entity. A special purpose entity may not obtain  
 239 capital from any natural person or entity with less than \$50  
 240 million in assets and may not enter into a viatical settlement  
 241 contract.

242 (11) "Stranger-originated life insurance practice" means  
 243 an act, practice, arrangement, or agreement to initiate a life  
 244 insurance policy for the benefit of a third-party investor who,  
 245 at the time of policy origination, has no insurable interest in  
 246 the insured. Stranger-originated life insurance practices  
 247 include, but are not limited to:

248 (a) The purchase of a life insurance policy with resources  
 249 or guarantees from or through a person who, at the time of such  
 250 policy's inception, could not lawfully initiate the policy and  
 251 the execution of a verbal or written arrangement or agreement to  
 252 directly or indirectly transfer the ownership of such policy or  
 253 policy benefits to a third party.

254 (b) The creation of a trust or other entity that has the  
 255 appearance of an insurable interest to initiate policies for  
 256 investors, which violates insurable interest laws and the  
 257 prohibition against wagering on life.

258 (12)(9)- "Viatical settlement broker" means a person who,  
 259 on behalf of a viator and for a fee, commission, or other  
 260 valuable consideration, offers or attempts to negotiate viatical

261 settlement contracts between a viator resident in this state and  
262 one or more viatical settlement providers. Notwithstanding the  
263 manner in which the viatical settlement broker is compensated, a  
264 viatical settlement broker is deemed to represent only the  
265 viator and owes a fiduciary duty to the viator to act according  
266 to the viator's instructions and in the best interest of the  
267 viator. The term does not include an attorney, licensed  
268 Certified Public Accountant, or investment adviser lawfully  
269 registered under chapter 517, who is retained to represent the  
270 viator and whose compensation is paid directly by or at the  
271 direction and on behalf of the viator.

272 (13)~~(10)~~ "Viatical settlement contract" means a written  
273 agreement entered into between a viatical settlement provider,  
274 or its related provider trust, and a viator. The viatical  
275 settlement contract includes an agreement to transfer ownership  
276 or change the beneficiary designation of a life insurance policy  
277 at a later date, regardless of the date that compensation is  
278 paid to the viator. The agreement must establish the terms under  
279 which the viatical settlement provider will pay compensation or  
280 anything of value, which compensation or value is less than the  
281 expected death benefit of the insurance policy or certificate,  
282 in return for the viator's assignment, transfer, sale, devise,  
283 or bequest of the death benefit or ownership of all or a portion  
284 of the insurance policy or certificate of insurance to the  
285 viatical settlement provider. The term also includes the  
286 transfer for compensation or value of an ownership or a

287 beneficial interest in a trust or other entity that owns such  
 288 policy if the trust or other entity was formed or used for the  
 289 principal purpose of acquiring one or more life insurance  
 290 contracts that insure the life of a person residing in this  
 291 state, and ~~A viatical settlement contract also includes a~~  
 292 contract for a loan or other financial transaction secured  
 293 primarily by an individual or group life insurance policy. The  
 294 term does not include, ~~other than a policy loan by a life~~  
 295 insurance company pursuant to the terms of the life insurance  
 296 contract or accelerated death provisions contained in a life  
 297 insurance policy, whether issued with the original policy or as  
 298 a rider, ~~or~~ a loan secured by the cash surrender value of a  
 299 policy as determined by the policy issuer and the life insurance  
 300 policy terms, or a loan or advance from the issuer of the policy  
 301 to the policyowner.

302 (14)~~(11)~~ "Viatical settlement investment" has the same  
 303 meaning as specified in s. 517.021.

304 (15)~~(12)~~ "Viatical settlement provider" means a person  
 305 who, in this state, from this state, or with a resident of this  
 306 state, effectuates a viatical settlement contract. The term does  
 307 not include:

308 (a) A ~~Any~~ bank, savings bank, savings and loan  
 309 association, or credit union, ~~or other licensed lending~~  
 310 ~~institution~~ that takes an assignment of a life insurance policy  
 311 as collateral for a loan.

312 (b) A life and health insurer that has lawfully issued a



313 life insurance policy that provides accelerated benefits to  
 314 terminally ill policyholders or certificateholders.

315 (c) A ~~Any~~ natural person who enters into no more than one  
 316 viatical settlement contract with a viator in 1 calendar year,  
 317 unless such natural person has previously been licensed under  
 318 this act or is currently licensed under this act.

319 (d) A trust that meets the definition of a "related  
 320 provider trust."

321 (e) A viator in this state.

322 (f) A financing entity.

323 (16) ~~(13)~~ "Viaticated policy" means a life insurance  
 324 policy, or a certificate under a group policy, which is the  
 325 subject of a viatical settlement contract.

326 (17) ~~(14)~~ "Viator" means the owner of a life insurance  
 327 policy or a certificateholder under a group policy, which policy  
 328 is not a previously viaticated policy, who enters or seeks to  
 329 enter into a viatical settlement contract. This term does not  
 330 include a viatical settlement provider, ~~or a~~ a ~~any~~ person  
 331 acquiring a policy or interest in a policy from a viatical  
 332 settlement provider, or ~~nor does it include~~ an independent  
 333 third-party trustee or escrow agent.

334 Section 2. Subsections (2) and (3) of section 626.9913,  
 335 Florida Statutes, are amended, and subsection (6) is added to  
 336 that section, to read:

337 626.9913 Viatical settlement provider license continuance;  
 338 annual report; fees; deposit.-

339           (2) (a) Annually, on or before March 1, the viatical  
 340 settlement provider licensee shall file a statement containing  
 341 information the commission requires and shall pay to the office  
 342 a license fee in the amount of \$500.

343           (b) In addition to any other requirements, the annual  
 344 statement must specify:

345           1. The total number of unsettled viatical settlement  
 346 contracts and corresponding total amount due to viators under  
 347 viatical settlement contracts that have been signed by the  
 348 viator but have not been settled as of December 31 of the  
 349 preceding calendar year, categorized by the number of days since  
 350 the viator signed the contract for transactions regulated by  
 351 this state.

352           2. For each of the most recent 5 years, the total number  
 353 of policies purchased, total gross amount paid for policies  
 354 purchased, total commissions or compensation paid for policies  
 355 purchased, and total face value of policies purchased, allocated  
 356 by state, territory, and jurisdiction.

357           3. For the most recent calendar year, the total amount of  
 358 proceeds or compensation paid to policyowners, allocated by  
 359 state, territory, and jurisdiction.

360           (c) After ~~December 31, 2007,~~ The annual statement shall  
 361 include an annual audited financial statement of the viatical  
 362 settlement provider prepared in accordance with generally  
 363 accepted accounting principles by an independent certified  
 364 public accountant covering a 12-month period ending on a day

365 occurring within ~~falling during~~ the last 6 months of the  
366 preceding calendar year. If the audited financial statement has  
367 not been completed, however, the licensee shall include in its  
368 annual statement an unaudited financial statement for the  
369 preceding calendar year and an affidavit from an officer of the  
370 licensee stating that the audit has not been completed. In this  
371 event, the licensee shall submit the audited statement on or  
372 before June 1. The annual statement, due on or before March 1  
373 each year, shall also provide the office with a report of all  
374 life expectancy providers who have provided life expectancies  
375 directly or indirectly to the viatical settlement provider for  
376 use in connection with a viatical settlement contract or a  
377 viatical settlement investment. A viatical settlement provider  
378 shall include in all statements filed with the office all  
379 information requested by the office regarding a related provider  
380 trust established by the viatical settlement provider. The  
381 office may require more frequent reporting. Failure to timely  
382 file the annual statement or the audited financial statement or  
383 to timely pay the license fee is grounds for immediate  
384 suspension of the license. The commission may by rule require  
385 all or part of the statements or filings required under this  
386 section to be submitted by electronic means in a computer-  
387 readable form compatible with the electronic data format  
388 specified by the commission.

389 (3) To ensure the faithful performance of its obligations  
390 to its viators in the event of insolvency or the loss of its

391 license, a viatical settlement provider licensee must deposit  
 392 and maintain deposited in trust with the department securities  
 393 eligible for deposit under s. 625.52, having at all times a  
 394 value of not less than \$250,000 ~~\$100,000; however, a viatical~~  
 395 ~~settlement provider licensed in this state prior to June 1,~~  
 396 ~~2004, which has deposited and maintains continuously deposited~~  
 397 ~~in trust with the department securities in the amount of \$25,000~~  
 398 ~~and which posted and maintains continuously posted a security~~  
 399 ~~bond acceptable to the department in the amount of \$75,000, has~~  
 400 ~~until June 1, 2005, to comply with the requirements of this~~  
 401 ~~subsection.~~

402 (6) The commission may adopt rules to implement this  
 403 section.

404 Section 3. Subsections (1) and (2) of section 626.9914,  
 405 Florida Statutes, are amended to read:

406 626.9914 Suspension, revocation, denial, or nonrenewal of  
 407 viatical settlement provider license; grounds; administrative  
 408 fine.—

409 (1) The office shall suspend, revoke, deny, or refuse to  
 410 renew the license of any viatical settlement provider if the  
 411 office finds that the licensee has committed any of the  
 412 following acts:

413 (a) Has made a misrepresentation in the application for  
 414 the license.†

415 (b) Has engaged in fraudulent or dishonest practices, or  
 416 otherwise has been shown to be untrustworthy or incompetent to

417 act as a viatical settlement provider.†  
 418 (c) Demonstrates a pattern of unreasonable payments to  
 419 viators.†  
 420 (d) Has been found guilty of, or has pleaded guilty or  
 421 nolo contendere to, any felony, or a misdemeanor involving fraud  
 422 or moral turpitude, regardless of whether a judgment of  
 423 conviction has been entered by the court.†  
 424 (e) Has issued viatical settlement contracts that have not  
 425 been approved pursuant to this act.†  
 426 (f) Has failed to honor contractual obligations related to  
 427 the business of viatical settlement contracts.†  
 428 (g) Deals in bad faith with viators.†  
 429 (h) Has violated any provision of the insurance code or of  
 430 this act.†  
 431 (i) Employs or contracts with a ~~any~~ person who materially  
 432 influences the licensee's conduct and who fails to meet the  
 433 requirements of this act.†  
 434 (j) No longer meets the requirements for initial  
 435 licensure.†~~or~~  
 436 (k) Obtains or utilizes life expectancies from life  
 437 expectancy providers who are not registered with the office  
 438 pursuant to this act.  
 439 (1) Has engaged in a fraudulent viatical settlement act.  
 440 (2) The office may, in lieu of or in addition to any  
 441 suspension or revocation, assess an administrative fine not to  
 442 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000

443 ~~\$10,000~~ for each willful violation by a viatical settlement  
 444 provider licensee. The office may also place a viatical  
 445 settlement provider licensee on probation for a period not to  
 446 exceed 2 years.

447 Section 4. Subsection (1) of section 626.99175, Florida  
 448 Statutes, is amended to read:

449 626.99175 Life expectancy providers; registration  
 450 required; denial, suspension, revocation.—

451 (1) ~~After July 1, 2006,~~ A person may not perform the  
 452 functions of a life expectancy provider without first having  
 453 registered as a life expectancy provider, ~~except as provided in~~  
 454 ~~subsection (6).~~

455 Section 5. Section 626.99185, Florida Statutes, is created  
 456 to read:

457 626.99185 Disclosures to viator of disbursement.—

458 (1) Before or concurrently with a viator's execution of a  
 459 viatical settlement contract, the viatical settlement provider  
 460 shall provide to the viator, in duplicate, a disclosure  
 461 statement in legible written form disclosing:

462 (a) The name of each viatical settlement broker who  
 463 receives or will receive compensation and the amount of each  
 464 broker's compensation related to that transaction. For the  
 465 purpose of this section, compensation includes anything of value  
 466 paid or given by or at the direction of a viatical settlement  
 467 provider or person acquiring an interest in one or more life  
 468 insurance policies to a viatical settlement broker in connection

469 with the viatical settlement contract.

470 (b) A complete reconciliation of the gross offer or bid by  
 471 the viatical settlement provider to the net amount of proceeds  
 472 or value to be received by the viator related to that  
 473 transaction. As used in this section, the term "gross offer" or  
 474 "bid" means the total amount or value offered by the viatical  
 475 settlement provider for the purchase of an interest in one or  
 476 more life insurance policies, including commissions,  
 477 compensation, or other proceeds or value being deducted from the  
 478 gross offer or bid.

479 (2) The viator shall sign and date the disclosure  
 480 statement before or concurrently with the viator's execution of  
 481 a viatical settlement contract, with the viator retaining the  
 482 duplicate copy of the disclosure statement.

483 (3) If a viatical settlement contract is entered into and  
 484 the contract is subsequently amended or if there is a change in  
 485 the viatical settlement provider's gross offer or bid amount, a  
 486 change in the net amount of proceeds or value to be received by  
 487 the viator, or a change in the information provided in the  
 488 disclosure statement to the viator, the viatical settlement  
 489 provider shall provide, in duplicate, an amended disclosure  
 490 statement to the viator containing the information in subsection  
 491 (1). The viator shall sign and date the amended disclosure  
 492 statement, with the viator retaining the duplicate copy of the  
 493 amended disclosure statement.

494 (4) Before a viatical settlement provider's execution of a

495 viatical settlement contract or an amendment to such contract,  
 496 the viatical settlement provider must obtain the signed and  
 497 dated disclosure statement and any amended disclosure statement  
 498 required by this section. In transactions for which a broker is  
 499 not used, the viatical settlement provider must obtain the  
 500 signed and dated disclosure statement from the viator.

501 (5) The viatical settlement provider shall maintain the  
 502 documentation required by this section pursuant to s.  
 503 626.9922(2) and shall make such documentation available to the  
 504 office at any time for copying and inspection upon reasonable  
 505 notice by the office to the viatical settlement provider.

506 Section 6. Subsection (7) of section 626.9924, Florida  
 507 Statutes, is amended to read:

508 626.9924 Viatical settlement contracts; procedures;  
 509 rescission.-

510 (7) At any time during the contestable period, within 20  
 511 days after a viator executes documents necessary to transfer  
 512 rights under an insurance policy or within 20 days of any  
 513 agreement, option, promise, or any other form of understanding,  
 514 express or implied, to viaticate the policy, the provider must  
 515 give notice to the insurer of the policy that the policy has or  
 516 will become a viaticated policy. The notice must be accompanied  
 517 by the documents required by ss. 626.99276 and 626.99287 ~~s.~~  
 518 ~~626.99287(5)(a)~~ in their entirety.

519 Section 7. Subsection (2) of section 626.99245, Florida  
 520 Statutes, is amended to read:



521           626.99245 Conflict of regulation of viaticals.-  
 522           (2) This section does not affect the requirement of ss.  
 523 626.9911~~(15)~~~~(12)~~ and 626.9912(1) that a viatical settlement  
 524 provider doing business from this state must obtain a viatical  
 525 settlement license from the office. As used in this subsection,  
 526 the term "doing business from this state" includes effectuating  
 527 viatical settlement contracts from offices in this state,  
 528 regardless of the state of residence of the viator.

529           Section 8. Section 626.99273, Florida Statutes, is created  
 530 to read:

531           626.99273 Prohibited practices and conflicts of interest.-

532           (1) With respect to a viatical settlement contract or an  
 533 insurance policy, a viatical settlement broker may not knowingly  
 534 solicit an offer from, effectuate a viatical settlement with, or  
 535 make a sale to any viatical settlement provider, financing  
 536 entity, or related provider trust that is controlling,  
 537 controlled by, or under common control with such viatical  
 538 settlement broker.

539           (2) With respect to a viatical settlement contract or an  
 540 insurance policy, a viatical settlement provider may not  
 541 knowingly enter into a viatical settlement contract with a  
 542 viator if, in connection with such viatical settlement contract,  
 543 anything of value will be paid to a viatical settlement broker  
 544 that is controlling, controlled by, or under common control with  
 545 such viatical settlement provider, financing entity, or related  
 546 provider trust that is involved in such viatical settlement

547 contract.

548 (3) A viatical settlement provider may not enter into a  
 549 viatical settlement contract unless the viatical settlement  
 550 promotional, advertising, and marketing materials, as may be  
 551 prescribed by rule, have been filed with the office. Such  
 552 materials may not expressly indicate, or include any reference  
 553 that would cause a viator to reasonably believe, that the life  
 554 insurance is free for any period of time.

555 (4) A life insurance agent, insurer, viatical settlement  
 556 broker, or viatical settlement provider may not make a statement  
 557 or representation to an applicant or policyholder in connection  
 558 with the sale of a life insurance policy to the effect that the  
 559 insurance is free or without cost to the policyholder for any  
 560 period of time.

561 (5) The commission may adopt rules to implement this  
 562 section.

563 Section 9. Section 626.99275, Florida Statutes, is amended  
 564 to read:

565 626.99275 Prohibited practices; penalties.—

566 (1) It is unlawful for a ~~any~~ person to:

567 (a) ~~To~~ Knowingly enter into, broker, or otherwise deal in  
 568 a viatical settlement contract the subject of which is a life  
 569 insurance policy, knowing that the policy was obtained by  
 570 presenting materially false information concerning any fact  
 571 material to the policy or by concealing, for the purpose of  
 572 misleading another, information concerning any fact material to

573 the policy, where the viator or the viator's agent intended to  
574 defraud the policy's issuer.

575 (b) ~~Te~~ Knowingly or with the intent to defraud, for the  
576 purpose of depriving another of property or for pecuniary gain,  
577 issue or use a pattern of false, misleading, or deceptive life  
578 expectancies.

579 (c) ~~Te~~ Knowingly engage in any transaction, practice, or  
580 course of business intending thereby to avoid the notice  
581 requirements of s. 626.9924(7).

582 (d) ~~Te~~ Knowingly or intentionally facilitate the change of  
583 state of residency of a viator to avoid the provisions of this  
584 chapter.

585 (e) Knowingly enter into a viatical settlement contract  
586 before the application for or issuance of a life insurance  
587 policy that is the subject of a viatical settlement contract or  
588 during the 5-year period commencing on the date of issuance of  
589 the policy or certificate, unless the viator provides a sworn  
590 affidavit and accompanying documentation in accordance with s.  
591 626.9987.

592 (f) Knowingly issue, solicit, market, or otherwise promote  
593 the purchase of a life insurance policy for the purpose of or  
594 with an emphasis on selling the policy.

595 (g) Engage in a fraudulent viatical settlement act.

596 (2) A person who violates any provision of this section  
597 commits:

598 (a) A felony of the third degree, punishable as provided

599 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 600 | policy involved is valued at any amount less than \$20,000.

601 |       (b) A felony of the second degree, punishable as provided  
 602 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 603 | policy involved is valued at \$20,000 or more, but less than  
 604 | \$100,000.

605 |       (c) A felony of the first degree, punishable as provided  
 606 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 607 | policy involved is valued at \$100,000 or more.

608 |       Section 10. Section 626.99276, Florida Statutes, is  
 609 | created to read:

610 |       626.99276 Notification to insurer required.-

611 |       (1) A copy of the sworn affidavit and the documentation  
 612 | required in s. 626.99287 must be submitted to the insurer if the  
 613 | viatical settlement provider or other party entering into a  
 614 | viatical settlement contract with a viator submits a request to  
 615 | the insurer for verification of coverage or if the viatical  
 616 | settlement provider submits a request to transfer the policy or  
 617 | certificate to the provider. If the request is made by a  
 618 | viatical settlement provider, the copy shall be accompanied by a  
 619 | sworn affidavit from the viatical settlement provider affirming  
 620 | that the copy is a true and correct copy of the documentation  
 621 | received by the provider.

622 |       (2) An insurer may not require, as a condition of  
 623 | responding to a request for verification of coverage or  
 624 | effecting the transfer of a policy pursuant to a viatical

625 settlement contract, that the viator, insured, viatical  
 626 settlement provider, or viatical settlement broker sign any  
 627 disclosures, consent form, waiver form, or other form that has  
 628 not been approved by the office for use in connection with  
 629 viatical settlement contracts in this state.

630 (3) Upon receipt of a properly completed request for  
 631 change of ownership or beneficiary of a policy, the insurer  
 632 shall respond in writing within 30 calendar days confirming that  
 633 the change has been effectuated or specifying the reasons why  
 634 the requested change cannot be processed. The insurer may not  
 635 unreasonably delay effectuating a change of ownership or  
 636 beneficiary and may not otherwise seek to interfere with any  
 637 viatical settlement contract lawfully entered into in this  
 638 state.

639 Section 11. Section 626.99278, Florida Statutes, is  
 640 amended to read:

641 626.99278 Viatical provider anti-fraud plan.-

642 (1) Each ~~Every~~ licensed viatical settlement provider and  
 643 registered life expectancy provider must adopt an anti-fraud  
 644 plan and file it with the Division of Insurance Fraud of the  
 645 department. Each anti-fraud plan shall include:

646 (a) ~~(1)~~ A description of the procedures for detecting and  
 647 investigating possible fraudulent acts and procedures for  
 648 resolving material inconsistencies between medical records and  
 649 insurance applications.

650 (b) ~~(2)~~ A description of the procedures for the mandatory

651 reporting of possible fraudulent insurance acts and prohibited  
 652 practices specified ~~set forth~~ in s. 626.99275 to the Division of  
 653 Insurance Fraud ~~of the department~~.

654 ~~(c)(3)~~ A description of the plan for anti-fraud education  
 655 and training of its underwriters or other personnel.

656 ~~(d)(4)~~ A written description or chart outlining the  
 657 organizational arrangement of the anti-fraud personnel who are  
 658 responsible for the investigation and reporting of possible  
 659 fraudulent insurance acts and for the investigation of  
 660 unresolved material inconsistencies between medical records and  
 661 insurance applications.

662 ~~(e)(5)~~ For viatical settlement providers, a description of  
 663 the procedures used to perform initial and continuing review of  
 664 the accuracy of life expectancies used in connection with a  
 665 viatical settlement contract or viatical settlement investment.

666 (2) Each licensed viatical settlement provider shall  
 667 maintain in accordance with s. 626.9922:

668 (a) Documentation of compliance with its anti-fraud plan  
 669 and procedures filed in accordance with this section.

670 (b) Documentation pertaining to resolved and unresolved  
 671 material inconsistencies between medical records and insurance  
 672 applications.

673 (c) Documentation of its mandatory reporting of the  
 674 possible fraudulent acts and prohibited practices specified in  
 675 s. 626.99275 to the Division of Insurance Fraud.

676 Section 12. Section 626.99287, Florida Statutes, is

677 amended, to read:

678           626.99287 Contestability of viaticated policies.—Except as  
 679 hereinafter provided, if a viatical settlement contract is  
 680 entered into ~~during~~ within the 5-year ~~2-year~~ period commencing  
 681 on ~~with~~ the date of issuance of the insurance policy or  
 682 certificate to be acquired, the viatical settlement contract is  
 683 void and unenforceable by either party. Notwithstanding this  
 684 limitation, such a viatical settlement contract is not void and  
 685 unenforceable if the viator provides a sworn affidavit and  
 686 accompanying documentation that certifies to the viatical  
 687 settlement provider that one or more of the following conditions  
 688 were met during the 5-year period:

689           (1) The policy was issued upon the owner's exercise of  
 690 conversion rights arising out of a group or term policy, if the  
 691 total time covered under the prior policy is at least 60 months.  
 692 The time covered under a group policy shall be calculated  
 693 without regard to any change in insurance carriers, provided the  
 694 coverage has been continuous and under the same group  
 695 sponsorship;

696           (2) The owner of the policy is a charitable organization  
 697 exempt from taxation under 26 U.S.C. s. 501(c)(3);

698           (3) The owner of the policy is not a natural person;

699           (4) The viatical settlement contract was entered into  
 700 before July 1, 2000;

701           (5) The viator certifies by producing independent evidence  
 702 to the viatical settlement provider that one or more of the

703 following conditions were ~~have been~~ met during ~~within~~ the 5-year  
 704 ~~2-year~~ period:

705 (a) ~~1.~~ The viator or insured is terminally or chronically  
 706 ill ~~diagnosed with an illness or condition that is either:~~

- 707 a. ~~Catastrophic or life threatening; or~~
- 708 b. ~~Requires a course of treatment for a period of at least~~  
 709 ~~3 years of long term care or home health care; and~~

710 ~~2.~~ the condition was not known to the insured at the time  
 711 the life insurance contract was entered into; ~~or~~

- 712 (b) The viator's spouse dies;
- 713 (c) The viator divorces his or her spouse;
- 714 (d) The viator retires from full-time employment;
- 715 (e) The viator becomes physically or mentally disabled and  
 716 a physician determines that the disability prevents the viator  
 717 from maintaining full-time employment;
- 718 (f) The owner of the policy was the insured's employer at  
 719 the time the policy or certificate was issued and the employment  
 720 relationship terminated;

721 (g) A final order, judgment, or decree is entered by a  
 722 court of competent jurisdiction, on the application of a  
 723 creditor of the viator, adjudicating the viator bankrupt or  
 724 insolvent, or approving a petition seeking reorganization of the  
 725 viator or appointing a receiver, trustee, or liquidator to all  
 726 or a substantial part of the viator's assets; or

727 (h) The viator experiences a significant decrease in  
 728 income which is unexpected by the viator and which impairs his



729 or her reasonable ability to pay the policy premium.

730 (6) The viator entered into a viatical settlement contract  
 731 more than 2 years after the policy's issuance date and, with  
 732 respect to the policy, at all times before such date each of the  
 733 following conditions were met:

734 (a) Policy premiums were funded exclusively with  
 735 unencumbered assets, including an interest in the life insurance  
 736 policy being financed but only to the extent of its net cash  
 737 surrender value provided by or full recourse liability incurred  
 738 by the insured;

739 (b) An agreement or understanding with another person was  
 740 not entered into to guarantee any such liability or to purchase,  
 741 or agree to purchase, the policy, including through an  
 742 assumption or forgiveness of the loan; and

743 (c) The insured and the policy were not evaluated for  
 744 settlement.

745  
 746 ~~If the viatical settlement provider submits to the insurer a~~  
 747 ~~copy of the viator's or owner's certification described above,~~  
 748 ~~then the provider submits a request to the insurer to effect the~~  
 749 ~~transfer of the policy or certificate to the viatical settlement~~  
 750 ~~provider, the viatical settlement agreement shall not be void or~~  
 751 ~~unenforceable by operation of this section. The insurer shall~~  
 752 ~~timely respond to such request. Nothing in this section shall~~  
 753 ~~prohibit an insurer from exercising its right during the~~  
 754 ~~contestability period to contest the validity of any policy on~~

755 ~~grounds of fraud.~~

756 Section 13. Section 626.99289, Florida Statutes, is  
 757 created to read:

758 626.99289 Void and unenforceable contracts, agreements,  
 759 arrangements, and transactions.—A contract, agreement,  
 760 arrangement, or transaction, including, but not limited to, a  
 761 financing agreement or any other arrangement or understanding  
 762 entered into, whether written or verbal, for the furtherance or  
 763 aid of a stranger-originated life insurance practice is void and  
 764 unenforceable.

765 Section 14. This act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 641 Department of Agriculture and Consumer Services  
**SPONSOR(S):** Agriculture & Natural Resources Appropriations Subcommittee; Business & Professions Subcommittee; Trumbull  
**TIED BILLS:** HB 643 **IDEN./SIM. BILLS:** CS/SB 772

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N, As CS	Butler	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	12 Y, 0 N, As CS	Lolley	Massengale
3) Regulatory Affairs Committee		Butler <i>BSB</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The bill contains modifications to several licensing and consumer services activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (Department). Specifically, the bill:

- Provides that veterans and their spouses applying for certain licenses and registrations shall have initial fees waived if recently discharged from a branch of the United States Armed Forces;
- Removes the requirement that one of the board members of the Board of Surveying and Mapping be specialized in photogrammetry;
- Clarifies that telemarketers only have to disclose actual physical locations of operations;
- Exempts certain water-related amusement rides from inspection at facilities not open to the general public, if:
  - The ride is an incidental amenity operated by a licensed lodging or food service establishment;
  - The ride is an incidental amenity at a private, membership-only facility; or,
  - The ride is located at a nonprofit charitable permanent facility.
- Clarifies several fees and standards related to weights and measures in chs. 527 & 531, F.S.;
- Removes "personal trainers," "tour guides," and "tour guide services" from regulation;
- Allows a certificate from the International Association of Law Enforcement Firearm Instructors and the Second Amendment Foundation Training Division to qualify an applicant for a Class "K" Firearm Instructor license;
- Requires the Department to participate in FDLE's Applicant Fingerprint Retention and Notification Program and requires licensees to submit fingerprints and pay retention fees for state and federal fingerprint retention programs;
- Makes several amendments to concealed weapons licensing, including amending the eligibility requirements to clarify what crimes would disqualify an applicant, requiring a live fire demonstration by the trainee in the physical presence of the trainer, and reducing the fee for initial licensure and renewal by \$10;
- Provides that lienholders may post a bond to secure the release of a motor vehicle that the lienholder has a security interest in, which is currently being held by a motor vehicle repair shop with a possessory lien;
- Provides that the Department may send notice of a suspension or revocation of a concealed weapons license by first-class mail or e-mail, if notice by certified mail is returned undeliverable; and,
- Allows tax collectors to print and renew concealed weapons licenses on site.

The bill will have a significant fiscal impact on state government and the private sector, in part, due to the veteran fee waiver programs and the concealed weapons license fee reduction. See Fiscal Analysis & Economic Impact Statement for more details.

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

Except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0641d.RAC.DOCX

DATE: 2/15/2016

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Department's mission is to safeguard the public and support Florida's agricultural economy by:

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

The Division of Consumer Services is the state's clearinghouse for consumer complaints, information and protection, including operating Florida's Do Not Call List. Various businesses, such as Pawnbrokers, Health Studios, Sellers of Travel, Professional Surveyors and Mappers, and Telemarketing, are regulated by the Division of Consumer Services. Additionally, the Division of Consumer Services regulates standards for gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices.

The Division of Licensing within the Department is responsible for protecting the public from unethical business practices on the part of persons providing private security, private investigative and recovery services to the public through licensure and regulation of those industries pursuant to ch. 493, F.S. Additionally, the Division of Licensing is responsible for the issuance of Concealed Weapon or Firearm Licenses in accordance with s. 790.06, F.S.

#### **Military Veteran Fee Waivers**

##### Current Situation

The Division of Consumer Services regulates and licenses surveyors and mappers, health studios, telemarketing, intrastate movers, sellers of liquefied petroleum gasoline, pawn broking, motor vehicle repair, and sellers of travel. The Division of Licensing regulates and licenses private investigation, recovery, and security industries.

There are more than 231,000 veterans of the Afghanistan and Iraq wars that currently live in Florida.<sup>1</sup> One of the greatest challenges facing returning veterans is finding gainful employment in a profession. Several Legislative initiatives have attempted to bridge this gap in recent years.<sup>2</sup>

##### Effect of the Bill

The bill provides that the Department shall waive the initial license or registration fees for certain professions and industries under the Division of Consumer Services for veterans. License or registration applications for veterans and their spouses submitted within **60 months** of the veteran's discharge from any branch of the United States Armed Services, including the initial license or

---

<sup>1</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 4 (Nov. 17, 2015).

<sup>2</sup> In recent years, the Department of Business and Professional Regulation and the Department of Health have begun waiving professional license fees for veterans. Specifically, Chapter 2014-1, Laws of Florida, amended s. 455.213, F.S., to allow the Department of Business and Professional Regulation to waive the initial licensing fee, initial application fee, and initial unlicensed activity fee for a military veteran or his or her spouse within 60 months of discharge. This same bill amended s. 456.013, F.S., and s. 468.304, F.S., to waive similar fees for the Department of Health.

registration fees for business entities where a veteran or their spouse is the majority owner, shall be waived in the following industries and professions:

- Surveyors and mappers
- Health studios
- Telemarketing
- Intrastate movers
- Sellers of liquefied petroleum gasoline
- Pawn broking
- Motor vehicle repair
- Sellers of travel

The bill further provides the following licenses under the Division of Licensing shall have their fees waived for veterans honorably discharged within the past **24 months**:

- Firearm Instructor (Class K License)
- Private Security Agency Manager (Class MB License)
- Private Security Branch Office Manager (Class AB License)
- Private Security Officer School or Training Facility Instructor (Class DI License)
- Private Investigation Agency Manager (Class MA License)
- Private Investigation Branch Office Manager (Class AB License)
- Private Investigator (Class C License)
- Private Investigator Intern (Class CC License)
- Recovery Agency Manager (Class MR License)
- Recovery Agency School or Training Facility Instructor (Class RI License)
- Recovery Agent (Class E License)
- Recovery Agent Intern (Class EE License)

Security Officers (Class D License) and the Statewide Firearms License (Class G License) are not included in the veteran fee waiver proposal, although Class D Licensees currently do not have a license fee.

Veterans must provide the department with a copy of their DD Form 214, discharge papers, as issued by the United States Department of Defense, or other acceptable form of identification as specified by the Department of Veterans' Affairs to qualify for the waiver.

## **Board of Professional Surveyors and Mappers**

### Current Situation

The Board of Professional Surveyors and Mappers consists of nine total members, seven surveyors and mappers, of whom one is a photogrammetric mapper, and two consumer members. Each member is appointed by the Commissioner of Agriculture, subject to confirmation by the Senate, and each serves a 4 year term.<sup>3</sup> The practice of surveying and mapping is governed by ch. 472, F.S. The Board has authority to adopt rules to implement ch. 472, F.S., subject to approval by the Department.<sup>4</sup>

Licensed surveyor and mappers provide data relevant to the shape, contour, gravitation, location, elevation, or dimension of land or land features on or near the earth's surface for engineering, mapmaking, mining, land evaluation, construction and other purposes.<sup>5</sup>

---

<sup>3</sup> s. 472.007, F.S.

<sup>4</sup> s. 472.008, F.S.

<sup>5</sup> Florida Department of Agriculture and Consumer Services, *Professional Surveyors and Mappers*,

<http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services/Business-Services/Surveyors-and-Mappers>.

The specialization of photogrammetry focuses on measuring a subject using high-quality images.<sup>6</sup> Recent technological advances in digital cameras, computer processors, and computational techniques have increased access to accurate photogrammetry measurements.<sup>7</sup> The Department reports that due to the changing shape of the profession, the subprofession of photogrammetry has greatly dwindled, and individuals are no longer taking the photogrammetrist exam.<sup>8</sup>

There are currently only 3 individuals designated as a photogrammetrist licensed in Florida, of which, one is a current second term board member and another is a previous board member.<sup>9</sup> Due to a lack of interest in this specialization, the Board of Surveyors and Mappers has recommended that the statutory requirement of a photogrammetrist specialized board member be removed.<sup>10</sup>

### Effect of the Bill

The bill provides that the Board of Surveyors and Mappers is no longer required to have one of the board members obtain the designation of photogrammetrist.

### **Telemarketing Physical Location**

#### Current Situation

The Department has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Telemarketing is regulated under Florida's Telemarketing Act, codified in ss. 501.601 – 501.626, F.S.

When applying to become a "commercial telephone seller," an applicant must provide a complete street address for each location from which an applicant will be "doing business."<sup>11</sup> An applicant is required to provide an address where the actual telemarketing operation is taking place.<sup>12</sup> A "mail drop" cannot be a location where an applicant will be doing business because by its nature a "mail drop" is shorthand for a location where mail is delivered and retrieved, but where no actual business occurs.<sup>13</sup>

### Effect of the Bill

The bill revises s. 501.605, F.S., to remove the requirement to disclose whether a location where the applicant will be doing business is a "mail drop." The removal does not change the prohibition against listing a "mail drop" address as the principal place of business and should have no effect on the industry.

---

<sup>6</sup> See generally, Cultural Heritage Imaging, *Photogrammetry: What is it?*, <http://culturalheritageimaging.org/Technologies/Photogrammetry/> (last visited Nov. 18, 2015).

<sup>7</sup> *Id.*

<sup>8</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 3-4 (Nov. 17, 2015).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> s. 501.059, F.S., defines "doing business in this state" as a business that conducts telephonic sales calls from a location in Florida or from other states or nations to consumers located in Florida. Although not directly stated, there is a strong implication that a location where an entity is "doing business" is the location where the telephonic sales call originates from.

<sup>12</sup> s. 501.605(2)(j), F.S.

<sup>13</sup> s. 501.605(2)(j), F.S. See generally, *Hertz Corp. v. Friend*, 559 U.S. 77, 97 (2010) (stating that the "principal place of business" for jurisdictional purposes is a business's "nerve center," and that courts should ignore an alleged location that is "nothing more than a mail drop box.")

## **Safety Standards for Amusement Rides**

### Current Situation

The Bureau of Fair Rides Inspection within the Department (Bureau of Fair Rides) is assigned to inspect, investigate, and enforce the regulations related to amusement rides. The Bureau of Fair Rides has statewide responsibility to inspect all amusement rides in the state, except for certain large parks which have more than 1,000 employees and have full time inspectors on staff.

The Department has previously removed inspection requirements for private facilities such as residential community centers not open to the general public. The Department currently does not monitor waterslides at hotels that are not open to the public and do not allow day rates.<sup>14</sup>

When inspecting their own rides, the owners of fair rides fill out a Department approved form that is generalized and not customized for any specific ride.<sup>15</sup> The Department reports that often owners will fill out the Department form and provide an inspection form provided by the ride's manufacturer.<sup>16</sup>

### Effect of the Bill

This bill exempts from regulation and inspection any facility operating as a charitable entity licensed under ch. 496, F.S., which is not open to the general public. The Department states that only two companies would currently qualify under this exemption.<sup>17</sup>

The bill also expands the current residential inspection exemption to exempt private, membership-only facilities if the amusement ride is an incidental amenity and the facility is not open to the general public, is not primarily engaged in providing amusement, pleasure, thrills, or excitement, and does not offer day rates.

The bill allows the use of manufacturer inspection forms to be submitted to the Department in lieu of the Department's form, if the manufacturer's form is approved by the Department.

Fair ride owners must submit their new forms for approval. At a minimum, any submitted form must have the same information that is required on the Department's forms, which will continue to be used.

## **Streamlining of Standards Regulations**

### Current Situation

The Bureau of Standards is responsible for conducting inspections of petroleum distribution systems, analyzing samples of petroleum products, the accuracy of retail price scanners, packaged goods inspections, and ensuring hundreds of other products that are purchased daily by consumers and business meet safety and performance standards required by law.

The Bureau of Standards also contains the Department's metrology laboratory which maintains the state's primary standards of mass, length and volume and provides calibration services to the commercial measurement industry, scientific and law enforcement labs, manufacturers, and the aerospace and technology industries.

---

<sup>14</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 8 (Nov. 17, 2015).

<sup>15</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*



Vehicles transporting liquid petroleum gas in bulk must be registered with the Department and are accessed a \$50 fee.<sup>18</sup> Liquid petroleum gas truck meters are also inspected and assessed a \$100 fee.<sup>19</sup>

“Weights and measures” is defined as “all weights and measures of every kind, instruments, and devices for weighing and measures, and any appliance and accessories associated with any or all such instruments and devices.”<sup>20</sup>

The Department charges and collects fees for metrological laboratory calibration and testing services, ranging from \$50 to \$250, depending on the test or calibration that is performed.<sup>21</sup>

When a specific weight or measures device is permitted by the Department, the permit is assigned to the person or business, as it may be, that owns or controls the weights and measures instrument or device. When a business transfers ownership of a weights and measures device, or should the ownership of a business be wholly or partially transferred to another person, s. 531.60, F.S., determines the status of a permitted weights and measures devices.

### Effect of the Bill

The bill clarifies the intent of s. 531.60, F.S., and other sections within ch. 531, F.S., that a permit is issued to the person or business who owns the weights and measures instrument or device, and not to the device or instrument itself. The bill also requires the businesses to notify the Department within 30 days if there is a change in permit status, or if the permit will not be renewed.

The bill removes s. 531.60(3), F.S., which permits the Department to test instruments or devices that are not used commercially, if the instrument or device is permitted and the appropriate fees are paid. Currently, the Department does not permit non-commercial instruments or devices, thus, and may not test a non-permitted device.<sup>22</sup> Additionally, the Department reports that private companies are available to provide testing for non-commercial instruments and devices.<sup>23</sup>

The bill simplifies and clarifies the fees for several calibration and testing services, and clarifies that any item that is not in a condition that is ready to be tested may be refused by the Department. The Department reports instances of customers bringing dirty equipment to the lab for testing and being unable to clean these artifacts before testing.<sup>24</sup>

Currently, all weights and measures permits are renewed annually and a permit expires one year following its date of issue.<sup>25</sup> The bill amends the annual renewal cycle to allow either annual or biennial permits, and to permit a person to elect whether their commercial use permit for a weights and measures device expires after one or two years.

Finally, the bill clarifies several of the fees required for certain weights and measures devices in s. 531.63, F.S., combines the two fees for transporting liquid petroleum gas into a single \$150 fee, and removes “grain moisture meters” from the list of devices that are permitted by the Department. The Department reports that “grain moisture meters” are no longer inspected by the Department and should be removed from the list.<sup>26</sup>

---

<sup>18</sup> s. 527.021, F.S.

<sup>19</sup> s. 531.63(2)(i), F.S.

<sup>20</sup> s. 531.37(1), F.S.

<sup>21</sup> s. 531.415, F.S.

<sup>22</sup> s. 531.60(1), F.S.

<sup>23</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

<sup>24</sup> *Id.*

<sup>25</sup> s. 531.62, F.S.

<sup>26</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 7 (Nov. 17, 2015).

## Sellers of Travel

### Current Situation

The Department is responsible for registering and regulating sellers of travel, who must register annually with the department and provide performance bonds if offering vacation certificates. A seller of travel offers prearranged travel or tourist-related services through vacation and tour packages, or through vacation certificates. The Department reports that the current statutes regulating sellers of travel, excepting language related to travel to terrorist nations, need updating to meet the changing marketplace.<sup>27</sup>

### Effect of the Bill

The bill removes regulation of “tour guides.” The Department states that regulation of sellers of travel is focused on high-end vacations, typically bought weeks or months in advance. Tour guides, and same-day travel tours, are not a source of consumer complaints.<sup>28</sup>

The bill amends the definition of “accommodations” to clarify that regulated accommodations do not include long-term home rentals covered under a lease pursuant to ch. 83, F.S., Florida’s Landlord and Tenant law.

The bill amends the definition of “vacation certificate” to clarify that a vacation certificate refers to an advance travel purchase, and does not include “travel if exact travel dates are selected, guaranteed, and paid for at the time of the purchase.”

The bill amends the definitions of “prearranged travel,” “purchaser,” “satisfactory consumer complaint history,” and “seller of travel” to remove references to tour guide services, sightseeing tours, and making technical changes.

The bill amends the registration requirements of sellers of travel to allow the Department to deny or refuse to renew a registration for a seller of travel based on a crime or civil penalty related to theft or embezzlement, and to revoke the registration should the seller of travel, or any of its directors, officers, owners, or general partners:

- Fail to meet the requirements of registration;
- Are convicted of a crime involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel;
- Fail to satisfy a civil fine or penalty arising out of enforcement of a civil action involving fraud, theft, embezzlement, dishonest dealing, or any violation of the sellers of travel statutes or rules;
- Has pending any criminal, administrative, or enforcement proceedings based upon conduct involving fraud, theft, embezzlement, dishonest dealing, or any other act of moral turpitude or any other act arising out of conduct as a seller of travel; or,
- Has had a judgment entered against him or her in any action brought by the Department or the Department of Legal Affairs.

The bill removes a requirement that the Department respond to a seller of travel within ten working days about whether the materials submitted meet the statutory requirements of a vacation certificate, subsequent to the initial registration. Sellers of travel will also not be required to identify the number of vacation certificates to be issued or their expiration dates to the Department.

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 8.

Vacation certificates will be required to include disclosure language in a 10-point font, and the Department will be required to review certificates and contracts for compliance with the disclosure requirements of s. 559.932, F.S.

The cancellation and refund provisions of vacation certificates are clarified to provide that a seller of travel must honor a cancellation request made within 30 days after the date of purchase or receipt, or when the accommodations or facilities are not available. The purchaser may accept comparable alternative accommodations or facilities.

Further, the bill amends and clarifies the intent required for violations made by sellers of travel, including clarifying it is a violation to knowingly make a false statement to the Department or any other governmental agency in response to an inquiry or investigation, or engage in any other fraudulent actions. The bill removes violations for payment-type requirements or any other methods of payment, requirements to state "This is an offer to sell travel" in an advertisement, and disclosure requirements of the seller's fixed business address in solicitations and contracts.

## **Health Studios**

### Current Situation

The financial and business methods of health studios are currently regulated by the Department because certain business practices have caused undue financial hardship on citizens within the state.<sup>29</sup> The definition of a "health studio" includes both persons who sell services, such as instruction or training in physical exercise, and the facilities, often referred to as "gyms," that contain training and workout equipment which may be contracted to be utilized in exchange for a membership fee.

A "personal trainer" is a person who provides services as an instructor or trainer for physical exercise, but does not necessarily associate with a specific gym. The Department reports that entities like personal trainers that are not affiliated with a gym do not pose a significant risk to consumers because they generally "do not issue extensive binding contracts, may or may not provide equipment, and do not collect monies more than 30 days in advance."<sup>30</sup> Despite this, personal trainers who are not affiliated with a gym, and who do not require payment more than 30 days in advance of services are required to register as a "health studio."

### Effect of the Bill

The bill exempts a "personal trainer" from the definition of a "health studio" and defines a "personal trainer" as "an individual: (a) Who does not have an established place of business for the primary purpose of the conducting of physical exercise; (b) Whose provision of exercise equipment is incidental to the instruction provided; and (c) Who does not accept payment for services that are to be rendered more than 30 days after the date of payment."

## **Firearm Instructors for Concealed Carry Permits**

### Current Situation

In order to obtain a "G" Statewide Firearms License, an individual must receive training from a "K" Firearms Instructor.<sup>31</sup> To become licensed as a "K" Firearms Instructor, an applicant must submit an application, a background history check, a full set of fingerprints, and provide one of the following certificates, which indicate a proficiency with firearms instruction:

---

<sup>29</sup> s. 501.012, F.S.

<sup>30</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 6 (Nov. 17, 2015).

<sup>31</sup> s. 493.6113, F.S.,

1. The Florida Criminal Justice Standards and Training Commission (FCJSTC) Instructor Certificate and an active firearms certification,
2. The National Rifle Association (NRA) Private Security Firearm Instructor Certificate, or;
3. A firearms instructor certificate issued by a federal law enforcement agency.

To become a general instructor with the FCJSTC, an application must be submitted to the Florida Department of Law Enforcement (FDLE), the Florida General Instructor Techniques Course must be completed,<sup>32</sup> and an instructional internship with a training center director or agency administrator must be completed.<sup>33</sup>

Further, to possess an active Firearms Instructor Certification from the FCJSTC, an applicant must obtain the general instructor certification (either prior or concurrently),<sup>34</sup> obtain three years of experience as a certified criminal justice officer or in firearms instruction, complete the CMS Firearms Instructor Course,<sup>35</sup> and complete a high-liability instructor internship.<sup>36</sup>

To obtain a private security firearm instructor certificate from the NRA, an applicant must be a current member of the NRA, the applicant's agency must be a member of the NRA,<sup>37</sup> and the applicant must complete the NRA Law Enforcement Firearm Instructor School Course and obtain a course completion certificate.<sup>38</sup>

To enroll in the NRA Law Enforcement Firearm Instructor School, an applicant must be one of the following:

- A "sworn" law enforcement officer with at least three years of experience;
- A retired or previously employed "sworn" law enforcement officer with at least three years of experience as a law enforcement officer;
- A licensed "armed" private security officer with three years of experience as an armed private security officer;
- A current member of the United States Armed Forces, with a letter from their unit or command requesting admittance;
- A civilian employed as a full-time firearm instructor by a public law enforcement agency.<sup>39</sup>

The requirements to obtain a firearms instructor certificate from a federal law enforcement agency vary between each agency; however, generally each agency will only instruct and provide certificates for current employees of the agency, active members of the United States Armed Forces, or state and local law enforcement agency partners.

### Effect of the Bill

The bill provides that in addition to FDLE, the NRA, and federal law enforcement agencies, the International Association of Law Enforcement Firearms Instructors (IALEFI) and the Second

---

<sup>32</sup> The Florida General Instructor Techniques Course is a 64 hour course offered by an educational institutions approved by the Florida Criminal Justice Standards and Training Commission. Applicants must complete this course within 4 years of applying for a certificate, or complete an 8 hour refresher course within 4 years of applying. 11B-35.007, F.A.C.

<sup>33</sup> 11B-20.001, F.A.C.

<sup>34</sup> Alternatively, an applicant may apply for a General Instructor Certification at the same time as he or she applies for a Firearms Certification.

<sup>35</sup> The CMS Firearms Instructor Course is a 44 hour training course. 11B-35.0024, F.A.C.

<sup>36</sup> 11B-20.0014, F.A.C.

<sup>37</sup> The agencies of applicants employed by law enforcement or the armed forces do not need to have NRA membership. *See* NRA, Application for Certification as a NRA Law Enforcement Firearm Instructor, [http://le.nra.org/documents/pdf/law/training/recert-application\\_form.pdf](http://le.nra.org/documents/pdf/law/training/recert-application_form.pdf).

<sup>38</sup> The NRA's Law Enforcement Firearm Instructor Course is listed as a 40 hour course. *See* NRA, Instructor Development Schools, <http://le.nra.org/training/instructor-development-schools.aspx> (last visited Dec. 8, 2015).

<sup>39</sup> NRA, Instructor Development Schools, <http://le.nra.org/training/instructor-development-schools.aspx> (last visited Dec. 8, 2015).

Amendment Foundation Training Division may provide the training and certification necessary for “K” firearms instructors in Florida.

Currently, in order to obtain certification from IALEFI, an applicant must successfully complete an instructor level training course approved by their state,<sup>40</sup> and complete a 40-hour course designed by IALEFI.<sup>41</sup>

Currently, in order to obtain certification with the Second Amendment Foundation Training Division, an applicant must have outstanding firearm handling safety skills, \$1,000,000 of liability insurance coverage, first aid, CPR, and AED certification, be at least 21 years old, must be able to legally possess and carry firearms under federal and state laws, and complete a five day Defensive Firearms Instructor Certification Course.<sup>42</sup>

Similar to the NRA, both IALEFI and the Second Amendment Foundation Training Division are private entities, and as such, may increase or reduce the requirements to obtain their certification without consulting the Legislature or the Department.

## **Duration of a “K” License**

### Current Situation

In 2011, s. 493.6111, F.S., was amended to extend the duration of the validity of a “K” license from two to three years. However, s. 493.6113, F.S., still requires that all licenses under ch. 493, F.S., must be renewed biennially except for specific licenses, which must renew every three years.

### Effect of the Bill

The bill amends s. 493.6113, F.S., to include Class “K” licenses within the group of specific licenses that do not have to renew biennially and which may be renewed every three years.

## **Licensee Fingerprint Retention**

### Current Situation

An individual who wishes to work in the private security, private investigative, or repossession industries that are regulated by the Department under ch. 493, F.S., must provide a set of fingerprints and submit to a criminal history background check. After a person has been licensed, the Department is mandated by s. 493.6118, F.S., to continually monitor weekly criminal arrests and match reports furnished by the FDLE to ensure that licensees remain eligible for licensure during the term of the license. The Department reports that the current process is very time consuming, based only on name-search criteria, and does not guarantee accurate identification.<sup>43</sup> When a match is found, the Division of Licensing manually reviews the demographic information of the arrested person with the demographic information of the matched licensee.

The Department additionally has difficulty identifying licensees who are arrested outside the State because FDLE is only able to provide reports of arrests that occur in Florida.

---

<sup>40</sup> It is unclear based on the documentation provided what courses in Florida would meet this requirement, and if the instructor level training course must be general in nature or specialize in firearms training.

<sup>41</sup> IALEFI, Firearms Instructor Development Course: Course Curriculum (June 2015) (on file with the Business and Professions Subcommittee).

<sup>42</sup> Second Amendment Foundation Training Division, 5-Day Defensive Firearms Instructor Certification Course (on file with the Business and Professions Subcommittee).

<sup>43</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 5 (Nov. 17, 2015).

## Effect of the Bill

The bill requires the Department to participate in both a federal and state background check and fingerprint retention program. The state program is administered by FDLE and is referred to as the Applicant Fingerprint Retention and Notification Program (AFRNP) which allows for retention of applicant fingerprints within FDLE's Biometric Identification System.

The Federal Bureau of Investigation (FBI) administers the federal program as part of its Next Generation Identification project, and retains fingerprints at the national level to provide a nation-wide database that the agency and participating state and local entities may use to identify fingerprints. In order for entities to participate in the federal program, fingerprints must be retained at the state level and subsequently enrolled through the state program into the FBI's program.

Participation in FDLE's Biometric Identification System requires an annual fee of \$6.00 for each year that a license is valid. Participation in the FBI's Next Generation Identification project requires a one-time fee of \$13.00 that covers the cost of fingerprint retention for as long as a license is valid.

These fingerprint retention programs would automate the manual practice of matching arrest records with licensees. Moreover, participation in the FBI's Next Generation Identification project allows the Department to receive information on arrests of licensees in any jurisdiction that also participates in the FBI's Next Generation Identification project.

The bill requires the Department to inform the agency that employs the licensee of any arrest, and the Department may initiate appropriate action against the license.

Starting January 1, 2017, the bill will require renewal licensees to re-submit their fingerprints and pay the processing and retention fees to be enrolled in the federal and statewide fingerprint retention programs if they have not already done so during initial licensure. Licensees will have to submit fingerprints and pay both processing fees upon the first renewal; all subsequent renewals will only require the licensee to pay statewide retention fees.

## **Residency Requirements**

### Current Situation

In 2012, the Department of Justice amended regulations of the Bureau of Alcohol, Tobacco, Firearms, and Explosives removing a 90-day residency requirement for a permanent legal resident alien lawfully present in the United States to purchase or acquire firearms.

Based on the former federal requirement, an applicant for a private security, private investigative, or repossession license in Florida, who is a permanent legal resident alien, must reside for 90 days in the state shown on the application.

The Department reports that the 90-day residency requirement serves no practical purpose, and has caused frustration for new Florida residents who must wait before seeking employment in the private security, private investigative, or repossession industries, even if previously employed in another state in those industries.

### Effect of the Bill

The bill amends Florida law to remove the 90-day residency requirement for legal resident aliens seeking licensure in the private security, private investigative or repossession industries.

A person who is not a United States citizen must still submit proof that she or he is deemed a permanent legal resident alien by the United States Citizenship and Immigration Services to receive a private security, private investigative, or repossession license.

## **Concealed Weapon Licensing Law**

### Current Situation: Application for Concealed Weapons License

An applicant may be disqualified from receiving a concealed weapons license, pursuant to s. 790.06(2)(k), F.S., if the applicant "...had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence...." The Department reports that this has led to some confusion from applicants and licensees, who read this section to believe that only felonies of domestic violence and misdemeanors of domestic violence are disqualifying crimes, instead of all felonies and separately, misdemeanors of domestic violence.<sup>44</sup>

The application for a concealed weapons license requires that applicants list their occupation, per s. 790.06(4)(a), F.S. The Department does not use or collect this information for any purposes related to licensure; an application is considered incomplete if the applicant fails to provide their occupation.<sup>45</sup>

Currently an applicant for a concealed weapons license is not required by statute to provide personal identifying information, including height, weight, eye color, hair color, and other demographic information as required by federal law to process fingerprints of applicants.<sup>46</sup> However, the Department does request this information on the application.

### Effect of the Bill: Application for Concealed Weapon License

The bill clarifies that all felonies are disqualifying crimes for which the Department may deny an applicant from receiving a concealed weapons license. The bill deletes misdemeanors of domestic violence, so that the new section reads, "...had adjudication of guilt withheld or imposition of sentence suspended on any felony..."

The bill creates a new subsection 790.06(2)(l), F.S., to clarify that, in addition to all felonies, misdemeanors of domestic violence shall disqualify an applicant from receiving a concealed weapons license.

The bill removes the requirement that an applicant provide their occupation, and includes a requirement that an applicant supply certain personal identifying information required by federal law to process fingerprints.

### Current Situation: Expedited Consideration for Military Applications

Following the domestic terrorism attack on July 16, 2015, resulting in the murder of four United States Marines at a United States Armed Services recruiting center and a Naval Reserve Facility, Governor Scott issued Executive Order No. 15-137 on July 18, 2015. The order directed Florida Adjunct General Michael Calhoun to ensure that all qualified full-time guardsmen were adequately armed and stated that "for those Florida Guardsmen who need a new state concealed weapons permit, the state will support the expedited processing of licenses for those soldiers."<sup>47</sup>

Following Gov. Scott's executive order, Commissioner Putnam announced on July 27, 2015, that the Department would expedite the applications of all active military and veterans applying for a concealed

---

<sup>44</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 9 (Nov. 17, 2015).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Office of the Governor, Exec. Order No. 15-137 (2015).

weapons license.<sup>48</sup> There is neither a requirement nor prohibition in statute related to expedited consideration of concealed weapons licenses to any member of the general public.

#### Effect of the Bill: Expedited Consideration for Military Applications

The bill creates s. 790.06(4)(f), s. 790.06(5)(f), F.S., and s. 790.06(6)(f), F.S., to provide that servicemembers and veterans who identify themselves as such to the Department will have their application for a concealed weapons license expedited.

The bill provides that the application for a concealed weapons license shall include directions for an applicant who is a "servicemember, as defined in s. 250.01, or a veteran, as defined in s. 1.01, to request expedited processing of his or her application."

The bill provides that a servicemember may submit either a "copy of the Common Access Card, United States Uniformed Services Identification Card, or current deployment orders" as proof of their status to receive expedited processing. A veteran may submit "a copy of the DD Form 214," or another acceptable form of identification as specified by the Department of Veterans' Affairs to receive expedited processing.

#### Current Situation: Live Fire Requirements

Firearms instructors who provide the qualifying training for the Florida concealed weapons license, s. 790.06, F.S., "must maintain records certifying that he or she observed the student safely handle and discharge a firearm"; however, the language is unclear as to whether this observation must be made in the actual physical presence of the trainer. The current language is ambiguous as to whether remote viewing or reviewing a prerecording of a firearm discharge would satisfy this requirement, and the current language does not specify if the firearms trainer may use simulated ammunition or firearms to conduct the training.

#### Effect of the Bill: Live Fire Requirements

The bill requires a student discharge an actual firearm using functional ammunition in the physical presence of a trainer in order to qualify for a concealed weapons license. It also provides that firearm instruction must use a fully functional firearm with live ammunition.

#### Current Situation: Service Requirements for Notice of Suspension or Revocation

When an agency seeks to revoke or suspend a license, s. 120.60(5), F.S., requires either personal service or service by certified mail of the administrative complaint. When an agency cannot personally serve a licensee and service by certified mail is returned undeliverable, the agency must publish notice of revocation or suspension once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address.

Approximately 176,000 concealed weapons license holders live outside the state of Florida.<sup>49</sup> The Department currently spends approximately \$140,000 annually on publication. The Department notes that newspaper publication of a license holder's name and license number may violate s. 790.0601, F.S., which makes confidential and exempt the personal identifying information of a concealed weapons license holder.

---

<sup>48</sup> See Kellan Howell, *Florida OKs faster concealed weapons permits for military members, vets*, WASHINGTON TIMES (Aug. 1, 2015), <http://www.washingtontimes.com/news/2015/aug/1/florida-oks-faster-concealed-weapons-permits-for-m/>

<sup>49</sup> Florida Department of Agriculture and Consumer Services, Agency Analysis of 2016 House Bill 641, p. 10-11 (Nov. 17, 2015).



### Effect of the Bill: Service Requirements for Notice of Suspension or Revocation

The bill provides that the Department may forego the normal methods of providing administrative service or notice in s. 120.60(5), F.S., and provide service of a notice of the suspension or revocation of a concealed weapon or firearm license through certified mail, with return receipt requested, or through personal service.

Should the Department be unable to deliver notice through certified mail, the Department must attempt to provide notice through first-class mail or through e-mail, if the licensee provided an e-mail address to the Department.

The bill provides that mailing notice through regular mail is effective notice by operation of law, regardless of whether the licensee receives any actual or constructive notice. A licensee may request a hearing within 21 days of receiving delivery of the notice, or within 26 days of the date that the Department sent their notice to the licensee.

This provision of the bill may have constitutional concerns. See Comments, Constitutional Issues for discussion.

### Current Situation: Renewal Notarization

Concealed weapons license renewal affidavits are required to be notarized pursuant to s. 790.06(11), F.S.

The Department indicated that a total of 1,282,036 concealed weapons licenses will expire over the next six years, and expects a renewal rate between 53 and 78 percent, for approximately 800,000 license renewals. The Department would like to automate its renewal process because the volume of renewals will be overwhelming without an online, automated system.<sup>50</sup>

### Effect of the Bill: Renewal Notarization

The bill removes the notarization requirement for concealed weapons licenses renewals and replaces it with a requirement that the form would be submitted under oath and under penalty of perjury.

This section would be effective upon becoming law.

### Current Situation: Tax Collector Renewal Authority

As of July 1, 2014, select tax collectors' offices began accepting Florida Concealed Weapon or Firearm License applications on behalf of the Department. The service was made possible by the implementation of Chapter 2014-205, Laws of Florida. Under this program, the Department can enter into a Memorandum of Understanding (MOU) with any constitutionally elected tax collector in Florida to allow the tax collector to provide concealed weapons license application intake services in his or her county.

The Department reports that this program has been successful and may help alleviate the anticipated workload of increasing new and renewal concealed weapons license applications.

### Effect of the Bill: Tax Collector Renewal Authority

The bill provides that a tax collector who is accepting concealed weapons license applications may now also print and furnish a renewal license to a concealed weapons license holder. The Department must still approve the renewal prior to issuance.

---

<sup>50</sup> *Id.*

### Current Situation: Concealed Weapon License Fees

Concealed weapons license holders are required to pay an initial license fee of \$70, and a renewal fee of \$60.

### Effect of the Bill: Concealed Weapon License Fees

The bill lowers the fees for concealed weapons licenses to \$60 for the initial license, and \$50 for the renewal.

## **Motor Vehicle Repair Bond and Lien Requirements**

### Current Situation

When performing labor or service upon the personal property of another, the person or business that performs the labor or service, such as a motor vehicle repair shop, is given a possessory lien upon the personal property that is improved by the labor or service.<sup>51</sup> In the case of a motor vehicle, when an owner fails to make payment, this possessory lien (referred to as a "mechanic's lien") may be enforced by the sale of the motor vehicle, subject to certain procedures.<sup>52</sup> A motor vehicle repair shop may charge storage fees for vehicles that are not timely retrieved following the completion of the labor or service.<sup>53</sup>

While in possession of the vehicle, the mechanic's lien supersedes any other security interest on the vehicle, including a purchase-money security interest.<sup>54</sup> In the event that a motor vehicle is sold to enforce the mechanic's lien, the motor vehicle repair shop's lien and costs will be paid first, before any other lienholder is paid.

When there is a dispute over the cost of the repair, and the motor vehicle repair shop refuses to release the vehicle prior to the bill being paid, the owner of the vehicle may file a cash or surety bond with the clerk of the court to secure the release of the vehicle during the pending litigation.<sup>55</sup> Another lienholder, such as a party that has a purchase-money security interest in the vehicle, may not post a bond to obtain possession of the motor vehicle during any pending litigation.<sup>56</sup>

### Effect of the Bill

The bill defines a "lienholder" as "a person claiming an interest in or a lien on a vehicle" under s. 713.585(5), F.S. The bill defines a "lienor" as "a person claiming a lien for motor vehicle repair shop work" under ch. 713, F.S.

The bill reduces the notice period during which a motor vehicle repair shop must notify the owner, or any other lienholder, of the shop's intent to enforce the mechanic's lien on a vehicle from 15 days after the beginning of the assessment of storage charges to 7 days after the beginning of the assessment of storage charges.

---

<sup>51</sup> s. 713.58, F.S.

<sup>52</sup> s. 713.585, F.S.

<sup>53</sup> s. 679.2071(2)(a), F.S., (which provides "[r]easonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral.")

<sup>54</sup> s. 679.333, F.S., (which provides that "[a] possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.") and s. 679.1031, F.S., (which describes a purchase-money security interest as a secured interest in a good that is created in favor of the party that provides the money to another party to purchase the good.)

<sup>55</sup> s. 559.917, F.S.

<sup>56</sup> *Am. Atl. Transmission v. Nice Car, Inc.*, 112 So. 3d 639, 642 (Fla. 4d DCA 2013).

The bill provides that a lienholder, who is not the owner of the motor vehicle, may demand a hearing or to post a bond to have a motor vehicle released from the possession of a motor vehicle repair shop.

If the lienholder posts a bond and receives possession of the vehicle, the lienholder must return the vehicle to the owner within 5 days if the owner repays the lienholder for the amount of the bond, or agrees to repay the bond under terms agreeable to the lienholder, so long as the owner is not in default under the installment sales contract or title loan held by the lienholder. A lienholder may retain possession of the vehicle if the owner is in default until such time as the default is cured and the amount of the bond is repaid by the owner, or an arrangement agreeable to the lienholder is made with the owner.

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

**B. SECTION DIRECTORY:**

**Section 1** amends s. 427.007, F.S., revising the composition of the Board of Professional Surveyors and Mappers.

**Section 2** amends s. 472.015, F.S., requiring the Department to waive the initial license fee for certain veterans.

**Section 3** amends s. 493.6105, F.S., waiving the initial license fee for certain veterans for certain professions, authorizes certain fees for fingerprint retention programs, and revises Class "K" license certification requirements.

**Section 4** amends s. 493.6106, F.S., removing residency requirements for Class "G" and Class "K" license applications.

**Section 5** amends s. 493.6107, F.S., waiving the initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

**Section 6** amends s. 493.6108, F.S., requiring the Department of Law Enforcement to retain certain applicant's fingerprints, retain them in state and federal programs, and to report any arrest record information to the Department; requiring the department to provide information about an arrest of a licensee for certain crimes within the state to the agency that employs the licensee.

**Section 7** amends s. 493.6113, F.S., clarifying the renewal requirements for Class "K" licenses.

**Sections 8, 9, and 10** amend ss. 493.6202, 493.6302, & 493.6402, F.S., waiving initial license fees for veterans for certain private investigative, private security, and repossession service licenses.

**Section 11** amends s. 501.0125, F.S., revising the definition of the term "health studio" and defining the term "personal trainer."

**Section 12** amends s. 501.015, F.S., **Section 14** amends s. 501.607, F.S., **Section 15** amends s. 507.03, F.S., **Section 16** amends s. 527.02, F.S., **Section 25** amends s. 539.001, F.S., **Section 26** amends s. 559.904, F.S., **Section 28** amends s. 559.928, F.S., requiring the Department to waive the initial registration fee of certain professions for certain veterans and their spouses, or certain business entities that have a majority ownership held by such veterans or spouses.

**Section 13** amends s. 501.605, F.S., prohibiting the use of a mail drop as a street address for the principal location of a commercial telephone seller and requiring the department to waive the initial commercial telephone seller license fee for certain veterans, the spouses of such veterans, or certain business entities that have a majority ownership held by such veterans or spouses.

**Section 17** amends s. 527.021, F.S., deleting a provision requiring a fee for registering transport vehicles.

**Section 18** amends s. 531.37, F.S., revising the definition of the term "weights and measures."

**Section 19** amends s. 531.415, F.S., revising the fees for actual metrology laboratory calibration and testing services.

**Section 20** amends s. 531.60, F.S., clarifying provisions of weights or measures.

**Section 21** amends s. 531.61, F.S., clarifying provisions exempting certain instruments or devices from specified requirements.

**Section 22** amends s. 531.62, F.S., specifying that the commercial use permit fee is based upon the number and types of instruments or devices permitted; revising the expiration date of the commercial use permit; requiring annual and biennial commercial use permit renewals to meet the same requirements.

**Section 23** amends s. 527.63, F.S., revising the commercial use permit fees and fee structures.

**Section 24** amends s. 531.65, F.S., clarifying that the department may use one or more of the prescribed penalties for the unauthorized use of a weights and measures instrument or device.

**Section 27** amends s. 559.917, F.S., to provide definitions for "lienholder" and "lienor."

**Section 28** amends s. 559.927, F.S., revising several definitions related to sellers of travel, tour guides, and vacation certificates.

**Section 29** amends s. 559.928, F.S., revising the registration requirements for sellers of travel.

**Section 30** amends s. 559.929, F.S., revising security requirements for vacation certificates.

**Section 31** amends s. 559.9295, F.S., revising disclosure requirements and deleting provisions relating to the duties of the Department.

**Section 32** amends s. 559.932, F.S., requiring a specified typeface point size for certain disclosures; requiring the Department to review copies of certain certificates and contracts for compliance with disclosure requirements.

**Section 33** amends s. 559.933, F.S., making technical changes to requirements for sellers of travel.

**Section 34** amends s. 559.9335, F.S., revising violations relating to the sale of travel.

**Section 35** amends s. 559.935, F.S., deleting a provision requiring an affidavit of exemption to obtain a seller of travel affiliate exemption; adding embezzlement as a crime for which the department may revoke certain exemptions.

**Section 36** amends s. 559.936, F.S., conforming cross-references.

**Section 37** amends s. 616.242, F.S., exempting certain water-related amusement rides from inspection under certain situations; authorizing owners or managers of amusement rides to use alternative forms to record ride inspections and employee training.

**Section 38** amends s. 713.585, F.S., providing that a lienholder with a security interest in a motor vehicle may post a bond with the clerk of the court to have the vehicle released from the possession of a motor vehicle repair shop with a possessory lien on the vehicle

**Section 39 and Section 40** amend s. 790.06, F.S., revising the requirements for issuance or revocation of a concealed weapons license; reducing initial and renewal fees; providing a process for expediting applications for servicemembers and veterans.

**Section 41** amends s. 790.0625, F.S., authorizing certain tax collector offices, upon approval and confirmation of license issuance by the department, to print and deliver concealed weapons or firearm licenses.

**Sections 42 and 43** amend ss. 559.9285 & 559.937, F.S., conforming terminology between the sellers of travel statutes.

**Section 44** provides an appropriation.

**Section 45** provides that, except as otherwise expressly provided in the bill, the effective date of the bill is July 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

##### **Recurring**

##### **General Inspection Trust Fund**

Although the number of veterans and veterans' spouses who will apply for the waivers is unknown, the Department estimates the revenue loss based on the following information. An estimated 231,000 veterans from the Afghanistan and Iraq wars live in Florida, which is 1.5 percent of the total population based on 2010 Census data. To estimate the potential loss, the Department doubled the percentage (3 percent) to account for spouses of military veterans who may be interested in the waivers. Using FY 2013-2014 data, the Department calculated the potential loss for each program and license type by multiplying the total number of applications from each program by 3 percent to determine the total number of applications waived. The number of applications waived was then multiplied by the corresponding fee according to program/license type to determine the loss of revenue.

	<b>(FY 16-17)</b>	<b>(FY 17-18)</b>	<b>(FY 18-19)</b>
Military Veteran Fee Waiver	(\$51,250)	(\$51,250)	(\$51,250)
Safety Standards for Amusement Rides	<u>(\$2,280)</u>	<u>(\$2,280)</u>	<u>(\$2,280)</u>
<b>General Inspection Trust Fund Loss</b>	<b>(\$53,530)</b>	<b>(\$53,530)</b>	<b>(\$53,530)</b>
<b><u>Division of Licensing Trust Fund</u></b>			
Military Veteran Fee Waiver	(\$164,965)	(\$164,965)	(\$164,965)
<b>Concealed Weapon License Fees</b>			
New CW License Fee Reduction (\$10)	(\$1,650,000)	(\$1,550,000)	(\$1,550,000)
Renewal CW License Fee Reduction (\$10)	<u>(\$1,294,010)</u>	<u>(\$1,240,260)</u>	<u>(\$1,162,230)</u>
<b>Division of Licensing Trust Fund Loss</b>	<b>(\$3,108,975)</b>	<b>(\$2,955,225)</b>	<b>(\$2,877,195)</b>

**General Revenue Service Charge**

General Revenue Service Charge-Reduction  
Veteran Fee Waiver, Amusement Rides  
And Concealed Weapons Fee Reduction (\$130,641) (\$122,491) (\$119,370)

General Revenue Service Charge-Increase  
Ch. 493 Fingerprint Retention \$104,408 \$104,408 \$47,137

**General Revenue Service Charge Loss (\$26,233) (\$18,083) (\$72,233)**

2. Expenditures:

**Recurring (FY 16-17) (FY 17-18) (FY 18-19)**

**Division of Licensing Trust Fund**

Notice of Service of Process for  
Out of State Licensees (\$140,186) (\$140,186) (\$140,186)

The Department expects to reduce expenditures related to publishing costs for notifying out-of-state licensees of revocation or suspension of their concealed weapon license.

**Nonrecurring**

Tax Collectors  
30 card printers to print and provide a renewal  
license for concealed weapons license holders. \$120,000 \$40,000 \$40,000

The Department will supply printers for tax collectors with existing resources.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill waives the initial application fee for veterans and their spouses for the following industries and professions: surveyors and mappers, health studios, telemarketing, intrastate movers, LP gas, pawn broking, motor vehicle repair, and travel.

The bill eliminates the licensure fee for facilities operating as a charitable entity that have amusement rides that are not open to the general public and do not allow for day rates.

The bill provides that in addition to FDLE, the NRA, and federal law enforcement agencies, the International Association of Law Enforcement Firearms Instructors (IALEFI) and the Second Amendment Foundation Training Division may provide the training and certification necessary for "K" firearms instructors in Florida.

The bill requires individuals who are seeking licensure or renewing a license under ch. 493 (private investigation, recovery, and security industries) to participate in the state and federal fingerprint

retention programs. Participation in the fingerprint retention program sponsored by the FBI would require payment of a \$13.00 fee at the time of initial application that would cover the cost of fingerprint retention for as long as a license is valid. Participation at the statewide level would require payment of an annual fee of \$6.00 for each year that a license is valid. Licensees, whose permits were issued prior to January 2017 must submit a fingerprint set at the time of renewal to be included in the new retention program. The national background check is \$14.75 and the state background check is \$15.00. Both are one-time fees.

The bill provides that servicemembers and veterans, who identify themselves as such, will have their application for a concealed weapons license expedited.

The bill lowers the fee for concealed weapons licenses by \$10, from \$70 to \$60 for the initial license and from \$60 to \$50 for the renewal license.

The bill provides that a tax collector who is accepting concealed weapons license applications may print and furnish a renewal license to a concealed weapons license holder.

**D. FISCAL COMMENTS:**

Fingerprint Retention

New Applicants	(FY 16-17)	(FY17-18)	(FY 18-19)
Federal Bureau of Investigation	\$441,272	\$441,272	\$441,272
Florida Department of Law Enforcement	<u>\$203,664</u>	<u>\$203,664</u>	<u>\$203,664</u>
Subtotal:	\$644,936	\$644,936	\$644,936

The Department estimates that 33,944 new applicants with a two-year license pay FBI's one-time \$13.00 fingerprint retention fee for life of license and FDLE's \$6 annual fingerprint retention fee (no charge for first year of new license).

Renewals	(FY 16-17)	(FY 17-18)	(FY 18-19)
Federal Bureau of Investigation	\$1,118,686	\$1,118,686	\$ 0
Florida Department of Law Enforcement	<u>\$ 846,573</u>	<u>\$ 846,573</u>	<u>\$533,481</u>
Subtotal:	\$1,965,259	\$1,965,259	\$533,481

The Department estimates 40,313 renewal applicants pay FBI's one-time \$13 fingerprint retention fee for as long as the license is valid and the national background check fingerprint fee of \$14.75. Since the fingerprint retention fee and the background check fee are one-time only, there will be no payment to the FBI for renewals of the two-year license after FY 2017-18. The FDLE's fingerprint retention fee is \$6 annually and the state background check fingerprint fee is a one-time only fee of \$15. An estimated 1,020 of the 39,650 have three-year licenses and are captured in FY 2018-19.

These fees will be collected by the Department and deposited in the Division of Licensing Trust Fund where they will then be disbursed to the FBI or FDLE for the administration of their fingerprint retention programs.

The bill provides a nonrecurring appropriation of \$1,305,097 from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

**Procedural Due Process: Generally**

The Due Process Clauses of the Fifth and Fourteenth Amendments intend fair process. “An elementary and fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.”<sup>57</sup> The degree to which due process protections apply varies with the nature of the interests implicated.<sup>58</sup>

The bill provides that the Department must attempt to deliver service of a notice of the suspension or revocation of a concealed weapon or firearm license by first-class mail or e-mail, when notice through certified mail is returned undeliverable. This method of notice may raise procedural due process concerns because it may not, under all the circumstances, apprise an interested party of the action.

The bill does not require return receipt when sending notice through first-class mail or e-mail, nor does it provide for procedures when the mail is returned undeliverable, and the bill eliminates the Department’s responsibility to attempt constructive notice when all other attempts to provide actual notice have failed. Without confirmation of delivery, the Department may be unable to demonstrate that notice was effective, and may have to rely upon the rebuttable presumption that notice sent through regular mail is received by the intended party.<sup>59</sup>

**Single-Subject Requirement**

Article III, Section 6, of the Florida Constitution provides in relevant part, “[e]very law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.” The primary purpose of Section 6 is to prevent logrolling: that is, the stringing together of bills on diverse subjects in order to gain support for the entire package. If logrolling were allowed, legislators would be forced to vote for provisions they did not support in order to gain passage of unrelated provisions.<sup>60</sup>

The Florida Supreme Court has defined the single subject requirement as having three requirements. First, each law shall “embrace” only “one subject.” Second, the law may include any matter that is “properly connected” with the subject. The third requirement, related to the first, is that the subject shall be “briefly expressed in the title.”<sup>61</sup>

Motor vehicle repair shops are licensed under the Department; however, it is unclear if amendments to the procedures for mechanic liens are related to the subject of the bill because the Department generally does not enforce or regulate these types of liens. The bill generally relates to the regulation and enforcement of Department’s administrative functions and mechanic liens may not be considered within that subject.

<sup>57</sup> *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>58</sup> *Mathews v. Eldridge*, 424 U.S. 319 (1976); *Hadley v. Dept. of Admin.*, 411 So.2d 184 (Fla. 1982).

<sup>59</sup> *Compare, Shelley v. State, Dep't of Fin. Servs.*, 846 So. 2d 577, 577 (Fla. 3d DCA 2003).

<sup>60</sup> *Department of Educ. v. Lewis*, 416 So.2d 455 (Fla. 1982).

<sup>61</sup> *Franklin v. State*, 887 So.2d 1063, 1072 (Fla. 2004).



**B. RULE-MAKING AUTHORITY:**

The bill makes several changes to the application for a concealed weapons license (s. 790.06, F.S.), and the Department may be required to perform rulemaking to update any rules or forms that are affected by these changes under their current rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 12, 2016, the Business & Professions Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments:

- Provided technical changes to conform language for license and registration fee waivers.
- Amended the notice provisions for concealed weapon and firearm permit holders to provide notice of the suspension or revocation of a concealed weapon or firearm license by certified mail, and if the notice by certified mail is returned undeliverable, by first class mail or e-mail.
- Provided that a lienholder with a security interest in a motor vehicle may post a bond with the clerk of the court to have the vehicle released from the possession of a motor vehicle repair shop with a possessory lien on the vehicle.

The staff analysis is drafted to reflect the committee substitute.

On January 28, 2016, the Agriculture & Natural Resources Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides a nonrecurring appropriation from the Division of Licensing Trust Fund for payment of fingerprint processing and retention fees to the Department of Law Enforcement.

The staff analysis is drafted to reflect the committee substitute.



27 fingerprints into the statewide automated biometric  
 28 identification system and the Federal Bureau of  
 29 Investigation's national retained print arrest  
 30 notification program, and to report any arrest record  
 31 information to the Department of Agriculture and  
 32 Consumer Services; requiring the department to provide  
 33 information about an arrest of a licensee for certain  
 34 crime within the state to the agency that employs the  
 35 licensee; amending s. 493.6113, F.S.; clarifying the  
 36 renewal requirements for Class "K" licenses; requiring  
 37 a person holding a private investigative, private  
 38 security, or repossession service license issued  
 39 before a certain date to submit, upon first renewal of  
 40 the license, a full set of fingerprints and a  
 41 fingerprint processing fee; amending ss. 493.6202,  
 42 493.6302, and 493.6402, F.S.; waiving initial license  
 43 fees for veterans for certain private investigative,  
 44 private security, and repossession service licenses;  
 45 amending s. 501.0125, F.S.; revising the definition of  
 46 the term "health studio"; defining the term "personal  
 47 trainer"; amending s. 501.015, F.S.; requiring the  
 48 department to waive the initial health studio  
 49 registration fee for certain veterans, the spouses of  
 50 such veterans, or certain business entities that have  
 51 a majority ownership held by such veterans or spouses;  
 52 amending s. 501.605, F.S.; prohibiting the use of a

53 mail drop as a street address for the principal  
 54 location of a commercial telephone seller; requiring  
 55 the department to waive the initial commercial  
 56 telephone seller license fee for certain veterans, the  
 57 spouses of such veterans, or certain business entities  
 58 that have a majority ownership held by such veterans  
 59 or spouses; amending s. 501.607, F.S.; requiring the  
 60 department to waive the initial telephone salesperson  
 61 license fees for certain veterans, the spouses of such  
 62 veterans, or certain business entities that have a  
 63 majority ownership held by such veterans or spouses;  
 64 amending s. 507.03, F.S.; requiring the department to  
 65 waive the initial registration fee for an intrastate  
 66 mover for certain veterans, the spouses of such  
 67 veterans, or certain business entities that have a  
 68 majority ownership held by such veterans or spouses;  
 69 amending s. 527.02, F.S.; requiring the department to  
 70 waive the original liquefied petroleum gas license fee  
 71 for certain veterans, the spouses of such veterans, or  
 72 certain business entities that have a majority  
 73 ownership held by such veterans or spouses; amending  
 74 s. 527.021, F.S.; deleting a provision requiring a fee  
 75 for registering transport vehicles; amending s.  
 76 531.37, F.S.; revising the definition of the term  
 77 "weights and measures"; amending s. 531.415, F.S.;  
 78 revising the fees for actual metrology laboratory

79 calibration and testing services; amending s. 531.60,  
 80 F.S.; clarifying the applicability of permits for  
 81 commercially operated or tested weights or measures  
 82 instruments or devices; requiring a new permit  
 83 application if a new owner acquires and moves an  
 84 instrument or a device; requiring a business to notify  
 85 the department of certain information under certain  
 86 circumstances; deleting a provision authorizing the  
 87 department to test weights and measures instruments or  
 88 devices under certain circumstances; amending s.  
 89 531.61, F.S.; clarifying provisions exempting certain  
 90 instruments or devices from specified requirements;  
 91 amending s. 531.62, F.S.; specifying that the  
 92 commercial use permit fee is based upon the number and  
 93 types of instruments or devices permitted; revising  
 94 the expiration date of the commercial use permit;  
 95 requiring annual and biennial commercial use permit  
 96 renewals to meet the same requirements; amending s.  
 97 531.63, F.S.; revising the commercial use permit fees  
 98 and fee structures; amending s. 531.65, F.S.;  
 99 clarifying that the department may use one or more of  
 100 the prescribed penalties for the unauthorized use of a  
 101 weights and measures instrument or device; amending s.  
 102 539.001, F.S.; requiring the department to waive the  
 103 initial pawnbroker license fee for certain veterans,  
 104 the spouses of such veterans, or certain business

105 | entities that have a majority ownership held by such  
 106 | veterans or spouses; amending s. 559.904, F.S.;  
 107 | requiring the department to waive the initial motor  
 108 | vehicle repair shop registration fee for certain  
 109 | veterans, the spouses of such veterans, or certain  
 110 | business entities that have a majority ownership held  
 111 | by such veterans or spouses; amending s. 559.917,  
 112 | F.S.; defining the terms "lienholder" and "lienor";  
 113 | revising provisions relating to the release of motor  
 114 | vehicles from specified liens claimed by motor vehicle  
 115 | repair shops; amending s. 559.927, F.S.; revising  
 116 | definitions; amending s. 559.928, F.S.; revising the  
 117 | registration requirements for sellers of travel;  
 118 | requiring the department to waive the initial seller  
 119 | of travel registration fee for certain veterans, the  
 120 | spouses of such veterans, or certain business entities  
 121 | that have a majority ownership held by such veterans  
 122 | or spouses; requiring each advertisement, each  
 123 | certificate, or any other travel document to include a  
 124 | specified phrase; deleting a provision requiring an  
 125 | advertisement to include a specified phrase; revising  
 126 | the circumstances under which the department may deny  
 127 | or refuse to renew a registration; authorizing the  
 128 | department to revoke the registration of a seller of  
 129 | travel under certain circumstances; amending s.  
 130 | 559.929, F.S.; revising certain security requirements;

131 amending s. 559.9295, F.S.; revising the requirements  
132 that certain sellers of travel submit and disclose to  
133 the department; deleting provisions relating to the  
134 duties of the department; amending s. 559.932, F.S.;  
135 requiring a specified typeface point size for certain  
136 disclosures; requiring the department to review copies  
137 of certain certificates and contracts for compliance  
138 with disclosure requirements; amending s. 559.933,  
139 F.S.; making technical changes; amending s. 559.9335,  
140 F.S.; revising violations relating to the sale of  
141 travel; amending s. 559.935, F.S.; deleting a  
142 provision requiring an affidavit of exemption to  
143 obtain a seller of travel affiliate exemption; adding  
144 embezzlement as a crime for which the department may  
145 revoke certain exemptions; amending s. 559.936, F.S.;  
146 conforming cross-references; amending s. 616.242,  
147 F.S.; exempting water-related amusement rides operated  
148 by lodging and food service establishments and  
149 membership campgrounds, amusement rides at private,  
150 membership-only facilities, and nonprofit permanent  
151 facilities from certain safety standards; authorizing  
152 owners or managers of amusement rides to use  
153 alternative forms to record ride inspections and  
154 employee training; amending s. 713.585, F.S.; revising  
155 the timeframe for a motor vehicle repair shop to give  
156 certain notice to the owners of vehicles for which the

157 shop is a lienor; providing for owners of, or persons  
 158 claiming an interest in or lien thereon, such vehicles  
 159 to post bonds to recover the vehicles; directing the  
 160 clerk of the court to issue certificates notifying  
 161 lienors of the posting of such bonds; providing  
 162 requirements for the release and recovery of such  
 163 vehicles; providing for the award of certain damages;  
 164 providing requirements for final orders issued by the  
 165 court; amending s. 790.06, F.S.; revising the  
 166 requirements for issuance of a concealed weapon or  
 167 firearm license; requiring directions for expedited  
 168 processing requests in the license application form;  
 169 revising the initial and renewal fees for a concealed  
 170 weapon or firearm license; providing a process for  
 171 expediting applications for servicemembers and  
 172 veterans; requiring that notice of the suspension or  
 173 revocation of a concealed weapon or firearm license or  
 174 the suspension of the processing of an application for  
 175 such license be given by personal delivery or first-  
 176 class mail; specifying deadlines for requests for a  
 177 hearing for suspensions or revocations; specifying  
 178 standards of proof for notice of suspensions or  
 179 revocations; requiring concealed weapon or firearm  
 180 license renewals to include an affidavit submitted  
 181 under oath and under penalty of perjury, rather than a  
 182 notarized affidavit; amending s. 790.0625, F.S.;



183 authorizing certain tax collector offices, upon  
 184 approval and confirmation of license issuance by the  
 185 department, to print and deliver concealed weapon or  
 186 firearm licenses; amending ss. 559.9285 and 559.937,  
 187 F.S.; conforming terminology; providing an  
 188 appropriation; providing effective dates.

189

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

191

192 Section 1. Subsection (1) of section 472.007, Florida  
 193 Statutes, is amended to read:

194 472.007 Board of Professional Surveyors and Mappers.—There  
 195 is created in the Department of Agriculture and Consumer  
 196 Services the Board of Professional Surveyors and Mappers.

197 (1) The board shall consist of nine members, seven ~~six~~ of  
 198 whom shall be registered surveyors and mappers primarily engaged  
 199 in the practice of surveying and mapping, ~~one of whom shall be a~~  
 200 ~~registered surveyor and mapper with the designation of~~  
 201 ~~photogrammetrist,~~ and two of whom shall be laypersons who are  
 202 not and have never been surveyors and mappers or members of any  
 203 closely related profession or occupation.

204 Section 2. Subsection (3) of section 472.015, Florida  
 205 Statutes, is amended to read:

206 472.015 Licensure.—

207 (3) (a) Before the issuance of any license, the department  
 208 may charge an initial license fee as determined by rule of the

209 board. Upon receipt of the appropriate license fee, except as  
210 provided in subsection (6), the department shall issue a license  
211 to any person certified by the board, or its designee, as having  
212 met the applicable requirements imposed by law or rule. However,  
213 an applicant who is not otherwise qualified for licensure is not  
214 entitled to licensure solely based on a passing score on a  
215 required examination.

216 (b) The department shall waive the initial license fee for  
217 an honorably discharged veteran of the United States Armed  
218 Forces, the spouse of such a veteran, or a business entity that  
219 has a majority ownership held by such a veteran or spouse if the  
220 department receives an application, in a format prescribed by  
221 the department, within 60 months after the date of the veteran's  
222 discharge from any branch of the United States Armed Forces. To  
223 qualify for the waiver, a veteran must provide to the department  
224 a copy of his or her DD Form 214, as issued by the United States  
225 Department of Defense, or another acceptable form of  
226 identification as specified by the Department of Veterans'  
227 Affairs; the spouse of a veteran must provide to the department  
228 a copy of the veteran's DD Form 214, as issued by the United  
229 States Department of Defense, or another acceptable form of  
230 identification as specified by the Department of Veterans'  
231 Affairs, and a copy of a valid marriage license or certificate  
232 verifying that he or she was lawfully married to the veteran at  
233 the time of discharge; or a business entity must provide to the  
234 department proof that a veteran or the spouse of a veteran holds

235 a majority ownership in the business, a copy of the veteran's DD  
 236 Form 214, as issued by the United States Department of Defense,  
 237 or another acceptable form of identification as specified by the  
 238 Department of Veterans' Affairs, and, if applicable, a copy of a  
 239 valid marriage license or certificate verifying that the spouse  
 240 of the veteran was lawfully married to the veteran at the time  
 241 of discharge.

242 Section 3. Paragraph (c) is added to subsection (1) of  
 243 section 493.6105, Florida Statutes, and paragraph (j) of  
 244 subsection (3) and paragraph (a) of subsection (6) of that  
 245 section are amended, to read:

246 493.6105 Initial application for license.—

247 (1) Each individual, partner, or principal officer in a  
 248 corporation, shall file with the department a complete  
 249 application accompanied by an application fee not to exceed \$60,  
 250 except that the applicant for a Class "D" or Class "G" license  
 251 is not required to submit an application fee. The application  
 252 fee is not refundable.

253 (c) The initial application fee for a veteran, as defined  
 254 in s. 1.01, if he or she applies for a Class "C," Class "CC,"  
 255 Class "DI," Class "E," Class "EE," Class "K," Class "M," Class  
 256 "MA," Class "MB," Class "MR," or Class "RI" license within 24  
 257 months after being discharged from a branch of the United States  
 258 Armed Forces shall be waived. An eligible veteran must include a  
 259 copy of his or her DD Form 214, as issued by the United States  
 260 Department of Defense, or another acceptable form of

261 identification as specified by the Department of Veterans'  
 262 Affairs with his or her application in order to obtain a waiver.

263 (3) The application must contain the following information  
 264 concerning the individual signing the application:

265 (j) A full set of fingerprints, a fingerprint processing  
 266 fee, and a fingerprint retention fee. The fingerprint processing  
 267 and retention fees shall ~~to~~ be established by rule of the  
 268 department based upon costs determined by state and federal  
 269 agency charges and department processing costs, which must  
 270 include the cost of retaining the fingerprints in the statewide  
 271 automated biometric identification system established in s.  
 272 943.05(2)(b) and the cost of enrolling the fingerprints in the  
 273 national retained print arrest notification program as required  
 274 under s. 493.6108. An applicant who has, within the immediately  
 275 preceding 6 months, submitted such fingerprints and fees ~~fee~~ for  
 276 licensing purposes under this chapter and who still holds a  
 277 valid license is not required to submit another set of  
 278 fingerprints or another fingerprint processing fee. An applicant  
 279 who holds multiple licenses issued under this chapter is  
 280 required to pay only a single fingerprint retention fee.

281 (6) In addition to the requirements under subsection (3),  
 282 an applicant for a Class "K" license must:

283 (a) Submit one of the following:

284 1. The Florida Criminal Justice Standards and Training  
 285 Commission Instructor Certificate and written confirmation by  
 286 the commission that the applicant possesses an active firearms

287 certification.

288 2. The National Rifle Association Private Security Firearm  
289 Instructor Certificate.

290 3. A firearms instructor certificate issued by a federal  
291 law enforcement agency.

292 4. An International Association of Law Enforcement  
293 Firearms Instructors certification.

294 5. A Second Amendment Foundation Training Division  
295 Firearms Instructors certification.

296 Section 4. Paragraph (f) of subsection (1) of section  
297 493.6106, Florida Statutes, is amended to read:

298 493.6106 License requirements; posting.-

299 (1) Each individual licensed by the department must:

300 (f) Be a citizen or permanent legal resident alien of the  
301 United States or have appropriate authorization issued by the  
302 United States Citizenship and Immigration Services of the United  
303 States Department of Homeland Security.

304 1. An applicant for a Class "C," Class "CC," Class "D,"  
305 Class "DI," Class "E," Class "EE," Class "M," Class "MA," Class  
306 "MB," Class "MR," or Class "RI" license who is not a United  
307 States citizen must submit proof of current employment  
308 authorization issued by the United States Citizenship and  
309 Immigration Services or proof that she or he is deemed a  
310 permanent legal resident alien by the United States Citizenship  
311 and Immigration Services.

312 2. An applicant for a Class "G" or Class "K" license who

313 is not a United States citizen must submit proof that she or he  
 314 is deemed a permanent legal resident alien by the United States  
 315 Citizenship and Immigration Services, ~~together with additional~~  
 316 ~~documentation establishing that she or he has resided in the~~  
 317 ~~state of residence shown on the application for at least 90~~  
 318 ~~consecutive days before the date that the application is~~  
 319 ~~submitted.~~

320 3. An applicant for an agency or school license who is not  
 321 a United States citizen or permanent legal resident alien must  
 322 submit documentation issued by the United States Citizenship and  
 323 Immigration Services stating that she or he is lawfully in the  
 324 United States and is authorized to own and operate the type of  
 325 agency or school for which she or he is applying. An employment  
 326 authorization card issued by the United States Citizenship and  
 327 Immigration Services is not sufficient documentation.

328 Section 5. Subsection (6) is added to section 493.6107,  
 329 Florida Statutes, to read:

330 493.6107 Fees.—

331 (6) The initial license fee for a veteran, as defined in  
 332 s. 1.01, shall be waived if he or she applies for a Class "M" or  
 333 Class "K" license within 24 months after being discharged from  
 334 any branch of the United States Armed Forces. An eligible  
 335 veteran must include a copy of his or her DD Form 214, as issued  
 336 by the United States Department of Defense, or another  
 337 acceptable form of identification as specified by the Department  
 338 of Veterans' Affairs with his or her application in order to

339 obtain a waiver.

340 Section 6. Subsections (4) and (5) are added to section  
341 493.6108, Florida Statutes, to read:

342 493.6108 Investigation of applicants by Department of  
343 Agriculture and Consumer Services.—

344 (4) The Department of Law Enforcement shall:

345 (a) Retain and enter into the statewide automated  
346 biometric identification system established in s. 943.05(2)(b)  
347 all fingerprints submitted to the Department of Agriculture and  
348 Consumer Services pursuant to this chapter.

349 (b) When the Department of Law Enforcement begins  
350 participation in the Federal Bureau of Investigation's national  
351 retained print arrest notification program, enroll such  
352 fingerprints in the program. The fingerprints must thereafter be  
353 available for arrest notifications and all purposes and uses  
354 authorized for arrest fingerprint submissions entered into the  
355 statewide automated biometric identification system established  
356 in s. 943.05(2)(b).

357 (c) Search all arrest fingerprints against fingerprints  
358 retained.

359 (d) Report to the Department of Agriculture and Consumer  
360 Services any arrest record that it identifies or that is  
361 identified by the Federal Bureau of Investigation.

362 (5) If the department receives information about an arrest  
363 within the state of a person who holds a valid license issued  
364 under this chapter for a crime that could potentially disqualify

365 the person from holding such a license, the department must  
 366 provide the arrest information to the agency that employs the  
 367 licensee.

368 Section 7. Subsections (1) and (3) of section 493.6113,  
 369 Florida Statutes, are amended to read:

370 493.6113 Renewal application for licensure.—

371 (1) A license granted under the provisions of this chapter  
 372 shall be renewed biennially by the department, except for Class  
 373 "A," Class "B," Class "AB," Class "K," Class "R," and branch  
 374 agency licenses, which shall be renewed every 3 years.

375 (3) Each licensee is responsible for renewing his or her  
 376 license on or before its expiration by filing with the  
 377 department an application for renewal accompanied by payment of  
 378 the renewal fee and the fingerprint retention fee to cover the  
 379 cost of ongoing retention in the statewide automated biometric  
 380 identification system established in s. 943.05(2)(b) ~~prescribed~~  
 381 license fee. A person holding a valid license issued under this  
 382 chapter before January 1, 2017, must submit, upon first renewal  
 383 of the license, a full set of fingerprints and a fingerprint  
 384 processing fee to cover the cost of entering the fingerprints  
 385 into the statewide automated biometric identification system  
 386 under s. 493.6108(4)(a). Subsequent renewals may be completed  
 387 without submission of a set of fingerprints.

388 (a) Each Class "B" licensee shall additionally submit on a  
 389 form prescribed by the department a certification of insurance  
 390 that evidences that the licensee maintains coverage as required



391 under s. 493.6110.

392 (b) Each Class "G" licensee shall additionally submit  
 393 proof that he or she has received during each year of the  
 394 license period a minimum of 4 hours of firearms recertification  
 395 training taught by a Class "K" licensee and has complied with  
 396 such other health and training requirements that the department  
 397 shall adopt by rule. Proof of completion of firearms  
 398 recertification training shall be submitted to the department  
 399 upon completion of the training. If the licensee fails to  
 400 complete the required 4 hours of annual training during the  
 401 first year of the 2-year term of the license, the license shall  
 402 be automatically suspended. The licensee must complete the  
 403 minimum number of hours of range and classroom training required  
 404 at the time of initial licensure and submit proof of completion  
 405 of such training to the department before the license may be  
 406 reinstated. If the licensee fails to complete the required 4  
 407 hours of annual training during the second year of the 2-year  
 408 term of the license, the licensee must complete the minimum  
 409 number of hours of range and classroom training required at the  
 410 time of initial licensure and submit proof of completion of such  
 411 training to the department before the license may be renewed.  
 412 The department may waive the firearms training requirement if:

- 413 1. The applicant provides proof that he or she is  
 414 currently certified as a law enforcement officer or correctional  
 415 officer under the Criminal Justice Standards and Training  
 416 Commission and has completed law enforcement firearms

417 requalification training annually during the previous 2 years of  
 418 the licensure period;

419 2. The applicant provides proof that he or she is  
 420 currently certified as a federal law enforcement officer and has  
 421 received law enforcement firearms training administered by a  
 422 federal law enforcement agency annually during the previous 2  
 423 years of the licensure period; or

424 3. The applicant submits a valid firearm certificate among  
 425 those specified in s. 493.6105(6)(a) and provides proof of  
 426 having completed requalification training during the previous 2  
 427 years of the licensure period.

428 (c) Each Class "DS" or Class "RS" licensee shall  
 429 additionally submit the current curriculum, examination, and  
 430 list of instructors.

431 (d) Each Class "K" licensee shall additionally submit one  
 432 of the certificates specified under s. 493.6105(6) as proof that  
 433 he or she remains certified to provide firearms instruction.

434 Section 8. Subsection (4) is added to section 493.6202,  
 435 Florida Statutes, to read:

436 493.6202 Fees.—

437 (4) The initial license fee for a veteran, as defined in  
 438 s. 1.01, shall be waived if he or she applies for a Class "C,"  
 439 Class "CC," or Class "MA" license within 24 months after being  
 440 discharged from any branch of the United States Armed Forces. An  
 441 eligible veteran must include a copy of his or her DD Form 214,  
 442 as issued by the United States Department of Defense, or another

443 acceptable form of identification as specified by the Department  
 444 of Veterans' Affairs with his or her application in order to  
 445 obtain a waiver.

446 Section 9. Subsection (4) is added to section 493.6302,  
 447 Florida Statutes, to read:

448 493.6302 Fees.—

449 (4) The initial license fee for a veteran, as defined in  
 450 s. 1.01, shall be waived if he or she applies for a Class "D,"  
 451 Class "DI," or Class "MB" license within 24 months after being  
 452 discharged from any branch of the United States Armed Forces. An  
 453 eligible veteran must include a copy of his or her DD Form 214,  
 454 as issued by the United States Department of Defense, or another  
 455 acceptable form of identification as specified by the Department  
 456 of Veterans' Affairs with his or her application in order to  
 457 obtain a waiver.

458 Section 10. Subsection (4) is added to section 493.6402,  
 459 Florida Statutes, to read:

460 493.6402 Fees.—

461 (4) The initial license fee for a veteran, as defined in  
 462 s. 1.01, shall be waived if he or she applies for a Class "E,"  
 463 Class "EE," Class "MR," or Class "RI" license within 24 months  
 464 after being discharged from any branch of the United States  
 465 Armed Forces. An eligible veteran must include a copy of his or  
 466 her DD Form 214, as issued by the United States Department of  
 467 Defense, or another acceptable form of identification as  
 468 specified by the Department of Veterans' Affairs with his or her

469 application in order to obtain a waiver.

470 Section 11. Subsection (1) of section 501.0125, Florida  
 471 Statutes, is amended, and subsection (6) is added to that  
 472 section, to read:

473 501.0125 Health studios; definitions.—For purposes of ss.  
 474 501.012-501.019, the following terms shall have the following  
 475 meanings:

476 (1) "Health studio" means any person who is engaged in the  
 477 sale of services for instruction, training, or assistance in a  
 478 program of physical exercise or in the sale of services for the  
 479 right or privilege to use equipment or facilities in furtherance  
 480 of a program of physical exercise. The term does not include an  
 481 individual acting as a personal trainer.

482 (6) "Personal trainer" means an individual:

483 (a) Who does not have an established place of business for  
 484 the primary purpose of the conducting of physical exercise;

485 (b) Whose provision of exercise equipment is incidental to  
 486 the instruction provided; and

487 (c) Who does not accept payment for services that are to  
 488 be rendered more than 30 days after the date of payment.

489 Section 12. Subsection (2) of section 501.015, Florida  
 490 Statutes, is amended to read:

491 501.015 Health studios; registration requirements and  
 492 fees.—Each health studio shall:

493 (2) Remit an annual registration fee of \$300 to the  
 494 department at the time of registration for each of the health

495 studio's business locations. The department shall waive the  
496 initial registration fee for an honorably discharged veteran of  
497 the United States Armed Forces, the spouse of such a veteran, or  
498 a business entity that has a majority ownership held by such a  
499 veteran or spouse if the department receives an application, in  
500 a format prescribed by the department, within 60 months after  
501 the date of the veteran's discharge from any branch of the  
502 United States Armed Forces. To qualify for the waiver, a veteran  
503 must provide to the department a copy of his or her DD Form 214,  
504 as issued by the United States Department of Defense, or another  
505 acceptable form of identification as specified by the Department  
506 of Veterans' Affairs; the spouse of a veteran must provide to  
507 the department a copy of the veteran's DD Form 214, as issued by  
508 the United States Department of Defense, or another acceptable  
509 form of identification as specified by the Department of  
510 Veterans' Affairs, and a copy of a valid marriage license or  
511 certificate verifying that he or she was lawfully married to the  
512 veteran at the time of discharge; or a business entity must  
513 provide to the department proof that a veteran or the spouse of  
514 a veteran holds a majority ownership in the business, a copy of  
515 the veteran's DD Form 214, as issued by the United States  
516 Department of Defense, or another acceptable form of  
517 identification as specified by the Department of Veterans'  
518 Affairs, and, if applicable, a copy of a valid marriage license  
519 or certificate verifying that the spouse of the veteran was  
520 lawfully married to the veteran at the time of discharge.

521 Section 13. Paragraph (j) of subsection (2) and paragraph  
 522 (b) of subsection (5) of section 501.605, Florida Statutes, are  
 523 amended to read:

524 501.605 Licensure of commercial telephone sellers.-

525 (2) An applicant for a license as a commercial telephone  
 526 seller must submit to the department, in such form as it  
 527 prescribes, a written application for the license. The  
 528 application must set forth the following information:

529 (j) The complete street address of each location,  
 530 designating the principal location, from which the applicant  
 531 will be doing business. The street address may not be ~~If any~~  
 532 ~~location is a mail drop, this shall be disclosed as such.~~

533  
 534 The application shall be accompanied by a copy of any: Script,  
 535 outline, or presentation the applicant will require or suggest a  
 536 salesperson to use when soliciting, or, if no such document is  
 537 used, a statement to that effect; sales information or  
 538 literature to be provided by the applicant to a salesperson; and  
 539 sales information or literature to be provided by the applicant  
 540 to a purchaser in connection with any solicitation.

541 (5) An application filed pursuant to this part must be  
 542 verified and accompanied by:

543 (b) A fee for licensing in the amount of \$1,500. The fee  
 544 shall be deposited into the General Inspection Trust Fund. The  
 545 department shall waive the initial license fee for an honorably  
 546 discharged veteran of the United States Armed Forces, the spouse

547 of such a veteran, or a business entity that has a majority  
548 ownership held by such a veteran or spouse if the department  
549 receives an application, in a format prescribed by the  
550 department, within 60 months after the date of the veteran's  
551 discharge from any branch of the United States Armed Forces. To  
552 qualify for the waiver, a veteran must provide to the department  
553 a copy of his or her DD Form 214, as issued by the United States  
554 Department of Defense, or another acceptable form of  
555 identification as specified by the Department of Veterans'  
556 Affairs; the spouse of a veteran must provide to the department  
557 a copy of the veteran's DD Form 214, as issued by the United  
558 States Department of Defense, or another acceptable form of  
559 identification as specified by the Department of Veterans'  
560 Affairs, and a copy of a valid marriage license or certificate  
561 verifying that he or she was lawfully married to the veteran at  
562 the time of discharge; or a business entity must provide to the  
563 department proof that a veteran or the spouse of a veteran holds  
564 a majority ownership in the business, a copy of the veteran's DD  
565 Form 214, as issued by the United States Department of Defense,  
566 or another acceptable form of identification as specified by the  
567 Department of Veterans' Affairs, and, if applicable, a copy of a  
568 valid marriage license or certificate verifying that the spouse  
569 of the veteran was lawfully married to the veteran at the time  
570 of discharge.

571 Section 14. Paragraph (b) of subsection (2) of section  
572 501.607, Florida Statutes, is amended to read:

573           501.607 Licensure of salespersons.—  
 574           (2) An application filed pursuant to this section must be  
 575 verified and be accompanied by:  
 576           (b) A fee for licensing in the amount of \$50 per  
 577 salesperson. The fee shall be deposited into the General  
 578 Inspection Trust Fund. The fee for licensing may be paid after  
 579 the application is filed, but must be paid within 14 days after  
 580 the applicant begins work as a salesperson. The department shall  
 581 waive the initial license fee for an honorably discharged  
 582 veteran of the United States Armed Forces, the spouse of such a  
 583 veteran, or a business entity that has a majority ownership held  
 584 by such a veteran or spouse if the department receives an  
 585 application, in a format prescribed by the department, within 60  
 586 months after the date of the veteran's discharge from any branch  
 587 of the United States Armed Forces. To qualify for the waiver, a  
 588 veteran must provide to the department a copy of his or her DD  
 589 Form 214, as issued by the United States Department of Defense,  
 590 or another acceptable form of identification as specified by the  
 591 Department of Veterans' Affairs; the spouse of a veteran must  
 592 provide to the department a copy of the veteran's DD Form 214,  
 593 as issued by the United States Department of Defense, or another  
 594 acceptable form of identification as specified by the Department  
 595 of Veterans' Affairs, and a copy of a valid marriage license or  
 596 certificate verifying that he or she was lawfully married to the  
 597 veteran at the time of discharge; or a business entity must  
 598 provide to the department proof that a veteran or the spouse of



599 a veteran holds a majority ownership in the business, a copy of  
 600 the veteran's DD Form 214, as issued by the United States  
 601 Department of Defense, or another acceptable form of  
 602 identification as specified by the Department of Veterans'  
 603 Affairs, and, if applicable, a copy of a valid marriage license  
 604 or certificate verifying that the spouse of the veteran was  
 605 lawfully married to the veteran at the time of discharge.

606 Section 15. Subsection (3) of section 507.03, Florida  
 607 Statutes, is amended to read:

608 507.03 Registration.—

609 (3) (a) Registration fees shall be calculated at the rate  
 610 of \$300 per year per mover or moving broker. All amounts  
 611 collected shall be deposited by the Chief Financial Officer to  
 612 the credit of the General Inspection Trust Fund of the  
 613 department for the sole purpose of administration of this  
 614 chapter.

615 (b) The department shall waive the initial registration  
 616 fee for an honorably discharged veteran of the United States  
 617 Armed Forces, the spouse of such a veteran, or a business entity  
 618 that has a majority ownership held by such a veteran or spouse  
 619 if the department receives an application, in a format  
 620 prescribed by the department, within 60 months after the date of  
 621 the veteran's discharge from any branch of the United States  
 622 Armed Forces. To qualify for the waiver, a veteran must provide  
 623 to the department a copy of his or her DD Form 214, as issued by  
 624 the United States Department of Defense, or another acceptable

625 form of identification as specified by the Department of  
 626 Veterans' Affairs; the spouse of a veteran must provide to the  
 627 department a copy of the veteran's DD Form 214, as issued by the  
 628 United States Department of Defense, or another acceptable form  
 629 of identification as specified by the Department of Veterans'  
 630 Affairs, and a copy of a valid marriage license or certificate  
 631 verifying that he or she was lawfully married to the veteran at  
 632 the time of discharge; or a business entity must provide to the  
 633 department proof that a veteran or the spouse of a veteran holds  
 634 a majority ownership in the business, a copy of the veteran's DD  
 635 Form 214, as issued by the United States Department of Defense,  
 636 or another acceptable form of identification as specified by the  
 637 Department of Veterans' Affairs, and, if applicable, a copy of a  
 638 valid marriage license or certificate verifying that the spouse  
 639 of the veteran was lawfully married to the veteran at the time  
 640 of discharge.

641 Section 16. Subsection (3) of section 527.02, Florida  
 642 Statutes, is amended to read:

643 527.02 License; penalty; fees.—

644 (3) (a) An ~~Any~~ applicant for an original license who  
 645 submits an ~~whose application is submitted~~ during the last 6  
 646 months of the license year may have the original license fee  
 647 reduced by one-half for the 6-month period. This provision  
 648 applies ~~shall apply~~ only to those companies applying for an  
 649 original license and may ~~shall~~ not be applied to licensees who  
 650 held a license during the previous license year and failed to

651 renew the license. The department may refuse to issue an initial  
 652 license to an ~~any~~ applicant who is under investigation in any  
 653 jurisdiction for an action that would constitute a violation of  
 654 this chapter until such time as the investigation is complete.

655 (b) The department shall waive the initial license fee for  
 656 an honorably discharged veteran of the United States Armed  
 657 Forces, the spouse of such a veteran, or a business entity that  
 658 has a majority ownership held by such a veteran or spouse if the  
 659 department receives an application, in a format prescribed by  
 660 the department, within 60 months after the date of the veteran's  
 661 discharge from any branch of the United States Armed Forces. To  
 662 qualify for the waiver, a veteran must provide to the department  
 663 a copy of his or her DD Form 214, as issued by the United States  
 664 Department of Defense or another acceptable form of  
 665 identification as specified by the Department of Veterans'  
 666 Affairs; the spouse of a veteran must provide to the department  
 667 a copy of the veteran's DD Form 214, as issued by the United  
 668 States Department of Defense, or another acceptable form of  
 669 identification as specified by the Department of Veterans'  
 670 Affairs, and a copy of a valid marriage license or certificate  
 671 verifying that he or she was lawfully married to the veteran at  
 672 the time of discharge; or a business entity must provide to the  
 673 department proof that a veteran or the spouse of a veteran holds  
 674 a majority ownership in the business, a copy of the veteran's DD  
 675 Form 214, as issued by the United States Department of Defense,  
 676 or another acceptable form of identification as specified by the

677 Department of Veterans' Affairs, and, if applicable, a copy of a  
 678 valid marriage license or certificate verifying that the spouse  
 679 of the veteran was lawfully married to the veteran at the time  
 680 of discharge.

681 Section 17. Subsection (4) of section 527.021, Florida  
 682 Statutes, is amended to read:

683 527.021 Registration of transport vehicles.—

684 ~~(4) An inspection fee of \$50 shall be assessed for each~~  
 685 ~~registered vehicle inspected by the department pursuant to s.~~  
 686 ~~527.061. All inspection fees collected in connection with this~~  
 687 ~~section shall be deposited in the General Inspection Trust Fund~~  
 688 ~~for the purpose of administering the provisions of this chapter.~~

689 Section 18. Subsection (1) of section 531.37, Florida  
 690 Statutes, is amended to read:

691 531.37 Definitions.—As used in this chapter:

692 (1) "Weights and measures" means all weights and measures  
 693 of every kind, instruments, and devices for weighing and  
 694 measuring, and any appliance and accessories associated with any  
 695 or all such instruments and devices, excluding those weights and  
 696 measures used for the purpose of inspecting the accuracy of  
 697 devices used in conjunction with aviation fuel.

698 Section 19. Subsections (1) and (2) of section 531.415,  
 699 Florida Statutes, are amended to read:

700 531.415 Fees.—

701 (1) The department shall charge and collect fees of not  
 702 more than the following ~~fees~~ for actual metrology laboratory

703 calibration and testing services rendered:

704 (a) For each mass standard that is tested or certified to  
 705 meet tolerances less stringent than American National Standards  
 706 Institute/American Society for Testing and Materials (ANSI/ASTM)  
 707 Standard E617 Class 4, ~~the department shall charge a fee of not~~  
 708 ~~more than:~~

709 Weight	Fee/Unit
710 0 - 2 lb.	\$6
711 3 - 10 lb.	\$8
712 11 - 50 lb.	\$12
713 51 - 500 lb.	\$20
714 501 - 1000 lb.	\$30
715 1001 - 2500 lb.	\$40
716 2501 - 5000 lb.	\$50

717 (b) For each mass standard that is tested or certified to  
 718 meet ANSI/ASTM Standard Class 4 or National Institute of  
 719 Standards and Technology Class P tolerances, ~~the department~~  
 720 ~~shall charge a fee of not more than:~~

721 Weight	Fee/Unit
722 0 - 10 lb.	\$20
723 11 - 50 lb.	\$30
724 51 - 500 lb.	\$40
725 501 - 1000 lb.	\$50
726 1001 - 2500 lb.	\$60
727 2501 - 5000 lb.	\$75

728 (c) For each mass standard that is calibrated to determine

729 actual mass or apparent mass values, ~~the department shall charge~~  
 730 ~~a fee of not more than:~~

731 Weight	Fee/Unit
732 0 - 20 lb.	\$40
733 21 - 50 lb.	\$50
734 51 - 1000 lb.	\$70
735 1001 - 2500 lb.	\$150
736 2501 - 5000 lb.	\$250

737 (d) For each volumetric flask, graduate, or test measure,  
 738 ~~the department shall charge a fee of not more than:~~

739 Vessel	Fee/Test Point
740 0 - 5 gal.	\$35
741 Over 5 gal.	Plus \$0.75 for each additional gallon

742 ~~(e) For each linear measure that is tested or certified,~~  
 743 ~~the department shall charge a fee of not more than \$75.~~

744 (e)(f) For each linear measure test that is calibrated to  
 745 determine actual values, the department shall charge a fee of  
 746 \$75 not more than \$100.

747 ~~(g) For each liquid-in-glass or electronic thermometer~~  
 748 ~~that is tested or certified, the department shall charge a fee~~  
 749 ~~of not more than \$50.~~

750 (f)(h) For each temperature measuring device, ~~liquid-in-~~  
 751 ~~glass or electronic thermometer that is calibrated to determine~~  
 752 ~~actual values, the department shall charge a fee of \$50 not more~~  
 753 ~~than \$100.~~

754 (g)(i) For each special test or special preparation, ~~the~~

755 ~~department shall charge~~ a fee of ~~not more than~~ \$50 per hour.

756 (2) Each fee is payable to the department at the time the  
 757 testing is done, regardless of whether the item tested is  
 758 certified. The department may refuse to accept for testing any  
 759 item deemed by the department to be unsuitable for its intended  
 760 use or not to be in a condition ready for testing. The  
 761 department shall deposit all fees collected under this section  
 762 into the General Inspection Trust Fund.

763 Section 20. Section 531.60, Florida Statutes, is amended  
 764 to read:

765 531.60 Permit for commercially operated or tested weights  
 766 or measures instrument or devices.—

767 (1) A weights and measures instrument or device may not  
 768 operate or be used for commercial purposes, as defined by  
 769 department rule, within this state without first being permitted  
 770 through a valid commercial use permit issued by the department  
 771 to the person who owns the weights and measures device, unless  
 772 exempted as provided in s. 531.61. Such permit applies only to  
 773 the specific location and instrument types or device types  
 774 listed on ~~for which~~ the permit ~~was issued~~. However, the  
 775 department may allow such permit to be applicable to a  
 776 replacement for the original instrument or device.

777 (2) If ownership of a business ~~an instrument or device~~ for  
 778 which a permit has been issued changes and the instruments or  
 779 devices affected by the permit ~~instrument or device~~:

780 (a) Remain ~~Remains~~ in the same location, the permit

781 transfers to the new owner and remains in effect until its  
 782 original expiration date. Within 30 days after the change in  
 783 ownership, the new owner shall notify the department of the  
 784 change and provide the pertinent information regarding the  
 785 change in ownership and an updated replacement permit shall be  
 786 issued if needed.

787 (b) Move ~~Moves~~ to a new location, the permit automatically  
 788 expires and a new permit must be applied for by the new owner of  
 789 the instruments or devices issued ~~which will expire 1 year~~  
 790 ~~following the date of issuance.~~

791 (3) A person who holds a permit that has been issued under  
 792 this section must notify the department within 30 days after a  
 793 change in permit status or if a permit will not be renewed due  
 794 to the termination in use or removal of all weighing and  
 795 measuring instruments or devices from the permitted location  
 796 ~~Weights and measures instruments or devices that are not used~~  
 797 ~~commercially may be tested by the department under this chapter~~  
 798 ~~only if they are permitted and appropriate fees paid as~~  
 799 ~~prescribed by this section and adopted rules.~~

800 Section 21. Section 531.61, Florida Statutes, is amended  
 801 to read:

802 531.61 Exemptions from permit requirement.—Commercial  
 803 weights or measures instruments or devices are exempt from the  
 804 ~~permit~~ requirements of ss. 531.60-531.66 if:

805 (1) The device is a taximeter that is licensed, permitted,  
 806 or registered by a municipality, county, or other local



807 government and is tested for accuracy and compliance with state  
 808 standards by the local government in cooperation with the state  
 809 as authorized in s. 531.421.

810 (2) The device is used exclusively for weighing railroad  
 811 cars and is tested for accuracy and compliance with state  
 812 standards by a private testing agency.

813 (3) The device is used exclusively for measuring aviation  
 814 fuel or petroleum products inspected under chapter 525.

815 Section 22. Subsections (1), (2), and (4) of section  
 816 531.62, Florida Statutes, are amended to read:

817 531.62 Permit application and renewal.-

818 (1) An application for a ~~weights and measures~~ commercial  
 819 use permit shall be submitted to the department on a form  
 820 prescribed and furnished by the department and must contain such  
 821 information as the department may require by rule.

822 (2) The application must be accompanied by a fee in an  
 823 amount determined by the number and types of instruments or  
 824 devices covered by the permit as provided by department rule.  
 825 However, the fee for each instrument or device listed on the  
 826 permit may not exceed the maximum limits set forth in s. 531.63.

827 (4) A permit expires 2 years ~~1 year~~ following its date of  
 828 issue and must be renewed biennially ~~annually~~. If a complete an  
 829 application package for renewal is not received by the  
 830 department before the permit expires ~~within 30 days after its~~  
 831 ~~due date~~, a late fee of up to \$100 must be paid in addition to  
 832 the ~~annual~~ commercial use permit fee. However, a person may

833 elect to renew a commercial use permit on an annual basis rather  
 834 than a biennial basis. An annual renewal must meet the same  
 835 requirements and conditions as a biennial renewal.

836 Section 23. Paragraph (a) of subsection (1) and subsection  
 837 (2) of section 531.63, Florida Statutes, are amended to read:

838 531.63 Maximum permit fees.—The commercial use permit fees  
 839 established for weights or measures instruments or devices shall  
 840 be in an amount necessary to administer this chapter but may not  
 841 exceed the amounts provided in this section.

842 (1) For weighing devices, the fees must be based on the  
 843 manufacturer's rated capacity or the device's design and use and  
 844 whether measuring by inch or pounds or the metric equivalent:

845 (a) For weighing devices of up to and including the 100-  
 846 pound capacity which are used during any portion of the period  
 847 covered by the permit, the maximum annual fees per category of  
 848 device ~~retail establishment~~ may not exceed the following:

849 Number of devices	Maximum Fee
850 in a single <u>category</u> <del>retail</del>	
851 <del>establishment</del>	
852 1 to 5	\$60
853 6 to 10	\$150
854 11 to 30	\$200
855 More than 30	\$300

856 (2) For other measuring devices, the annual permit fees  
 857 per device may not exceed the following:

858 (a) Mass flow meters having a maximum flow rate of up to

859 150 pounds per minute.....\$100.  
 860 This includes all mass flow meters used to dispense compressed  
 861 and liquefied natural gas for retail sale.  
 862 (b) Mass flow meters having a maximum flow rate greater  
 863 than 150 pounds per minute.....\$500.  
 864 (c) Volumetric flow meters having a maximum flow rate of  
 865 up to 20 gallons per minute.....\$50.  
 866 This includes all devices used to dispense diesel exhaust fluid  
 867 for retail sale.  
 868 (d) Volumetric flow meters having a maximum flow rate  
 869 greater than 20 gallons per minute.....\$100.  
 870 (e) Tanks, under 500 gallons capacity, used as measure  
 871 containers, with or without gage rods or markers.....\$100.  
 872 (f) Tanks, 500 or more gallons capacity, used as measure  
 873 containers, with or without gage rods or markers.....\$200.  
 874 (g) Taximeters.....\$50.  
 875 ~~(h) Grain moisture meters.....\$25.~~  
 876 (h)(i) Multiple-dimension measuring  
 877 devices.....\$100.  
 878 (i) Liquefied petroleum gas bulk delivery vehicles with a  
 879 meter owned or leased by a liquefied petroleum gas licensee\$150.  
 880 Section 24. Section 531.65, Florida Statutes, is amended  
 881 to read:  
 882 531.65 Unauthorized use; penalties.—If a weights or  
 883 measures instrument or device is used commercially without a  
 884 valid commercial use permit, the department may do one or more

885 of the following:

886 (1) Prohibit the further commercial use of the unpermitted  
887 instrument or device until the proper permit has been issued.~~†~~

888 (2) Employ and attach to the instrument or device such  
889 form, notice, tag, or seal to prevent the continued unauthorized  
890 use of the instrument or device.~~†~~

891 (3) In addition to the permit fees prescribed by rule for  
892 the commercial use of a weights and measures instrument or  
893 device, assess the late fee authorized under s. 531.62.~~†~~~~or~~

894 (4) Impose penalties as prescribed in s. 531.50 in  
895 addition to the payment of appropriate permit fees for the  
896 commercial use of a weights and measures instrument or device.

897 Section 25. Paragraph (c) of subsection (3) of section  
898 539.001, Florida Statutes, is amended to read:

899 539.001 The Florida Pawnbroking Act.—

900 (3) LICENSE REQUIRED.—

901 (c) Each license is valid for a period of 1 year unless it  
902 is earlier relinquished, suspended, or revoked. Each license  
903 shall be renewed annually, and each licensee shall, initially  
904 and annually thereafter, pay to the agency a license fee of \$300  
905 for each license held. The agency shall waive the initial  
906 license fee for an honorably discharged veteran of the United  
907 States Armed Forces, the spouse of such a veteran, or a business  
908 entity that has a majority ownership held by such a veteran or  
909 spouse if the agency receives an application, in a format  
910 prescribed by the agency, within 60 months after the date of the

911 veteran's discharge from any branch of the United States Armed  
 912 Forces. To qualify for the waiver, a veteran must provide to the  
 913 agency a copy of his or her DD Form 214, as issued by the United  
 914 States Department of Defense, or another acceptable form of  
 915 identification as specified by the Department of Veterans'  
 916 Affairs; the spouse of a veteran must provide to the agency a  
 917 copy of the veteran's DD Form 214, as issued by the United  
 918 States Department of Defense, or another acceptable form of  
 919 identification as specified by the Department of Veterans'  
 920 Affairs, and a copy of a valid marriage license or certificate  
 921 verifying that he or she was lawfully married to the veteran at  
 922 the time of discharge; or a business entity must provide to the  
 923 agency proof that a veteran or the spouse of a veteran holds a  
 924 majority ownership in the business, a copy of the veteran's DD  
 925 Form 214, as issued by the United States Department of Defense,  
 926 or another acceptable form of identification as specified by the  
 927 Department of Veterans' Affairs, and, if applicable, a copy of a  
 928 valid marriage license or certificate verifying that the spouse  
 929 of the veteran was lawfully married to the veteran at the time  
 930 of discharge.

931 Section 26. Subsection (3) of section 559.904, Florida  
 932 Statutes, is amended to read:

933 559.904 Motor vehicle repair shop registration;  
 934 application; exemption.-

935 (3) (a) Each application for registration must be  
 936 accompanied by a registration fee calculated on a per-year basis

937 as follows:

938 1.~~(a)~~ If the place of business has 1 to 5 employees: \$50.

939 2.~~(b)~~ If the place of business has 6 to 10 employees:

940 \$150.

941 3.~~(c)~~ If the place of business has 11 or more employees:

942 \$300.

943 (b) The department shall waive the initial registration  
 944 fee for an honorably discharged veteran of the United States  
 945 Armed Forces, the spouse of such a veteran, or a business entity  
 946 that has a majority ownership held by such a veteran or spouse  
 947 if the department receives an application, in a format  
 948 prescribed by the department, within 60 months after the date of  
 949 the veteran's discharge from any branch of the United States  
 950 Armed Forces. To qualify for the waiver, a veteran must provide  
 951 to the department a copy of his or her DD Form 214, as issued by  
 952 the United States Department of Defense, or another acceptable  
 953 form of identification as specified by the Department of  
 954 Veterans' Affairs; the spouse of a veteran must provide to the  
 955 department a copy of the veteran's DD Form 214, as issued by the  
 956 United States Department of Defense, or another acceptable form  
 957 of identification as specified by the Department of Veterans'  
 958 Affairs, and a copy of a valid marriage license or certificate  
 959 verifying that he or she was lawfully married to the veteran at  
 960 the time of discharge; or a business entity must provide to the  
 961 department proof that a veteran or the spouse of a veteran holds  
 962 a majority ownership in the business, a copy of the veteran's DD

963 Form 214, as issued by the United States Department of Defense  
 964 or another acceptable form of identification as specified by the  
 965 Department of Veterans' Affairs, and, if applicable, a copy of a  
 966 valid marriage license or certificate verifying that the spouse  
 967 of the veteran was lawfully married to the veteran at the time  
 968 of discharge.

969 Section 27. Section 559.917, Florida Statutes, is amended  
 970 to read:

971 559.917 Bond to release possessory lien claimed by motor  
 972 vehicle repair shop.-

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

974 (a) "Lienholder" means a person claiming an interest in or  
 975 a lien on a vehicle pursuant to s. 713.585(5).

976 (b) "Lienor" means a person claiming a lien for motor  
 977 vehicle repair shop work under part II of chapter 713.

978 (2) ~~(1)~~ (a) A lienholder or Any customer may obtain the  
 979 release of a ~~her or his~~ motor vehicle for which the lienholder  
 980 or customer has a lien or ownership rights, respectively, from  
 981 any lien claimed under part II of chapter 713 by a motor vehicle  
 982 repair shop for repair work performed under a written repair  
 983 estimate by filing with the clerk of the court in the circuit in  
 984 which the disputed transaction occurred a cash or surety bond,  
 985 payable to the person claiming the lien and conditioned for the  
 986 payment of any judgment which may be entered on the lien. The  
 987 bond shall be in the amount stated on the invoice required by s.  
 988 559.911, plus accrued storage charges, if any, less any amount

989 | paid to the motor vehicle repair shop as indicated on the  
 990 | invoice. The lienholder or customer ~~is shall~~ not be required to  
 991 | institute judicial proceedings in order to post the bond in the  
 992 | registry of the court, or ~~nor shall the customer be required~~ to  
 993 | use a particular form for posting the bond, unless the clerk  
 994 | provides ~~shall provide~~ such form to the lienholder or customer  
 995 | for filing. Upon the posting of such bond, the clerk of the  
 996 | court shall automatically issue a certificate notifying the  
 997 | lienor of the posting of the bond and directing the lienor to  
 998 | release the lienholder's or customer's motor vehicle.

999 |         (b) The lienor shall have 60 days to file suit to recover  
 1000 | the bond. The prevailing party in that action may be entitled to  
 1001 | damages plus court costs and reasonable attorney ~~attorney's~~  
 1002 | fees. If the lienor fails to file suit within 60 days after the  
 1003 | posting of such bond, the bond shall be discharged.

1004 |         ~~(3)(2)~~ The failure of a lienor to release or return to the  
 1005 | lienholder or customer the motor vehicle upon which any lien is  
 1006 | claimed, upon receiving a copy of a certificate giving notice of  
 1007 | the posting of the bond and directing release of the motor  
 1008 | vehicle, shall subject the lienor to judicial proceedings which  
 1009 | may be brought by the lienholder or customer to compel  
 1010 | compliance with the certificate. If ~~Whenever~~ a lienholder  
 1011 | pursuant to s. 713.585 or customer brings an action to compel  
 1012 | compliance with the certificate, the lienholder or customer need  
 1013 | only establish that:

1014 |         (a) Bond in the amount of the invoice, plus accrued



1015 storage charges, if any, less any amount paid to the motor  
 1016 vehicle repair shop as indicated on the invoice, was posted;

1017 (b) A certificate was issued pursuant to this section;

1018 (c) The motor vehicle repair shop, or any employee or  
 1019 agent thereof who is authorized to release the motor vehicle,  
 1020 received a copy of a certificate issued pursuant to this  
 1021 section; and

1022 (d) The motor vehicle repair shop or employee authorized  
 1023 to release the motor vehicle failed to release the motor  
 1024 vehicle.

1025

1026 The lienholder or customer, upon a judgment in her or his favor  
 1027 in an action brought under this subsection, may be entitled to  
 1028 damages plus court costs and reasonable attorney ~~attorney's~~ fees  
 1029 sustained by her or him by reason of such wrongful detention or  
 1030 retention. Upon a judgment in favor of the motor vehicle repair  
 1031 shop, the shop may be entitled to reasonable attorney ~~attorney's~~  
 1032 fees.

1033 ~~(4)(3)~~ Any motor vehicle repair shop that ~~which~~, or any  
 1034 employee or agent thereof who is authorized to release the motor  
 1035 vehicle who, upon receiving a copy of a certificate giving  
 1036 notice of the posting of the bond in the required amount and  
 1037 directing release of the motor vehicle, fails to release or  
 1038 return the property to the lienholder or customer pursuant to  
 1039 this section commits ~~is guilty of~~ a misdemeanor of the second  
 1040 degree, punishable as provided in s. 775.082 or s. 775.083.

1041           ~~(5)(4)~~ Any lienholder or customer who stops payment on a  
 1042 credit card charge or a check drawn in favor of a motor vehicle  
 1043 repair shop on account of an invoice or who fails to post a cash  
 1044 or surety bond pursuant to this section shall be prohibited from  
 1045 any recourse under this section with respect to the motor  
 1046 vehicle repair shop.

1047           Section 28. Subsections (1), (7), (8), (10), (11), and  
 1048 (13) of section 559.927, Florida Statutes, are amended to read:  
 1049           559.927 Definitions.—For the purposes of this part, the  
 1050 term:

1051           (1) "Accommodations" means any hotel or motel room,  
 1052 condominium or cooperative unit, cabin, lodge, or apartment; any  
 1053 other commercial structure designed for occupancy by one or more  
 1054 individuals; or any lodging establishment as provided by law.  
 1055 The term does not include long-term home rentals covered under a  
 1056 lease pursuant to chapter 83.

1057           (7) "Prearranged travel or, ~~or~~ tourist-related services, ~~or~~  
 1058 ~~tour-guide services~~" includes, but is not limited to, car  
 1059 rentals, lodging, transfers, ~~and sightseeing tours~~ and all other  
 1060 such services that ~~which~~ are reasonably related to air, sea,  
 1061 rail, motor coach, or other medium of transportation, or  
 1062 accommodations for which a purchaser receives a premium or  
 1063 contracts or pays before ~~prior to~~ or after departure. This term  
 1064 ~~These terms~~ also includes ~~include~~ services for which a  
 1065 purchaser, whose legal residence is outside the United States,  
 1066 contracts or pays before ~~prior to~~ departure, and any arrangement

1067 by which a purchaser prepays for, receives a reservation or any  
 1068 other commitment to provide services before ~~prior to~~ departure  
 1069 for, or otherwise arranges for travel directly to a terrorist  
 1070 state and which originates in Florida.

1071 (8) "Purchaser" means the purchaser of, or person  
 1072 otherwise entitled to receive, prearranged travel or, tourist-  
 1073 related services, ~~or tour guide services~~, for a fee or  
 1074 commission, or who has acquired a vacation certificate for  
 1075 personal use.

1076 (10) "Satisfactory consumer complaint history" means no  
 1077 unresolved complaints regarding prearranged travel or, tourist-  
 1078 related services, ~~or tour guide services~~ are on file with the  
 1079 department. A complaint is unresolved when a seller of travel  
 1080 does not respond to the department's efforts to mediate the  
 1081 complaint or a complaint where the department has determined  
 1082 that a violation of this part has occurred and the complainant  
 1083 ~~complaint~~ has not been satisfied by the seller of travel.

1084 (11) "Seller of travel" means any ~~resident or nonresident~~  
 1085 person, firm, corporation, or business entity who offers for  
 1086 sale, directly or indirectly, at wholesale or retail,  
 1087 prearranged travel or, tourist-related services, ~~or tour guide~~  
 1088 ~~services~~ for individuals or groups, including, but not limited  
 1089 to, vacation ~~or tour~~ packages, or vacation certificates in  
 1090 exchange for a fee, commission, or other valuable consideration.  
 1091 The term includes any business entity offering membership in a  
 1092 travel club or travel services for an advance fee or payment,

1093 even if no travel contracts or certificates or vacation or tour  
 1094 packages are sold by the business entity.

1095 (13) "Vacation certificate" means any advance travel  
 1096 purchase arrangement, plan, program, or vacation package that  
 1097 promotes, discusses, or discloses a destination or itinerary or  
 1098 type of travel, whereby a purchaser ~~for consideration paid in~~  
 1099 ~~advance~~ is entitled to the use of travel, accommodations, or  
 1100 facilities for any number of days, whether certain or uncertain,  
 1101 during the period in which the certificate can be exercised, and  
 1102 no specific date or dates for its use are designated. A vacation  
 1103 certificate does not include prearranged travel or, tourist-  
 1104 related services, ~~or tour-guide services~~ when a seller of travel  
 1105 remits full payment for the cost of such services to the  
 1106 provider or supplier within 10 business days of the purchaser's  
 1107 initial payment to the seller of travel. The term does not  
 1108 include travel if exact travel dates are selected, guaranteed,  
 1109 and paid for at the time of the purchase.

1110 Section 29. Section 559.928, Florida Statutes, is amended  
 1111 to read:

1112 559.928 Registration.—

1113 (1) Each seller of travel shall annually register with the  
 1114 department, providing: its legal business or trade name, mailing  
 1115 address, and business locations; the full names, addresses, and  
 1116 telephone numbers of its owners or corporate officers and  
 1117 directors and the Florida agent of the corporation; a statement  
 1118 whether it is a domestic or foreign corporation, its state and

1119 date of incorporation, its charter number, and, if a foreign  
 1120 corporation, the date it registered with this state, and  
 1121 business tax receipt where applicable; ~~the date on which a~~  
 1122 ~~seller of travel registered its fictitious name if the seller of~~  
 1123 ~~travel is operating under a fictitious or trade name;~~ the name  
 1124 of all other corporations, business entities, and trade names  
 1125 through which each owner of the seller of travel operated, was  
 1126 known, or did business as a seller of travel within the  
 1127 preceding 5 years; a list of all authorized independent agents,  
 1128 including the agent's trade name, full name, mailing address,  
 1129 business address, and telephone numbers; the business location  
 1130 and address of each branch office and full name and address of  
 1131 the manager or supervisor; the certification required under s.  
 1132 559.9285; and proof of purchase of adequate bond as required in  
 1133 this part. A certificate evidencing proof of registration shall  
 1134 be issued by the department and must be prominently displayed in  
 1135 the seller of travel's primary place of business.

1136 (2)(a) Registration fees shall be as follows:

1137 1. Three hundred dollars per year per registrant  
 1138 certifying its business activities under s. 559.9285(1)(a).

1139 2. One thousand dollars per year per registrant certifying  
 1140 its business activities under s. 559.9285(1)(b).

1141 3. Twenty-five hundred dollars per year per registrant  
 1142 certifying its business activities under s. 559.9285(1)(c).

1143 (b) All amounts collected shall be deposited by the Chief  
 1144 Financial Officer to the credit of the General Inspection Trust

1145 Fund of the Department of Agriculture and Consumer Services  
 1146 pursuant to s. 570.20, for the sole purpose of administration of  
 1147 this part.

1148 (c) The department shall waive the initial registration  
 1149 fee for an honorably discharged veteran of the United States  
 1150 Armed Forces, the spouse of such a veteran, or a business entity  
 1151 that has a majority ownership held by such a veteran or spouse  
 1152 if the department receives an application, in a format  
 1153 prescribed by the department, within 60 months after the date of  
 1154 the veteran's discharge from any branch of the United States  
 1155 Armed Forces. To qualify for the waiver, a veteran must provide  
 1156 to the department a copy of his or her DD Form 214, as issued by  
 1157 the United States Department of Defense, or another acceptable  
 1158 form of identification as specified by the Department of  
 1159 Veterans' Affairs; the spouse of a veteran must provide to the  
 1160 department a copy of the veteran's DD Form 214, as issued by the  
 1161 United States Department of Defense, or another acceptable form  
 1162 of identification as specified by the Department of Veterans'  
 1163 Affairs, and a copy of a valid marriage license or certificate  
 1164 verifying that he or she was lawfully married to the veteran at  
 1165 the time of discharge; or a business entity must provide to the  
 1166 department proof that a veteran or the spouse of a veteran holds  
 1167 a majority ownership in the business, a copy of the veteran's DD  
 1168 Form 214, as issued by the United States Department of Defense,  
 1169 or another acceptable form of identification as specified by the  
 1170 Department of Veterans' Affairs, and, if applicable, a copy of a

1171 valid marriage license or certificate verifying that the spouse  
 1172 of the veteran was lawfully married to the veteran at the time  
 1173 of discharge.

1174 (3) Each independent agent shall annually file an  
 1175 affidavit with the department before ~~prior to~~ engaging in  
 1176 business in this state. This affidavit must include the  
 1177 independent agent's full name, legal business or trade name,  
 1178 mailing address, business address, telephone number, and the  
 1179 name and address of each seller of travel represented by the  
 1180 independent agent. A letter evidencing proof of filing must be  
 1181 issued by the department and must be prominently displayed in  
 1182 the independent agent's primary place of business. Each  
 1183 independent agent must also submit an annual registration fee of  
 1184 \$50. All moneys collected pursuant to the imposition of the fee  
 1185 shall be deposited by the Chief Financial Officer into the  
 1186 General Inspection Trust Fund of the Department of Agriculture  
 1187 and Consumer Services for the sole purpose of administrating  
 1188 this part. As used in this subsection, the term "independent  
 1189 agent" means a person who represents a seller of travel by  
 1190 soliciting persons on its behalf; who has a written contract  
 1191 with a seller of travel which is operating in compliance with  
 1192 this part and any rules adopted thereunder; who does not receive  
 1193 a fee, commission, or other valuable consideration directly from  
 1194 the purchaser for the seller of travel; who does not at any time  
 1195 have any unissued ticket stock or travel documents in his or her  
 1196 possession; and who does not have the ability to issue tickets,

1197 vacation certificates, or any other travel document. The term  
 1198 "independent agent" does not include an affiliate of the seller  
 1199 of travel, as that term is used in s. 559.935(3), or the  
 1200 employees of the seller of travel or of such affiliates.

1201 (4) Any person applying for or renewing a local business  
 1202 tax receipt to engage in business as a seller of travel must  
 1203 exhibit a current registration certificate from the department  
 1204 before the local business tax receipt may be issued or reissued.

1205 (5) Each contract, advertisement, or certificate, or any  
 1206 other travel document, of a seller of travel must include the  
 1207 phrase "... (NAME OF FIRM)... is registered with the State of  
 1208 Florida as a Seller of Travel. Registration No....."

1209 ~~(6) Each advertisement of a seller of travel must include~~  
 1210 ~~the phrase "Fla. Seller of Travel Reg. No....."~~

1211 ~~(6)-(7)~~ A ~~No~~ registration is not ~~shall be~~ valid for any  
 1212 seller of travel transacting business at any place other than  
 1213 that designated in its application, unless the department is  
 1214 first notified in writing in advance of any change of location.  
 1215 ~~A Nor shall the~~ registration is not ~~be~~ valid for an affiliate of  
 1216 the seller of travel who engages in the prearranged travel and  
 1217 tourist business. A registration issued under this part may  
 1218 ~~shall~~ not be assignable, and the seller of travel may ~~shall~~ not  
 1219 be permitted to conduct business under more than one name except  
 1220 as registered. A seller of travel desiring to change its  
 1221 registered name or location or designated agent for service of  
 1222 process at a time other than upon renewal of registration shall



1223 notify the department of such change.

1224 (7)~~(8)~~ Applications under this section are ~~shall be~~  
 1225 subject to ~~the provisions of~~ s. 120.60.

1226 (8)~~(9)~~ The department may deny, ~~or~~ refuse to renew, or  
 1227 revoke the registration of any seller of travel based upon a  
 1228 determination that the seller of travel, or any of its  
 1229 directors, officers, owners, or general partners:

1230 (a) Has failed to meet the requirements for registration  
 1231 as provided in this part;

1232 (b) Has been convicted of a crime involving fraud, theft,  
 1233 embezzlement, dishonest dealing, or any other act of moral  
 1234 turpitude or any other act arising out of conduct as a seller of  
 1235 travel;

1236 (c) Has not satisfied a civil fine or penalty arising out  
 1237 of any administrative or enforcement action brought by any  
 1238 governmental agency or private person based upon conduct  
 1239 involving fraud, theft, embezzlement, dishonest dealing, or any  
 1240 violation of this part;

1241 (d) Has pending against her or him any criminal,  
 1242 administrative, or enforcement proceedings in any jurisdiction,  
 1243 based upon conduct involving fraud, theft, embezzlement,  
 1244 dishonest dealing, or any other act of moral turpitude or any  
 1245 other act arising out of conduct as a seller of travel; or

1246 (e) Has had a judgment entered against her or him in any  
 1247 action brought by the department or the Department of Legal  
 1248 Affairs pursuant to ss. 501.201-501.213 or this act ~~part~~.

1249 Section 30. Subsections (2) and (6) of section 559.929,  
 1250 Florida Statutes, are amended to read:  
 1251 559.929 Security requirements.—  
 1252 (2) The bond must be filed with the department on a form  
 1253 adopted by department rule and must be in favor of the  
 1254 department for the use and benefit of a traveler who is injured  
 1255 by the fraud, misrepresentation, breach of contract, or  
 1256 financial failure, or any other violation of this part by the  
 1257 seller of travel. Such liability may be enforced by proceeding  
 1258 in an administrative action as specified in subsection (3) or by  
 1259 filing a civil action. However, in such civil action the bond  
 1260 posted with the department may ~~shall~~ not be amenable or subject  
 1261 to a judgment or other legal process issuing out of or from such  
 1262 court in connection with such civil action, but such bond shall  
 1263 be amenable to and enforceable only by and through  
 1264 administrative proceedings before the department. It is the  
 1265 intent of the Legislature that such bond be applicable and  
 1266 liable only for the payment of claims duly adjudicated by order  
 1267 of the department. The bond must be open to successive claims,  
 1268 but the aggregate amount awarded may not exceed the amount of  
 1269 the bond. In addition to the foregoing, a bond provided by a  
 1270 registrant or applicant for registration which certifies its  
 1271 business activities under s. 559.9285(1)(b) or (c) must be in  
 1272 favor of the department, with payment in the following order of  
 1273 priority:  
 1274 (a) The expenses for prosecuting the registrant or

1275 applicant in an administrative or civil action under this part,  
 1276 including attorney fees and fees for other professionals, court  
 1277 costs or other costs of the proceedings, and all other expenses  
 1278 incidental to the action.

1279 (b) The costs and expenses of investigation before the  
 1280 commencement of an administrative or civil action under this  
 1281 part.

1282 (c) An unpaid administrative fine imposed by final order  
 1283 or an unpaid civil penalty imposed by final judgment under this  
 1284 part.

1285 (d) Damages or compensation for a traveler injured as  
 1286 provided in this subsection.

1287 (6) The department may waive the bond requirement on an  
 1288 annual basis if the seller of travel has had 5 or more  
 1289 consecutive years of experience as a seller of travel in this  
 1290 state in compliance with this part, has not had a civil,  
 1291 criminal, or administrative action instituted against the seller  
 1292 of travel in the vacation and travel business by a governmental  
 1293 agency or an action involving fraud, theft, misappropriation of  
 1294 property, violation of a statute pertaining to business or  
 1295 commerce with a terrorist state, ~~or~~ moral turpitude, or other  
 1296 violation of this part and has a satisfactory consumer complaint  
 1297 history with the department, and certifies its business  
 1298 activities under s. 559.9285. Such waiver may be revoked if the  
 1299 seller of travel violates this part. A seller of travel which  
 1300 certifies its business activities under s. 559.9285(1)(b) or (c)

1301 is not entitled to the waiver provided in this subsection.  
 1302 Section 31. Subsections (10), (14), and (17) of section  
 1303 559.9295, Florida Statutes, are amended to read:  
 1304 559.9295 Submission of vacation certificate documents.—  
 1305 Sellers of travel who offer vacation certificates must submit  
 1306 and disclose to the department with the application for  
 1307 registration, and any time such document is changed, but prior  
 1308 to the sale of any vacation certificate, the following  
 1309 materials:  
 1310 ~~(10) A statement of the number of certificates to be~~  
 1311 ~~issued and the date of their expiration.~~  
 1312 (13)~~(14)~~ A listing of the full name, address, and  
 1313 telephone number of each person through which the distribution  
 1314 and sale of vacation certificates is to be carried out,  
 1315 ~~including the number of vacation certificates allocated or sold~~  
 1316 ~~to each such person and the name and address of a Florida~~  
 1317 registered agent for service of process.  
 1318 ~~(17) Within 10 working days after receipt of any materials~~  
 1319 ~~submitted subsequent to filing an initial registration~~  
 1320 ~~application or any annual renewal thereof, the department shall~~  
 1321 ~~determine whether such materials are adequate to meet the~~  
 1322 ~~requirements of this section. The department shall notify the~~  
 1323 ~~seller of travel that materials submitted are in substantial~~  
 1324 ~~compliance, or shall notify the seller of travel of any specific~~  
 1325 ~~deficiencies. If the department fails to notify the seller of~~  
 1326 ~~travel of its determination within the period specified in this~~

1327 ~~subsection, the materials shall be deemed in compliance;~~  
 1328 ~~however, the failure of the department to send notification in~~  
 1329 ~~either case will not relieve the seller of travel from the duty~~  
 1330 ~~of complying with this section. Neither the submission of these~~  
 1331 ~~materials nor the department's response implies approval,~~  
 1332 ~~recommendation, or endorsement by the department or that the~~  
 1333 ~~contents of said materials have been verified by the department.~~

1334 Section 32. Section 559.932, Florida Statutes, is amended  
 1335 to read:

1336 559.932 Vacation certificate disclosure.—

1337 (1) A ~~It shall be unlawful for any~~ seller of travel must  
 1338 ~~to fail to~~ provide each person solicited with a contract that  
 1339 includes which shall include the following in a 10-point font,  
 1340 unless otherwise specified:

1341 (a) A space for the date, name, address, and signature of  
 1342 the purchaser.

1343 (b) The expiration date of the vacation certificate and  
 1344 the terms and conditions of its extension or renewal, if  
 1345 available.

1346 (c) The name and business address of any seller of travel  
 1347 who may solicit vacation certificate purchasers for further  
 1348 purchases, and a full and complete statement as to the nature  
 1349 and method of that solicitation.

1350 (d) The total financial obligation of the purchaser which  
 1351 shall include the initial purchase price and any additional  
 1352 charges to which the purchaser may be subject, including, but

1353 not limited to, any per diem, seasonal, reservation, or  
 1354 recreational charge.

1355 (e) The name and street address of any person who has the  
 1356 right to alter, amend, or add to the charges to which the  
 1357 purchaser may be subject and the terms and conditions under  
 1358 which such charges may be imposed.

1359 (f) If any accommodation or facility which a purchaser  
 1360 acquires the right to use pursuant to the vacation certificate  
 1361 is not completed at the time the certificate is offered for  
 1362 sale, the date of availability of each component of the  
 1363 accommodation or facility.

1364 (g) By means of a section entitled "terms and conditions":

1365 1. All eligibility requirements for use of the vacation  
 1366 certificate, including, but not limited to, age, sex, marital  
 1367 status, group association, residency, or geographic limitations.

1368 2. All eligibility requirements for use of any discount or  
 1369 complimentary coupon or ticket.

1370 3. A statement as to whether transportation and meals are  
 1371 provided pursuant to use of the certificate.

1372 4. Any room deposit requirement, including all conditions  
 1373 for its return or refund.

1374 5. The manner in which reservation requests are to be made  
 1375 and the method by which they are to be confirmed.

1376 6. Any identification, credential, or other means by which  
 1377 a purchaser must establish her or his entitlement to the rights,  
 1378 benefits, or privileges of the vacation certificate.

1379           7. Any restriction or limitation upon transfer of the  
1380 vacation certificate or any right, benefit, or privilege  
1381 thereunder.

1382           8. Any other term, limitation, condition, or requirement  
1383 material to use of the vacation certificate or any right,  
1384 benefit, or privilege thereunder.

1385           (h) In immediate proximity to the space reserved in the  
1386 contract for the date and the name, address, and signature of  
1387 the purchaser, the following statement in boldfaced type of a  
1388 size of 10 points:

1389

1390           "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR  
1391 OBLIGATION WITHIN 30 DAYS FROM THE DATE OF PURCHASE OR RECEIPT  
1392 OF THE VACATION CERTIFICATE, WHICHEVER OCCURS LATER."

1393           "YOU MAY ALSO CANCEL THIS CONTRACT IF ACCOMMODATIONS OR  
1394 FACILITIES ARE NOT AVAILABLE PURSUANT TO A REQUEST FOR USE AS  
1395 PROVIDED IN THE CONTRACT."

1396           "IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN  
1397 WRITING OF YOUR INTENT TO CANCEL BY RETURNING THE CERTIFICATE  
1398 AND SENDING NOTICE TO: ... (NAME OF SELLER)... AT ... (SELLER'S  
1399 ADDRESS)...."

1400

1401           (i) In immediate proximity to the statement required in  
1402 paragraph (h), the following statement in boldfaced type of a  
1403 size of 12 ~~10~~ points:

1404

1405 "NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN  
 1406 THOSE INCLUDED IN THIS CONTRACT."

1407

1408 However, inclusion of this statement shall not impair any  
 1409 purchaser's right to bring legal action based on verbal  
 1410 statements.

1411 (j) In immediate proximity to the statement required in  
 1412 paragraph (i), the following statement:

1413 "This contract is for the purchase of a vacation  
 1414 certificate and puts all assignees on notice of the consumer's  
 1415 right to cancel under section 559.933, Florida Statutes."

1416 (2) If a sale or agreement to purchase a vacation  
 1417 certificate is completed over the telephone, the seller shall  
 1418 inform the purchaser over the telephone that:

1419 (a) The purchaser may cancel the contract without any  
 1420 penalty or obligation within 30 days from the date of purchase  
 1421 or receipt of the vacation certificate, whichever occurs later.

1422 (b) The purchaser may also cancel the contract if  
 1423 accommodations or facilities are not available upon request for  
 1424 use as provided in the contract.

1425 (3) Upon receipt of a copy of a vacation certificate or  
 1426 contract required pursuant to s. 559.9295, the department must  
 1427 review the certificate or contract for compliance with the  
 1428 disclosures required under this section.

1429 Section 33. Section 559.933, Florida Statutes, is amended  
 1430 to read:



1431 559.933 Vacation certificate cancellation and refund  
 1432 provisions.—

1433 (1) A ~~It shall be unlawful for any~~ seller of travel or  
 1434 assignee must honor a purchaser's request to cancel a vacation  
 1435 certificate if such request is made:

1436 ~~(1) To fail or refuse to honor a purchaser's vacation~~  
 1437 ~~certificate request to cancel if such request is made:~~

1438 (a) Within 30 days after ~~from~~ the date of purchase or  
 1439 receipt of the vacation certificate, whichever occurs later; or

1440 (b) At any time accommodations or facilities are not  
 1441 available pursuant to a request for use as provided in the  
 1442 contract, provided that:

1443 1. The contract may ~~shall~~ not require notice greater than  
 1444 60 days in advance of the date requested for use;

1445 2. If acceptable to the purchaser, comparable alternate  
 1446 accommodations or facilities in a city, or reservations for a  
 1447 date different than that requested, may be provided.

1448 (2) A seller of travel or assignee must ~~To fail to~~ refund  
 1449 any and all payments made by the vacation certificate purchaser  
 1450 within 30 days after receipt of the certificate and notice of  
 1451 cancellation made pursuant to this section, if the purchaser has  
 1452 not received any benefits pursuant to the vacation certificate.

1453 (3) A seller of travel or assignee must, if the purchaser  
 1454 has received any benefits pursuant to the vacation certificate,  
 1455 ~~to fail to~~ refund within 30 days after receipt of the  
 1456 certificate and notice of cancellation made pursuant to this

1457 section any and all payments made by the purchaser which exceed  
 1458 a pro rata portion of the total price, representing the portion  
 1459 of any benefits actually received by the vacation certificate  
 1460 purchaser during the time preceding cancellation.

1461 (4) If ~~where~~ any purchaser has received confirmation of  
 1462 reservations in advance and is refused accommodations upon  
 1463 arrival, a seller of travel or assignee must ~~to fail to~~ procure  
 1464 comparable alternate accommodations for the purchaser in the  
 1465 same city at no expense to the purchaser, or ~~to fail to~~ fully  
 1466 compensate the purchaser for the room rate incurred in securing  
 1467 comparable alternate accommodations himself or herself.

1468 (5) A seller of travel or assignee may not ~~to~~ collect more  
 1469 than the full contract price from the purchaser.

1470 (6) A seller of travel or assignee may not ~~to~~ sell,  
 1471 assign, or otherwise transfer any interest in a seller of travel  
 1472 business, or ~~to~~ sell, assign, or otherwise transfer to a third  
 1473 party any interest in any vacation certificate unless:

1474 (a) The third party agrees in writing to fully honor the  
 1475 rights of vacation certificate purchasers to cancel and to  
 1476 receive an appropriate refund or reimbursement as provided in  
 1477 this section.

1478 (b) The third party agrees in writing to comply with all  
 1479 other provisions of this part for as long as the third party  
 1480 continues the sale of vacation certificates or for the duration  
 1481 of the period of validity of outstanding vacation certificates,  
 1482 whichever is longer in time.

1483 (c) The seller of travel agrees to be liable for and fully  
 1484 indemnify a purchaser from any loss occasioned by the failure of  
 1485 the third party to honor the purchaser's right to cancel and  
 1486 failure to make prompt and complete refund to the purchaser of  
 1487 all sums paid to the third party, or occasioned by the third  
 1488 party's failure to comply with the provisions of this part.

1489 (7) A seller of travel or assignee must ~~To fail to~~ fulfill  
 1490 the terms of a vacation certificate within 18 months after ~~of~~  
 1491 the initial payment of any consideration by the purchaser to a  
 1492 seller of travel or third party.

1493 Section 34. Section 559.9335, Florida Statutes, is amended  
 1494 to read:

1495 559.9335 Violations.—It is a violation of this part for  
 1496 any seller of travel, independent agent, or other person:

1497 (1) To conduct business as a seller of travel without  
 1498 registering annually with the department unless exempt pursuant  
 1499 to s. 559.935.

1500 (2) To conduct business as a seller of travel without an  
 1501 annual purchase of a performance bond in the amount set by the  
 1502 department unless exempt pursuant to s. 559.935.

1503 (3) Knowingly to make any false statement, representation,  
 1504 or certification in any application, document, or record  
 1505 required to be submitted or retained under this part or in any  
 1506 response to an inquiry or investigation conducted by the  
 1507 department or any other governmental agency.

1508 (4) Knowingly to sell or market any ~~number of~~ vacation

1509 certificates that exceed the accommodations available at the  
 1510 time of sale ~~the number disclosed to the department pursuant to~~  
 1511 ~~this section.~~

1512 (5) Knowingly to sell or market vacation certificates with  
 1513 an expiration date of more than 18 months from the date of  
 1514 issuance.

1515 ~~(6) Knowingly to require, request, encourage, or suggest,~~  
 1516 ~~directly or indirectly, that payment for the right to obtain a~~  
 1517 ~~travel contract, certificate, or vacation package must be by~~  
 1518 ~~credit card authorization or to otherwise announce a preference~~  
 1519 ~~for that method of payment over any other when no correct and~~  
 1520 ~~true explanation for such preference is likewise stated.~~

1521 (7)~~(7)~~ Knowingly to state, represent, indicate, suggest,  
 1522 or imply, directly or indirectly, that the travel contract,  
 1523 certificate, or vacation package being offered by the seller of  
 1524 travel cannot be purchased at some later time or may not  
 1525 otherwise be available after the initial contact, or that  
 1526 callbacks by the prospective purchaser are not accepted, when no  
 1527 such restrictions or limitations in fact exist.

1528 (7)~~(8)~~ To misrepresent ~~in any manner~~ the purchaser's right  
 1529 to cancel and to receive an appropriate refund or reimbursement  
 1530 as provided by this part.

1531 (8)~~(9)~~ To sell any vacation certificate the duration of  
 1532 which exceeds the duration of any agreement between the seller  
 1533 and any business entity obligated thereby to provide  
 1534 accommodations or facilities pursuant to the vacation

1535 certificate.

1536 (9)~~(10)~~ To misrepresent or deceptively represent:

1537 (a) The amount of time or period of time accommodations or  
1538 facilities will be available.

1539 (b) The location of accommodations or facilities offered.

1540 (c) The price, size, nature, extent, qualities, or  
1541 characteristics of accommodations or facilities offered.

1542 (d) The nature or extent of other goods, services, or  
1543 amenities offered.

1544 (e) A purchaser's rights, privileges, or benefits.

1545 (f) The conditions under which the purchaser may obtain a  
1546 reservation for the use of offered accommodations or facilities.

1547 (g) That the recipient of an advertisement or promotional  
1548 materials is a winner, or has been selected, or is otherwise  
1549 being involved in a select group for receipt, of a gift, award,  
1550 or prize, unless this fact is the truth.

1551 (10)~~(11)~~ To fail to inform a purchaser of a nonrefundable  
1552 cancellation policy before ~~prior to~~ the seller of travel  
1553 accepting any fee, commission, or other valuable consideration.

1554 ~~(12) To fail to include, when offering to sell a vacation  
1555 certificate, in any advertisement or promotional material, the  
1556 following statement: "This is an offer to sell travel."~~

1557 (11)~~(13)~~ To fail to honor and comply with all provisions  
1558 of the vacation certificate regarding the purchaser's rights,  
1559 benefits, and privileges thereunder.

1560 (12)~~(14)~~(a) To include in any vacation certificate or

1561 contract any provision purporting to waive or limit any right or  
 1562 benefit provided to purchasers under this part; or

1563 (b) To seek or solicit such waiver or acceptance of  
 1564 limitation from a purchaser concerning rights or benefits  
 1565 provided under this part.

1566 (13)~~(15)~~ To offer vacation certificates for any  
 1567 accommodation or facility for which there is no contract with  
 1568 the owner of the accommodation or facility securing the  
 1569 purchaser's right to occupancy and use, unless the seller is the  
 1570 owner.

1571 ~~(16) To use a local mailing address, registration~~  
 1572 ~~facility, drop box, or answering service in the promotion,~~  
 1573 ~~advertising, solicitation, or sale of vacation certificates,~~  
 1574 ~~unless the seller's fixed business address is clearly disclosed~~  
 1575 ~~during any telephone solicitation and is prominently and~~  
 1576 ~~conspicuously disclosed on all solicitation materials and on the~~  
 1577 ~~contract.~~

1578 (14)~~(17)~~ To use any registered trademark, trade name, or  
 1579 trade logo in any promotional, advertising, or solicitation  
 1580 materials without written authorization from the holder of such  
 1581 trademark, trade name, or trade logo.

1582 (15)~~(18)~~ To represent, directly or by implication, any  
 1583 affiliation with, or endorsement by, any governmental,  
 1584 charitable, educational, medical, religious, fraternal, or civic  
 1585 organization or body, or any individual, in the promotion,  
 1586 advertisement, solicitation, or sale of vacation certificates

1587 without express written authorization.

1588 (16)~~(19)~~ To sell a vacation certificate to any purchaser  
 1589 who is ineligible for its use.

1590 ~~(20) To sell any number of vacation certificates exceeding~~  
 1591 ~~the number disclosed pursuant to this part.~~

1592 (17)~~(21)~~ During the period of a vacation certificate's  
 1593 validity, in the event, for any reason whatsoever, of lapse or  
 1594 breach of an agreement for the provision of accommodations or  
 1595 facilities to purchasers, to fail to procure similar agreement  
 1596 for the provision of comparable alternate accommodations or  
 1597 facilities in the same city or surrounding area.

1598 (18)~~(22)~~ To offer to sell, at wholesale or retail,  
 1599 prearranged travel or, tourist-related services, ~~or tour-guide~~  
 1600 ~~services~~ for individuals or groups directly to any terrorist  
 1601 state and which originate in Florida, without disclosing such  
 1602 business activities in a certification filed under s.  
 1603 559.9285(1)(b) or (c).

1604 (19)~~(23)~~ To violate any state or federal law restricting  
 1605 or prohibiting commerce with terrorist states.

1606 (20)~~(24)~~ To engage in ~~de~~ any other fraudulent action that  
 1607 ~~act which~~ constitutes fraud, misrepresentation, or failure to  
 1608 disclose a material fact, or to commit any other violation of,  
 1609 or fail to comply with, this part.

1610 (21)~~(25)~~ To refuse or fail, or for any of its principal  
 1611 officers to refuse or fail, after notice, to produce any  
 1612 document or record or disclose any information required to be

1613 produced or disclosed.

1614 (22)~~(26)~~ Knowingly to make a material false statement in  
 1615 response to any request or investigation by the department, the  
 1616 Department of Legal Affairs, or the state attorney.

1617 Section 35. Subsections (3) and (4) of section 559.935,  
 1618 Florida Statutes, are amended to read:

1619 559.935 Exemptions.—

1620 (3) Sections 559.928, 559.929, 559.9295, 559.931, and  
 1621 559.932 ~~shall~~ also do not apply to a seller of travel that is an  
 1622 affiliate of an entity exempt pursuant to subsection (2) subject  
 1623 to the following conditions:

1624 (a) If ~~In the event~~ the department finds the affiliate  
 1625 does not have a satisfactory consumer complaint history or the  
 1626 affiliate fails to respond to a consumer complaint within 30  
 1627 days, the related seller of travel exempt pursuant to subsection  
 1628 (2) is ~~shall be~~ liable for the actions of the affiliate, subject  
 1629 to the remedies provided in ss. 559.9355 and 559.936.

1630 (b) If ~~In the event~~ the department is unable to locate an  
 1631 affiliate, the related seller of travel exempt pursuant to  
 1632 subsection (2) is ~~shall be~~ fully liable for the actions of the  
 1633 affiliate, subject to the remedies provided in ss. 559.9355 and  
 1634 559.936.

1635 ~~(c) In order to obtain an exemption under this subsection,~~  
 1636 ~~the affiliate shall file an affidavit of exemption on a form~~  
 1637 ~~prescribed by the department and shall certify its business~~  
 1638 ~~activities under s. 559.9285(1)(a). The affidavit of exemption~~



1639 ~~shall be executed by a person who exercises identical control~~  
 1640 ~~over the seller of travel exempt pursuant to subsection (2) and~~  
 1641 ~~the affiliate. Failure to file an affidavit of exemption or~~  
 1642 ~~certification under s. 559.9285(1)(a) prior to engaging in~~  
 1643 ~~seller of travel activities shall subject the affiliate to the~~  
 1644 ~~remedies provided in ss. 559.9355 and 559.936.~~

1645 (c)~~(d)~~ Revocation by the department of an exemption  
 1646 provided to a seller of travel under subsection (2) shall  
 1647 constitute automatic revocation by law of an exemption obtained  
 1648 by an affiliate under the subsection.

1649 (d)~~(e)~~ This subsection does ~~shall~~ not apply to:

1650 1. An affiliate that independently qualifies for another  
 1651 exemption under this section.

1652 2. An affiliate that sells, or offers for sale, vacation  
 1653 certificates.

1654 3. An affiliate that certifies its business activities  
 1655 under s. 559.9285(1)(b) or (c).

1656 (e)~~(f)~~ For purposes of this section, the term an  
 1657 "affiliate" means an entity that meets the following:

1658 1. The entity has the identical ownership as the seller of  
 1659 travel that is exempt under subsection (2).

1660 2. The ownership controlling the seller of travel that is  
 1661 exempt under subsection (2) also exercises identical control  
 1662 over the entity.

1663 3. The owners of the affiliate hold the identical  
 1664 percentage of voting shares as they hold in the seller of travel

1665 that is exempt under subsection (2).

1666 (4) The department may revoke the exemption provided in  
 1667 subsection (2) or subsection (3) if the department finds that  
 1668 the seller of travel does not have a satisfactory consumer  
 1669 complaint history, has been convicted of a crime involving  
 1670 fraud, theft, embezzlement, misappropriation of property,  
 1671 deceptive or unfair trade practices, or moral turpitude, or has  
 1672 not complied with the terms of any order or settlement agreement  
 1673 arising out of an administrative or enforcement action brought  
 1674 by a governmental agency or private person based on conduct  
 1675 involving fraud, theft, embezzlement, misappropriation of  
 1676 property, deceptive or unfair trade practices, or moral  
 1677 turpitude.

1678 Section 36. Subsection (3) of section 559.936, Florida  
 1679 Statutes, is amended to read:

1680 559.936 Civil penalties; remedies.—

1681 (3) The department may seek a civil penalty in the Class  
 1682 III category pursuant to s. 570.971 for each act or omission in  
 1683 violation of s. 559.9335(18) or (19) ~~s. 559.9335(22) or (23)~~.

1684 Section 37. Paragraph (b) of subsection (5), paragraph (a)  
 1685 of subsection (10), and subsections (15) and (16) of section  
 1686 616.242, Florida Statutes, are amended to read:

1687 616.242 Safety standards for amusement rides.—

1688 (5) ANNUAL PERMIT.—

1689 (b) To apply for an annual permit, an owner must submit to  
 1690 the department a written application on a form prescribed by

1691 rule of the department, which must include the following:

1692       1. The legal name, address, and primary place of business

1693 of the owner.

1694       2. A description, manufacturer's name, serial number,

1695 model number and, if previously assigned, the United States

1696 Amusement Identification Number of the amusement ride.

1697       3. A valid certificate of insurance ~~or bond~~ for each

1698 amusement ride.

1699       4. An affidavit of compliance that the amusement ride was

1700 inspected in person by the affiant and that the amusement ride

1701 is in general conformance with the requirements of this section

1702 and all applicable rules adopted by the department. The

1703 affidavit must be executed by a professional engineer or a

1704 qualified inspector no earlier than 60 days before, but not

1705 later than, the date of the filing of the application with the

1706 department. The owner shall request inspection and permitting of

1707 the amusement ride within 60 days of the date of filing the

1708 application with the department. The department shall inspect

1709 and permit the amusement ride within 60 days after filing the

1710 application with the department.

1711       5. If required by subsection (6), an affidavit of

1712 nondestructive testing dated and executed no earlier than 60

1713 days before ~~prior to~~, but not later than, the date of the filing

1714 of the application with the department. The owner shall request

1715 inspection and permitting of the amusement ride within 60 days

1716 of the date of filing the application with the department. The

1717 department shall inspect and permit the amusement ride within 60  
 1718 days after filing the application with the department.

1719 6. A request for inspection.

1720 7. Upon request, the owner shall, at no cost to the  
 1721 department, provide the department a copy of the manufacturer's  
 1722 current recommended operating instructions in the possession of  
 1723 the owner, the owner's operating fact sheet, and any written  
 1724 bulletins in the possession of the owner concerning the safety,  
 1725 operation, or maintenance of the amusement ride.

1726 (10) EXEMPTIONS.—

1727 (a) This section does not apply to:

1728 1. Permanent facilities that employ at least 1,000 full-  
 1729 time employees and that maintain full-time, in-house safety  
 1730 inspectors. Furthermore, the permanent facilities must file an  
 1731 affidavit of the annual inspection with the department, on a  
 1732 form prescribed by rule of the department. Additionally, the  
 1733 Department of Agriculture and Consumer Services may consult  
 1734 annually with the permanent facilities regarding industry safety  
 1735 programs.

1736 2. Any playground operated by a school, local government,  
 1737 or business licensed under chapter 509, if the playground is an  
 1738 incidental amenity and the operating entity is not primarily  
 1739 engaged in providing amusement, pleasure, thrills, or  
 1740 excitement.

1741 3. Museums or other institutions principally devoted to  
 1742 the exhibition of products of agriculture, industry, education,

1743 science, religion, or the arts.

1744 4. Conventions or trade shows for the sale or exhibit of  
 1745 amusement rides if there are a minimum of 15 amusement rides on  
 1746 display or exhibition, and if any operation of such amusement  
 1747 rides is limited to the registered attendees of the convention  
 1748 or trade show.

1749 5. Skating rinks, arcades, laser ~~lazer~~ or paint ball war  
 1750 games, bowling alleys, miniature golf courses, mechanical bulls,  
 1751 inflatable rides, trampolines, ball crawls, exercise equipment,  
 1752 jet skis, paddle boats, airboats, helicopters, airplanes,  
 1753 parasails, hot air or helium balloons whether tethered or  
 1754 untethered, theatres, batting cages, stationary spring-mounted  
 1755 fixtures, rider-propelled merry-go-rounds, games, side shows,  
 1756 live animal rides, or live animal shows.

1757 6. Go-karts operated in competitive sporting events if  
 1758 participation is not open to the public.

1759 7. Nonmotorized playground equipment that is not required  
 1760 to have a manager.

1761 8. Coin-actuated amusement rides designed to be operated  
 1762 by depositing coins, tokens, credit cards, debit cards, bills,  
 1763 or other cash money and which are not required to have a  
 1764 manager, and which have a capacity of six persons or less.

1765 9. Facilities described in s. 549.09(1)(a) when such  
 1766 facilities are operating cars, trucks, or motorcycles only.

1767 10. Battery-powered cars or other vehicles that are  
 1768 designed to be operated by children 7 years of age or under and

1769 that cannot exceed a speed of 4 miles per hour.

1770 11. Mechanically driven vehicles that pull train cars,  
 1771 carts, wagons, or other similar vehicles, that are not confined  
 1772 to a metal track or confined to an area but are steered by an  
 1773 operator and do not exceed a speed of 4 miles per hour.

1774 12. A water-related amusement ride operated by a business  
 1775 licensed under chapter 509 if the water-related amusement ride  
 1776 is an incidental amenity and the operating business is not  
 1777 primarily engaged in providing amusement, pleasure, thrills, or  
 1778 excitement and does not offer day rates.

1779 13. An amusement ride at a private, membership-only  
 1780 facility if the amusement ride is an incidental amenity and the  
 1781 facility is not open to the general public; is not primarily  
 1782 engaged in providing amusement, pleasure, thrills, or  
 1783 excitement; and does not offer day rates.

1784 14. A nonprofit permanent facility registered under  
 1785 chapter 496 which is not open to the general public.

1786 (15) INSPECTION BY OWNER OR MANAGER.—~~Before~~ Prior to  
 1787 opening on each day of operation and before ~~prior~~ to any  
 1788 inspection by the department, the owner or manager of an  
 1789 amusement ride must inspect and test the amusement ride to  
 1790 ensure compliance with all requirements of this section. Each  
 1791 inspection must be recorded on a form prescribed by rule of the  
 1792 department and signed by the person who conducted the  
 1793 inspection. In lieu of the form prescribed by rule of the  
 1794 department, the owner or manager may request approval of an

1795 alternative form if the alternative form includes, at a minimum,  
 1796 the information required on the form prescribed by rule of the  
 1797 department. Inspection records of the last 14 daily inspections  
 1798 must be kept on site by the owner or manager and made  
 1799 immediately available to the department upon request.

1800 (16) TRAINING OF EMPLOYEES.—The owner or manager of an ~~any~~  
 1801 amusement ride shall maintain a record of employee training for  
 1802 each employee authorized to operate, assemble, disassemble,  
 1803 transport, or conduct maintenance on an amusement ride, ~~on a~~  
 1804 form prescribed by rule of the department. In lieu of the form  
 1805 prescribed by rule of the department, the owner or manager may  
 1806 request approval of an alternative form if the alternative form  
 1807 includes, at a minimum, the information required on the form  
 1808 prescribed by rule of the department. The training record must  
 1809 be kept on site by the owner or manager and made immediately  
 1810 available to the department upon request. Training may not be  
 1811 conducted when an amusement ride is open to the public unless  
 1812 the training is conducted under the supervision of an employee  
 1813 who is trained in the operation of that ride. The owner or  
 1814 manager shall certify that each employee is trained, as required  
 1815 by this section and any rules adopted thereunder, on the  
 1816 amusement ride for which the employee is responsible.

1817 Section 38. Subsections (1), (2), (5), (7), and (13) of  
 1818 section 713.585, Florida Statutes, are amended to read:

1819 713.585 Enforcement of lien by sale of motor vehicle.—A  
 1820 person claiming a lien under s. 713.58 for performing labor or

1821 services on a motor vehicle may enforce such lien by sale of the  
 1822 vehicle in accordance with the following procedures:

1823 (1) The lienor must give notice, by certified mail, return  
 1824 receipt requested, within 7 ~~15~~ business days, excluding Saturday  
 1825 and Sunday, from the beginning date of the assessment of storage  
 1826 charges on said motor vehicle, to the registered owner of the  
 1827 vehicle, to the customer as indicated on the order for repair,  
 1828 and to all other persons claiming an interest in or lien  
 1829 thereon, as disclosed by the records of the Department of  
 1830 Highway Safety and Motor Vehicles or as disclosed by the records  
 1831 of any corresponding agency of any other state in which the  
 1832 vehicle is identified through a records check of the National  
 1833 Motor Vehicle Title Information System or an equivalent  
 1834 commercially available system as being the current state where  
 1835 the vehicle is titled. Such notice must contain:

1836 (a) A description of the vehicle, including, at a minimum,  
 1837 the vehicle's ~~(year, make, vehicle identification number,)~~ and  
 1838 ~~its~~ location.

1839 (b) The name and address of the owner of the vehicle, the  
 1840 customer as indicated on the order for repair, and any person  
 1841 claiming an interest in or lien thereon.

1842 (c) The name, address, and telephone number of the lienor.

1843 (d) Notice that the lienor claims a lien on the vehicle  
 1844 for labor and services performed and storage charges, if any,  
 1845 and the cash sum which, if paid to the lienor, would be  
 1846 sufficient to redeem the vehicle from the lien claimed by the



1847 | lienor.

1848 |       (e) Notice that the lien claimed by the lienor is subject  
1849 | to enforcement pursuant to this section and that the vehicle may  
1850 | be sold to satisfy the lien.

1851 |       (f) If known, the date, time, and location of any proposed  
1852 | or scheduled sale of the vehicle. A ~~No~~ vehicle may not be sold  
1853 | earlier than 60 days after completion of the repair work.

1854 |       (g) Notice that the owner of the vehicle or any person  
1855 | claiming an interest in or lien thereon has a right to a hearing  
1856 | at any time before ~~prior to~~ the scheduled date of sale by filing  
1857 | a demand for hearing with the clerk of the circuit court in the  
1858 | county in which the vehicle is held and mailing copies of the  
1859 | demand for hearing to all other owners and lienors as reflected  
1860 | on the notice.

1861 |       (h) Notice that the owner of the vehicle has a right to  
1862 | recover possession of the vehicle without instituting judicial  
1863 | proceedings by posting bond in accordance with ~~the provisions of~~  
1864 | s. 559.917.

1865 |       (i) Notice that any proceeds from the sale of the vehicle  
1866 | remaining after payment of the amount claimed to be due and  
1867 | owing to the lienor will be deposited with the clerk of the  
1868 | circuit court for disposition upon court order pursuant to  
1869 | subsection (8).

1870 |       (j) Notice that a lienholder, if any, has the right, as  
1871 | specified in subsection (5), to demand a hearing or to post a  
1872 | bond.

1873           (2) If attempts to locate the owner or lienholder are  
 1874 unsuccessful after a check of the records of the Department of  
 1875 Highway Safety and Motor Vehicles and any state disclosed by the  
 1876 check of the National Motor Vehicle Title Information System or  
 1877 an equivalent commercially available system, the lienor must  
 1878 notify the local law enforcement agency in writing by certified  
 1879 mail or acknowledged hand delivery that the lienor has been  
 1880 unable to locate the owner or lienholder, that a physical search  
 1881 of the vehicle has disclosed no ownership information, and that  
 1882 a good faith effort, including records checks of the Department  
 1883 of Highway Safety and Motor Vehicles database and the National  
 1884 Motor Vehicle Title Information System or an equivalent  
 1885 commercially available system, has been made. A description of  
 1886 the motor vehicle which includes the year, make, and  
 1887 identification number must be given on the notice. This  
 1888 notification must take place within 7 ~~15~~ business days,  
 1889 excluding Saturday and Sunday, from the beginning date of the  
 1890 assessment of storage charges on said motor vehicle. For  
 1891 purposes of this paragraph, the term "good faith effort" means  
 1892 that the following checks have been performed by the company to  
 1893 establish the prior state of registration and title:  
 1894           (a) A check of the Department of Highway Safety and Motor  
 1895 Vehicles database for the owner and any lienholder;  
 1896           (b) A check of the federally mandated electronic National  
 1897 Motor Vehicle Title Information System or an equivalent  
 1898 commercially available system to determine the state of

1899 registration when there is not a current title or registration  
 1900 record for the vehicle on file with the Department of Highway  
 1901 Safety and Motor Vehicles;

1902 (c) A check of vehicle for any type of tag, tag record,  
 1903 temporary tag, or regular tag;

1904 (d) A check of vehicle for inspection sticker or other  
 1905 stickers and decals that could indicate the state of possible  
 1906 registration; and

1907 (e) A check of the interior of the vehicle for any papers  
 1908 that could be in the glove box, trunk, or other areas for the  
 1909 state of registration.

1910 (5) At any time before ~~prior to~~ the proposed or scheduled  
 1911 date of sale of a vehicle, the owner of the vehicle, or any  
 1912 person claiming an interest in the vehicle or a lien thereon,  
 1913 may post a bond following the procedures outlined in s. 559.917  
 1914 or file a demand for hearing with the clerk of the circuit court  
 1915 in the county in which the vehicle is held to determine whether  
 1916 the vehicle has been wrongfully taken or withheld from her or  
 1917 him. Any person who files a demand for hearing shall mail copies  
 1918 of the demand to all other owners and lienors as reflected on  
 1919 the notice required in subsection (1).

1920 (a) Upon the filing of a demand for hearing, a hearing  
 1921 shall be held before ~~prior to~~ the proposed or scheduled date of  
 1922 sale of the vehicle.

1923 (b) Upon the posting of the bond and payment of the  
 1924 applicable fee set forth in s. 28.24, the clerk of the court

1925 shall issue a certificate notifying the lienor of the posting of  
 1926 the bond and directing the lienor to release the vehicle to the  
 1927 lienholder or the owner, based upon whomever posted the bond.

1928 (c) If a lienholder obtains the vehicle and the owner of  
 1929 the vehicle is not in default under the installment sales  
 1930 contract or title loan at the time the lienholder has possession  
 1931 of the vehicle, the lienholder must return the vehicle to the  
 1932 owner within 5 days after the owner repays the lienholder for  
 1933 the amount of the bond, or makes arrangements to repay the  
 1934 lienholder for the bond under terms agreeable to the lienholder.  
 1935 A lienholder may retain possession of the vehicle if the owner  
 1936 is in default until such time as the default is cured and the  
 1937 amount of the bond is repaid by the owner, or an arrangement  
 1938 agreeable to the lienholder is made with the owner.

1939 (7) At a ~~the~~ hearing on a ~~the~~ complaint relating to the  
 1940 requirements of this section, the court shall ~~forthwith~~ issue an  
 1941 ~~its~~ order determining:

1942 (a) Whether the vehicle is subject to a valid lien by the  
 1943 lienor and the amount thereof;

1944 (b) The priority of the lien of the lienor as against any  
 1945 existing security interest in the vehicle;

1946 (c) The distribution of any proceeds of the sale by the  
 1947 clerk of the circuit court;

1948 (d) The award of damages, if any;

1949 (e) ~~(d)~~ The award of reasonable attorney ~~attorney's~~ fees  
 1950 and costs, at the court's discretion, to the prevailing party;

1951  
1952  
1953  
1954  
1955  
1956  
1957  
1958  
1959  
1960  
1961  
1962  
1963  
1964  
1965  
1966  
1967  
1968  
1969  
1970  
1971  
1972  
1973  
1974  
1975  
1976

and  
     (f)~~(e)~~ The reasonableness of storage charges.  
A final order issued by the court must also provide for  
immediate payment of any proceeds or awards and the immediate  
release of the bond to the posting party, if applicable.  
     (13) A failure to make good faith efforts as defined in  
 subsection (2) precludes the imposition of any storage charges  
 against the vehicle. If a lienor fails to provide notice to any  
 person claiming a lien on a vehicle under subsection (1) within  
7 ~~15~~ business days after the assessment of storage charges has  
 begun, then the lienor is precluded from charging for more than  
7 ~~15~~ days of storage, but failure to provide timely notice does  
 not affect charges made for repairs, adjustments, or  
 modifications to the vehicle or the priority of liens on the  
 vehicle.  
     Section 39. Subsections (2), (4), (5), and (10) of section  
 790.06, Florida Statutes, are amended, and paragraph (f) is  
 added to subsection (6) of that section, to read:  
     790.06 License to carry concealed weapon or firearm.--  
     (2) The Department of Agriculture and Consumer Services  
 shall issue a license if the applicant:  
     (a) Is a resident of the United States and a citizen of  
 the United States or a permanent resident alien of the United  
 States, as determined by the United States Bureau of Citizenship  
 and Immigration Services, or is a consular security official of

1977 a foreign government that maintains diplomatic relations and  
 1978 treaties of commerce, friendship, and navigation with the United  
 1979 States and is certified as such by the foreign government and by  
 1980 the appropriate embassy in this country;

1981 (b) Is 21 years of age or older;

1982 (c) Does not suffer from a physical infirmity which  
 1983 prevents the safe handling of a weapon or firearm;

1984 (d) Is not ineligible to possess a firearm pursuant to s.  
 1985 790.23 by virtue of having been convicted of a felony;

1986 (e) Has not been committed for the abuse of a controlled  
 1987 substance or been found guilty of a crime under the provisions  
 1988 of chapter 893 or similar laws of any other state relating to  
 1989 controlled substances within a 3-year period immediately  
 1990 preceding the date on which the application is submitted;

1991 (f) Does not chronically and habitually use alcoholic  
 1992 beverages or other substances to the extent that his or her  
 1993 normal faculties are impaired. It shall be presumed that an  
 1994 applicant chronically and habitually uses alcoholic beverages or  
 1995 other substances to the extent that his or her normal faculties  
 1996 are impaired if the applicant has been committed under chapter  
 1997 397 or under the provisions of former chapter 396 or has been  
 1998 convicted under s. 790.151 or has been deemed a habitual  
 1999 offender under s. 856.011(3), or has had two or more convictions  
 2000 under s. 316.193 or similar laws of any other state, within the  
 2001 3-year period immediately preceding the date on which the  
 2002 application is submitted;

2003 (g) Desires a legal means to carry a concealed weapon or  
 2004 firearm for lawful self-defense;

2005 (h) Demonstrates competence with a firearm by any one of  
 2006 the following:

2007 1. Completion of any hunter education or hunter safety  
 2008 course approved by the Fish and Wildlife Conservation Commission  
 2009 or a similar agency of another state;

2010 2. Completion of any National Rifle Association firearms  
 2011 safety or training course;

2012 3. Completion of any firearms safety or training course or  
 2013 class available to the general public offered by a law  
 2014 enforcement agency, junior college, college, or private or  
 2015 public institution or organization or firearms training school,  
 2016 using ~~utilizing~~ instructors certified by the National Rifle  
 2017 Association, Criminal Justice Standards and Training Commission,  
 2018 or the Department of Agriculture and Consumer Services;

2019 4. Completion of any law enforcement firearms safety or  
 2020 training course or class offered for security guards,  
 2021 investigators, special deputies, or any division or subdivision  
 2022 of a law enforcement agency or security enforcement;

2023 5. Presents evidence of equivalent experience with a  
 2024 firearm through participation in organized shooting competition  
 2025 or military service;

2026 6. Is licensed or has been licensed to carry a firearm in  
 2027 this state or a county or municipality of this state, unless  
 2028 such license has been revoked for cause; or

2029           7. Completion of any firearms training or safety course or  
 2030 class conducted by a state-certified or National Rifle  
 2031 Association certified firearms instructor;

2032  
 2033 A photocopy of a certificate of completion of any of the courses  
 2034 or classes; ~~or~~ an affidavit from the instructor, school, club,  
 2035 organization, or group that conducted or taught such ~~said~~ course  
 2036 or class attesting to the completion of the course or class by  
 2037 the applicant; or a copy of any document that ~~which~~ shows  
 2038 completion of the course or class or evidences participation in  
 2039 firearms competition shall constitute evidence of qualification  
 2040 under this paragraph. A ~~any~~ person who conducts a course  
 2041 pursuant to subparagraph 2., subparagraph 3., or subparagraph  
 2042 7., or who, as an instructor, attests to the completion of such  
 2043 courses, must maintain records certifying that he or she  
 2044 observed the student safely handle and discharge the firearm in  
 2045 his or her physical presence and that the discharge of the  
 2046 firearm included live fire using a firearm and ammunition as  
 2047 defined in s. 790.001;

2048           (i) Has not been adjudicated an incapacitated person under  
 2049 s. 744.331, or similar laws of any other state, unless 5 years  
 2050 have elapsed since the applicant's restoration to capacity by  
 2051 court order;

2052           (j) Has not been committed to a mental institution under  
 2053 chapter 394, or similar laws of any other state, unless the  
 2054 applicant produces a certificate from a licensed psychiatrist



2055 that he or she has not suffered from disability for at least 5  
 2056 years before ~~prior to~~ the date of submission of the application;

2057 (k) Has not had adjudication of guilt withheld or  
 2058 imposition of sentence suspended on any felony ~~or misdemeanor~~  
 2059 ~~crime of domestic violence~~ unless 3 years have elapsed since  
 2060 probation or any other conditions set by the court have been  
 2061 fulfilled, or expunction has occurred ~~the record has been sealed~~  
 2062 ~~or expunged~~;

2063 (l) Has not had adjudication of guilt withheld or  
 2064 imposition of sentence suspended on any misdemeanor crime of  
 2065 domestic violence unless 3 years have elapsed since probation or  
 2066 any other conditions set by the court have been fulfilled, or  
 2067 the record has been sealed or expunged;

2068 (m) ~~(l)~~ Has not been issued an injunction that is currently  
 2069 in force and effect and that restrains the applicant from  
 2070 committing acts of domestic violence or acts of repeat violence;  
 2071 and

2072 (n) ~~(m)~~ Is not prohibited from purchasing or possessing a  
 2073 firearm by any other provision of Florida or federal law.

2074 (4) The application shall be completed, under oath, on a  
 2075 form adopted ~~promulgated~~ by the Department of Agriculture and  
 2076 Consumer Services and shall include:

2077 (a) The name, address, place of birth, ~~and~~ date of birth,  
 2078 and race, ~~and occupation~~ of the applicant;

2079 (b) A statement that the applicant is in compliance with  
 2080 criteria contained within subsections (2) and (3);

2081 (c) A statement that the applicant has been furnished a  
 2082 copy of this chapter and is knowledgeable of its provisions;

2083 (d) A conspicuous warning that the application is executed  
 2084 under oath and that a false answer to any question, or the  
 2085 submission of any false document by the applicant, subjects the  
 2086 applicant to criminal prosecution under s. 837.06; ~~and~~

2087 (e) A statement that the applicant desires a concealed  
 2088 weapon or firearms license as a means of lawful self-defense;  
 2089 and-

2090 (f) Directions for an applicant who is a servicemember, as  
 2091 defined in s. 250.01, or a veteran, as defined in s. 1.01, to  
 2092 request expedited processing of his or her application.

2093 (5) The applicant shall submit to the Department of  
 2094 Agriculture and Consumer Services or an approved tax collector  
 2095 pursuant to s. 790.0625:

2096 (a) A completed application as described in subsection  
 2097 (4).

2098 (b) A nonrefundable license fee of up to \$60 ~~\$70~~ if he or  
 2099 she has not previously been issued a statewide license or of up  
 2100 to \$50 ~~\$60~~ for renewal of a statewide license. The cost of  
 2101 processing fingerprints as required in paragraph (c) shall be  
 2102 borne by the applicant. However, an individual holding an active  
 2103 certification from the Criminal Justice Standards and Training  
 2104 Commission as a law enforcement officer, correctional officer,  
 2105 or correctional probation officer as defined in s. 943.10(1),  
 2106 (2), (3), (6), (7), (8), or (9) is exempt from the licensing

2107 requirements of this section. If such individual wishes to  
 2108 receive a concealed weapon ~~weapons~~ or firearm ~~firearms~~ license,  
 2109 he or she is exempt from the background investigation and all  
 2110 background investigation fees, but must pay the current license  
 2111 fees regularly required to be paid by nonexempt applicants.  
 2112 Further, a law enforcement officer, a correctional officer, or a  
 2113 correctional probation officer as defined in s. 943.10(1), (2),  
 2114 or (3) is exempt from the required fees and background  
 2115 investigation for ~~a period of~~ 1 year after his or her  
 2116 retirement.

2117 (c) A full set of fingerprints of the applicant  
 2118 administered by a law enforcement agency or the Division of  
 2119 Licensing of the Department of Agriculture and Consumer Services  
 2120 or an approved tax collector pursuant to s. 790.0625 together  
 2121 with any personal identifying information required by federal  
 2122 law to process fingerprints.

2123 (d) A photocopy of a certificate, affidavit, or document  
 2124 as described in paragraph (2)(h).

2125 (e) A full frontal view color photograph of the applicant  
 2126 taken within the preceding 30 days, in which the head, including  
 2127 hair, measures 7/8 of an inch wide and 1 1/8 inches high.

2128 (f) For expedited processing of an application:

2129 1. A servicemember shall submit a copy of the Common  
 2130 Access Card, United States Uniformed Services Identification  
 2131 Card, or current deployment orders.

2132 2. A veteran shall submit a copy of the DD Form 214,

2133 issued by the United States Department of Defense, or another  
 2134 acceptable form of identification as specified by the Department  
 2135 of Veterans' Affairs.

2136 (6)

2137 (f) The Department of Agriculture and Consumer Services  
 2138 shall, upon receipt of a completed application and the  
 2139 identifying information required under paragraph (5) (f),  
 2140 expedite the processing of a servicemember's or a veteran's  
 2141 concealed weapon or firearm license application.

2142 (10) A license issued under this section shall be  
 2143 suspended or revoked pursuant to chapter 120 if the licensee:

2144 (a) Is found to be ineligible under the criteria set forth  
 2145 in subsection (2);

2146 (b) Develops or sustains a physical infirmity which  
 2147 prevents the safe handling of a weapon or firearm;

2148 (c) Is convicted of a felony which would make the licensee  
 2149 ineligible to possess a firearm pursuant to s. 790.23;

2150 (d) Is found guilty of a crime under the provisions of  
 2151 chapter 893, or similar laws of any other state, relating to  
 2152 controlled substances;

2153 (e) Is committed as a substance abuser under chapter 397,  
 2154 or is deemed a habitual offender under s. 856.011(3), or similar  
 2155 laws of any other state;

2156 (f) Is convicted of a second violation of s. 316.193, or a  
 2157 similar law of another state, within 3 years after ~~of~~ a first  
 2158 ~~previous~~ conviction of such section~~7~~, or similar law of another

2159 state, even though the first violation may have occurred before  
 2160 ~~prior to~~ the date on which the application was submitted;

2161 (g) Is adjudicated an incapacitated person under s.  
 2162 744.331, or similar laws of any other state; or

2163 (h) Is committed to a mental institution under chapter  
 2164 394, or similar laws of any other state.

2165

2166 Notwithstanding s. 120.60(5), service of a notice of the  
 2167 suspension or revocation of a concealed weapon or firearm  
 2168 license must be given by either certified mail, return receipt  
 2169 requested, to the licensee at his or her last known mailing  
 2170 address furnished to the Department of Agriculture and Consumer  
 2171 Services, or by personal service. If a notice given by certified  
 2172 mail is returned as undeliverable, a second attempt must be made  
 2173 to provide notice to the licensee at that address, by either  
 2174 first-class mail in an envelope, postage prepaid, addressed to  
 2175 the licensee at his or her last known mailing address furnished  
 2176 to the department, or, if the licensee has provided an e-mail  
 2177 address to the department, by e-mail. Such mailing by the  
 2178 department constitutes notice, and any failure by the licensee  
 2179 to receive such notice does not stay the effective date or term  
 2180 of the suspension or revocation. A request for hearing must be  
 2181 filed with the department within 21 days after notice is  
 2182 received by personal delivery, or within 26 days after the date  
 2183 the department deposits the notice in the United States mail (21  
 2184 days plus 5 days for mailing). The department shall document its

2185 attempts to provide notice and such documentation is admissible  
 2186 in the courts of this state and constitutes sufficient proof  
 2187 that notice was given.

2188 Section 40. Effective upon this act becoming a law,  
 2189 paragraph (a) of subsection (11) of section 790.06, Florida  
 2190 Statutes, is amended to read:

2191 790.06 License to carry concealed weapon or firearm.—

2192 (11) (a) At least ~~No less than~~ 90 days before the  
 2193 expiration date of the license, the Department of Agriculture  
 2194 and Consumer Services shall mail to each licensee a written  
 2195 notice of the expiration and a renewal form prescribed by the  
 2196 Department of Agriculture and Consumer Services. The licensee  
 2197 must renew his or her license on or before the expiration date  
 2198 by filing with the Department of Agriculture and Consumer  
 2199 Services the renewal form containing an ~~a notarized~~ affidavit  
 2200 submitted under oath and under penalty of perjury stating that  
 2201 the licensee remains qualified pursuant to the criteria  
 2202 specified in subsections (2) and (3), a color photograph as  
 2203 specified in paragraph (5) (e), and the required renewal fee.  
 2204 Out-of-state residents must also submit a complete set of  
 2205 fingerprints and fingerprint processing fee. The license shall  
 2206 be renewed upon receipt of the completed renewal form, color  
 2207 photograph, appropriate payment of fees, and, if applicable,  
 2208 fingerprints. Additionally, a licensee who fails to file a  
 2209 renewal application on or before its expiration date must renew  
 2210 his or her license by paying a late fee of \$15. A license may

2211 not be renewed 180 days or more after its expiration date, and  
 2212 such a license is deemed to be permanently expired. A person  
 2213 whose license has been permanently expired may reapply for  
 2214 licensure; however, an application for licensure and fees under  
 2215 subsection (5) must be submitted, and a background investigation  
 2216 shall be conducted pursuant to this section. A person who  
 2217 knowingly files false information under this subsection is  
 2218 subject to criminal prosecution under s. 837.06.

2219 Section 41. Subsection (8) is added to section 790.0625,  
 2220 Florida Statutes, to read:

2221 790.0625 Appointment of tax collectors to accept  
 2222 applications for a concealed weapon or firearm license; fees;  
 2223 penalties.-

2224 (8) Upon receipt of a completed renewal application, a new  
 2225 color photograph, and appropriate payment of fees, a tax  
 2226 collector authorized to accept renewal applications for  
 2227 concealed weapon or firearm licenses under this section may,  
 2228 upon approval and confirmation of license issuance by the  
 2229 department, print and deliver a concealed weapon or firearm  
 2230 license to a licensee renewing his or her license at the tax  
 2231 collector's office.

2232 Section 42. Subsection (1) and paragraph (d) of subsection  
 2233 (3) of section 559.9285, Florida Statutes, are amended to read:

2234 559.9285 Certification of business activities.-

2235 (1) Each certifying party, as defined in s. 559.927(2):

2236 (a) Which does not offer for sale, at wholesale or retail,

2237 prearranged travel or, tourist-related services, ~~or tour-guide~~  
 2238 ~~services~~ for individuals or groups directly to any terrorist  
 2239 state and which originate in Florida;

2240 (b) Which offers for sale, at wholesale or retail, only  
 2241 prearranged travel or, tourist-related services, ~~or tour-guide~~  
 2242 ~~services~~ for individuals or groups directly to any terrorist  
 2243 state and which originate in Florida, but engages in no other  
 2244 business dealings or commerce with any terrorist state; or

2245 (c) Which offers for sale, at wholesale or retail,  
 2246 prearranged travel or, tourist-related services, ~~or tour-guide~~  
 2247 ~~services~~ for individuals or groups directly to any terrorist  
 2248 state and which originate in Florida, and also engages in any  
 2249 other business dealings or commerce with any terrorist state,

2250  
 2251 shall annually certify its business activities by filing a  
 2252 disclosure statement with the department which accurately  
 2253 represents the scope of the seller's business activities  
 2254 according to the criteria provided in paragraph (a), paragraph  
 2255 (b), or paragraph (c).

2256 (3) The department shall specify by rule the form of each  
 2257 certification under this section which shall include the  
 2258 following information:

2259 (d) The type of all prearranged travel or, tourist-related  
 2260 ~~services, or tour-guide services~~ that the certifying party  
 2261 offers for sale to individuals or groups traveling directly to  
 2262 any terrorist state and that originate in Florida, and the



2263 frequency with which such services are offered.

2264 Section 43. Subsection (2) of section 559.937, Florida  
 2265 Statutes, is amended to read:

2266 559.937 Criminal penalties.—Any person or business that  
 2267 violates this part:

2268 (2) Which violation directly or indirectly pertains to an  
 2269 offer to sell, at wholesale or retail, prearranged travel or  
 2270 ~~tourist-related services, or tour guide services~~ for individuals  
 2271 or groups directly to any terrorist state and which originate in  
 2272 Florida, commits a felony of the third degree, punishable as  
 2273 provided in s. 775.082 or s. 775.083.

2274 Section 44. For the 2016-2017 fiscal year, the sum of  
 2275 \$1,305,097 in nonrecurring funds from the Division of Licensing  
 2276 Trust Fund is appropriated to the Department of Agriculture and  
 2277 Consumer Services for the purpose of implementing the amendments  
 2278 made by this act to s. 493.6108, Florida Statutes, relating to  
 2279 the collection of fingerprints and the subsequent payment of  
 2280 fingerprint processing and retention fees to the Department of  
 2281 Law Enforcement.

2282 Section 45. Except as otherwise expressly provided in this  
 2283 act, this act shall take effect July 1, 2016.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 643 Pub. Rec./Department of Agriculture and Consumer Services  
**SPONSOR(S):** Trumbull  
**TIED BILLS:** HB 641 **IDEN./SIM. BILLS:** SB 754

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	12 Y, 1 N	Butler	Anstead
2) Government Operations Subcommittee	13 Y, 0 N	Williamson	Williamson
3) Regulatory Affairs Committee		Butler <i>BSB</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (Department) collaborates with state and federal investigative agencies when pursuing remedies for administrative and civil investigations, most specifically as it relates to the Department's regulation of charitable organizations. Many charitable organizations operate both inside and outside of Florida.

Florida's public records laws do not allow the Department to keep information received from other state or federal agencies, such as the Federal Trade Commission (FTC) or Internal Revenue Service (IRS) confidential and exempt from public record laws. Because of this, the Department is unable to participate in data sharing with several state and federal agencies.

This bill, which is contingent upon the passage of House Bill 641, creates a public record exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information shared is confidential or exempt under the laws or regulations of that state or federal agency.

However, the public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a public necessity statement as required by the State Constitution.

The bill may have a minimal fiscal impact on the Department.

**Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records or public meetings exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Public Records Laws

The State of Florida has a long history of providing public access to governmental records and meetings. The Florida Legislature enacted the first public records law in 1892.<sup>1</sup> One hundred years later, Floridians adopted an amendment to the Florida Constitution that raised the statutory right of access to public records to a constitutional level.<sup>2</sup> Article I, section 24 of the Florida Constitution provides that:

(a) Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Act,<sup>3</sup> which pre-dates the Florida Constitution's public records provisions, specifies conditions under which public access must be provided to records of an agency.<sup>4</sup> Section 119.07(1)(a), F.S., provides that every person who has custody of a public record must permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term "public records" is broadly defined to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."<sup>5</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>6</sup> All such materials, regardless of whether they are in final form, are open for public inspection unless made exempt.<sup>7</sup>

---

<sup>1</sup> s. 1390, 1391 F.S. (Rev. 1892).

<sup>2</sup> FLA. CONST. art. I, s. 24.

<sup>3</sup> ch. 119, F.S.

<sup>4</sup> The word "agency" is defined in s. 119.011(2), F.S., to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Florida Constitution also establishes a right of access to any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except those records exempted by law or the State Constitution.

<sup>5</sup> s. 119.011(12), F.S.

<sup>6</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>7</sup> *Wait v. Florida Power & Light Co.*, 372 So.2d 420 (Fla. 1979).

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in statute.<sup>8</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>10</sup> Exemptions must be created by general law, must specifically state the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.<sup>11</sup> A bill enacting an exemption<sup>12</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>13</sup>

### Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)<sup>14</sup> provides for the systematic review, through a five-year cycle ending October 2 of the fifth year following enactment, of an exemption from public records requirements.<sup>15</sup>

The Act states that an exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>16</sup> An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of the individual under this provision is exempted.
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.<sup>17</sup>

### The Department of Agriculture and Consumer Services

The mission of the Department is to safeguard the public and support Florida's agricultural economy by:

- Ensuring the safety and wholesomeness of food and other consumer products through inspection and testing programs;

<sup>8</sup> 85-62 Fla. Op. Att'y Gen. (1985).

<sup>9</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>10</sup> FLA. CONST. art. I, s. 24.

<sup>11</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 784 So.2d 438 (Fla. 2001); *Halifax Hospital Medical Center v. News-Journal Corp.*, 724 So.2d 567, 569 (Fla. 1999).

<sup>12</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>13</sup> FLA. CONST. art. I, s. 24.

<sup>14</sup> s. 119.15, F.S.

<sup>15</sup> s. 119.15(3), F.S.

<sup>16</sup> s. 119.15(6)(b), F.S.

<sup>17</sup> *Id.*

- Protecting consumers from unfair and deceptive business practices and providing consumer information;
- Assisting Florida's farmers and agricultural industries with the production and promotion of agricultural products; and
- Conserving and protecting the state's agricultural and natural resources by reducing wildfires, promoting environmentally safe agricultural practices, and managing public lands.

The Department investigates and regulates several professions in the State of Florida. The Department's oversight and regulation of charitable organizations was significantly expanded in 2014.<sup>18</sup> The Department is particularly interested in the state and federal resources available to assist with the enforcement and regulation of these entities.

These resources are unavailable to the Department currently because Florida's public records laws do not allow the Department to keep information private when received from another state or federal agency, such as the FTC or the IRS. Due to the Department's inability to agree to maintain the confidentiality of such investigative data, the Department is unable to participate in data sharing with several state and federal agencies.

It would be of significant assistance to the Department to be able to receive data from other state and federal agencies. The FTC operates a Consumer Sentinel database that is protected from public record disclosure and can only be provided to a state agency that agrees not to disseminate the information. This database contains information on subjects related to:

- Identity Theft.
- Do-Not-Call Registry violations.
- Computers, the Internet, and Online Auctions.
- Telemarketing Scams.
- Advance-fee Loans and Credit Scams.
- Immigration Services.
- Sweepstakes, Lotteries, and Prizes.
- Business Opportunities and Work-at-Home Schemes.
- Health and Weight Loss Products.
- Debt Collection, Credit Reports, and Financial Matters.

Similarly, the IRS would be willing to share certain information, on a case by case basis, if the Department could agree that such information would not be disseminated. The IRS has access to tax filing information that would be very valuable to the Department when investigating whether an organization is observing, especially a charitable organization, Florida's laws.

### **Effect of the Bill**

The bill, which is contingent upon the passage of House Bill 641, creates a public records exemption for criminal or civil intelligence or investigative information or any other information held by the Department as part of a joint or multi-agency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency when the information that is shared is confidential or exempt under the laws or regulations of that state or federal agency. The Department may obtain, use, and release the information in accordance with the conditions imposed by the joint or multi-agency agreement.

The public records exemption does not apply to information held by the Department as part of an independent examination or investigation conducted by the Department.

The Department may release the confidential and exempt information in the furtherance of its official duties and responsibilities, or to another governmental agency in the furtherance of its official duties and responsibilities.

The bill provides that the section is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. The bill also provides a public necessity statement as required by the State Constitution.

**B. SECTION DIRECTORY:**

**Section 1** creates s. 570.077, F.S., relating to confidentiality of intelligence or investigative information.

**Section 2** provides a public necessity statement.

**Section 3** provides an effective date that is contingent upon the passage of HB 641 or similar legislation.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may create a minimal fiscal impact on the Department because staff responsible for complying with public records requests could require training related to the creation of the public records exemption. In addition, the Department could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the Department.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public records exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for information held by the Department as part of a joint or multiagency examination or investigation. The exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Department of Agriculture and Consumer Services

According to the Department, adopting this public records exemption will increase efficiency in investigations by saving time on developing leads, and increasing witness and victim data. Further, the Department believes that it will be able to field consumer complaints more efficiently.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None.



A bill to be entitled

An act relating to public records; creating s. 570.077, F.S.; providing an exemption from public records requirements for criminal or civil intelligence or investigative information or any other information held by the Department of Agriculture and Consumer Services as part of an examination or investigation with another state or federal regulatory, administrative, or criminal justice agency; providing exceptions to the exemption; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Section 570.077, Florida Statutes, is created to read:

570.077 Confidentiality of intelligence or investigative information.-

(1) Criminal or civil intelligence or investigative information or any other information held by the department as part of a joint or multiagency examination or investigation with another state or federal regulatory, administrative, or criminal justice agency which is confidential or exempt under the laws or

27 regulations of that state or federal agency is confidential and  
28 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
29 Constitution. The department may obtain, use, and release the  
30 information in accordance with the conditions imposed by the  
31 joint or multiagency agreement.

32 (2) The department may release information that is made  
33 confidential and exempt under subsection (1):

34 (a) In the furtherance of its official duties and  
35 responsibilities.

36 (b) To another governmental agency in the furtherance of  
37 its official duties and responsibilities.

38 (3) The public records exemption provided in subsection  
39 (1) does not apply to information held by the department as part  
40 of an independent examination or investigation conducted by the  
41 department.

42 (4) This section is subject to the Open Government Sunset  
43 Review Act in accordance with s. 119.15 and shall stand repealed  
44 on October 2, 2021, unless reviewed and saved from repeal  
45 through reenactment by the Legislature.

46 Section 2. The Legislature finds that it is a public  
47 necessity that criminal or civil intelligence or investigative  
48 information or any other information held by the Department of  
49 Agriculture and Consumer Services as part of a joint or  
50 multiagency examination or investigation with another state or  
51 federal regulatory, administrative, or criminal justice agency  
52 which is confidential or exempt under the laws or regulations of

53 that state or federal agency be made confidential and exempt  
 54 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 55 the State Constitution. Without the exemption, the department  
 56 will be unable to obtain information that could assist it in  
 57 pursuing violations of law under its jurisdiction. With this  
 58 exemption, the department should increase efficiency of  
 59 investigations by saving time on developing investigative leads,  
 60 witness data, and victim data. Furthermore, the exemption is  
 61 necessary to enable the department to participate in joint or  
 62 multiagency investigations and examinations. Without the  
 63 exemption, the department would continue to be excluded from  
 64 information due to the inability to maintain investigative  
 65 confidentiality. Without the sharing and coordination of  
 66 information, governmental agencies may be required to conduct  
 67 duplicative independent investigations or examinations in order  
 68 to meet their regulatory responsibilities. With this exemption,  
 69 the department will strengthen relationships with other state  
 70 and federal agencies, allowing them to become more efficient by  
 71 sharing critical investigative data.

72 Section 3. This act shall take effect upon becoming a law  
 73 if HB 641 or similar legislation is adopted in the same  
 74 legislative session or an extension thereof and becomes a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 651 Department of Financial Services  
**SPONSOR(S):** Government Operations Appropriations Subcommittee; Insurance & Banking Subcommittee; Beshears and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/SB 992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Yaffe	Luczynski
2) Government Operations Appropriations Subcommittee	9 Y, 0 N, As CS	Keith	Topp
3) Regulatory Affairs Committee		Yaffe <i>DY</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- Authorizing the DFS to create an Internet-based system for the electronic transmission of service of process documents served on the Chief Financial Officer of the State;
- Revising requirements for service of process to unauthorized insurers;
- Revising requirements relating to service of legal process and revising requirements relating to service of process upon insurers or persons representing or aiding insurers;
- Removing the requirement that the Executive Office of the Governor review and approve certain alternative retirement income security programs;
- Clarifying the eligibility requirements for participation in the State's deferred compensation plan;
- Revising requirements for the approval of certain surety bonds;
- Amending the Florida Single Audit Act to conform to new federal standards, defining the term "higher education entity," and adding specific provisions applicable to higher education entities;
- Authorizing the DFS to access the digital photographs of licenses from the Department of Highway Safety and Motor Vehicles to investigate alleged violations of the insurance code by licensees and unlicensed persons;
- Revising safety regulations for carbon monoxide detectors in public lodging establishments;
- Amending the export requirements for commercial residential property insurance;
- Amending the appointment procedures for the Florida Surplus Lines Service Office board of governors;
- Providing additional grounds for the disqualification of a neutral evaluator in sinkhole insurance claims disputes;
- Creating procedures to grant exemptions to persons disqualified from licensure or certification by the Division of State Fire Marshall (DSFM);
- Creating the Firefighter Assistance Grant Program to provide financial assistance in the form of training and equipment for volunteer and combination fire departments;
- Clarifying that the Life Safety Code does not apply to one-family and two-family dwellings;
- Amending the requirements for obtaining a firefighter certificate of compliance;
- Providing for the expiration of firefighter and volunteer firefighter certificates of compliance and completion four years after the date of issuance unless renewed;
- Repealing the statute requiring the DSFM to suspend or revoke a firefighter's certification under certain conditions;
- Amending the requirements to renew firefighter certifications; and
- Providing an appropriation to administer the Firefighter Assistance Grant Program.

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS. The bill has no fiscal impact on local government revenue or expenditures. The Internet-based system for the electronic transmission of service of process documents should have a positive fiscal impact on the private sector.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation - Service of Process

Florida law may designate a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.<sup>1</sup> The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR).<sup>2</sup> Service of process on the CFO is made by mail or personal service<sup>3</sup> and plaintiffs are required to pay the DFS a \$15 fee which is deposited into the Administrative Trust Fund.<sup>4</sup> Once the service of process is received, the CFO retains a record copy in paper or electronic form and promptly forwards the process documents to the defendant's designated agent by registered or certified mail.<sup>5</sup> In lieu of sending the process by registered or certified mail, the CFO may send the process by "any other verifiable means."<sup>6</sup> The language "any other verifiable means" is not defined in statute but, Florida case law has interpreted it to include electronic delivery.<sup>7</sup>

##### Effect of Proposed Changes - Service of Process (sections 1, 9, 10, 11, and 12)

The bill amends s. 48.151(3), F.S., to authorize the DFS to create an Internet-based system to accept service of process documents by electronic transmission for serving the CFO, his or her assistant or deputy, or another person in charge of the office as the agent for *licensed* and *unauthorized* insurers. The purpose of the Internet-based system is to save consumers time and money serving process on the CFO by eliminating the need to copy, package, and mail documents or by eliminating the cost of personal service. The system's electronic transmission should eliminate the 3-7 day period for document delivery through the mail and the 3-7 day period for the DFS to send back a proof of service through the mail.

The bill also modifies several sections of ch. 624, F.S., to provide regulations related to the use of the Internet-based system and other clarifications to service of process. The modified sections of ch. 624, F.S., currently only apply to licensed insurers; however, the bill incorporates "unauthorized insurers" into these sections.

After the CFO receives service of process, he or she may send it by registered or certified mail, or by any other verifiable means to the person to receive the process. The bill modifies these options to permit the process to be sent or made available by any other verifiable means, including but not limited to, making the documents available by electronic transmission from a secure website established by the DFS. If the documents are made available electronically, the CFO is required to send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available and contain the uniform resource locator for a hyperlink to obtain a copy of the process.

<sup>1</sup> s. 48.151, F.S.

<sup>2</sup> The CFO also serves as the agent for service of process to all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., domestic reciprocal insurers, fraternal benefit societies under Ch. 632, F.S., warrant associations under Ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.

<sup>3</sup> s. 48.151, F.S.

<sup>4</sup> s. 624.502, F.S.

<sup>5</sup> s. 624.423(1), F.S.

<sup>6</sup> s. 624.307, F.S.

<sup>7</sup> See *Campbell v. Metropolitan Life Ins. Co.*, No. 2:12-cv-616-Ftm-99SPC, 2013 WL 461872, at \*1 (M.D. Fla.); *Dunn v. Prudential Ins. Co. of America*, No. 8:10-cv-1626-T-24-TGW, 2011 WL 52867, at \*1-2 (M.D. Fla.); *Johnson v. USAA Cas. Ins. Co.*, 900 F. Supp.2d 1310, 1314 fn. 1 (M.D. Fla. 2012).

The bill also revises requirements for service of process to an unauthorized insurer. Currently, the procedures for personal service of process on an insurer or person representing or aiding an unauthorized insurer require delivering the service to the CFO or some person in apparent charge of his or her office. The bill adds the assistant or deputy of the CFO or another person in charge of the office as authorized recipients of the service. Additionally, the bill clarifies that the party requesting service of process on an authorized or unauthorized insurer is required to pay the \$15 fee to the DFS.

#### Current Situation - Alternative Retirement Income Security Program

The DFS provides an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services.<sup>8</sup> The DFS is permitted to contract with a private vendor(s) to administer the program under a defined-contribution plan. The DFS may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. The proposal must comply with all necessary federal and state laws and rules. The program requires the review and approval of the Executive Office of the Governor.

#### Effect of Proposed Changes - Alternative Retirement Income Security Program (section 2)

The bill removes the requirement that the Executive Office of the Governor review and approve the alternative retirement income security program.

#### Current Situation - Deferred Compensation Program

The CFO, with approval of the State Board of Administration, is required to establish a deferred compensation plan for state employees under the "Government Employees' Deferred Compensation Act."<sup>9</sup> A deferred compensation plan is a retirement savings plan that allows eligible employees to supplement any existing retirement and pension benefits by saving and investing before-tax dollars through a tax-deferred voluntary salary contribution.<sup>10</sup> Currently, the statutory language is unclear regarding which government entities are eligible to participate in the plan.

#### Effect of Proposed Changes - Deferred Compensation Program (section 3)

The bill clarifies that eligibility in the deferred compensation plan shall apply to persons employed by a state university as defined in s. 1000.21(6), F.S.,<sup>11</sup> a special district as defined in s. 189.012(6), F.S.,<sup>12</sup> or a water management district as defined in s. 189.012, F.S.<sup>13</sup> The bill authorizes the CFO to adopt any rule necessary to administer and implement the deferred compensation plan with respect to these parties.

---

<sup>8</sup> s. 110.1315, F.S.

<sup>9</sup> s. 112.215(4)(a), F.S.

<sup>10</sup> DEPARTMENT OF FINANCIAL SERVICES, *Florida Deferred Compensation Plan FAQ*, <https://www.myfloridaderferredcomp.com/SOFWeb/plan.aspx> (last visited Jan. 25, 2016).

<sup>11</sup> "'State university,' except as otherwise specifically provided, includes the following institutions and any branch campuses, centers, or other affiliates of the institution:" The University of Florida; The Florida State University; The Florida Agricultural and Mechanical University; The University of South Florida; The Florida Atlantic University; The University of West Florida; The University of Central Florida; The University of North Florida; The Florida International University; The Florida Gulf Coast University; New College of Florida; The Florida Polytechnic University.

<sup>12</sup> "'Special district' means a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality."

<sup>13</sup> "'Water management district' for purposes of this chapter means a special taxing district which is a regional water management district created and operated pursuant to chapter 373 or chapter 61-691, Laws of Florida, or a flood control district created and operated pursuant to chapter 25270, Laws of Florida, 1949, as modified by s. 373.149."

## Current Situation - Surety Bonds

*County Officers:* a county officer serving on a board of county commissioners may be required by ordinance to give a surety bond conditioned on the faithful performance of the duties of her or his office.<sup>14</sup> The board of county commissions and the DFS are required to approve each surety bond.<sup>15</sup> This law dates back to 1887, when county officers had to pledge personal property to protect the county in the event that the official embezzled county money or property.<sup>16</sup>

*Florida Inland Navigation District (FIND) Commissioners:* FIND is an independent special district existing under Florida law.<sup>17</sup> The agency head of FIND is a collegial body known as the Board of Commissioners of Florida Inland Navigation District (Board),<sup>18</sup> comprised of one commissioner from each of the following twelve counties along Florida's east coast: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade.<sup>19</sup> Each commissioner is appointed by the Governor and upon appointment, before assuming office, each commissioner is required to give a surety bond in the sum of \$10,000 payable to the Governor, conditioned upon the faithful performance of the duties of the office.<sup>20</sup> The surety bond is approved by and filed with the CFO.<sup>21</sup>

## Effect of Proposed Changes - Surety Bonds (sections 4 and 7)

*County Officers:* the bill removes the requirement that the DFS approve each surety bond issued upon county officers. Only the board of county commissioners shall be required to approve each surety bond. The DFS reports that it has no recent inquiries related to the bonds and believes this statutory section has outlived its usefulness and applicability.<sup>22</sup> The Florida Association of Counties reviewed the proposed change and agreed with the DFS, indicating they do not foresee any problems with the change.<sup>23</sup>

*Florida Inland Navigation District Commissioners:* the bill requires that the \$10,000 surety bond provided by Board commissioners be approved by and filed with the Board of Commissioners of FIND, rather than the CFO.

## Current Situation - Florida Single Audit Act

The Florida Single Audit Act (FSAA) establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.<sup>24</sup> The FSAA is intended to closely parallel the Federal Single Audit Act. Under the FSAA, nonstate entities include nonprofit organizations, for-profit organizations, and local government entities.<sup>25</sup> The Federal Act does not apply to for-profit organizations. Pursuant to the FSAA, certain nonstate entities that exceed the "audit threshold" are subject to a state single audit or a project specific audit.<sup>26</sup> Florida's

---

<sup>14</sup> s. 137.01, F.S.

<sup>15</sup> s. 137.09, F.S.

<sup>16</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 1-2 (Jan. 1, 2016).

<sup>17</sup> FIND has two primary missions: (1) to perform the functions of the "local sponsor" of the Atlantic Intracoastal Waterway project and a portion of the Okeechobee Waterway project in Florida, both of which are State/Federal navigation projects, and (2) provide assistance to other governments to develop waterway access and improvement projects. THE FLORIDA INLAND NAVIGATION DISTRICT, *Our Mission Statement*, <http://www.aicw.org/mission.jsp> (last visited Jan. 25, 2016).

<sup>18</sup> *Id.*

<sup>19</sup> s. 374.983(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 4 (Jan. 1, 2016).

<sup>23</sup> Email from Laura Youmans, Esq., Legislative Associate, Florida Association of Counties, RE: County Surety Bonds (Oct. 22, 2015).

<sup>24</sup> s. 215.97, F.S.

<sup>25</sup> s. 215.97(2)(m), F.S.

<sup>26</sup> s. 215.97(2)(a), F.S.



“audit threshold” is triggered when a nonstate entity spends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year.<sup>27</sup>

On December 13, 2013, the Federal Office of Management and Budget (OMB) issued a rule to amend the Federal Single Audit requirements to strengthen oversight and focus audits where there is the greatest risk of waste, fraud, and abuse of taxpayer dollars.<sup>28</sup> OMB increased their “audit threshold” from \$500,000 to \$750,000 such that any state, local government, or nonprofit entity that receives and spends an amount equal to or in excess of \$750,000 in federal awards is subject to a single audit.<sup>29</sup> Entities that receive state financial assistance typically also receive federal grant awards and must therefore comply with the Federal and State audit requirements. The FSAA provides that every two years, the threshold amount shall be reviewed and may be adjusted in order to be consistent with the purposes of the FSAA.<sup>30</sup>

#### **Effect of Proposed Changes - Florida Single Audit Act** (section 5)

The bill amends the FSAA to more closely conform to the Federal Single Audit Act, including the following changes:

- Amends the definition of “audit threshold” to raise the amount a nonstate entity must expend from \$500,000 to \$750,000 of state financial assistance in any fiscal year to be subject to a state single audit or project-specific audit;
- Clarifies the application of the FSAA to higher education entities:
  - Creates a definition for “higher education entity” which means a Florida College System institution or a state university;
  - Amends the definition of “nonstate entity” to include “higher education entity”; and
  - Exempts higher education entities from the audit threshold provisions and from the audit requirements, while continuing to subject them to the remaining provisions, including contracting and record keeping requirements.
- Clarifies requirements of the FSAA when a higher education entity acts only as a conduit of state financial assistance to a subrecipient.

#### **Current Situation – Color Photographic or Digital Image Licenses**

The Department of Highway Safety and Motor Vehicles maintains a digital record of digital photographs of licenses and signatures pursuant to s. 322.142, F.S. These photographs and signatures (and other data required for identification and retrieval) are exempt from public disclosure but may be shared with various state agencies to assist the agencies with their duties. The DFS can obtain such photographs to facilitate the validation of unclaimed property claims and the identification of false or fraudulent claims. The DFS is unable to obtain these photographs for the investigation of alleged violations of the Florida Insurance Code,<sup>31</sup> which often makes it difficult for an investigator to document and confirm the identity of the alleged violator.<sup>32</sup>

#### **Effect of Proposed Changes – Color Photographic or Digital Image Licenses** (Section 6)

The bill authorizes the DFS to access the digital photographs of licenses from the Department of Highway Safety and Motor Vehicles’ digital records to investigate alleged violations of the insurance code by licensees and unlicensed persons. The DFS indicates this bill will help their investigative efforts

---

<sup>27</sup> *Id.*

<sup>28</sup> FEDERAL REGISTER, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, <https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards> (last visited Jan. 5, 2016).

<sup>29</sup> *Id.*

<sup>30</sup> s. 215.97, F.S.

<sup>31</sup> s. 624.01, F.S., states that chs. 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.”

<sup>32</sup> Florida Department of Financial Services, Agency Analysis of 2015 Senate Bill 992, p. 6 (Jan. 12, 2016).

to accurately confirm an accused's identity.<sup>33</sup> Additionally, the DFS indicates that the ability to authenticate signatures on documents with the accused's legally authenticated signature will be an invaluable tool in its investigative efforts.<sup>34</sup>

### **Current Situation – Safety Regulations in Public Lodging Establishments**

The DFS regulates “boiler” safety pursuant to ch. 554, F.S.,<sup>35</sup> the “Boiler Safety Act.” Every enclosed space or room that contains a “boiler” and that is located in any portion of a public lodging establishment that also contains sleeping rooms must be equipped with one or more carbon monoxide sensor devices that bear the label of a nationally recognized testing laboratory and complies with the most recent Underwriters Laboratories, Inc., Standard 2034, or its equivalent. Such devices must be integrated with the public lodging establishment's fire detection system, in accordance with rules adopted by the Division of State Fire Marshal (DSFM). A carbon monoxide sensor is not necessary if the DFS, acting through the DSFM, determines that carbon monoxide hazards have been adequately mitigated.

### **Effect of Proposed Changes – Safety Regulations in Public Lodging Establishments** (Section 8)

The bill removes the requirement that a carbon monoxide detector bear the label of a nationally recognized testing laboratory. The bill requires that carbon monoxide detectors bear a certification mark from a testing and certification organization accredited in accordance with ISO/IEC Guide 65, General Requirements for Bodies Operating Product Certification Systems and that have been tested and listed as complying with the most recent Underwriters Laboratories Standard 2075, or its equivalent.

The exception to this requirement, i.e., when the DSFM determines that carbon monoxide hazards have been adequately mitigated, is removed from statute.

### **Current Situation – Eligibility for Export of Commercial Residential Property Insurance**

Commercial residential property insurance provides coverage for condominium associations, homeowner associations, continuing care retirement communities, and apartment complexes. When this insurance coverage cannot be procured from an authorized insurer, such coverage may be procured from an unauthorized insurer subject to several conditions. Two relevant conditions are (1) the insurance must be eligible for “export” under s. 626.916, F.S., and (2) the insurer must be an “eligible surplus lines insurer.”

To “export” insurance “means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.”<sup>36</sup> An “eligible surplus lines insurer” means an unauthorized insurer which has been made eligible by the Florida Surplus Lines Service Office to issue insurance coverage under Surplus Lines law.<sup>37</sup>

In order for insurance coverage to be eligible for export, certain statutory conditions must be met.<sup>38</sup> In general, the conditions prevent an eligible surplus lines insurer, which is subject to substantially less regulation than an admitted carrier, from offering policies with terms and conditions that are more favorable than can be offered by an admitted insurer. An agent is required to determine that the insurance is not available from a company currently writing in the state and limits any amount that may be exported to the amount in excess of the amount that can be procured in the state. The agent must

---

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> A “boiler” is a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or any combination of these functions is accomplished, under pressure or vacuum, for use external to itself, by the direct application of energy from the combustion of fuels or from electric or solar energy.” s. 554.1021(1), F.S.

<sup>36</sup> s. 626.914, F.S.

<sup>37</sup> *Id.*

<sup>38</sup> s. 626.916(1), F.S.

document that he or she has made a “diligent effort” to procure the coverage from an admitted insurer. “Diligent effort” is defined as seeking and being denied coverage from at least three authorized insurers in the admitted market, unless the cost to replace the property insured is \$1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.<sup>39</sup> Therefore, a consumer is prohibited from inquiring what coverage is available in the surplus lines market until a diligent effort has been made to procure coverage from an admitted insurer.

Additionally, premium rates, policy or contract forms, and deductible amounts for an exported policy may not be more favorable than those offered by a majority of authorized insurers in the state.

### **Effect of Proposed Changes – Eligibility for Export of Commercial Residential Property Insurance (Section 13)**

The bill exempts commercial residential property insurance from the export eligibility conditions in s. 626.916, F.S. Consequently, commercial residential property insurance coverage may be exported to a surplus lines carrier without meeting the conditions related to diligent efforts to procure coverage from an admitted carrier, comparability of premiums, policy contents, and deductibility. The bill may result in surplus lines carriers having a competitive advantage over admitted carriers offering commercial residential property insurance coverage due to the reduced regulations that surplus lines carriers are subject to versus admitted carriers.

### **Current Situation – Florida Surplus Lines Service Officers**

The Florida Surplus Lines Service Office (Office) is a self-regulating, nonprofit association of approved unauthorized insurers, established by the Legislature in 1997. The Office was created to protect consumers seeking surplus-line insurance in the state, monitor marketplace compliance, and protect state revenues.<sup>40</sup> All licensed surplus line agents are deemed to be members of the Office. The Office operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market. The board consists of:

- Five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association;
- Two individuals appointed by the DFS, one from each of the two largest domestic agents’ associations, each of whom is a licensed surplus lines agent;
- The Insurance Consumer Advocate; and
- One individual appointed by the DFS, who shall be a risk manager for a large domestic commercial enterprise.

Each board member serves a 3-year term, staggered such that a number of appointments expire annually.

### **Effect of Proposed Changes – Florida Surplus Lines Service Officers (Section 14)**

The bill amends the appointment procedure for the five individuals appointed by the DFS from the regular membership of the Florida Surplus Lines Association. The bill requires that the DFS appoint members from a pool of five nominees chosen by the association.

### **Current Situation - Neutral Evaluation for Sinkhole Insurance Claims**

Florida’s neutral evaluator program is an alternative process for resolving sinkhole insurance claims disputes. The DFS administers the program and is required to certify engineers and geologists to serve as neutral evaluators. A neutral evaluator is a fair and impartial third party selected mutually by a policyholder and insurer, and is an engineer licensed under ch. 471, F.S., who has experience and

---

<sup>39</sup> See s. 626.914, F.S.

<sup>40</sup> See s. 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, <https://www.fsiso.com/about> (last visited Jan. 26, 2016).

expertise in the identification of sinkhole activity as well as other potential causes of structural damage.<sup>41</sup> Following the report or a denial of a claim, the insurer must inform the policyholder, in writing, of their right to participate in the neutral evaluation program and must include an informational pamphlet prepared by the DFS.<sup>42</sup> The neutral evaluation program is mandatory once requested by either party. The insurer must pay all costs associated with the program.<sup>43</sup> At the conclusion of the neutral evaluation, the neutral evaluator prepares a report stating whether the sinkhole loss has been verified or invalidated.<sup>44</sup>

Upon receipt of a request for neutral evaluation, the DFS is required to provide the parties with a list of certified neutral evaluators.<sup>45</sup> The policyholder and insurer may submit requests to the DFS to disqualify neutral evaluators for cause. Cause is based on any of the following grounds:

- 1) A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party;
- 2) The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter;
- 3) The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties; or
- 4) The neutral evaluator has worked as an employer or employee of any party to the case in the preceding 5 years.

#### **Effect of Proposed Changes - Neutral Evaluation for Sinkhole Insurance Claims** (section 15)

The bill adds an additional basis for the DFS to disqualify a proposed neutral evaluator for cause at the request of a party. A proposed neutral evaluator may be disqualified for cause if, within the preceding 5 years, the neutral evaluator worked for the company or firm that performed the initial testing to determine the presence or absence of sinkhole loss or other causes of damage to the property in question.

#### **Current Situation – Exemption from Disqualification from Licensure or Certification**

An individual is disqualified from obtaining any class of firefighter certification or licensure if such individual has committed a felony or a crime punishable by imprisonment of 1 year or more, or has been dishonorably discharged from the United States Armed Forces.<sup>46</sup> Current law does not provide the DFS with the discretion to grant disqualified individuals an exemption from disqualification.

#### **Effect of Proposed Changes – Exemption from Disqualification from Licensure or Certification** (Section 17)

The bill creates s. 633.107, F.S., establishing discretionary standards whereby the DFS may exempt an applicant convicted of a felony or dishonorably discharged from the United States Armed Forces from disqualification from licensure or certification. Two primary requirements must be met:

- 1) The applicant must have paid in full any cost imposed by a court as part of the judgment and sentence for the disqualifying offense; and
  - a. A minimum of 5 years have elapsed since the applicant completed or was lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying offense; or
  - b. A minimum of 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.

<sup>41</sup> s. 627.706(2)(c), F.S.

<sup>42</sup> s. 627.7074(3), F.S.

<sup>43</sup> s. 627.7074(6), F.S.

<sup>44</sup> s. 627.7074(12), F.S.

<sup>45</sup> s. 627.7074(7), F.S.

<sup>46</sup> ss. 633.412 and 633.408, F.S.

- 2) The applicant must clearly and convincingly demonstrate to the DFS that she or he does not pose a risk to persons or property if permitted to be licensed or certified. The bill provides for the types of evidence that may be presented by the applicant.

The DFS retains discretion to grant an exemption and such decisions must be made in writing. The DFS' decisions are subject to proceedings under ch. 120, F.S.

An exemption applicant that has received executive clemency or a pardon is not subject to the time limitations noted above. Applicants that receive an executive clemency are required to comply with the second requirement above. The DFS is not required to award the exemption. The DSFM has rulemaking authority to adopt rules to administer this section.

### **Current Situation – Firefighter Assistance Grant Program**

Volunteer firefighters comprise about 69 percent of firefighters in the United States.<sup>47</sup> Since 1984, the number of volunteer firefighters has declined by about 12 percent, from 897,750 to 786,150.<sup>48</sup> Factors contributing to the decline in volunteer firefighters include increased time demands and costs for training coupled with potential volunteers that work multiple jobs in two-income families.<sup>49</sup> The situation is no different in Florida, where nearly 12 million residents depend on volunteer firefighters to protect their communities,<sup>50</sup> yet many volunteer and combination fire departments<sup>51</sup> report fiscal constraints in acquiring the training and equipment that is needed to perform their duties while still meeting the required minimum safety levels.<sup>52</sup>

The Florida Fire College, in conjunction with corporate sponsors, hosts the annual Northwest Volunteer Firefighter Weekend (NVFW). The event provides volunteer firefighters with free training and equipment. The DFS reports that attendees consistently report that if not for the NVFW, they would not have the resources to take the proper training courses and to acquire the proper equipment to perform their duties because many volunteer and combination fire departments rely on donations to fund a large part of their operations.<sup>53</sup> Additionally, the DSFM, through its statutory authority to perform safety inspections of fire departments, constantly reports compliance issues with training and equipment due to a lack of fiscal resources.<sup>54</sup>

### **Effect of Proposed Changes – Firefighter Assistance Grant Program** (Section 18)

The bill creates s. 633.135, F.S., the Firefighter Assistance Grant Program (Program), within the DSFM, to improve the emergency response capabilities of volunteer fire departments and combination fire departments. The Program's stated goal is to improve firefighter safety and enable fire departments to provide firefighting, emergency medical, and rescue services to their communities.

The Program will annually award financial assistance to aid such fire departments in providing firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion and procuring the necessary equipment for the firefighter and fire department. On average, the cost to train and equip a volunteer firefighter with personal protective equipment is about \$27,095 and the cost of fire engine

---

<sup>47</sup> NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> FLORIDA'S CHIEF FINANCIAL OFFICER, *Florida Volunteer Firefighter Information*, <http://www.myfloridacfo.com/Division/sfm/VOLFF/default.htm> (last visited Jan. 26, 2016).

<sup>51</sup> A "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

<sup>52</sup> Email from B.G. Murphy, Deputy Legislative Affairs Director, Florida Department of Financial Services, RE: FFAG – Talking Points (Jan. 22, 2015).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

pump apparatus equipment can range \$150,000 - \$400,000.<sup>55</sup> Grants will be awarded based on the annual Florida Fire Service Needs Assessment Survey and priority will be given to fire departments in counties with populations of 75,000 or less.

The DSFM is given rulemaking authority to adopt rules and procedures for the Program that require grant recipients to:

- Report their activity to the DSFM for submission in the Fire and Emergency Incident Information Reporting System;
- Annually complete and submit the Florida Fire Service Needs Assessment Survey to the DSFM;
- Comply with the Florida Firefighters Occupational Safety and Health Act;
- Comply with any other rule determined by the DSFM to effectively and efficiently implement, administer, and manage the Program; and
- Meet the definition of a “fire service provider” in s. 633.102, F.S.

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS.

### **Current Situation - Minimum Firesafety Standards**

The Life Safety Code (LSC), which is contained in the Florida Fire Prevention Code (FFPC), provides minimum fire safety requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures. The LSC does not apply to one-family and two-family dwellings; however, the current statutory language could be misconstrued to suggest that the LSC does apply to “newly constructed” one-family and two-family dwellings.

### **Effect of Proposed Changes - Minimum Firesafety Standards** (section 19)

The bill removes “newly constructed” from the statute to clarify that the LSC does not apply to existing or newly constructed one-family and two-family dwellings.

### **Current Situation - Firefighter Certification**

Chapter 633, F.S., governs state law on fire prevention and control. The CFO is designated as the State Fire Marshall, operating through the DSFM,<sup>56</sup> and tasked with regulating “fire service providers.” The DSFM is responsible for establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters. A Firefighter is defined as an individual who holds a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the DSFM. A FCOC is issued by the DSFM to an individual who does all of the following:

1. Satisfactorily completes the Minimum Standards Course or training in another state determined by the DSFM to be, at a minimum, the equivalent of the training required for the Minimum Standards Course;
2. Passes the Minimum Standards Course examination; and
3. Meets the character and fitness requirements set forth in s. 633.412, F.S.

The DFS has reported that many applicants wait a year or longer to take the Minimum Standards Course examination after completion of the course, resulting in a high rate of failure and the need to re-take the course.<sup>57</sup>

---

<sup>55</sup> NATIONAL VOLUNTEER FIREFIGHTER COUNCIL, *Fire Service Statistics and Fact Sheets*, <http://www.nvfc.org/hot-topics/statistics-and-fact-sheets> (last visited Jan. 26, 2016).

<sup>56</sup> s. 633.104, F.S.

<sup>57</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 5 (Jan. 1, 2016).

“Certification” or “certified” is defined as the act of holding a current and valid certificate.<sup>58</sup> If evidence is found to demonstrate that certification was improperly issued, such as issuance on the basis of false or misleading information, an individual’s certification may be suspended or revoked by the DSFM. In such a case, the DSFM must suspend or revoke all other certificates issued to the individual by the DSFM.

In order for a firefighter to retain/renew her or his FCOC, every 4 years she or he must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.<sup>59</sup>

Currently, there are no separate renewal requirements for a fire service instructor.

#### Effect of Proposed Changes - Firefighter Certification (sections 16, 20, 21, 22, and 23)

The bill redefines “fire service provider” to include ‘the DSFM’ which houses and employs over 140 firefighters. This change will permit the DSFM’s firefighters to be classified as active firefighters in accordance with statute.

The bill repeals the mandatory requirement of a suspension or revocation of all other certifications issued to an individual following the suspension or revocation of an individual’s certificate.

The bill requires the Minimum Standards Course examination to be taken and passed within 12 months of completing the Minimum Standards Course. The bill clarifies that a FCOC or Volunteer Firefighter Certificate of Completion will expire 4 years after the date of issuance unless renewed.

The bill amends the certification renewal requirements for firefighters. In order to retain an FCOC, every 4 years a firefighter must meet the requirements provided under ch. 633, F.S., and by rule, which must include at least one of the following:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the DSFM, which proof must be registered in an electronic database designated by the DSFM;
- Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

Additionally, the State Fire Marshall is provided grounds to deny, refuse to renew, suspend, or revoke the certificate of an individual.

The definition of “certification” or “certified” is amended to mean the act of holding a current and valid certificate that meets the requirements for renewal of certification pursuant to ch. 633, F.S., and by rule.

#### B. SECTION DIRECTORY:

**Section 1:** amends s. 48.151, F.S., authorizing the creation of an Internet-based system for the electronic acceptance of service of process documents.

---

<sup>58</sup> s. 633.426(1)(b), F.S.

<sup>59</sup> s. 633.414(1), F.S.

- Section 2:** amends s. 110.1315, F.S., eliminating the requirement for the Executive Office of the Governor to review and approve the alternative retirement income security program.
- Section 3:** amends s. 112.215, F.S., relating to government employees; deferred compensation.
- Section 4:** amends s. 137.09, F.S., eliminating the DFS's duty to approve county officer surety bonds.
- Section 5:** amends s. 215.97, F.S., revising the Florida Single Audit Act to more closely parallel the Federal Single Audit Act.
- Section 6:** amends s. 322.142, F.S., relating to color photographic or digital imaged licenses.
- Section 7:** amends s. 374.983, F.S., eliminating the requirement that surety bonds for FIND commissioners be approved by and filed with the CFO.
- Section 8:** amends s.509.211, F.S., relating to safety regulations in public lodging establishments.
- Section 9:** amends s. 624.307, F.S., relating to general powers; duties.
- Section 10:** amends s. 624.423, F.S., authorizing service of process to be served on the CFO electronically.
- Section 11:** amends s. 624.502, F.S., relating to the service of process fee.
- Section 12:** amends s. 626.907, F.S., permitting service of process to be made to the CFO's assistant or deputy and requiring a defendant's last known principal place of business to be provided by the party serving process documents.
- Section 13:** amends s. 626.916, F.S., relating to eligibility of export for commercial residential property insurance.
- Section 14:** amends s. 626.921, F.S., relating to the Florida Surplus Lines Service Office.
- Section 15:** amends s. 627.7074, F.S., adding a new cause for disqualifying a neutral evaluator.
- Section 16:** amends s. 633.102, F.S., relating to the definition of "fire service provider."
- Section 17:** creates s. 633.107, F.S., relating to the exemption from disqualification from licensure or certification.
- Section 18:** creates s. 633.135, F.S., relating to the Firefighter Assistance Grant Program.
- Section 19:** amends s. 633.208, F.S., clarifying that the Life Safety Code does not apply to one-and two-family dwellings.
- Section 20:** amends s. 633.408, F.S., relating to firefighter and volunteer firefighter training and certification.
- Section 21:** amends s. 633.412, F.S., relating to firefighters; qualifications for certification.
- Section 22:** amends s. 633.414, F.S., relating to retention of firefighter, volunteer firefighter, and fire investigator certificates.
- Section 23:** amends s. 633.426, F.S., relating to disciplinary action; standards for revocation of certification.
- Section 24:** providing appropriation.
- Section 25:** providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.



2. Expenditures:

The bill appropriates \$229,165 in recurring funds from the Insurance Regulatory Trust Fund and authorizes one full-time equivalent position in order to create and administer the Firefighter Assistance Grant Program within the DFS.

In addition, the DFS indicates there could be potential expenditure savings associated with implementing the internet-based system for service of process documents. Specifically, the DFS estimates a savings of \$54,500 associated with a reduction in postage, printing, and the elimination of current IT support as a result of implementing the new system. Additionally, the DFS estimates that 2-3 OPS positions will be eliminated due to the proposed Internet-based system.<sup>60</sup>

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Internet-based system for service of process prescribed in the bill may save money for consumers by eliminating the need to print, package, and mail service of process documents or by saving the cost of personal service.

C. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Section 13 of the bill, relating to eligibility for export of commercial residential property insurance, may implicate the constitutional single subject rule pursuant to article III, section 6 of the Florida Constitution, which states “[e]very law shall embrace but one subject and matter properly connected therewith....” Each section of this bill, except for section 13, affects the duties and obligations of the DFS. Section 13, on the other hand, does not direct the DFS to act in any way, nor does it affect the duties and obligations of the DFS.

B. RULE-MAKING AUTHORITY:

Section 17 provides the Division of State Fire Marshal (DSFM) with rulemaking authority to adopt rules to administer the procedures pertaining to exempting applicants from certain disqualifying conditions from firefighter licensure or certification.

---

<sup>60</sup> Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 7 (Jan. 27, 2016).

Section 18 provides the DSFM with rulemaking authority to adopt rules and procedures for the Firefighter Assistance Grant Program.

Section 22 of the bill provides that the DSFM may establish certificate retention requirements by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Insurance & Banking Subcommittee adopted a proposed strike-all amendment and reported the bill favorably as a committee substitute. The strike-all:

- Amended the deferred compensation program by removing the updated definition of “employee,” removing the newly defined term “governmental entity,” and clarifying that the program applies to state employees, and may include persons employed by a state university, a special district, or a water management district.
- Revised the Florida Single Audit Act to restore applicability to “for-profit organizations.”
- Amended newly added s. 322.142, F.S., to authorize the DFS to access the digital image of a driver’s license for purposes of the investigation of an alleged violation of the insurance code.
- Amended newly added s. 509.211, F.S., concerning carbon monoxide detector regulations in public lodging establishments.
- Clarified language regarding the Internet-based system for the electronic transmission of service of process documents.
- Amended newly added s. 626.916, F.S., exempting commercial residential property insurance from conditions required before insurance coverage may be eligible for export to surplus lines.
- Removed s. 627.706, F.S., from the bill.
- Amended newly added s. 626.921, F.S., revising the procedure for appointing the board of governors of the Florida Surplus Lines Association.
- Amended the definition of “fire service provider.”
- Created s. 633.107, F.S., providing exemption provisions from the disqualification of firefighter licensure or certification.
- Created s. 633.135, F.S., establishing the Firefighter Assistance Grant Program.
- Clarified language regarding firefighter and volunteer firefighter certification, certification retention, and revocation of certification.
- Repealed subsection (2) of 633.412, F.S.

On February 8, 2016, the Government Operations Appropriations Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. Specifically, the amendments:

- Removed a \$25 fee for service of process on unauthorized insurers created in the bill; and
- Provided appropriations for the creation and administration of the Firefighter Assistance Grant Program created in the bill.

The staff analysis is drafted to the bill as amended and passed by the Government Operations Appropriations Subcommittee.



27 Department of Highway Safety and Motor Vehicles to  
 28 provide certain driver license images to the  
 29 department for the purpose of investigating  
 30 allegations of violations of the insurance code;  
 31 amending s. 374.983, F.S.; naming the Board of  
 32 Commissioners of the Florida Inland Navigation  
 33 District, rather than the Chief Financial Officer, as  
 34 the entity that receives and approves certain surety  
 35 bonds of commissioners; amending s. 509.211, F.S.;

36 revising certain standards for carbon monoxide  
 37 detector devices in specified spaces or rooms of  
 38 public lodging establishments; deleting a provision  
 39 authorizing the State Fire Marshal of the department  
 40 to exempt a device from such standards; amending s.  
 41 624.307, F.S.; conforming provisions to changes made  
 42 by the act; specifying requirements for the Chief  
 43 Financial Officer in providing notice of electronic  
 44 transmission of process documents; amending s.  
 45 624.423, F.S.; authorizing service of process by  
 46 specified means; reenacting and amending s. 624.502,  
 47 F.S.; providing that a party requesting service of  
 48 process shall pay a specified fee to the department or  
 49 Office of Insurance Regulation for such service;  
 50 amending s. 626.907, F.S.; requiring a service of  
 51 process fee for certain service of process made by the  
 52 Chief Financial Officer; revising methods by which

53 | copies of the service of process may be provided to a  
 54 | defendant; specifying the determination of a  
 55 | defendant's last known principal place of business;  
 56 | amending s. 626.916, F.S.; revising applicability of  
 57 | certain provisions relating to insurance coverage  
 58 | eligibility for export under the Surplus Lines Law;  
 59 | amending s. 626.921, F.S.; revising membership  
 60 | requirements of the Florida Surplus Lines Service  
 61 | Office board of governors; amending s. 627.7074, F.S.;  
 62 | providing an additional ground for disqualifying a  
 63 | neutral evaluator for disputed sinkhole insurance  
 64 | claims; amending s. 633.102, F.S.; redefining the term  
 65 | "fire service provider"; creating s. 633.107, F.S.;  
 66 | authorizing the department to grant exemptions from  
 67 | disqualification for licensure or certification by the  
 68 | Division of State Fire Marshal under certain  
 69 | circumstances; specifying the information an applicant  
 70 | must provide; providing the manner in which the  
 71 | department must render its decision to grant or deny  
 72 | an exemption; providing procedures for an applicant to  
 73 | contest the decision; providing an exception from  
 74 | certain requirements; authorizing the division to  
 75 | adopt rules; creating s. 633.135, F.S.; establishing  
 76 | the Firefighter Assistance Program for certain  
 77 | purposes; requiring the division to administer the  
 78 | program and annually award grants to qualifying fire

79 departments; defining the term "combination fire  
 80 department"; providing eligibility requirements;  
 81 requiring the State Fire Marshal to adopt rules and  
 82 procedures; providing program requirements; amending  
 83 s. 633.208, F.S.; revising applicability of the Life  
 84 Safety Code to exclude one-family and two-family  
 85 dwellings, rather than only such dwellings that are  
 86 newly constructed; amending s. 633.408, F.S.; revising  
 87 firefighter and volunteer firefighter certification  
 88 requirements; specifying the duration of certain  
 89 firefighter certifications; amending s. 633.412, F.S.;  
 90 deleting a requirement that the division suspend or  
 91 revoke all issued certificates if an individual's  
 92 certificate is suspended or revoked; amending s.  
 93 633.414, F.S.; conforming provisions to changes made  
 94 by the act; revising alternative requirements for  
 95 renewing specified certifications; providing grounds  
 96 for denial of, or disciplinary action against,  
 97 certifications for a firefighter or volunteer  
 98 firefighter; amending s. 633.426, F.S.; revising a  
 99 definition; providing a date after which an individual  
 100 is subject to revocation of certification under  
 101 specified circumstances; providing an appropriation  
 102 and authorizing a position; providing an effective  
 103 date.  
 104

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

106

107 Section 1. Subsection (3) of section 48.151, Florida  
 108 Statutes, is amended to read:

109 48.151 Service on statutory agents for certain persons.—

110 (3) The Chief Financial Officer or his or her assistant or  
 111 deputy or another person in charge of the office is the agent  
 112 for service of process on all insurers applying for authority to  
 113 transact insurance in this state, all licensed nonresident  
 114 insurance agents, all nonresident disability insurance agents  
 115 licensed pursuant to s. 626.835, any unauthorized insurer under  
 116 s. 626.906 or s. 626.937, domestic reciprocal insurers,  
 117 fraternal benefit societies under chapter 632, warranty  
 118 associations under chapter 634, prepaid limited health service  
 119 organizations under chapter 636, and persons required to file  
 120 statements under s. 628.461. As an alternative to service of  
 121 process made by mail or personal service on the Chief Financial  
 122 Officer, on his or her assistant or deputy, or on another person  
 123 in charge of the office, the Department of Financial Services  
 124 may create an Internet-based transmission system to accept  
 125 service of process by electronic transmission of documents.

126 Section 2. Subsection (1) of section 110.1315, Florida  
 127 Statutes, is amended to read:

128 110.1315 Alternative retirement benefits; other-personal-  
 129 services employees.—

130 (1) ~~Upon review and approval by the Executive Office of~~

131 ~~the Governor,~~ The Department of Financial Services shall provide  
 132 an alternative retirement income security program for eligible  
 133 temporary and seasonal employees of the state who are  
 134 compensated from appropriations for other personal services. The  
 135 Department of Financial Services may contract with a private  
 136 vendor or vendors to administer the program under a defined-  
 137 contribution plan under ss. 401(a) and 403(b) or s. 457 of the  
 138 Internal Revenue Code, and the program must provide retirement  
 139 benefits as required under s. 3121(b)(7)(F) of the Internal  
 140 Revenue Code. The Department of Financial Services may develop a  
 141 request for proposals and solicit qualified vendors to compete  
 142 for the award of the contract. A vendor shall be selected on the  
 143 basis of the plan that best serves the interest of the  
 144 participating employees and the state. The proposal must comply  
 145 with all necessary federal and state laws and rules.

146 Section 3. Paragraph (a) of subsection (4) and subsection  
 147 (12) of section 112.215, Florida Statutes, are amended to read:  
 148 112.215 Government employees; deferred compensation  
 149 program.—

150 (4) (a) The Chief Financial Officer, with the approval of  
 151 the State Board of Administration, shall establish such plan or  
 152 plans of deferred compensation for state employees and may  
 153 include persons employed by a state university as defined in s.  
 154 1000.21, a special district as defined in s. 189.012, or a water  
 155 management district as defined in s. 189.012, including all such  
 156 investment vehicles or products incident thereto, as may be



157 available through, or offered by, qualified companies or  
 158 persons, and may approve one or more such plans for  
 159 implementation by and on behalf of the state and its agencies  
 160 and employees.

161 (12) The Chief Financial Officer may adopt any rule  
 162 necessary to administer and implement this act with respect to  
 163 deferred compensation plans for state employees and persons  
 164 employed by a state university as defined in s. 1000.21, a  
 165 special district as defined in s. 189.012, or a water management  
 166 district as defined in s. 189.012.

167 Section 4. Section 137.09, Florida Statutes, is amended to  
 168 read:

169 137.09 Justification and approval of bonds.—Each surety  
 170 upon every bond of any county officer shall make affidavit that  
 171 he or she is a resident of the county for which the officer is  
 172 to be commissioned, and that he or she has sufficient visible  
 173 property therein unencumbered and not exempt from sale under  
 174 legal process to make good his or her bond. Every such bond  
 175 shall be approved by the board of county commissioners ~~and by~~  
 176 ~~the Department of Financial Services~~ when the board is ~~they and~~  
 177 ~~it are~~ satisfied in its ~~their~~ judgment that the bond ~~same~~ is  
 178 legal, sufficient, and proper to be approved.

179 Section 5. Paragraphs (h) through (y) of subsection (2) of  
 180 section 215.97, Florida Statutes, are redesignated as paragraphs  
 181 (i) through (z), respectively, a new paragraph (h) is added to  
 182 that subsection, present paragraphs (a), (m), and (v) of that

183 subsection and paragraph (o) of subsection (8) are amended,  
 184 subsections (9), (10), and (11) are renumbered as subsections  
 185 (10), (11), and (12), respectively, and a new subsection (9) is  
 186 added to that section, to read:

187 215.97 Florida Single Audit Act.—

188 (2) ~~Definitions~~; As used in this section, the term:

189 (a) "Audit threshold" means the threshold amount used to  
 190 determine when a state single audit or project-specific audit of  
 191 a nonstate entity shall be conducted in accordance with this  
 192 section. Each nonstate entity that expends a total amount of  
 193 state financial assistance equal to or in excess of \$750,000  
 194 ~~\$500,000~~ in any fiscal year of such nonstate entity shall be  
 195 required to have a state single audit, or a project-specific  
 196 audit, for such fiscal year in accordance with the requirements  
 197 of this section. Every 2 years the Auditor General, after  
 198 consulting with the Executive Office of the Governor, the  
 199 Department of Financial Services, and all state awarding  
 200 agencies, shall review the threshold amount for requiring audits  
 201 under this section and may adjust such threshold amount  
 202 consistent with the purposes of this section.

203 (h) "Higher education entity" means a Florida College  
 204 System institution or a state university, as those terms are  
 205 defined in s. 1000.21.

206 (n) ~~(m)~~ "Nonstate entity" means a local governmental  
 207 entity, higher education entity, nonprofit organization, or for-  
 208 profit organization that receives state financial assistance.

209 (w)~~(v)~~ "State project-specific audit" means an audit of  
 210 one state project performed in accordance with the requirements  
 211 of subsection (11) ~~(10)~~.

212 (8) Each recipient or subrecipient of state financial  
 213 assistance shall comply with the following:

214 (o) A higher education entity is exempt from the  
 215 requirements of paragraph (2)(a) and this subsection ~~A contract~~  
 216 ~~involving the State University System or the Florida College~~  
 217 ~~System funded by state financial assistance may be in the form~~  
 218 ~~of:~~

219 ~~1. A fixed price contract that entitles the provider to~~  
 220 ~~receive full compensation for the fixed contract amount upon~~  
 221 ~~completion of all contract deliverables;~~

222 ~~2. A fixed rate per unit contract that entitles the~~  
 223 ~~provider to receive compensation for each contract deliverable~~  
 224 ~~provided;~~

225 ~~3. A cost reimbursable contract that entitles the provider~~  
 226 ~~to receive compensation for actual allowable costs incurred in~~  
 227 ~~performing contract deliverables; or~~

228 ~~4. A combination of the contract forms described in~~  
 229 ~~subparagraphs 1., 2., and 3.~~

230 (9) This subsection applies to any contract or agreement  
 231 between a state awarding agency and a higher education entity  
 232 that is funded by state financial assistance.

233 (a) The contract or agreement must comply with ss.  
 234 215.971(1) and 216.3475 and must be in the form of one or a

235 combination of the following:

236 1. A fixed-price contract that entitles the provider to  
 237 receive compensation for the fixed contract amount upon  
 238 completion of all contract deliverables.

239 2. A fixed-rate-per-unit contract that entitles the  
 240 provider to receive compensation for each contract deliverable  
 241 provided.

242 3. A cost-reimbursable contract that entitles the provider  
 243 to receive compensation for actual allowable costs incurred in  
 244 performing contract deliverables.

245 (b) If a higher education entity has extremely limited or  
 246 no required activities related to the administration of a state  
 247 project and acts only as a conduit of state financial  
 248 assistance, none of the requirements of this section apply to  
 249 the conduit higher education entity. However, the subrecipient  
 250 that is provided state financial assistance by the conduit  
 251 higher education entity is subject to the requirements of  
 252 subsection (8) and this subsection.

253 (c) Regardless of the amount of the state financial  
 254 assistance, this subsection does not exempt a higher education  
 255 entity from compliance with provisions of law that relate to  
 256 maintaining records concerning state financial assistance to the  
 257 higher education entity or that allow access and examination of  
 258 those records by the state awarding agency, the higher education  
 259 entity, the Department of Financial Services, or the Auditor  
 260 General.

261        (d) This subsection does not prohibit the state awarding  
 262 agency from including terms and conditions in the contract or  
 263 agreement which require additional assurances that the state  
 264 financial assistance meets the applicable requirements of laws,  
 265 regulations, and other compliance rules.

266        Section 6. Paragraph (j) of subsection (4) of section  
 267 322.142, Florida Statutes, is amended to read:

268        322.142 Color photographic or digital imaged licenses.—

269        (4) The department may maintain a film negative or print  
 270 file. The department shall maintain a record of the digital  
 271 image and signature of the licensees, together with other data  
 272 required by the department for identification and retrieval.  
 273 Reproductions from the file or digital record are exempt from  
 274 the provisions of s. 119.07(1) and may be made and issued only:

275        (j) To the Department of Financial Services pursuant to an  
 276 interagency agreement to facilitate the location of owners of  
 277 unclaimed property, the validation of unclaimed property claims,  
 278 ~~and~~ the identification of fraudulent or false claims, and the  
 279 investigation of allegations of violations of the insurance code  
 280 by licensees and unlicensed persons;

281        Section 7. Subsection (2) of section 374.983, Florida  
 282 Statutes, is amended to read:

283        374.983 Governing body.—

284        (2) The present board of commissioners of the district  
 285 shall continue to hold office until their respective terms shall  
 286 expire. Thereafter the members of the board shall continue to be

287 appointed by the Governor for a term of 4 years and until their  
288 successors shall be duly appointed. Specifically, commencing on  
289 January 10, 1997, the Governor shall appoint the commissioners  
290 from Broward, Indian River, Martin, St. Johns, and Volusia  
291 Counties and on January 10, 1999, the Governor shall appoint the  
292 commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm  
293 Beach, and St. Lucie Counties. The Governor shall appoint the  
294 commissioner from Nassau County for an initial term that  
295 coincides with the period remaining in the current terms of the  
296 commissioners from Broward, Indian River, Martin, St. Johns, and  
297 Volusia Counties. Thereafter, the commissioner from Nassau  
298 County shall be appointed to a 4-year term. Each new appointee  
299 must be confirmed by the Senate. Whenever a vacancy occurs among  
300 the commissioners, the person appointed to fill such vacancy  
301 shall hold office for the unexpired portion of the term of the  
302 commissioner whose place he or she is selected to fill. Each  
303 commissioner under this act before he or she assumes office  
304 shall be required to give a good and sufficient surety bond in  
305 the sum of \$10,000 payable to the Governor and his or her  
306 successors in office, conditioned upon the faithful performance  
307 of the duties of his or her office, such bond to be approved by  
308 and filed with the board of commissioners of the district ~~Chief~~  
309 ~~Financial Officer~~. Any and all premiums upon such surety bonds  
310 shall be paid by the board of commissioners of such district as  
311 a necessary expense of the district.

312 Section 8. Subsection (4) of section 509.211, Florida

313 Statutes, is amended to read:

314 509.211 Safety regulations.—

315 (4) Every enclosed space or room that contains a boiler  
 316 regulated under chapter 554 which is fired by the direct  
 317 application of energy from the combustion of fuels and that is  
 318 located in any portion of a public lodging establishment that  
 319 also contains sleeping rooms shall be equipped with one or more  
 320 carbon monoxide detector ~~sensor~~ devices that bear the  
 321 certification mark from a testing and certification organization  
 322 accredited in accordance with ISO/IEC Guide 65, General  
 323 Requirements for Bodies Operating Product Certification Systems,  
 324 ~~label of a nationally recognized testing laboratory and that~~  
 325 have been tested and listed as complying with the most recent  
 326 Underwriters Laboratories, Inc., Standard 2075 ~~2034~~, or its  
 327 equivalent, ~~unless it is determined that carbon monoxide hazards~~  
 328 ~~have otherwise been adequately mitigated as determined by the~~  
 329 ~~Division of State Fire Marshal of the Department of Financial~~  
 330 ~~Services~~. Such devices shall be integrated with the public  
 331 lodging establishment's fire detection system. Any such  
 332 installation or determination shall be made in accordance with  
 333 rules adopted by the Division of State Fire Marshal.

334 Section 9. Subsection (9) of section 624.307, Florida  
 335 Statutes, is amended to read:

336 624.307 General powers; duties.—

337 (9) Upon receiving service of legal process issued in any  
 338 civil action or proceeding in this state against any regulated

339 person or any unauthorized insurer under s. 626.906 or s.  
 340 626.937 which is required to appoint the Chief Financial Officer  
 341 as its attorney to receive service of all legal process, the  
 342 Chief Financial Officer, as attorney, may, in lieu of sending  
 343 the process by registered or certified mail, send the process or  
 344 make it available by any other verifiable means, including, but  
 345 not limited to, making the documents available by electronic  
 346 transmission from a secure website established by the department  
 347 to the person last designated by the regulated person or the  
 348 unauthorized insurer to receive the process. When process  
 349 documents are made available electronically, the Chief Financial  
 350 Officer shall send a notice of receipt of service of process to  
 351 the person last designated by the regulated person or  
 352 unauthorized insurer to receive legal process. The notice must  
 353 state the date and manner in which the copy of the process was  
 354 made available to the regulated person or unauthorized insurer  
 355 being served and contain the uniform resource locator (URL) for  
 356 a hyperlink to access files and information on the department's  
 357 website to obtain a copy of the process.

358 Section 10. Section 624.423, Florida Statutes, is amended  
 359 to read:

360 624.423 Serving process.—

361 (1) Service of process upon the Chief Financial Officer as  
 362 process agent of the insurer ~~under s. 624.422 and s. 626.937~~  
 363 shall be made by serving a copy of the process upon the Chief  
 364 Financial Officer or upon her or his assistant, deputy, or other



365 person in charge of her or his office. Service may also be made  
 366 by mail or electronically as provided in s. 48.151. Upon  
 367 receiving such service, the Chief Financial Officer shall retain  
 368 a record copy and promptly forward one copy of the process by  
 369 registered or certified mail or by other verifiable means, as  
 370 provided under s. 624.307(9), to the person last designated by  
 371 the insurer to receive the same, as provided under s.  
 372 624.422(2). For purposes of this section, records may be  
 373 retained as paper or electronic copies.

374 (2) If ~~where~~ process is served upon the Chief Financial  
 375 Officer as an insurer's process agent, the insurer is ~~shall~~ not  
 376 ~~be~~ required to answer or plead except within 20 days after the  
 377 date upon which the Chief Financial Officer sends or makes  
 378 available by other verifiable means ~~mailed~~ a copy of the process  
 379 served upon her or him as required by subsection (1).

380 (3) Process served upon the Chief Financial Officer and  
 381 sent or made available in accordance with this section and s.  
 382 624.307(9) ~~copy thereof forwarded as in this section provided~~  
 383 shall for all purposes constitute valid and binding service  
 384 thereof upon the insurer.

385 Section 11. Notwithstanding the expiration date in section  
 386 41 of chapter 2015-222, Laws of Florida, section 624.502,  
 387 Florida Statutes, as amended by chapter 2013-41, Laws of  
 388 Florida, is reenacted and amended to read:

389 624.502 Service of process fee.—In all instances as  
 390 provided in any section of the insurance code and s. 48.151(3)

391 in which service of process is authorized to be made upon the  
 392 Chief Financial Officer or the director of the office, the party  
 393 requesting service ~~plaintiff~~ shall pay to the department or  
 394 office a fee of \$15 for such service of process on an authorized  
 395 or unauthorized insurer, which fee shall be deposited into the  
 396 Administrative Trust Fund.

397 Section 12. Subsection (1) of section 626.907, Florida  
 398 Statutes, is amended to read:

399 626.907 Service of process; judgment by default.—

400 (1) Service of process upon an insurer or person  
 401 representing or aiding such insurer pursuant to s. 626.906 shall  
 402 be made by delivering to and leaving with the Chief Financial  
 403 Officer, his or her assistant or deputy, or another person in  
 404 charge of the ~~or some person in apparent charge of his or her~~  
 405 office two copies thereof and the service of process fee as  
 406 required in s. 624.502. The Chief Financial Officer shall  
 407 forthwith mail by registered mail, commercial carrier, or any  
 408 verifiable means one of the copies of such process to the  
 409 defendant at the defendant's last known principal place of  
 410 business as provided by the party submitting the documents and  
 411 shall keep a record of all process so served upon him or her.  
 412 The service of process is sufficient, provided notice of such  
 413 service and a copy of the process are sent within 10 days  
 414 thereafter by registered mail by plaintiff or plaintiff's  
 415 attorney to the defendant at the defendant's last known  
 416 principal place of business, and the defendant's receipt, or

417 receipt issued by the post office with which the letter is  
 418 registered, showing the name of the sender of the letter and the  
 419 name and address of the person to whom the letter is addressed,  
 420 and the affidavit of the plaintiff or plaintiff's attorney  
 421 showing a compliance herewith are filed with the clerk of the  
 422 court in which the action is pending on or before the date the  
 423 defendant is required to appear, or within such further time as  
 424 the court may allow.

425 Section 13. Paragraph (b) of subsection (3) of section  
 426 626.916, Florida Statutes, is amended to read:

427 626.916 Eligibility for export.—

428 (3)

429 (b) Paragraphs (1)(a)-(d) do not apply to commercial  
 430 residential property insurance or to classes of insurance which  
 431 are subject to s. 627.062(3)(d)1. These classes may be  
 432 exportable under the following conditions:

- 433 1. The insurance must be placed only by or through a  
 434 surplus lines agent licensed in this state;
- 435 2. The insurer must be made eligible under s. 626.918; and
- 436 3. The insured must sign a disclosure that substantially  
 437 provides the following: "You are agreeing to place coverage in  
 438 the surplus lines market. Superior coverage may be available in  
 439 the admitted market and at a lesser cost. Persons insured by  
 440 surplus lines carriers are not protected under the Florida  
 441 Insurance Guaranty Act with respect to any right of recovery for  
 442 the obligation of an insolvent unlicensed insurer." If the

443 notice is signed by the insured, the insured is presumed to have  
 444 been informed and to know that other coverage may be available,  
 445 and, with respect to the diligent-effort requirement under  
 446 subsection (1), there is no liability on the part of, and no  
 447 cause of action arises against, the retail agent presenting the  
 448 form.

449 Section 14. Paragraph (a) of subsection (4) of section  
 450 626.921, Florida Statutes, is amended to read:

451 626.921 Florida Surplus Lines Service Office.—

452 (4) The association shall operate under the supervision of  
 453 a board of governors consisting of:

454 (a) Five individuals nominated by the Florida Surplus  
 455 Lines Association and appointed by the department from the  
 456 regular membership of the Florida Surplus Lines Association.

457  
 458 Each board member shall be appointed to serve beginning on the  
 459 date designated by the plan of operation and shall serve at the  
 460 pleasure of the department for a 3-year term, such term  
 461 initially to be staggered by the plan of operation so that three  
 462 appointments expire in 1 year, three appointments expire in 2  
 463 years, and three appointments expire in 3 years. Members may be  
 464 reappointed for subsequent terms. The board of governors shall  
 465 elect such officers as may be provided in the plan of operation.

466 Section 15. Paragraph (a) of subsection (7) of section  
 467 627.7074, Florida Statutes, is amended to read:

468 627.7074 Alternative procedure for resolution of disputed

469 sinkhole insurance claims.—

470 (7) Upon receipt of a request for neutral evaluation, the  
 471 department shall provide the parties a list of certified neutral  
 472 evaluators. The department shall allow the parties to submit  
 473 requests to disqualify evaluators on the list for cause.

474 (a) The department shall disqualify neutral evaluators for  
 475 cause based only on any of the following grounds:

476 1. A familial relationship within the third degree exists  
 477 between the neutral evaluator and either party or a  
 478 representative of either party.

479 2. The proposed neutral evaluator has, in a professional  
 480 capacity, previously represented either party or a  
 481 representative of either party in the same or a substantially  
 482 related matter.

483 3. The proposed neutral evaluator has, in a professional  
 484 capacity, represented another person in the same or a  
 485 substantially related matter and that person's interests are  
 486 materially adverse to the interests of the parties. The term  
 487 "substantially related matter" means participation by the  
 488 neutral evaluator on the same claim, property, or adjacent  
 489 property.

490 4. The proposed neutral evaluator has, within the  
 491 preceding 5 years, worked as an employer or employee of any  
 492 party to the case.

493 5. The proposed neutral evaluator has, within the  
 494 preceding 5 years, worked for any entity that performed any

495 sinkhole loss testing, review, or analysis for the property.

496 Section 16. Subsection (13) of section 633.102, Florida  
 497 Statutes, is amended to read:

498 633.102 Definitions.—As used in this chapter, the term:

499 (13) "Fire service provider" means a municipality or  
 500 county, the state, the division, or any political subdivision of  
 501 the state, including authorities and special districts, that  
 502 employs ~~employing~~ firefighters or uses ~~utilizing~~ volunteer  
 503 firefighters to provide fire extinguishment or fire prevention  
 504 services for the protection of life and property. The term  
 505 includes any organization under contract or other agreement with  
 506 such entity to provide such services.

507 Section 17. Section 633.107, Florida Statutes, is created  
 508 to read:

509 633.107 Exemption from disqualification from licensure or  
 510 certification.—

511 (1) The department may grant an exemption from  
 512 disqualification to any person disqualified from licensure or  
 513 certification by the Division of State Fire Marshal under this  
 514 chapter because of a criminal record or dishonorable discharge  
 515 from the United States Armed Forces if the applicant has paid in  
 516 full any fee, fine, fund, lien, civil judgment, restitution,  
 517 cost of prosecution, or trust contribution imposed by the court  
 518 as part of the judgment and sentence for any disqualifying  
 519 offense and:

520 (a) At least 5 years have elapsed since the applicant

521 completed or has been lawfully released from confinement,  
 522 supervision, or nonmonetary condition imposed by the court for a  
 523 disqualifying offense; or

524 (b) At least 5 years have elapsed since the applicant was  
 525 dishonorably discharged from the United States Armed Forces.

526 (2) For the department to grant an exemption, the  
 527 applicant must clearly and convincingly demonstrate that he or  
 528 she would not pose a risk to persons or property if permitted to  
 529 be licensed or certified under this chapter, evidence of which  
 530 must include, but need not be limited to, facts and  
 531 circumstances surrounding the disqualifying offense, the time  
 532 that has elapsed since the offense, the nature of the offense  
 533 and harm caused to the victim, the applicant's history before  
 534 and after the offense, and any other evidence or circumstances  
 535 indicating that the applicant will not present a danger if  
 536 permitted to be licensed or certified.

537 (3) The department has discretion whether to grant or deny  
 538 an exemption. The department shall provide its decision in  
 539 writing which, if the exemption is denied, must state with  
 540 particularity the reasons for denial. The department's decision  
 541 is subject to proceedings under chapter 120, except that a  
 542 formal proceeding under s. 120.57(1) is available only if there  
 543 are disputed issues of material fact that the department relied  
 544 upon in reaching its decision.

545 (4) An applicant may request an exemption, notwithstanding  
 546 the time limitations of paragraphs (1)(a) and (b), if by

547 executive clemency his or her civil rights are restored, or he  
 548 or she receives a pardon, from the disqualifying offense. The  
 549 fact that the applicant receives executive clemency does not  
 550 alleviate his or her obligation to comply with subsection (2) or  
 551 in itself require the department to award the exemption.

552 (5) The division may adopt rules to administer this  
 553 section.

554 Section 18. Section 633.135, Florida Statutes, is created  
 555 to read:

556 633.135 Firefighter Assistance Grant Program.—

557 (1) The Firefighter Assistance Grant Program is created  
 558 within the division to improve the emergency response capability  
 559 of volunteer fire departments and combination fire departments.  
 560 The program shall provide financial assistance to improve  
 561 firefighter safety and enable such fire departments to provide  
 562 firefighting, emergency medical, and rescue services to their  
 563 communities. For purposes of this section, the term "combination  
 564 fire department" means a fire department composed of a  
 565 combination of career and volunteer firefighters.

566 (2) The division shall administer the program and annually  
 567 award grants to volunteer fire departments and combination fire  
 568 departments using the annual Florida Fire Service Needs  
 569 Assessment Survey. The purpose of the grants is to assist such  
 570 fire departments in providing volunteer firefighter training and  
 571 procuring necessary firefighter personal protective equipment,  
 572 self-contained breathing apparatus equipment, and fire engine



573 pumper apparatus equipment. However, the division shall  
 574 prioritize the annual award of grants to such fire departments  
 575 in a county having a population of 75,000 or less.

576 (3) The State Fire Marshal shall adopt rules and  
 577 procedures for the program that require grant recipients to:

578 (a) Report their activity to the division for submission  
 579 in the Fire and Emergency Incident Information Reporting System  
 580 created pursuant to s. 633.136;

581 (b) Annually complete and submit the Florida Fire Service  
 582 Needs Assessment Survey to the division;

583 (c) Comply with the Florida Firefighters Occupational  
 584 Safety and Health Act, ss. 633.502-633.536;

585 (d) Comply with any other rule determined by the State  
 586 Fire Marshal to effectively and efficiently implement,  
 587 administer, and manage the program; and

588 (e) Meet the definition of the term "fire service  
 589 provider" in s. 633.102.

590 (4) Funds shall be used to:

591 (a) Provide firefighter training to individuals to obtain  
 592 a Volunteer Firefighter Certificate of Completion pursuant to s.  
 593 633.408. Training must be provided at no cost to the fire  
 594 department or student by a division-approved instructor and must  
 595 be documented in the division's electronic database.

596 (b) Purchase firefighter personal protective equipment,  
 597 including structural firefighting protective ensembles and  
 598 individual ensemble elements such as garments, helmets, gloves,

599 and footwear, that complies with NFPA No. 1851, "Standard on  
 600 Selection, Care, and Maintenance of Protective Ensembles for  
 601 Structural Fire Fighting and Proximity Fire Fighting," by the  
 602 National Fire Protection Association.

603 (c) Purchase self-contained breathing apparatus equipment  
 604 that complies with NFPA No. 1852, "Standard on Selection, Care,  
 605 and Maintenance of Open-Circuit Self-Contained Breathing  
 606 Apparatus."

607 (d) Purchase fire engine pumper apparatus equipment. Funds  
 608 provided under this paragraph may be used to purchase the  
 609 equipment or subsidize a federal grant from the Federal  
 610 Emergency Management Agency to purchase the equipment.

611 Section 19. Subsection (8) of section 633.208, Florida  
 612 Statutes, is amended to read:

613 633.208 Minimum firesafety standards.—

614 (8) The provisions of the Life Safety Code, as contained  
 615 in the Florida Fire Prevention Code, do not apply to newly  
 616 ~~constructed~~ one-family and two-family dwellings. However, fire  
 617 sprinkler protection may be permitted by local government in  
 618 lieu of other fire protection-related development requirements  
 619 for such structures. While local governments may adopt fire  
 620 sprinkler requirements for one- and two-family dwellings under  
 621 this subsection, it is the intent of the Legislature that the  
 622 economic consequences of the fire sprinkler mandate on home  
 623 owners be studied before the enactment of such a requirement.  
 624 After the effective date of this act, any local government that

625 | desires to adopt a fire sprinkler requirement on one- or two-  
626 | family dwellings must prepare an economic cost and benefit  
627 | report that analyzes the application of fire sprinklers to one-  
628 | or two-family dwellings or any proposed residential subdivision.  
629 | The report must consider the tradeoffs and specific cost savings  
630 | and benefits of fire sprinklers for future owners of property.  
631 | The report must include an assessment of the cost savings from  
632 | any reduced or eliminated impact fees if applicable, the  
633 | reduction in special fire district tax, insurance fees, and  
634 | other taxes or fees imposed, and the waiver of certain  
635 | infrastructure requirements including the reduction of roadway  
636 | widths, the reduction of water line sizes, increased fire  
637 | hydrant spacing, increased dead-end roadway length, and a  
638 | reduction in cul-de-sac sizes relative to the costs from fire  
639 | sprinkling. A failure to prepare an economic report shall result  
640 | in the invalidation of the fire sprinkler requirement to any  
641 | one- or two-family dwelling or any proposed subdivision. In  
642 | addition, a local jurisdiction or utility may not charge any  
643 | additional fee, above what is charged to a non-fire sprinklered  
644 | dwelling, on the basis that a one- or two-family dwelling unit  
645 | is protected by a fire sprinkler system.

646 |       Section 20. Paragraph (b) of subsection (4) and subsection  
647 | (8) of section 633.408, Florida Statutes, are amended, and  
648 | subsection (9) is added to that section, to read:

649 |       633.408 Firefighter and volunteer firefighter training and  
650 | certification.—

651 (4) The division shall issue a firefighter certificate of  
 652 compliance to an individual who does all of the following:

653 (b) Passes the Minimum Standards Course examination within  
 654 12 months after completing the required courses.

655 (8) (a) Pursuant to s. 590.02(1)(e), the division shall  
 656 establish a structural fire training program of not less than  
 657 206 hours. The division shall issue to a person satisfactorily  
 658 complying with this training program and who has successfully  
 659 passed an examination as prescribed by the division and who has  
 660 met the requirements of s. 590.02(1)(e), a Forestry Certificate  
 661 of Compliance.

662 (b) An individual who holds a current and valid Forestry  
 663 Certificate of Compliance is entitled to the same rights,  
 664 privileges, and benefits provided for by law as a firefighter.

665 (9) A Firefighter Certificate of Compliance or a Volunteer  
 666 Firefighter Certificate of Completion issued under this section  
 667 expires 4 years after the date of issuance unless renewed as  
 668 provided in s. 633.414.

669 Section 21. Subsection (2) of section 633.412, Florida  
 670 Statutes, is amended to read:

671 633.412 Firefighters; qualifications for certification.—

672 ~~(2) If the division suspends or revokes an individual's~~  
 673 ~~certificate, the division must suspend or revoke all other~~  
 674 ~~certificates issued to the individual by the division pursuant~~  
 675 ~~to this part.~~

676 Section 22. Section 633.414, Florida Statutes, is amended

677 to read:

678           633.414 Retention of firefighter, volunteer firefighter,  
679 and fire investigator certifications ~~certification.~~-

680           (1) In order for a firefighter to retain her or his  
681 Firefighter Certificate of Compliance, every 4 years he or she  
682 must meet the requirements for renewal provided in this chapter  
683 and by rule, which must include at least one of the following:

684           (a) Be active as a firefighter.~~†~~

685           (b) Maintain a current and valid fire service instructor  
686 certificate, instruct at least 40 hours during the 4-year  
687 period, and provide proof of such instruction to the division,  
688 which proof must be registered in an electronic database  
689 designated by the division.~~†~~

690           (c) Within 6 months before the 4-year period expires,  
691 successfully complete a Firefighter Retention Refresher Course  
692 consisting of a minimum of 40 hours of training to be prescribed  
693 by rule.~~†~~~~or~~

694           (d) Within 6 months before the 4-year period expires,  
695 successfully retake and pass the Minimum Standards Course  
696 examination pursuant to s. 633.408.

697           (2) In order for a volunteer firefighter to retain her or  
698 his Volunteer Firefighter Certificate of Completion, every 4  
699 years he or she must:

700           (a) Be active as a volunteer firefighter; or

701           (b) Successfully complete a refresher course consisting of  
702 a minimum of 40 hours of training to be prescribed by rule.

703 (3) Subsection (1) does not apply to state-certified  
 704 firefighters who are certified and employed full-time, as  
 705 determined by the fire service provider, as firesafety  
 706 inspectors or fire investigators, regardless of their ~~her or his~~  
 707 employment status as firefighters or volunteer firefighters ~~a~~  
 708 ~~firefighter~~.

709 (4) For the purposes of this section, the term "active"  
 710 means being employed as a firefighter or providing service as a  
 711 volunteer firefighter for a cumulative period of 6 months within  
 712 a 4-year period.

713 (5) The 4-year period begins upon issuance of the  
 714 certificate or separation from employment+

715 ~~(a) If the individual is certified on or after July 1,~~  
 716 ~~2013, on the date the certificate is issued or upon termination~~  
 717 ~~of employment or service with a fire department.~~

718 ~~(b) If the individual is certified before July 1, 2013, on~~  
 719 ~~July 1, 2014, or upon termination of employment or service~~  
 720 ~~thereafter.~~

721 (6) A certificate for a firefighter or volunteer  
 722 firefighter expires if he or she fails to meet the requirements  
 723 of this section.

724 (7) The State Fire Marshal may deny, refuse to renew,  
 725 suspend, or revoke the certificate of a firefighter or volunteer  
 726 firefighter if the State Fire Marshal finds that any of the  
 727 following grounds exists:

728 (a) Any cause for which issuance of a certificate could

729 have been denied if it had then existed and had been known to  
 730 the division.

731 (b) A violation of any provision of this chapter or any  
 732 rule or order of the State Fire Marshal.

733 (c) Falsification of a record relating to any certificate  
 734 issued by the division.

735 Section 23. Subsections (1) and (2) of section 633.426,  
 736 Florida Statutes, are amended to read:

737 633.426 Disciplinary action; standards for revocation of  
 738 certification.—

739 (1) For purposes of this section, the term:

740 (a) "Certificate" means any of the certificates issued  
 741 under s. 633.406.

742 (b) "Certification" or "certified" means ~~the act of~~  
 743 holding a certificate that is current and valid and that meets  
 744 the requirements for renewal of certification pursuant to this  
 745 chapter and the rules adopted under this chapter certificate.

746 (c) "Convicted" means a finding of guilt, or the  
 747 acceptance of a plea of guilty or nolo contendere, in any  
 748 federal or state court or a court in any other country, without  
 749 regard to whether a judgment of conviction has been entered by  
 750 the court having jurisdiction of the case.

751 (2) Effective July 1, 2013, an individual who holds a  
 752 certificate is subject to revocation for any of the following An  
 753 ~~individual is ineligible to apply for certification if the~~  
 754 ~~individual has, at any time, been:~~

755 (a) Conviction ~~Convicted~~ of a misdemeanor relating to the  
 756 certification or to perjury or false statements.

757 (b) Conviction ~~Convicted~~ of a felony or a crime punishable  
 758 by imprisonment of 1 year or more under the law of the United  
 759 States or of any state thereof, or under the law of any other  
 760 country.

761 (c) Dishonorable discharge ~~Dishonorably discharged~~ from  
 762 any of the Armed Forces of the United States.

763 Section 24. For the 2016-2017 fiscal year, the sum of  
 764 \$229,165 in recurring funds from the Insurance Regulatory Trust  
 765 Fund is appropriated to the Department of Financial Services,  
 766 and one full-time equivalent position with associated salary  
 767 rate of 50,000 is authorized, for the purpose of implementing  
 768 this act.

769 Section 25. This act shall take effect July 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 659 Automobile Insurance  
**SPONSOR(S):** Insurance & Banking Subcommittee; Santiago  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	11 Y, 1 N, As CS	Lloyd	Luczynski
2) Regulatory Affairs Committee		Lloyd <i>h.c.</i>	Hamon <i>K. Witt.</i>

### SUMMARY ANALYSIS

Private passenger motor vehicle insurance (automobile insurance) is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. The bill makes the following changes regarding automobile insurance:

- **The Florida Automobile Joint Underwriting Association (Auto JUA)** – an insurer, including the Auto JUA, may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium. The bill gives the Auto JUA specific authority to cancel policies within the first 60 days for non-payment and prohibits insureds from cancelling coverage in the first 90 days, except in certain circumstances.
- **Return of unearned premium** – when a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium. The bill allows the insured to apply the unearned premium to any other policies issued by the insurer or the insurer's group.
- **Prepayment of premium** – Subject to certain exceptions, insurers are required to collect two months of premium prior to issuing a private passenger motor vehicle policy or binder for personal injury protection (PIP) and property damage liability coverage. The bill allows an exception to this requirement if the insured has agreed to recurring credit or debit card payments with the insurer.
- **Methods of payment** – Florida law requires payment of premiums by certain methods. The bill adds payments by a "draft" to the list of acceptable payment methods for motor vehicle insurance contracts.
- **Insufficient funds fee** – in certain instances, a property, casualty, or surety insurer or a premium finance company may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). The bill authorizes motor vehicle insurers to charge \$15, pursuant to policy terms, if an electronic premium payment fails due to insufficient funds.
- **Medical diagnosis coding manuals** – Florida law requires PIP medical providers to code their diagnoses using the International Classification of Diseases, 9th Revision (ICD-9). The bill ends the use of the ICD-9 and begins use of the International Classification of Diseases, 10th Revision (ICD-10).
- **PIP Eligible Health Care Clinics** – Florida law limits which medical providers may receive PIP reimbursement. A health care clinic is only eligible if they are either licensed under ch. 400, F.S., or specifically exempted from the requirement by the PIP law. The bill exempts clinics that are managed by a licensed health care practitioner (who has certain specified responsibilities) and owned, directly or indirectly, by a publicly traded corporation that has \$250 million or more in total annual sales of health care services. This allows them to receive reimbursement from insurers for PIP medical services.

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

The bill is effective July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance<sup>1</sup> is casualty coverage<sup>2</sup> within the personal lines<sup>3</sup> segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).<sup>4</sup> Commercial motor vehicles are those that are not private passenger motor vehicles.<sup>5</sup> Motor vehicle<sup>6</sup> owners in the state are required to maintain proof of coverage for Personal Injury Protection (PIP)<sup>7</sup> under the Florida Motor Vehicle No-Fault Law<sup>8</sup> and financial responsibility, under the Financial Responsibility Law,<sup>9</sup> for damages arising due to the operation of a motor vehicle.

#### **Cancellation of Florida Automobile Joint Underwriting Association Policies**

Insurers<sup>10</sup> that offer motor vehicle insurance in the state must participate in the Florida Automobile Joint Underwriting Association (Auto JUA).<sup>11</sup> The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.<sup>12</sup> An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.<sup>13</sup> The bill gives the Auto JUA the specific authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.<sup>14</sup> This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

#### **Cancellation of Motor Vehicle Insurance and Return of Unearned Premium**

When a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium to the policyholder.<sup>15</sup> The bill allows the insured

---

<sup>1</sup> s. 627.041(8), F.S.

<sup>2</sup> s. 627.021(3), F.S.

<sup>3</sup> Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. s. 626.015(15), F.S.

<sup>4</sup> s. 627.041(8) and 627.728(1)(a), F.S.

<sup>5</sup> s. 627.732(3)(a), F.S.

<sup>6</sup> s. 627.732(3), F.S.

<sup>7</sup> s. 627.736, F.S.

<sup>8</sup> ss. 627.730-627.7405, F.S.

<sup>9</sup> ch. 324, F.S.

<sup>10</sup> s. 624.03, F.S.

<sup>11</sup> s. 627.311, F.S.

<sup>12</sup> ss. 627.7295 and 627.728, F.S.

<sup>13</sup> s. 627.7295(4), F.S.

<sup>14</sup> Proof of such coverage is required by statute. s. 627.311(3)(l), F.S.

<sup>15</sup> s. 627.7283, F.S.

to choose to apply the unearned premium to any other policies issued by the insurer or the insurer's group.

### **Motor Vehicle Insurance Contract Payments**

Florida law requires cash payment of insurance premiums.<sup>16</sup> Acceptable forms of payment are coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction. The bill allows consumers to also use a draft<sup>17</sup> to pay motor vehicle insurance premiums.

In certain instances, an insurer may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). If a check or draft for payment to a property, casualty, or surety insurer, including a workers' compensation insurer, is returned due to insufficient funds, the insurer may charge a fee of \$20.00 or 5 percent of the payment, whichever is greater.<sup>18</sup> Also, a premium finance company<sup>19</sup> may charge a fee of \$15.00 for checks or drafts that are returned due to insufficient funds.<sup>20</sup> The bill authorizes motor vehicle insurers to charge \$15.00, pursuant to policy terms, if a premium payment fails due to insufficient funds and that payment was made by debit card, credit card, or automatic funds transfer.

Insurers are required to collect two months of premium from the insured prior to issuing a private passenger motor vehicle policy or binder for PIP and property damage liability coverage.<sup>21</sup> This required prepayment must be made from the insured's own funds, as opposed to being paid on their behalf by an insurer, agent, or premium finance company or via an insurer's or agent's periodic payment plan. However, this prepayment requirement does not apply if:

- The insured is active or former military personnel or one of their dependents;
- The insured or a member of their family is renewing or replacing such a policy with the insurer or a member of the insurer's group;
- All policy payments are being made under a:
  - Payroll deduction plan or an automatic funds transfer payment plan from the policyholder; or
  - An automatic funds transfer payment plan from an agent, managing general agent, or premium finance company, if the policy provides:
    - PIP;
    - Property damage liability coverage (minimum \$10,000); and
    - Bodily injury or death liability coverage (minimum \$10,000, per accident, for one person, and \$20,000, per accident, for two or more persons);
- The insured has had such a policy in effect for 6 months, the insured's agent was terminated by the insurer and the insured obtains replacement coverage with a different insurer through that agent; or
- The insured or a family member has a current policy in effect with the insurer or the insurer's group and is obtaining additional coverage for the same or a new vehicle.

---

<sup>16</sup> s. 627.4035, F.S.

<sup>17</sup> A draft is a negotiable instrument that orders the payment of a fixed amount of money. s. 673.1041, F.S. Examples of drafts include checks, cashier's checks, teller's checks, and documentary drafts.

<sup>18</sup> s. 627.162, F.S.

<sup>19</sup> s. 627.826, F.S.

<sup>20</sup> s. 627.841(4), F.S.

<sup>21</sup> s. 627.7295, F.S. Such policies must be issued for a minimum coverage period of six months, unless the policy shares a common expiration date with an existing policy or to complete the unexpired portion of a previous policy period. The insured may not cancel the policy within the first two months, unless the insured vehicle is destroyed, ownership of the vehicle is transferred, or after a replacement policy covering the vehicle is purchased.

The bill allows an exception to the two-month prepayment requirement if the insured has agreed to recurring credit or debit card payments with the insurer.

### **Personal Injury Protection Insurance**

Florida's Motor Vehicle No-Fault Law (No-Fault Law)<sup>22</sup> requires motorists to carry at least \$10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of PIP insurance under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of \$10,000 of PIP insurance.<sup>23</sup>

PIP insurance benefits are payable as follows:

- Up to a limit of \$10,000, 80 percent of reasonable medical expenses for:
  - 1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
  - 2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
    - a) A licensed hospital or ambulatory surgical center;
    - b) An entity wholly owned by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members;
    - c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals;
    - d) A licensed physical therapist, based upon a referral by a provider listed in 2); or
    - e) A licensed health care clinic that meets specified criteria.
  - 3) Reimbursement for services and care pursuant to 1) or 2) of up to \$10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.
- Up to a limit of \$2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

---

<sup>22</sup> ss. 627.730-627.7405, F.S.

<sup>23</sup> s. 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires \$10,000, per person, and \$20,000, per incident, of bodily injury coverage, and \$10,000 of property damage liability coverage.

## Medical Billing and Diagnosis Coding – Materials Incorporated by Reference

Section 627.736, F.S., requires PIP medical providers to bill their services and code their diagnoses using the *Physicians' Current Procedural Terminology (CPT)*, the *Healthcare Correct Procedural Coding System (HCPCS)*,<sup>24</sup> or the *International Classification of Diseases, 9<sup>th</sup> Revision (ICD-9)*,<sup>25</sup> in effect for the year that the medical service is rendered and to comply with the CMS-1500 medical billing form instructions of the Centers for Medicare & Medicaid Services (CMS), the American Medical Services CPT Editorial Panel, and the HCPCS. Effective October 1, 2015, the CMS ended the use of the ICD-9 for federal reimbursement purposes and began requiring the use of the *International Classification of Diseases, 10<sup>th</sup> Revision (ICD-10)*. Providers are burdened by having to code their bills differently for different payors. Maintaining consistency with the federal CMS bill coding requirements will avoid this impact.

The bill requires the use of the applicable *International Classification of Diseases* manual adopted by the federal Department of Health and Human Services. This limits the use of the *International Classification of Diseases, 9<sup>th</sup> Revision, Clinical Modification (ICD-9-CM)*<sup>26</sup> to services provided prior to October 2015 and requires the use of the *International Classification of Diseases, 10<sup>th</sup> Revision, Clinical Modification (ICD-10-CM)* for all medical services rendered on or after October 1, 2015.

### Eligible Medical Providers – Health Care Clinics

Health care clinics are regulated under the Health Care Clinic Act.<sup>27</sup> The purpose of the Act is to “provide for the licensure, establishment, and enforcement of basic standards for health care clinics and to provide administrative oversight by the Agency for Health Care Administration.”<sup>28</sup> A “clinic” under the act is defined as “an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.”<sup>29</sup> However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act.<sup>30</sup> According to the AHCA web site,<sup>31</sup> there are 1,871 licensed Health Care Clinics and 10,063 clinics that have voluntarily received a certificate of exemption from Health Care Clinic licensure.<sup>32, 33</sup>

Despite the availability of an exemption to clinic licensure, “an entity shall be deemed a clinic and must be licensed under [the Health Care Clinic Act] in order to receive reimbursement under the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).”<sup>34</sup> The list of exempt clinics under the No-Fault Law is much shorter and includes clinics owned, operated by, or affiliated with separately licensed facilities or providers. The following entities do not have to be licensed as a health care clinic to make charges or receive reimbursement under the No-Fault Law:

<sup>24</sup> The CPT and the HCPCS are produced by the American Medical Association. They are available at <https://commerce.ama-assn.org/store/> under the Coding & Reimbursement section (last visited Jan. 14, 2016).

<sup>25</sup> The International Classification of Diseases (ICD) manuals are developed by the World Health Organization. Information about the ICD manuals can be obtained at <http://www.who.int/classifications/icd/en/> (last visited Jan. 14, 2016).

<sup>26</sup> The “clinical modification” of the ICD-9 and ICD-10, which are referred to as the ICD-9-CM and ICD-10-CM, respectively, are developed by the federal National Center for Health Statistics. The clinical modifications manuals allow health care providers to code their diagnoses consistent with the applicable ICD standard. Information about the ICD-9-CM and ICD-10-CM is available from the federal Centers for Disease Control and Prevention (CDC) at <http://www.cdc.gov/nchs/icd/icd10cm.htm> (last visited Jan. 14, 2016).

<sup>27</sup> Part X, chapter 400, F.S.

<sup>28</sup> s. 400.990(2), F.S.

<sup>29</sup> s. 400.9905(4), F.S.

<sup>30</sup> s. 400.9905(4)(a)–(n), F.S.

<sup>31</sup> AGENCY FOR HEALTH CARE ADMINISTRATION, *Facility/Provider Location*, <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 19, 2016).

<sup>32</sup> Data obtained from <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx>, with search limited to Facility/Provider Type - “Health Care Clinic” or “Health Care Clinic Exemption.”

<sup>33</sup> A Health Care Clinic that is exempt from the licensure requirements of 400.9905, F.S., may choose to obtain a certificate of exemption from the AHCA. Rule 59A-33.006, F.A.C.

<sup>34</sup> s. 400.9905(4), F.S.

- An entity wholly owned by a physician licensed under ch. 458, F.S., or ch. 459, F.S., or by the physician and the spouse, parent, child, or sibling of the physician;
- An entity wholly owned by a dentist licensed under ch. 466, F.S., or by the dentist and the spouse, parent, child, or sibling of the dentist;
- An entity wholly owned by a chiropractic physician licensed under ch. 460, F.S., or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
- A hospital or ambulatory surgical center licensed under ch. 395, F.S.;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under ch. 395, F.S.; or
- An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

The bill creates an exemption from a licensure requirement under the No-Fault Law for clinics that are owned by a publicly traded corporation, either directly or through a subsidiary, if the entity has \$250 million or more in total annual sales of health care services. The eligible health care clinic also must have a Florida licensed health care practitioner that is responsible for supervising the entity and ensuring compliance with the No-Fault Law. This is very similar to an existing licensing exemption within the Health Care Clinic Act that exempts a corporation, if the entity has \$250 million or more in total annual sales of health care services and is supervised by a Florida licensed health care practitioner that is responsible for supervising the entity and ensuring compliance with the Health Care Clinic Act. The difference between the two is that the bill requires the exempt entity to be owned by a publicly traded corporation or subsidiary of such a corporation.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemptions.

**Section 2:** Amends s. 627.7283, F.S., relating to cancellation; return of premium.

**Section 3:** Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.

**Section 4:** Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

**Section 5:** Provides an effective date of July 1, 2016.

## 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 has positive and negative impacts on the private sector. Positive impacts include: increased insurer efficiencies that may result in premium savings being passed on to consumers; increased flexibility paying premiums and reallocation of unearned premiums; and reduction of premium prepayments in certain circumstances. Negative impacts include: the bill authorizes a new insufficient funds fee for failed payments, which is in addition to fees levied by a financial institution and a new limitation when an Auto JUA policy may be cancelled by the insured.

**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 19, 2016, the Insurance & Banking Subcommittee considered the bill, adopted five amendments, and reported the bill favorably with a committee substitute. The amendments made multiple changes, as follows:

- Removed the portion of the bill amending the acceptable forms of payment applicable to insurance contracts. The substance of this provision is retained in the bill by the amendment. It is made applicable to motor vehicle insurance contracts, rather than insurance contracts, generally. It adds drafts to the acceptable forms of premium payment and authorizes motor vehicle insurers to collect a fee up to \$15.00 for premium payments that fail due to insufficient funds;
- Conformed the bill to the Senate companion in regard to the medical coding and billing standards for Personal Injury Protection (PIP) medical services;
- Made health care entities that have \$250 million or more in annual sales that are owned by a publicly owned corporation, or a subsidiary of one, eligible to receive PIP insurance



reimbursements without having to be licensed as a health care clinic under Part X of ch. 400, F.S., provided that the entity has a Florida licensed health care practitioner that is responsible for the entity's business activities and compliance with the No-Fault Law;

- Removed the portions of the bill affecting PIP insurance deductibles; and
- Deleted the portion of the bill relating to preinsurance inspections of automobiles.

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



27 |           may receive reimbursement under the Florida Motor  
 28 |           Vehicle No-Fault Law regardless of whether they meet a  
 29 |           specified licensure requirement; providing an  
 30 |           effective date.

31 |

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

33 |

34 |           Section 1. Paragraph (m) is added to subsection (3) of  
 35 |           section 627.311, Florida Statutes, to read:

36 |           627.311 Joint underwriters and joint reinsurers; public  
 37 |           records and public meetings exemptions.—

38 |           (3) The office may, after consultation with insurers  
 39 |           licensed to write automobile insurance in this state, approve a  
 40 |           joint underwriting plan for purposes of equitable apportionment  
 41 |           or sharing among insurers of automobile liability insurance and  
 42 |           other motor vehicle insurance, as an alternate to the plan  
 43 |           required in s. 627.351(1). All insurers authorized to write  
 44 |           automobile insurance in this state shall subscribe to the plan  
 45 |           and participate therein. The plan shall be subject to continuous  
 46 |           review by the office which may at any time disapprove the entire  
 47 |           plan or any part thereof if it determines that conditions have  
 48 |           changed since prior approval and that in view of the purposes of  
 49 |           the plan changes are warranted. Any disapproval by the office  
 50 |           shall be subject to the provisions of chapter 120. The Florida  
 51 |           Automobile Joint Underwriting Association is created under the  
 52 |           plan. The plan and the association:

53 (m) May cancel personal lines or commercial policies  
 54 issued by the plan within the first 60 days after the effective  
 55 date of the policy or binder for nonpayment of premium if the  
 56 check issued for payment of the premium is dishonored for any  
 57 reason or if any other form of payment is rejected or deemed  
 58 invalid. An insured may not cancel a policy or binder within the  
 59 first 90 days after its effective date, or within a lesser  
 60 period as required by the plan, except:

61 1. Upon total destruction of the insured motor vehicle;

62 2. Upon transfer of ownership of the insured motor  
 63 vehicle; or

64 3. After purchase of another policy or binder covering the  
 65 motor vehicle that was covered under the policy being canceled.

66 Section 2. Subsections (1), (2), and (3) of section  
 67 627.7283, Florida Statutes, are amended to read:

68 627.7283 Cancellation; return of unearned premium.—

69 (1) If the insured cancels a policy of motor vehicle  
 70 insurance, the insurer must mail or electronically transfer the  
 71 unearned portion of any premium paid within 30 days after the  
 72 effective date of the policy cancellation or receipt of notice  
 73 or request for cancellation, whichever is later. This  
 74 requirement applies to a cancellation initiated by an insured  
 75 for any reason. However, the insured may elect to apply the  
 76 unearned portion of any premium paid to unpaid balances of other  
 77 policies with the same insurer or insurer group.

78 (2) If an insurer cancels a policy of motor vehicle

79 insurance, the insurer must mail or electronically transfer the  
 80 unearned premium portion of any premium within 15 days after the  
 81 effective date of the policy cancellation. However, the insured  
 82 may elect to apply the unearned portion of any premium paid to  
 83 unpaid balances of other policies with the same insurer or  
 84 insurer group.

85 (3) If the unearned premium is not mailed, ~~or~~  
 86 electronically transferred, or applied to the unpaid balance of  
 87 other policies within the applicable period, the insurer must  
 88 pay to the insured 8 percent interest on the amount due. If the  
 89 unearned premium is not mailed or electronically transferred  
 90 within 45 days after the applicable period, the insured may  
 91 bring an action against the insurer pursuant to s. 624.155.

92 Section 3. Subsection (7) of section 627.7295, Florida  
 93 Statutes, is amended, and subsection (9) is added to that  
 94 section, to read:

95 627.7295 Motor vehicle insurance contracts.—

96 (7) A policy of private passenger motor vehicle insurance  
 97 or a binder for such a policy may be initially issued in this  
 98 state only if, before the effective date of such binder or  
 99 policy, the insurer or agent has collected from the insured an  
 100 amount equal to 2 months' premium. An insurer, agent, or premium  
 101 finance company may not, directly or indirectly, take any action  
 102 resulting in the insured having paid from the insured's own  
 103 funds an amount less than the 2 months' premium required by this  
 104 subsection. This subsection applies without regard to whether

105 the premium is financed by a premium finance company or is paid  
 106 pursuant to a periodic payment plan of an insurer or an  
 107 insurance agent. This subsection does not apply if an insured or  
 108 member of the insured's family is renewing or replacing a policy  
 109 or a binder for such policy written by the same insurer or a  
 110 member of the same insurer group. This subsection does not apply  
 111 to an insurer that issues private passenger motor vehicle  
 112 coverage primarily to active duty or former military personnel  
 113 or their dependents. This subsection does not apply if all  
 114 policy payments are paid pursuant to a payroll deduction plan,  
 115 ~~or~~ an automatic electronic funds transfer payment plan from the  
 116 policyholder, or a recurring credit card or debit card agreement  
 117 with the insurer. This subsection and subsection (4) do not  
 118 apply if all policy payments to an insurer are paid pursuant to  
 119 an automatic electronic funds transfer payment plan from an  
 120 agent, a managing general agent, or a premium finance company  
 121 and if the policy includes, at a minimum, personal injury  
 122 protection pursuant to ss. 627.730-627.7405; motor vehicle  
 123 property damage liability pursuant to s. 627.7275; and bodily  
 124 injury liability in at least the amount of \$10,000 because of  
 125 bodily injury to, or death of, one person in any one accident  
 126 and in the amount of \$20,000 because of bodily injury to, or  
 127 death of, two or more persons in any one accident. This  
 128 subsection and subsection (4) do not apply if an insured has had  
 129 a policy in effect for at least 6 months, the insured's agent is  
 130 terminated by the insurer that issued the policy, and the

131 insured obtains coverage on the policy's renewal date with a new  
 132 company through the terminated agent.

133 (9) (a) In addition to the methods provided in s.  
 134 627.4035(1), premium for motor vehicle insurance contracts  
 135 issued in this state or covering risk located in this state may  
 136 be paid in cash in the form of a draft or drafts.

137 (b) If payment of premium under this subsection by debit  
 138 card, credit card, or automatic electronic funds transfer is  
 139 returned, is declined, or cannot be processed due to  
 140 insufficient funds, the insurer may impose an insufficient funds  
 141 fee of up to \$15 per occurrence pursuant to the policy terms.

142 Section 4. Paragraphs (d) and (h) of subsection (5) of  
 143 section 627.736, Florida Statutes, are amended to read:

144 627.736 Required personal injury protection benefits;  
 145 exclusions; priority; claims.—

146 (5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

147 (d) All statements and bills for medical services rendered  
 148 by a physician, hospital, clinic, or other person or institution  
 149 shall be submitted to the insurer on a properly completed  
 150 Centers for Medicare and Medicaid Services (CMS) 1500 form, UB  
 151 92 forms, or any other standard form approved by the office and  
 152 ~~or~~ adopted by the commission for purposes of this paragraph. All  
 153 billings for such services rendered by providers must, to the  
 154 extent applicable, comply with the CMS 1500 form instructions,  
 155 the American Medical Association CPT Editorial Panel, and the  
 156 Healthcare Common Procedure Coding System (HCPCS); and must

157 follow the Physicians' Current Procedural Terminology (CPT), the  
 158 HCPCS in effect for the year in which services are rendered, and  
 159 the International Classification of Diseases (ICD) adopted by  
 160 the United States Department of Health and Human Services in  
 161 effect for the year in which services are rendered ~~follow the~~  
 162 ~~Physicians' Current Procedural Terminology (CPT) or Healthcare~~  
 163 ~~Correct Procedural Coding System (HCPCS), or ICD-9 in effect for~~  
 164 ~~the year in which services are rendered and comply with the CMS~~  
 165 ~~1500 form instructions, the American Medical Association CPT~~  
 166 ~~Editorial Panel, and the HCPCS.~~ All providers, other than  
 167 hospitals, must include on the applicable claim form the  
 168 professional license number of the provider in the line or space  
 169 provided for "Signature of Physician or Supplier, Including  
 170 Degrees or Credentials." In determining compliance with  
 171 applicable CPT and HCPCS coding, guidance shall be provided by  
 172 the ~~Physicians' Current Procedural Terminology (CPT)~~ or the  
 173 ~~Healthcare Correct Procedural Coding System (HCPCS)~~ in effect  
 174 for the year in which services were rendered, the Office of the  
 175 Inspector General, Physicians Compliance Guidelines, and other  
 176 authoritative treatises designated by rule by the Agency for  
 177 Health Care Administration. A statement of medical services may  
 178 not include charges for medical services of a person or entity  
 179 that performed such services without possessing the valid  
 180 licenses required to perform such services. For purposes of  
 181 paragraph (4) (b), an insurer is not considered to have been  
 182 furnished with notice of the amount of covered loss or medical



183 bills due unless the statements or bills comply with this  
 184 paragraph and are properly completed in their entirety as to all  
 185 material provisions, with all relevant information being  
 186 provided therein.

187 (h) As provided in s. 400.9905, an entity excluded from  
 188 the definition of a clinic shall be deemed a clinic and must be  
 189 licensed under part X of chapter 400 in order to receive  
 190 reimbursement under ss. 627.730-627.7405. However, this  
 191 licensing requirement does not apply to:

192 1. An entity wholly owned by a physician licensed under  
 193 chapter 458 or chapter 459, or by the physician and the spouse,  
 194 parent, child, or sibling of the physician;

195 2. An entity wholly owned by a dentist licensed under  
 196 chapter 466, or by the dentist and the spouse, parent, child, or  
 197 sibling of the dentist;

198 3. An entity wholly owned by a chiropractic physician  
 199 licensed under chapter 460, or by the chiropractic physician and  
 200 the spouse, parent, child, or sibling of the chiropractic  
 201 physician;

202 4. A hospital or ambulatory surgical center licensed under  
 203 chapter 395;

204 5. An entity that wholly owns or is wholly owned, directly  
 205 or indirectly, by a hospital or hospitals licensed under chapter  
 206 395;

207 6. An entity that is a clinical facility affiliated with  
 208 an accredited medical school at which training is provided for

209 | medical students, residents, or fellows; ~~or~~

210 |         7. An entity that is certified under 42 C.F.R. part 485,  
211 | subpart H; or

212 |         8. An entity that is owned by a publicly traded  
213 | corporation, either directly or indirectly through its  
214 | subsidiaries, that has \$250 million or more in total annual  
215 | sales of health care services provided by licensed health care  
216 | practitioners if one or more of the persons responsible for the  
217 | operations of the entity are health care practitioners who are  
218 | licensed in this state and who are responsible for supervising  
219 | the business activities of the entity and the entity's  
220 | compliance with state law for purposes of this section.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 743 Mobile Homes  
**SPONSOR(S):** Business & Professions Subcommittee; Latvala and Burgess  
**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/CS/SB 826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	11 Y, 0 N, As CS	Brown-Blake	Anstead
2) Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
3) Regulatory Affairs Committee		Brown-Blake <i>bb</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The Florida Mobile Home Act (Act) regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) of the Department of Business and Professional Regulation (Department) enforces the Act. The bill makes the following changes to the Act:

- Revises the Division's notice requirements when a written complaint is filed with the Division;
- Provides that non-ad valorem assessments are considered a charge that a mobile home park owner may pass on to a mobile home owner;
- Provides that, if the park owner does not provide a notice of a lot rental increase 90 days before the renewal date of the rental agreement, the rental agreement remains under the same terms until a 90-day notice is given;
- Permits the purchaser of a mobile home to cancel or rescind a contract for the purchase of the mobile home if the park owner has not approved the purchaser's tenancy at least five days before the closing of the purchase.
- Provides that, upon incorporation, all consenting mobile homeowners may become members or shareholders of a homeowners' association and that upon incorporation and notification to the park owner, the association becomes the representative to all mobile homeowners in all matters related to the Act;
- Provides that owners of a jointly owned mobile home or subdivision lot are only permitted one vote.
- Authorizes members to vote in person or by secret ballot, including an absentee ballot.
- Prohibits members from recording meetings between the board of directors or an appointed committee and the park owner;
- Requires the Division to adopt rules implementing board member training and publish a notice of proposed rules by October 1, 2016; and
- Provides that board members will not be considered in violation for failure to comply with board member certification and education requirements until after October 1, 2017.

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

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

Chapter 723, F.S., is known as the "Florida Mobile Home Act" (Act) and provides for the regulation of mobile homes by the Division. The Act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The Act provides in part that:

[O]nce occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.<sup>1</sup>

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease. The Florida Supreme Court, in addressing mobile home park issues, has stated that "a hybrid type of property relationship exists between the mobile home owner and the park owner and that . . . relationship is not simply one of landowner and tenant. Each has basic property rights which must reciprocally accommodate and harmonize. Separate and distinct mobile home laws are necessary to define the relationships and protect the interests of the persons involved."<sup>2</sup>

##### Notice of Complaint Process

The Division has the power to institute various enforcement proceedings in its own name against a developer, mobile home park owner, or homeowners' association or its assignee or agent if the Division has cause to believe a violation of any provision of ch. 723, F.S., has occurred. The permitted enforcement proceedings include:

- Allowing a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent agreement;
- Issuing a cease and desist order to a mobile home park owner and requiring him or her to take affirmative action to correct the violation, including:
  - Issuing refunds of rent increases, improper fees, charges and assessments;
  - Filing and using documents which correct a violation.
  - Reasonable action necessary to correct a violation.
- Bringing an action in circuit court on behalf of a class of mobile home owners, mobile home park owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution; and
- Imposing a civil penalty.

The Division often initiates enforcement proceedings based on complaints by mobile home owners, mobile home park owners, and homeowners' associations. When the division receives a written complaint alleging a violation of ch. 723, F.S., or the rules, the Division is required to periodically notify, in writing, the person who filed the complaint of the status of the investigation whether probable cause has been found to believe a violation has occurred and the status of any administrative action, civil action, or appellate action. If the Division has found probable cause to believe that a violation has

---

<sup>1</sup> s. 723.004(1), F.S.

<sup>2</sup> *Stewart v. Green*, 300 So. 2d 889, 892 (Fla. 1974).

occurred, it is required to notify, in writing, the party complained against of the results of the investigation and the disposition of the complaint.<sup>3</sup>

### Pass-on Charges and Lot Rental Increases

In mobile home parks containing 26 or more lots, prior to entering into a rental agreement for a mobile home lot with a mobile homeowner, the park owner must deliver a prospectus or offering circular to the homeowner.<sup>4</sup> The prospectus or offering circular in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park.<sup>5</sup> The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.<sup>6</sup>

The prospectus or offering circular must include “[a]n explanation of the manner in which the lot rental amount will be raised, including disclosure of the manner in which pass-through charges will be assessed.”<sup>7</sup> The term “pass-through charge” is defined as “the mobile home owner’s proportionate share of the necessary and actual direct costs and impact or hookup fees for a governmentally mandated capital improvement, which may include the necessary and actual direct costs and impact or hookup fees incurred for capital improvements required for public or private regulated utilities.”<sup>8</sup>

The rental agreement must contain the lot rental amount and included services. A lot rental amount may not be increased during the term of the lot rental agreement except:

- When the manner of the increase is disclosed in a lot rental agreement longer than 12 months and which provides for such increases not more frequently than annually;
- For pass-through charges; and
- That a charge may not be collected that results in payment of money for sums previously collected as part of the lot rental amount.<sup>9</sup>

However, the park owner may pass-on ad valorem property taxes, and utility charges, or increases of either, if they are not otherwise being collected with the rent and that the passing on of the property taxes or utility charges, or increases of either, was:

- Disclosed prior to tenancy;
- A matter of custom between the park owner and the mobile homeowner; or
- Authorized by law.<sup>10</sup>

The property taxes and utility charges are required to be part of the lot rental amount. Pass-on charges<sup>11</sup> may be passed on only within one year of the date a mobile home park owner remits payment of the charge. A park owner is prohibited from passing on any fine, interest, fee, or increase in a charge resulting from a park owner’s payment of the charge after the date such charges becomes delinquent. However, a park owner and a mobile homeowner may agree to an alternative manner of payment for the charges.<sup>12</sup>

---

<sup>3</sup> s. 723.006(6), F.S.

<sup>4</sup> s. 723.011(1)(a), F.S.

<sup>5</sup> s. 723.011(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> s. 723.012(9)(c), F.S.

<sup>8</sup> s. 723.003(17), F.S.

<sup>9</sup> s. 723.031(5), F.S.

<sup>10</sup> s. 723.031(5)(c), F.S.

<sup>11</sup> Note: Pass-on charges are different than pass-through charges.

<sup>12</sup> *Id.* at note 8.

### Rights of a Mobile Home Purchaser

The purchaser of a mobile home in a mobile home park may become a tenant of the park if the purchaser meets the requirements of entry into the park under the park's rules and regulations, subject to the park owner's approval. The park owner may not unreasonably withhold approval.<sup>13</sup>

### Homeowners' Association Formation

Section 723.075, F.S., requires mobile homeowners to form a homeowners' association in order to exercise certain rights set forth in s. 723.071, F.S. In order to create a homeowners' association, no less than two-thirds of all the mobile homeowners must have consented, in writing, to become members and shareholders of the corporation. Upon consent by two-thirds of the homeowners, all consenting homeowners and their successors become members of the association and are bound by the provisions of the articles of incorporation, the bylaws of the association, and other properly promulgated restrictions. All members must be bona fide owners of a mobile home located in the park. Upon incorporation and notification to the park owner, the association becomes the representative of mobile homeowners in all matters related to ch. 723, F.S.

### Homeowners' Association Voting Requirements and Meetings

Section 723.078, F.S. provides that, unless the bylaws state otherwise, a quorum consists of 30% of the total membership of the association. In order to reach a decision, the association must have a majority of members present at a meeting where a quorum is present.

Members may vote at homeowner association meetings in person or by limited proxy but may not vote by general proxy. However, both limited proxies and general proxies may be used to establish a quorum.<sup>14</sup>

Current law is silent as to how to count a member vote in cases where a mobile home or subdivision lot is jointly owned by two or more persons. Additionally, it is unclear in current law how many votes each mobile home or subdivision lot may have.

Section 723.078, F.S. was revised by the Legislature in 2015 to authorize any member to tape record or videotape meetings, and to require the division to adopt rules governing the tape recording and videotaping of meetings.<sup>15</sup>

### Board Member Education Requirements

The 2015 changes also revise s. 723.006, F.S., to require the Division to approve training and educational programs for board members of mobile home owners' associations. The Division is required to review and approve educational material and training programs for board members and mobile home owners and to maintain a list of approved programs and providers.<sup>16</sup> However, the Division has not promulgated rules approving training and education programs or providing curriculum.

Within 90 days of being elected, a member of a board directors is required to certify by affidavit that he or she:

- Has read the association's current articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies;
- Will work to uphold the documents and policies to the best of his or her ability; and

---

<sup>13</sup> s. 723.059(1), F.S.

<sup>14</sup> s. 723.078(2)(b)2., F.S.

<sup>15</sup> ch. 2015-90, Laws of Fla.

<sup>16</sup> s. 723.006(13), F.S.

- Will faithfully discharge his or her fiduciary responsibility to the members.<sup>17</sup>

In lieu of the written certification, the board members may submit a certificate of completion of the educational curriculum approved by the Division within 1 year before or 90 days after the date of his or her election.<sup>18</sup>

## **Effect of the Bill**

### *Notice of Complaint Process*

When there are disputes between a mobile home owner and a mobile home park owner, either party can request enforcement of ch. 723, F.S., by the Division by filing a complaint. The bill amends the notice requirements in s. 723.006(6), F.S., that set out how the Division notifies the complainant and the person the complaint is filed against following the filing of a written complaint alleging a violation of ch. 723, F.S. The bill requires the Division to notify the complainant in writing within 30 days of receipt of the written complaint. Thereafter, the Division is required to notify the complainant of the investigation status within 90 days of receipt of the written complaint. When the investigation is complete, the Division is required to notify, in writing, both the complainant and the party complained against of the investigation's results.

### *Pass-through Charges and Lot Rental Increases*

The bill amends s. 723.031(5)(c), F.S., to provide that non-ad valorem assessments, which are currently charged to mobile home owners, are considered a pass-on charge and thus may be passed on to homeowners in the same manner as ad valorem assessments and utility charges. The homeowners already pay these assessments, but by listing the assessments in the pass-on charges, the assessments would be itemized in the bill submitted to the homeowners by the park owners. This provides clearer notice to homeowners of what taxes and assessments they are paying.

The bill further provides that, if the park owner does not provide a notice of lot rental increase 90 days before the renewal date of the rental agreement, the rental agreement remains under the same terms until a 90-day notice of lot rental increase is given. The notice may provide for a rental term shorter than 1 year in order to maintain the same renewal date.

### *Rights of a Mobile Home Purchaser*

The bill provides that the purchaser of a mobile home may cancel or rescind a contract for the purchase of the mobile home if the park owner has not approved the purchaser's tenancy at least 5 days before the closing of the purchase.

### *Homeowners' Association Formation*

The bill maintains the requirement that two-thirds of the homeowners must consent to create the homeowners' association. However, the bill provides that, upon incorporation, all consenting mobile homeowners may become members or shareholders. The bill defines the terms "member" and "shareholder" to mean "a mobile home owner who consents to be bound by the articles of incorporation, bylaws, and policies of the incorporated homeowners' association," thus requiring that consent be provided by a homeowner prior to being bound by the association's governing documents. The bill removes the provision providing that the homeowners' successors are members of the association.

---

<sup>17</sup> s. 723.0781, F.S.

<sup>18</sup> *Id.*



Homeowners' Association Voting Requirements and Meetings

The bill provides that owners of a jointly owned mobile home or subdivision lot are only permitted one vote per lot or mobile home. Additionally, the bill provides that any number greater than 50 percent of the total number of votes cast at a meeting constitutes a majority for the purposes of determining whether an action passes at a homeowners' association member meeting. The bill provides that members may vote in person or by secret ballot, including an absentee ballot.

Additionally, the bill provides that any member may tape record or videotape meetings of the board of directors and its committees, except meetings between the board of directors or its appointed homeowners' committee and the park owner.

Board Member Education Requirements

The bill requires the Division to adopt the rules implementing board member training, including course content for such training, and publish a notice of proposed rule by October 1, 2016. Furthermore, the bill provides that s. 723.0781, F.S., regarding the certification and education of board members, becomes effective October 1, 2016, but the board members will not be considered in violation for failure to comply until after October 1, 2017.

B. SECTION DIRECTORY:

**Section 1** amends s. 723.006, F.S., revising certain notice requirements for written complaints.

**Section 2** amends s. 723.031, F.S., authorizing a mobile home park owner to pass on non-ad valorem assessments to a tenant under certain circumstances, and providing other requirements regarding non-ad valorem assessments.

**Section 3** amends s. 723.059, F.S., authorizing a mobile home purchaser to cancel or rescind the contract to purchase under certain circumstances.

**Section 4** amends s. 723.075, F.S., revising the rights that mobile home owners exercise if they form an association and the manner in which it is formed.

**Section 5** amends s. 723.078, F.S., specifying voting requirements for homeowners' associations.

**Section 6** amends s. 723.0781, F.S., relating to board member training programs.

**Section 7** provides an effective date of July 1, 2016.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 20, 2016, the Business & Professions Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Requires the division to adopt rules regarding board member training requirements and sets deadlines for implementation and enforcement.
- Provides that the term non-ad valorem assessments has the same meaning as in s. 197.3632(1)(d), F.S.
- Clarifies that the homeowners' associations controls all mobile home parcels located within the mobile home park, rather than just those owns who agreed to join the homeowners' association.
- Requires the Division to adopt a rule defining "secret ballot."
- Prohibits the tape recording or video taping of meetings between the board or a committee and the park owner.

The staff analysis is drafted to reflect the committee substitute.



27 relating to memberships of successors to home owners;  
 28 revising when the association becomes the  
 29 representative of all the mobile home owners; amending  
 30 s. 723.078, F.S.; specifying voting requirements for  
 31 homeowners' associations; specifying the requirements  
 32 for a majority of votes; authorizing members to vote  
 33 by secret ballot and absentee ballot; prohibiting the  
 34 tape recording or videotaping of meetings between the  
 35 board or committee and the park owner; amending s.  
 36 723.0781, F.S.; delaying applicability of certain  
 37 board member training requirements; specifying a  
 38 future date after which directors who fail to comply  
 39 with the training requirements are deemed to commit a  
 40 violation; providing an effective date.

41

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

43

44 Section 1. Subsection (6) of section 723.006, Florida  
 45 Statutes, is amended, and subsection (15) is added to that  
 46 section, to read:

47 723.006 Powers and duties of division.—In performing its  
 48 duties, the division has the following powers and duties:

49 (6) With regard to any written complaint alleging a  
 50 violation of any provision of this chapter or any rule adopted  
 51 ~~promulgated~~ pursuant thereto, the division shall, within 30 days  
 52 after receipt of a written complaint, ~~periodically~~ notify, in

53 writing, the person who filed the complaint of the status of the  
 54 complaint. Thereafter, the division shall notify the complainant  
 55 of the status of the investigation within 90 days after receipt  
 56 of the written complaint. Upon completion of the investigation,  
 57 the division investigation, whether probable cause has been  
 58 found, and the status of any administrative action, civil  
 59 action, or appellate action, and if the division has found that  
 60 probable cause exists, it shall notify, in writing, the  
 61 complainant and the party complained against of the results of  
 62 the investigation and disposition of the complaint.

63 (15) The division shall adopt rules to implement the board  
 64 member training requirements for educational programs as  
 65 provided in this chapter. The division shall publish a notice of  
 66 the proposed rules pursuant to s. 120.54(3)(a), by October 1,  
 67 2016. The rules must include content and notice requirements for  
 68 the board member training program to ensure that providers meet  
 69 minimum training requirements.

70 Section 2. Subsection (5) of section 723.031, Florida  
 71 Statutes, is amended to read:

72 723.031 Mobile home lot rental agreements.—

73 (5) The rental agreement shall contain the lot rental  
 74 amount and services included. An increase in lot rental amount  
 75 upon expiration of the term of the lot rental agreement shall be  
 76 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),  
 77 whichever is applicable, provided that, pursuant to s.  
 78 723.059(4), the amount of the lot rental increase is disclosed

79 and agreed to by the purchaser, in writing. An increase in lot  
 80 rental amount shall not be arbitrary or discriminatory between  
 81 similarly situated tenants in the park. A ~~No~~ lot rental amount  
 82 may not be increased during the term of the lot rental  
 83 agreement, except:

84 (a) When the manner of the increase is disclosed in a lot  
 85 rental agreement with a term exceeding 12 months and which  
 86 provides for such increases not more frequently than annually.

87 (b) For pass-through charges as defined in s. 723.003.

88 (c) That a ~~no~~ charge may not be collected which ~~that~~  
 89 results in payment of money for sums previously collected as  
 90 part of the lot rental amount. The provisions hereof  
 91 notwithstanding, the mobile home park owner may pass on, at any  
 92 time during the term of the lot rental agreement, ad valorem  
 93 property taxes, non-ad valorem assessments, and utility charges,  
 94 or increases of either, provided that the ad valorem property  
 95 taxes, non-ad valorem assessments, and ~~the~~ utility charges are  
 96 not otherwise being collected in the remainder of the lot rental  
 97 amount and provided further that the passing on of such ad  
 98 valorem taxes, non-ad valorem assessments, or utility charges,  
 99 or increases of either, was disclosed prior to tenancy, was  
 100 being passed on as a matter of custom between the mobile home  
 101 park owner and the mobile home owner, or such passing on was  
 102 authorized by law. A park owner shall be deemed to have  
 103 disclosed the passing on of ad valorem property taxes and non-ad  
 104 valorem assessments if ad valorem property taxes or non-ad

105 valorem assessments were disclosed as a factor for increasing  
 106 the lot rental amount in the prospectus or rental agreement.  
 107 Such ad valorem taxes, non-ad valorem assessments, and utility  
 108 charges shall be a part of the lot rental amount as defined by  
 109 this chapter. For purposes of this paragraph, the term "non-ad  
 110 valorem assessments" has the same meaning as provided in s.  
 111 197.3632(1)(d). Other provisions of this chapter  
 112 notwithstanding, pass-on charges may be passed on only within 1  
 113 year of the date a mobile home park owner remits payment of the  
 114 charge. A mobile home park owner is prohibited from passing on  
 115 any fine, interest, fee, or increase in a charge resulting from  
 116 a park owner's payment of the charge after the date such charges  
 117 become delinquent. Nothing herein shall prohibit a park owner  
 118 and a homeowner from mutually agreeing to an alternative manner  
 119 of payment to the park owner of the charges.

120 (d) If a notice of increase in lot rental amount is not  
 121 given 90 days before the renewal date of the rental agreement,  
 122 the rental agreement shall remain under the same terms until a  
 123 90-day notice of increase in lot rental amount is given. The  
 124 notice may provide for a rental term shorter than 1 year in  
 125 order to maintain the same renewal date.

126 Section 3. Subsection (1) of section 723.059, Florida  
 127 Statutes, is amended to read:

128 723.059 Rights of purchaser.—

129 (1) The purchaser of a mobile home within a mobile home  
 130 park may become a tenant of the park if such purchaser would

131 otherwise qualify with the requirements of entry into the park  
 132 under the park rules and regulations, subject to the approval of  
 133 the park owner, but such approval may not be unreasonably  
 134 withheld. The purchaser of the mobile home may cancel or rescind  
 135 the contract for purchase of the mobile home if the purchaser's  
 136 tenancy has not been approved by the park owner 5 days before  
 137 the closing of the purchase.

138 Section 4. Subsection (1) of section 723.075, Florida  
 139 Statutes, is amended to read:

140 723.075 Homeowners' associations.-

141 (1) In order to exercise the rights provided in this  
 142 chapter s. 723.071, the mobile home owners shall form an  
 143 association in compliance with this section and ss. 723.077,  
 144 723.078, and 723.079, which shall be a corporation for profit or  
 145 not for profit and of which not less than two-thirds of all of  
 146 the mobile home owners within the park shall have consented, in  
 147 writing, to become members or shareholders. Upon incorporation  
 148 of the association ~~such consent by two-thirds of the mobile home~~  
 149 ~~owners~~, all consenting mobile home owners in the park may become  
 150 members or shareholders. The term "member" or "shareholder"  
 151 means a mobile home owner who consents to be bound by the  
 152 articles of incorporation, bylaws, and policies of the  
 153 incorporated homeowners' association ~~and their successors shall~~  
 154 ~~become members of the association and shall be bound by the~~  
 155 ~~provisions of the articles of incorporation, the bylaws of the~~  
 156 ~~association, and such restrictions as may be properly~~



157 ~~promulgated pursuant thereto.~~ The association may not shall have  
 158 a ~~ne~~ member or shareholder who is not a bona fide owner of a  
 159 mobile home located in the park. Upon incorporation and service  
 160 of the notice described in s. 723.076, the association shall  
 161 become the representative of all the mobile home owners in all  
 162 matters relating to this chapter, regardless of whether the  
 163 homeowner is a member of the association.

164 Section 5. Paragraphs (b) and (c) of subsection (2) of  
 165 section 723.078, Florida Statutes, are amended to read:

166 723.078 Bylaws of homeowners' associations.-

167 (2) The bylaws shall provide and, if they do not, shall be  
 168 deemed to include, the following provisions:

169 (b) Quorum; voting requirements; proxies.-

170 1. Unless otherwise provided in the bylaws, 30 percent of  
 171 the total membership is required to constitute a quorum.

172 Decisions shall be made by a majority of members represented at  
 173 a meeting at which a quorum is present.

174 2. A member may not vote by general proxy but may vote by  
 175 limited proxies substantially conforming to a limited proxy form  
 176 adopted by the division. Limited proxies and general proxies may  
 177 be used to establish a quorum. Limited proxies may be used for  
 178 votes taken to amend the articles of incorporation or bylaws  
 179 pursuant to this section, and any other matters for which this  
 180 chapter requires or permits a vote of members, except that no  
 181 proxy, limited or general, may be used in the election of board  
 182 members. If a mobile home or subdivision lot is owned jointly,

183 the owners of the mobile home, or subdivision lot, shall be  
 184 counted as one for the purpose of determining the number of  
 185 votes required for a majority. Only one vote per mobile home or  
 186 subdivision lot shall be counted. Any number greater than 50  
 187 percent of the total number of votes constitutes a majority.  
 188 Notwithstanding ~~the provisions of~~ this section, members may vote  
 189 in person at member meetings or by secret ballot, including  
 190 absentee ballots, as defined by the division.

191 3. A proxy is effective only for the specific meeting for  
 192 which originally given and any lawfully adjourned meetings  
 193 thereof. In no event shall any proxy be valid for a period  
 194 longer than 90 days after the date of the first meeting for  
 195 which it was given. Every proxy shall be revocable at any time  
 196 at the pleasure of the member executing it.

197 4. A member of the board of directors or a committee may  
 198 submit in writing his or her agreement or disagreement with any  
 199 action taken at a meeting that the member did not attend. This  
 200 agreement or disagreement may not be used as a vote for or  
 201 against the action taken and may not be used for the purposes of  
 202 creating a quorum.

203 (c) Board of directors' and committee meetings.—

204 1. Meetings of the board of directors and meetings of its  
 205 committees at which a quorum is present shall be open to all  
 206 members. Notwithstanding any other provision of law, the  
 207 requirement that board meetings and committee meetings be open  
 208 to the members does not apply to board or committee meetings

209 held for the purpose of discussing personnel matters or meetings  
 210 between the board or a committee and the association's attorney,  
 211 with respect to potential or pending litigation, where the  
 212 meeting is held for the purpose of seeking or rendering legal  
 213 advice, and where the contents of the discussion would otherwise  
 214 be governed by the attorney-client privilege. Notice of meetings  
 215 shall be posted in a conspicuous place upon the park property at  
 216 least 48 hours in advance, except in an emergency. Notice of any  
 217 meeting in which assessments against members are to be  
 218 considered for any reason shall specifically contain a statement  
 219 that assessments will be considered and the nature of such  
 220 assessments.

221         2. A board or committee member's participation in a  
 222 meeting via telephone, real-time videoconferencing, or similar  
 223 real-time telephonic, electronic, or video communication counts  
 224 toward a quorum, and such member may vote as if physically  
 225 present. A speaker shall be used so that the conversation of  
 226 those board or committee members attending by telephone may be  
 227 heard by the board or committee members attending in person, as  
 228 well as by members present at a meeting.

229         3. Members of the board of directors may use e-mail as a  
 230 means of communication but may not cast a vote on an association  
 231 matter via e-mail.

232         4. The right to attend meetings of the board of directors  
 233 and its committees includes the right to speak at such meetings  
 234 with reference to all designated agenda items. The association

235 may adopt reasonable written rules governing the frequency,  
236 duration, and manner of members' statements. Any item not  
237 included on the notice may be taken up on an emergency basis by  
238 at least a majority plus one of the members of the board. Such  
239 emergency action shall be noticed and ratified at the next  
240 regular meeting of the board. Any member may tape record or  
241 videotape meetings of the board of directors and its committees,  
242 except meetings between the board of directors or its appointed  
243 homeowners' committee and the park owner. The division shall  
244 adopt reasonable rules governing the tape recording and  
245 videotaping of the meeting.

246 5. Except as provided in paragraph (i), a vacancy  
247 occurring on the board of directors may be filled by the  
248 affirmative vote of the majority of the remaining directors,  
249 even though the remaining directors constitute less than a  
250 quorum; by the sole remaining director; if the vacancy is not so  
251 filled or if no director remains, by the members; or, on the  
252 application of any person, by the circuit court of the county in  
253 which the registered office of the corporation is located.

254 6. The term of a director elected or appointed to fill a  
255 vacancy expires at the next annual meeting at which directors  
256 are elected. A directorship to be filled by reason of an  
257 increase in the number of directors may be filled by the board  
258 of directors, but only for the term of office continuing until  
259 the next election of directors by the members.

260 7. A vacancy that will occur at a specific later date, by

261 | reason of a resignation effective at a later date, may be filled  
 262 | before the vacancy occurs. However, the new director may not  
 263 | take office until the vacancy occurs.

264 |       8.a. The officers and directors of the association have a  
 265 | fiduciary relationship to the members.

266 |       b. A director and committee member shall discharge his or  
 267 | her duties in good faith, with the care an ordinarily prudent  
 268 | person in a like position would exercise under similar  
 269 | circumstances, and in a manner he or she reasonably believes to  
 270 | be in the best interests of the corporation.

271 |       9. In discharging his or her duties, a director may rely  
 272 | on information, opinions, reports, or statements, including  
 273 | financial statements and other financial data, if prepared or  
 274 | presented by:

275 |       a. One or more officers or employees of the corporation  
 276 | who the director reasonably believes to be reliable and  
 277 | competent in the matters presented;

278 |       b. Legal counsel, public accountants, or other persons as  
 279 | to matters the director reasonably believes are within the  
 280 | persons' professional or expert competence; or

281 |       c. A committee of the board of directors of which he or  
 282 | she is not a member if the director reasonably believes the  
 283 | committee merits confidence.

284 |       10. A director is not acting in good faith if he or she  
 285 | has knowledge concerning the matter in question that makes  
 286 | reliance otherwise permitted by subparagraph 9. unwarranted.

287           11. A director is not liable for any action taken as a  
 288 director, or any failure to take any action, if he or she  
 289 performed the duties of his or her office in compliance with  
 290 this section.

291           Section 6. Section 723.0781, Florida Statutes, is amended  
 292 to read:

293           723.0781 Board member training programs.—

294           (1) Effective October 1, 2016:

295           (a) Within 90 days after being elected or appointed to the  
 296 board, a newly elected or appointed director shall certify by an  
 297 affidavit in writing to the secretary of the association that he  
 298 or she has read the association's current articles of  
 299 incorporation, bylaws, and the mobile home park's prospectus,  
 300 rental agreement, rules, regulations, and written policies; that  
 301 he or she will work to uphold such documents and policies to the  
 302 best of his or her ability; and that he or she will faithfully  
 303 discharge his or her fiduciary responsibility to the  
 304 association's members.

305           (b) In lieu of this written certification, within 90 days  
 306 after being elected or appointed to the board, the newly elected  
 307 or appointed director may submit a certificate of having  
 308 satisfactorily completed the educational curriculum approved by  
 309 the division within 1 year before or 90 days after the date of  
 310 election or appointment. The educational certificate is valid  
 311 and does not have to be resubmitted as long as the director  
 312 serves on the board without interruption.

CS/HB 743

2016

313        (c) A director who fails to timely file the written  
314 certification or educational certificate is suspended from  
315 service on the board until he or she complies with this section.  
316 The board may temporarily fill the vacancy during the period of  
317 suspension.

318        (d) The secretary of the association shall retain a  
319 director's written certification or educational certificate for  
320 inspection by the members for 5 years after the director's  
321 election or the duration of the director's uninterrupted tenure,  
322 whichever is longer. Failure to have such written certification  
323 or educational certificate on file does not affect the validity  
324 of any board action.

325        (2) A director who fails to comply with the requirements  
326 of subsection (1) before October 1, 2017, is not deemed to have  
327 committed a violation of this section.

328        Section 7. This act shall take effect July 1, 2016.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1025 Public Records/Utility Security Information  
**SPONSOR(S):** State Affairs Committee; Energy & Utilities Subcommittee; Antone; and Cortes, B.  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 776

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	12 Y, 0 N, As CS	Whittier	Keating
2) State Affairs Committee	18 Y, 0 N, As CS	Williamson	Camechis
3) Regulatory Affairs Committee		Whittier <i>SMW</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

This bill creates a public record exemption for the following information held by a local government utility:

- Information related to the security of the utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.
- Information related to the security of the utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operation of the systems and the utility.

The bill provides for retroactive application of the public record exemption. The bill provides that this public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

For purposes of the Public Records Act, the bill defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill does not appear to have a fiscal impact on the state; however, it may have a minimal fiscal impact on local government utilities.

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

**Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.**

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of article I, section 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.<sup>1</sup>

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1)(a), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act<sup>2</sup> provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.<sup>3</sup>

The Act also requires the automatic repeal of a public record or public meeting exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>4</sup>

##### Local Government Utilities

Pursuant to article VIII, section 2(b) of the Florida Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

Municipalities are authorized by general law to provide water and sewer utility services.<sup>5</sup> According to a 2014 staff analysis, 254 municipalities provide water services and 222 municipalities provide wastewater service.<sup>6</sup>

---

<sup>1</sup> FLA. CONST. art. I, s. 24(c).

<sup>2</sup> s. 119.15, F.S.

<sup>3</sup> s. 119.15(6)(b), F.S.

<sup>4</sup> s. 119.15(3), F.S.

<sup>5</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

<sup>6</sup> Florida House of Representatives Staff Analysis of HB 813 (2014), p. 3 (Mar. 18, 2014).

Public power utilities in the state are composed of 34 municipally owned electric utilities<sup>7</sup> that serve approximately 15 percent of the state's population (3.0 million consumers).<sup>8</sup> Collectively, they are the third largest source of power in the state.<sup>9</sup>

According to the Florida Municipal Electric Association, "Each month, the Orlando Utilities Commission sees about 2 million 'hits' from foreign countries, mostly from the Middle East and Asia. These 'hits' are described as an attempt to connect to any resource on the utility's cyber network."<sup>10</sup> The chief information officer for the Orlando Utilities Commission states that, "[a]ttacks are daily, they are unrelenting and they are evolving... [There are] a bunch of rogue nations that are attacking our system on a daily basis in what used to be in the neighborhood of 30,000 probes into our firewalls and now has gone into the millions."<sup>11</sup>

Recent events have illuminated the threat to the electric power grid. For example:

- In December 2015, cyber hackers remotely attacked the power grid in western Ukraine and caused a blackout that left over 80,000 customers without power for six hours.<sup>12</sup>
- In October 2015, CNN Money reported that ISIS hackers had been attempting to penetrate the U.S. energy grid through cyberattacks to take down parts of the country's energy supply.<sup>13</sup>
- In October 2015, Iranian attackers hacked into a University of California housing system and opened a pathway into the utility networks that run into the U.S. power grid. The hackers stole passwords and engineering drawings of dozens of power plants that could have been used to knock out electricity flowing to millions of homes.<sup>14</sup>

### Public Record and Public Meeting Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

#### *Security System Plans*

Section 119.071(3)(a)1., F.S., defines "security system plan" to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or

<sup>7</sup> Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, p.1 (Mar. 2015).

<sup>8</sup> Florida Municipal Electric Association, *Who is FMEA?*, <http://publicpower.com/who-is-fmea/> (last visited Feb. 14, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> Email from Joseph Salzverg, representative of the Florida Municipal Electric Association, RE: the public records exemption for cyber security systems of municipal utilities (Jan. 21, 2016).

<sup>11</sup> Orlando Sentinel, *Orlando's electric utility fights cyber war*, <http://www.orlandosentinel.com/news/os-cyber-war-ouc-20140927-story.html> (last visited Jan. 23, 2016).

<sup>12</sup> CBCnews, *Cyberattack that crippled Ukrainian power grid was highly coordinated*, <http://www.cbc.ca/news/technology/ukraine-cyberattack-1.3398492> (last visited Jan. 23, 2016).

<sup>13</sup> CNN Money, *ISIS is attacking the U.S. energy grid (and failing)*, <http://money.cnn.com/2015/10/15/technology/isis-energy-grid/index.html> (last visited Jan. 23, 2016).

<sup>14</sup> The Journal, *Investigation finds U.S. power grid vulnerable to foreign hacks*, [http://journal-news.net/page/content\\_detail/id/648485/Investigation-finds-US-power-grid-vulnerable-to-foreign-hacks.html?nav=5006](http://journal-news.net/page/content_detail/id/648485/Investigation-finds-US-power-grid-vulnerable-to-foreign-hacks.html?nav=5006) (last visited Jan. 23, 2016).

- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency<sup>15</sup> is confidential and exempt<sup>16</sup> from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.<sup>17</sup>

An agency's custodian of public records<sup>18</sup> may disclose the confidential and exempt information to:

- The property owner or leaseholder; or
- Another state or federal agency to prevent, detect, guard against, respond to, investigate, or manage the consequences of any attempted or actual act of terrorism, or to prosecute those persons who are responsible for such attempts or acts.<sup>19</sup>

### *Other Information Related to Security Systems*

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency and all meetings relating directly to or that would reveal such security systems or information are confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information. There are no exceptions provided to authorize an agency to disclose the information under certain circumstances.

### **Effect of Proposed Changes**

The bill creates a public record exemption for the following information held by a utility owned or operated by a unit of local government:

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or information technology resources.

---

<sup>15</sup> Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

<sup>16</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

<sup>17</sup> Section 119.071(3)(a)2., F.S.

<sup>18</sup> Section 119.011(5), F.S., defines "custodian of public records" as the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.

<sup>19</sup> Section 119.071(3)(a)3., F.S.

- Information related to the security of a local government utility's existing or proposed information technology systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.

The bill provides for retroactive application of the public record exemption.<sup>20</sup>

For purposes of the Public Records Act,<sup>21</sup> the bill defines the term "utility" to mean a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater.

The bill provides a statement of public necessity as required by the Florida Constitution, which provides the following legislative findings:

- The increased interconnection and integration of utility system infrastructure exposes such systems to attacks that may result in the disruption of utility services and damage to utility systems.
- Maintaining safe and reliable utility systems is vital to protecting the public health and welfare and ensuring the economic well-being of the state.
- Disclosure of sensitive information related to the measures undertaken by utilities to secure their data, information technology systems, and industrial control technology systems could allow a security breach that damages utility systems and disrupts the safe and reliable operations of such systems, adversely impacting the public health and safety and the economic well-being of the state and potentially impacting national security concerns.
- The public and private harm in disclosing information related to such security measures outweighs any public benefit derived from disclosure of the information.

In accordance with s. 119.15, F.S, the exemption is subject to the Open Government Sunset Review Act and it stands repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 119.011, F.S., to define the term "utility."

**Section 2.** Amends s. 119.0713, F.S., relating to local government agency public records exemptions.

**Section 3.** Provides a statement of public necessity.

**Section 4.** Provides that the act takes effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

<sup>20</sup> In 2001, the Florida Supreme Court ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent. *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d 373 (Fla. 2001).

<sup>21</sup> Chapter 119, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill could have a minimal fiscal impact on local government utilities because staff responsible for complying with public record requests may require training related to creation of the public record exemption. In addition, local government utilities could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the local government utility.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption, and it includes a public necessity statement.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information related to the security of a local government utility's technology, processes, and practices designed to protect data and information technology resources from attack, damage, or unauthorized access. It also protects information

related to the security of its existing or proposed information technology systems or industrial control technology systems, if the disclosure of such information would facilitate unauthorized access to, and alteration or destruction of, data, information technology systems, and industrial control technology systems. As such, the exemption does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

**B. RULE-MAKING AUTHORITY:**

Not applicable.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On January 25, 2016, the Energy & Utilities Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed a provision of the bill that created a public record exemption for the identity of security firms used by a utility to secure and store data or provide information technology to the utility;
- Provided a definition for the term “utility” and replaced references to “utility agency” with the phrase “utility owned or operated by a local government unit;” and
- Identified the specific harm that the bill intends to prevent – unauthorized access to utility systems that could adversely affect safe and reliable utility operations – and made corresponding changes to the public necessity statement included in the bill.

On February 10, 2016, the State Affairs Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed unnecessary and duplicative language;
- Clarified that the retroactivity clause applied to exempt information *held by* the local government utility instead of information *obtained by* such utility; and
- Restructured the public necessity statement to mirror the standard format of all public necessity statements.

This analysis is drafted to the committee substitute as approved by the State Affairs Committee.

1 A bill to be entitled

2 An act relating to public records; amending s.  
 3 119.011, F.S.; defining the term "utility"; amending  
 4 s. 119.0713, F.S.; providing an exemption from public  
 5 records requirements for information related to the  
 6 security of information technology systems or  
 7 industrial control technology systems of a utility  
 8 owned or operated by a unit of local government;  
 9 providing applicability; providing for future  
 10 legislative review and repeal of the exemption;  
 11 providing a statement of public necessity; providing  
 12 an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16 Section 1. Subsection (15) is added to section 119.011,  
 17 Florida Statutes, to read:

18 119.011 Definitions.—As used in this chapter, the term:  
 19 (15) "Utility" means a person or entity that provides  
 20 electricity, natural gas, telecommunications, water, chilled  
 21 water, reuse water, or wastewater.

22 Section 2. Subsection (5) is added to section 119.0713,  
 23 Florida Statutes, to read:

24 119.0713 Local government agency exemptions from  
 25 inspection or copying of public records.—

26 (5) (a) The following information held by a utility owned



27 or operated by a unit of local government is exempt from s.  
28 119.07(1) and s. 24(a), Art. I of the State Constitution:

29 1. Information related to the security of the technology,  
30 processes, or practices of a utility owned or operated by a unit  
31 of local government that are designed to protect the utility's  
32 networks, computers, programs, and data from attack, damage, or  
33 unauthorized access, which information, if disclosed, would  
34 facilitate the alteration, disclosure, or destruction of such  
35 data or information technology resources.

36 2. Information related to the security of existing or  
37 proposed information technology systems or industrial control  
38 technology systems of a utility owned or operated by a unit of  
39 local government, which, if disclosed, would facilitate  
40 unauthorized access to, and alteration or destruction of, such  
41 systems in a manner that would adversely impact the safe and  
42 reliable operation of the systems and the utility.

43 (b) This exemption applies to such information held by a  
44 utility owned or operated by a unit of local government before,  
45 on, or after the effective date of this exemption.

46 (c) This subsection is subject to the Open Government  
47 Sunset Review Act in accordance with s. 119.15 and shall stand  
48 repealed on October 2, 2021, unless reviewed and saved from  
49 repeal through reenactment by the Legislature.

50 Section 3. (1) The Legislature finds that it is a public  
51 necessity that the following information held by a utility owned  
52 or operated by a unit of local government be exempt from s.

53 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 54 State Constitution:

55 (a) Information related to the security of the technology,  
 56 processes, or practices of a utility owned or operated by a unit  
 57 of local government that are designed to protect the utility's  
 58 networks, computers, programs, and data from attack, damage, or  
 59 unauthorized access, which information, if disclosed, would  
 60 facilitate the alteration, disclosure, or destruction of such  
 61 data or information technology resources.

62 (b) Information related to the security of existing or  
 63 proposed information technology systems or industrial control  
 64 technology systems of a utility owned or operated by a unit of  
 65 local government, which, if disclosed, would facilitate  
 66 unauthorized access to, and alteration or destruction of, such  
 67 systems in a manner that would adversely impact the safe and  
 68 reliable operation of the systems and the utility.

69 (2) The Legislature finds that, as utility system  
 70 infrastructure becomes more connected and integrated through  
 71 information and communications technology, the exposure to  
 72 damage from attacks through such technology continues to grow.  
 73 These attacks may result in the disruption of utility services  
 74 and damage to utility systems. Maintaining safe and reliable  
 75 utility systems is vital to protecting the public health and  
 76 safety and ensuring the economic well-being of the state.  
 77 Accordingly, many utilities have adopted technologies,  
 78 processes, and practices designed to secure data, information

79 technology systems, and industrial control technology systems.  
80 Disclosure of sensitive information related to these security  
81 measures could result in the identification of vulnerabilities  
82 that allow a security breach that damages utility systems and  
83 disrupts the safe and reliable operation of such systems,  
84 adversely impacting the public health and safety and the  
85 economic well-being of the state. Because of the interconnected  
86 nature of utility systems, a security breach may also impact  
87 national security concerns. As a result, the Legislature finds  
88 that the public and private harm in disclosing the information  
89 made exempt by this act outweighs any public benefit derived  
90 from disclosure of such information. The protection of  
91 information made exempt by this act will ensure that utilities  
92 have greater safeguards to protect against security threats and  
93 will bolster efforts to develop more resilient information  
94 technology systems and industrial control technology systems.  
95 For these reasons, the Legislature finds that it is a public  
96 necessity to make such information exempt from public records  
97 requirements and to provide for retroactive application of the  
98 public records exemption.

99 Section 4. This act shall take effect upon becoming a law.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1303 Insurance Agents  
**SPONSOR(S):** Insurance & Banking Subcommittee; Jones, S.  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1386

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Yaffe	Luczynski
2) Regulatory Affairs Committee		Yaffe <i>DY</i>	Hamon <i>K.W.H.</i>

### SUMMARY ANALYSIS

The bill clarifies that the qualifications for licensure as a life agent require an individual not to be found by the Department of Financial Services (DFS) as untrustworthy or incompetent and that the individual also meet a series of enumerated qualifications.

The bill raises the maximum amount of life insurance coverage that can be sold by a funeral director, a direct disposer, an employee of a funeral establishment, or a funeral establishment contracting with a life insurance agent, for a life insurance policy limited to funding a preneed contract. The coverage limit is raised from \$12,500 to \$21,000, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2016.

The bill renames a "certificate of authority" to a "preneed contract."

The bill does not appear to have a fiscal impact on state or local governments. The bill has positive impacts on the private sector.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

A preneed insurance policy, also referred to as a “preneed contract,”<sup>1</sup> covers the expense of a prearrangement for a funeral service and funeral merchandise. A “funeral service” generally consists of the ceremonies held to commemorate the life of the deceased.<sup>2</sup> “Funeral merchandise” is personal property offered or sold for use in the final disposition, such as caskets, urns, monuments, and register books.<sup>3</sup> To sell a preneed contract, an individual must have a valid preneed license.<sup>4</sup>

A preneed contract can be funded through a trust agreement or a life insurance policy. To sell a preneed contract funded through a trust agreement, an individual must be licensed as a preneed sales agent.<sup>5</sup> To sell a preneed contract funded by a life insurance policy, an individual must be licensed as a life agent.<sup>6</sup> Coverage is not limited to a specific dollar amount for a preneed contract funded by a trust agreement, but a preneed contract funded by a life insurance policy may not exceed \$12,500 in coverage, plus an annual percentage increase based on the Annual Consumer Price Index for 2003.

Chapter 626, F.S., Part III, regulates life agents and licensure, including the licensure of agents authorized to sell life insurance policies as funding-vehicles for preneed contracts. To qualify for licensure as a life agent, an individual must not be found by the DFS to be untrustworthy or incompetent, or meet a series of enumerated qualifications.<sup>7</sup> A life agent is defined as an individual that represents an insurer as to life insurance contracts.<sup>8</sup> Funeral establishments<sup>9</sup> are authorized to contract with a life agent to sell life insurance policies limited to funding a preneed contract. Additionally, a funeral director, a director disposer, or an employee of a funeral establishment may be licensed to sell life insurance policies limited to funding a preneed contract if they hold a “certificate of authority” pursuant to s. 497.451, F.S.<sup>10</sup> These life insurance policies are limited to coverage not exceeding \$12,500, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2003.

##### Effect of Proposed Changes

The bill clarifies that the qualifications for licensure as a life agent require an individual not to be found by the DFS as untrustworthy or incompetent and that the individual also meet a series of enumerated qualifications.

The bill raises the maximum amount of coverage that can be sold by a funeral director, a direct disposer, an employee of a funeral establishment, or a funeral establishment contracting with a life

---

<sup>1</sup> A “preneed contract” means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.” s. 497.005(56), F.S.

<sup>2</sup> s. 497.005(33), F.S.

<sup>3</sup> s. 497.005(6), F.S.

<sup>4</sup> s. 497.452, F.S.

<sup>5</sup> The only exception to this requirement is individuals licensed as funeral directors may engage in preneed sales for the preneed licensee with whom they are affiliated without preneed sales agent licensure, pursuant to s. 497.466(1), F.S.

<sup>6</sup> s. 626.785, F.S.

<sup>7</sup> *Id.*

<sup>8</sup> s. 626.015(10), F.S.

<sup>9</sup> A “funeral establishment” is a facility licensed under ch. 497, F.S., where a funeral director or embalmer practices funeral directing or embalming. s. 497.005(35), F.S.

<sup>10</sup> A “certificate of authority” is a “preneed license.”

insurance agent, for a life insurance policy limited to funding a preneed contract. The coverage limit is raised from \$12,500 to \$21,000, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2016.<sup>11</sup> The changes are intended to provide the consumer with more flexibility when utilizing a life insurance-funded preneed contract and to accommodate for unforeseen needs and expenses that may arise as it relates to funeral expenses and merchandise.

The bill renames a “certificate of authority” to a “preneed contract” in order to match its statutory counterpart, s. 497.452, F.S., which had previously made such change.

**B. SECTION DIRECTORY:**

**Section 1:** amends s. 626.785, F.S., relating to qualifications for licensure.

**Section 2:** provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: None.
2. Expenditures: None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.
2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The public will be able to purchase a larger limited life insurance policy to fund a preneed contract that covers the costs of funeral services.

**D. FISCAL COMMENTS:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:  
Not Applicable. This bill does not appear to affect county or municipal governments.
2. Other:

**B. RULE-MAKING AUTHORITY:**

None.

---

<sup>11</sup> Email from Lisa Coney, Compliance/Quality Assurance, Service Corporation International, RE: Florida Insurance & Banking Subcommittee -- House Bill 1303 Inquiry (Jan. 26, 2016).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 1, 2016, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS clarified language related to the qualifications for licensure as a life agent, added applicability to a funeral establishment contracting with a life insurance agent, changed the coverage limit for a life insurance policy limited to funding a preneed contract from \$22,500 to \$21,000, and renamed a "certificate of authority" to a "preneed contract."

The staff analysis is drafted to reflect the committee substitute.





27 (d) Must not be a funeral director or direct disposer, or  
 28 an employee or representative thereof, or have an office in, or  
 29 in connection with, a funeral establishment, except that a  
 30 funeral establishment may contract with a life insurance agent  
 31 to sell a preneed contract as defined in s. 497.005.  
 32 Notwithstanding other provisions of this chapter, such insurance  
 33 agent may sell limited policies of insurance covering the  
 34 expense of final disposition or burial of an insured in the  
 35 amount of \$21,000 ~~\$12,500~~, plus an annual percentage increase  
 36 based on the Annual Consumer Price Index compiled by the United  
 37 States Department of Labor, beginning with the Annual Consumer  
 38 Price Index announced by the United States Department of Labor  
 39 for the year 2016 ~~2003~~.

40 (e) Must take and pass any examination for license  
 41 required under s. 626.221.

42 (f) Must be qualified as to knowledge, experience, or  
 43 instruction in the business of insurance and meet the  
 44 requirements relative thereto provided in s. 626.7851.

45 (3) Notwithstanding any other provisions of this chapter,  
 46 a funeral director, a direct disposer, or an employee of a  
 47 funeral establishment that holds a preneed license ~~certificate~~  
 48 ~~of authority~~ pursuant to s. 497.452 may obtain an agent's  
 49 license to sell only policies of life insurance covering the  
 50 expense of a prearrangement for funeral services or merchandise  
 51 so as to provide funds at the time the services and merchandise  
 52 are needed. The face amount of insurance covered by any such

CS/HB 1303

2016

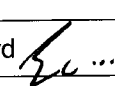
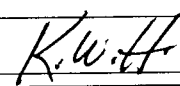
53 | policy shall not exceed \$21,000 ~~\$12,500~~, plus an annual  
54 | percentage increase based on the Annual Consumer Price Index  
55 | compiled by the United States Department of Labor, beginning  
56 | with the Annual Consumer Price Index announced by the United  
57 | States Department of Labor for 2016 ~~2003~~.

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7073      PCB RORS 16-01      Ratification of Rules/Florida Workers' Compensation Health Care Provider Reimbursement Manual/Department of Financial Services  
**SPONSOR(S):** Rulemaking Oversight & Repeal Subcommittee; Ray  
**TIED BILLS:**                      **IDEN./SIM. BILLS:** SB 1402

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Rulemaking Oversight & Repeal Subcommittee	11 Y, 0 N	Stranburg	Rubottom
1) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
2) Regulatory Affairs Committee		Lloyd 	Hamon 

### SUMMARY ANALYSIS

Florida's workers' compensation law requires that the provider reimbursement manuals setting maximum reimbursement rates for medical services must be updated every three years. For a variety of reasons, including the Legislature not ratifying the 2011 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual over multiple sessions, the 2008 Edition is currently in effect.

Since the 2015 Legislature adjourned, the Department of Financial Services (DFS) has adopted amendments to the rule incorporating by reference the Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition (2015 Edition). The 2015 Edition sets out the policies, guidelines, codes, and maximum reimbursement allowances for services and supplies furnished by health care providers under the workers' compensation statutes. The 2015 Edition adopted as part of Rule 69L-7.020, F.A.C., *Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2015 Edition* (Rule), on July 16, 2015, and submitted for ratification on November 3, 2015.

The Statement of Estimated Regulatory Costs developed in conjunction with the Rule shows that it has a specific, adverse economic effect, or increases regulatory costs, exceeding \$1 million over the first 5 years the rule is in effect. Accordingly, the Rule must be ratified by the Legislature before it may go into effect. The bill ratifies the Rule. The scope of the bill is limited to this rulemaking condition and does not adopt the substance of any rule into the statutes.

The bill will have a significant negative fiscal impact to state expenditures from the State Risk Management Trust Fund (SRMTF) within the DFS. The DFS Division of Risk Management (division) estimates an increase in workers' compensation expenses for the division by \$2.1 million in FY 2016-17, \$2.1 million in FY 2017-18, and \$2.2 million in FY 2018-19. However, the projected fiscal year-end balances of the SRMTF (including the impact of HB 7073) will be positive in FY 2016-17 and FY 2017-18, but a negative balance of (\$17.4) million in FY 2018-19. Without ratification of the manual, the cash balance would be (\$11.0) million in FY 2018-19.

The impact to local government and the private sector is indeterminate. However, local governments and private employers responsible for paying workers' compensation claims or obtaining workers' compensation insurance will incur increased costs due to the increase in the maximum reimbursements for providers.

The bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Florida's Workers' Compensation Law<sup>1</sup> requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.<sup>2</sup> The Department of Financial Services, Division of Workers' Compensation (DFS), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers<sup>3</sup> that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.<sup>4</sup> DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals<sup>5</sup> through the rulemaking process provided by the Administrative Procedures Act.<sup>6</sup>

##### The Three-Member Panel

The Three-Member Panel is created by statute to adopt MRAs and report on and make recommendations regarding the state of the workers' compensation health care delivery system.<sup>7</sup> The panel is made up of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members appointed by the Governor. The Governor's appointees are subject to confirmation by the Senate. One of the Governor's appointees is a representative of employers, while the other is a representative of employees.<sup>8</sup> The Three-Member Panel has approved three sets of MRAs. The MRAs establish the expected reimbursement amounts for medical services rendered by individual health care providers, hospitals, and ambulatory surgical centers. The Three-Member Panel does not have rulemaking authority. The DFS is charged with providing administrative support to the Three-Member Panel and implements the Three-Member Panel's MRA approvals through its rules. The Three-Member Panel holds publicly noticed open meetings to implement their duties and obligations.

##### Reimbursement Manuals

The DFS periodically adopts rules implementing the administrative policies and procedures that govern the provision, billing, and reimbursement of medical services in the workers' compensation health care delivery system. There are three reimbursement manuals adopted by the DFS. They are the *Florida Workers' Compensation Health Care Provider Reimbursement Manual, 2008 Edition*;<sup>9</sup> the *Florida Workers' Compensation Reimbursement Manual for Ambulatory Surgical Centers, 2015 Edition*;<sup>10</sup> and, the *Florida Workers' Compensation Reimbursement Manual for Hospitals, 2014 Edition*.<sup>11</sup> The DFS has

---

<sup>1</sup> Ch. 440, F.S.

<sup>2</sup> s. 440.13(2)(a), F.S.

<sup>3</sup> The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. s. 440.13(1)(g), F.S.

<sup>4</sup> s. 440.13(12), F.S.

<sup>5</sup> ss. 440.13(12) and (13), F.S. Ch. 69L-7, F.A.C.

<sup>6</sup> Ch. 120, F.S.

<sup>7</sup> s. 440.13(12), F.S.

<sup>8</sup> s. 440.13(a), F.S.

<sup>9</sup> Rule 69L-7.020, F.A.C.

<sup>10</sup> Rule 69L-7.100, F.A.C.

<sup>11</sup> Rule 69L-7.501, F.A.C.

rulemaking authority to develop the reimbursement manuals. The DFS can choose the organization of their rules and currently incorporates each set of MRAs into the related reimbursement manual as a single document.

Each reimbursement manual incorporates one set of MRAs, along with the DFS' administrative policies and procedures governing the provision, billing, and reimbursement of medical services, and is adopted by reference in a separate rule. The DFS reviews the economic impact of the entire rule to identify whether the legislative ratification threshold is met. While revisions to the DFS administrative policy and procedure portion of the manual may have some financial impact, the Three-Member Panel's revisions to the MRAs are typically the biggest cost driver. This is because the MRAs are the basis for many millions of dollars in reimbursement annually. Accordingly, it only takes a small percentage change to the MRAs to increase costs by \$1 million within the first 5 years of implementation.

In September 2011, the Department adopted Rule 69L-7.020, F.A.C., adopting the 2011 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual. The approved MRAs that were included in the manual were estimated to have an economic impact in excess of the legislative ratification threshold. The rule was not ratified by the Legislature in the 2012, 2013, or 2014 Regular Sessions. In 2013, HB 1165 was filed, to ratify the rule. HB 1165 was not considered and no other bills were filed for this purpose during these sessions. In February 2015, the DFS withdrew the rule development that adopted the 2011 Edition, pending legislative ratification. The DFS also proposed an updated edition, including a new set of MRAs approved by the Three-Member Panel.<sup>12</sup>

On January 22, 2015, the Three-Member Panel approved a revised uniform schedule of MRAs for physicians and other recognized practitioners. DFS initiated rulemaking to adopt the 2015 Edition of the Florida Workers' Compensation Health Care Provider Reimbursement Manual and on July 16, 2015, adopted the amended rule. According to the National Council on Compensation Insurance, the revisions to MRAs in the 2015 Edition will result in increased costs to the overall compensation system of \$64 million over the next five years.<sup>13</sup>

### Rulemaking Authority and Legislative Ratification

A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.<sup>14</sup> Rulemaking authority is delegated by the Legislature<sup>15</sup> through statute and authorizes an agency to "adopt, develop, establish, or otherwise create"<sup>16</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>17</sup> To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>18</sup> The grant of rulemaking authority itself need not be detailed.<sup>19</sup> The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>20</sup>

---

<sup>12</sup> See Florida Administrative Register, Vol. 41/39, published February 26, 2015, and Vol. 41/21, published February 2, 2015. The Florida Administrative Register is available on the Internet at [www.flrules.org](http://www.flrules.org).

<sup>13</sup> Email correspondence with The National Council on Compensation Insurance (Jan. 26, 2016) on file with the Government Operations Appropriations Subcommittee.

<sup>14</sup> s. 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>15</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>16</sup> s. 120.52(17), F.S.

<sup>17</sup> s. 120.54(1)(a), F.S.

<sup>18</sup> ss. 120.52(8) and 120.536(1), F.S.

<sup>19</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>20</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

An agency begins the formal rulemaking process by filing a notice of the proposed rule.<sup>21</sup> The notice is published by the Department of State in the Florida Administrative Register<sup>22</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency's statement of estimated regulatory costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule. The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.<sup>23</sup>

The economic analysis mandated for each SERC must analyze a rule's potential impact over the 5 year period from when the rule goes into effect. First is the rule's likely adverse impact on economic growth, private-sector job creation or employment, or private-sector investment.<sup>24</sup> Next is the likely adverse impact on business competitiveness,<sup>25</sup> productivity, or innovation.<sup>26</sup> Finally, the analysis must discuss whether the rule is likely to increase regulatory costs, including any transactional costs.<sup>27</sup> If the analysis shows the projected impact of the proposed rule in any one of these areas will exceed \$1 million in the aggregate for the 5 year period, the rule cannot go into effect until ratified by the Legislature pursuant to s. 120.541(3), F.S.

Present law distinguishes between a rule being "adopted" and becoming enforceable or "effective."<sup>28</sup> A rule must be filed for adoption before it may go into effect<sup>29</sup> and cannot be filed for adoption until completion of the rulemaking process.<sup>30</sup> A rule projected to have a specific economic impact exceeding \$1 million in the aggregate over 5 years<sup>31</sup> must be ratified by the Legislature before going into effect.<sup>32</sup> As a rule submitted under s. 120.541(3), F.S., becomes effective if ratified by the Legislature, a rule must be filed for adoption before being submitted for legislative ratification.

### Impact of Rule

The Rule incorporates by reference the 2015 Edition of the Manual, which provides for reimbursement of health care providers under the increased MRAs approved by the Three-Member Panel.

### Effect of Proposed Change

The bill ratifies Rule 69L-7.020, F.A.C., allowing the rule to go into effect.

## B. SECTION DIRECTORY:

**Section 1:** Ratifies Rule 69L-7.020, F.A.C., solely to meet the condition for effectiveness imposed by s. 120.541(3), F.S.; expressly limits ratification to the effectiveness of the rules; directs that the act shall not be codified in the Florida Statutes but only noted in the historical comments to each rule by the Department of State.

**Section 2:** Provides the act goes into effect upon becoming law.

---

<sup>21</sup> s. 120.54(3)(a)1., F.S.

<sup>22</sup> s. 120.55(1)(b)2., F.S.

<sup>23</sup> s. 120.541(2)(a), F.S.

<sup>24</sup> s. 120.541(2)(a)1., F.S.

<sup>25</sup> Including the ability of those doing business in Florida to compete with those doing business in other states or domestic markets.

<sup>26</sup> s. 120.541(2)(a)2., F.S.

<sup>27</sup> s. 120.541(2)(a)3., F.S.

<sup>28</sup> s. 120.54(3)(e)6., F.S. Before a rule becomes enforceable, thus "effective," the agency first must complete the rulemaking process and file the rule for adoption with the Department of State.

<sup>29</sup> s. 120.54(3)(e)6., F.S.

<sup>30</sup> s. 120.54(3)(e), F.S.

<sup>31</sup> s. 120.541(2)(a), F.S.

<sup>32</sup> s. 120.541(3), F.S.



## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Among other insurance programs, the DFS Division of Risk Management (division) administers the state's workers' compensation self-insurance program. The workers' compensation benefit costs are funded through premiums charged to participating public entities by the division and held by the DFS in the State Risk Management Trust Fund (SRMTF).<sup>33</sup>

The division estimates that ratifying the 2015 Edition of the Health Care Provider Reimbursement Manual will increase workers' compensation expenses for the division by \$2.1 million in Fiscal Year 2016-17, \$2.1 million in Fiscal Year 2017-18, and \$2.2 million in Fiscal Year 2018-19.<sup>34</sup> However, the projected fiscal year-end balances of the SRMTF (including the impact of HB 7073) will be positive in FY 2016-17 and FY 2017-18, but a negative balance of (\$17.4) million in FY 2018-19. Without ratification of the manual, the cash balance would be (\$11.0) million in FY 2018-19.<sup>35</sup>

<b>State Risk Management Trust Fund</b>			
	<b>FY 2016-17</b>	<b>FY 2017-18</b>	<b>FY 2018-19</b>
Beginning Balance	61,800,000	26,028,342	6,392,084
Estimated Revenue	193,500,000	193,500,000	193,500,000
<b>TOTAL REVENUE</b>	<b>255,300,000</b>	<b>219,528,342</b>	<b>199,892,084</b>
Estimated Expenditures	(227,200,000)	(211,000,000)	(215,100,000)
Impact of HB 7073	(2,071,658)	(2,136,258)	(2,202,758)
<b>Estimated Year-end Balance</b>	<b>26,028,342</b>	<b>6,392,084</b>	<b>(17,410,674)</b>

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The impact to local government is indeterminate. Local governments who are responsible for paying workers' compensation claims or obtaining workers' compensation insurance will incur increased costs due to the increase in the provider MRAs.

<sup>33</sup> ss. 284.02 and 284.30, F.S.

<sup>34</sup> Email correspondence with The Department of Financial Services (Jan. 26, 2016) on file with the Government Operations Appropriations Subcommittee.

<sup>35</sup> Prior to considering the application of the effect of the bill, the Revenue Estimating Conference has projected negative cash balance in the SRMTF of (\$10.9) million in FY 2018-19. OFFICE OF ECONOMIC & DEMOGRAPHIC RESEARCH, *Self-Insurance Estimating Conference, Risk Management Trust Fund*, Dec. 21, 2015, <http://edr.state.fl.us/Content/conferences/riskmanagement/index.cfm> (last visited Feb. 12, 2016). The Revenue Estimating Conference's estimate is based on numbers that are rounded differently than the figures provided by staff.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The impact to local government is indeterminate. Local governments who are responsible for paying workers' compensation claims or obtaining workers' compensation insurance will incur increased costs due to the increase in the provider MRAs.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

**2. Other:**

No other constitutional issues are presented by the bill.

**B. RULE-MAKING AUTHORITY:**

The bill meets the final statutory requirement for the DFS to exercise its rulemaking authority concerning the periodic adjustment of workers' compensation health care provider reimbursement policies and rates. No additional rulemaking authority is required.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to ratification of rules of the  
 3           Department of Financial Services; ratifying specified  
 4           rules relating to the Florida Workers' Compensation  
 5           Health Care Provider Reimbursement Manual, for the  
 6           sole and exclusive purpose of satisfying any condition  
 7           on effectiveness pursuant to s. 120.541(3), F.S.,  
 8           which requires ratification of any rule meeting any  
 9           specified thresholds for likely adverse impact or  
 10          increase in regulatory costs; providing applicability;  
 11          providing an effective date.

12  
 13   Be It Enacted by the Legislature of the State of Florida:

14  
 15           Section 1. (1) The following rule is ratified for the sole  
 16 and exclusive purpose of satisfying any condition on  
 17 effectiveness imposed under s. 120.541(3), Florida Statutes:  
 18 Rule 69L-7.020, Florida Administrative Code, titled "Florida  
 19 Workers' Compensation Health Care Provider Reimbursement Manual"  
 20 as filed for adoption with the Department of State pursuant to  
 21 the certification package dated July 16, 2015.

22           (2) This act serves no other purpose and shall not be  
 23 codified in the Florida Statutes. After this act becomes law,  
 24 its enactment and effective dates shall be noted in the Florida  
 25 Administrative Code, the Florida Administrative Register, or  
 26 both, as appropriate. This act does not alter rulemaking

HB 7073

2016

27 authority delegated by prior law, does not constitute  
28 legislative preemption of or exception to any provision of law  
29 governing adoption or enforcement of the rule cited, and is  
30 intended to preserve the status of any cited rule as a rule  
31 under chapter 120, Florida Statutes. This act does not cure any  
32 rulemaking defect or preempt any challenge based on a lack of  
33 authority or a violation of the legal requirements governing the  
34 adoption of any rule cited.

35 Section 2. This act shall take effect upon becoming a law.



---

# **Regulatory Affairs Committee**

**Wednesday, February 17, 2016  
9:30 AM  
Sumner Hall (404 HOB)**

## **Amendment Packet**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Regulatory Affairs Committee

**Start Date and Time:** Wednesday, February 17, 2016 09:30 am  
**End Date and Time:** Wednesday, February 17, 2016 12:00 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.50 hrs

**Consideration of the following bill(s):**

CS/HB 285 Natural Gas Fuel Fleet Vehicle Rebate Program by Business & Professions Subcommittee, Ray  
HB 303 Unlicensed Activity Fees by Burton  
CS/HB 445 Viatical Settlements by Insurance & Banking Subcommittee, Stevenson  
CS/CS/HB 641 Department of Agriculture and Consumer Services by Agriculture & Natural Resources Appropriations Subcommittee, Business & Professions Subcommittee, Trumbull  
HB 643 Pub. Rec./Department of Agriculture and Consumer Services by Trumbull  
CS/CS/HB 651 Department of Financial Services by Government Operations Appropriations Subcommittee, Insurance & Banking Subcommittee, Beshears  
CS/HB 659 Automobile Insurance by Insurance & Banking Subcommittee, Santiago  
CS/HB 743 Mobile Homes by Business & Professions Subcommittee, Latvala, Burgess  
CS/CS/HB 1025 Public Records/Utility Security Information by State Affairs Committee, Energy & Utilities Subcommittee, Antone, Cortes, B.  
CS/HB 1303 Insurance Agents by Insurance & Banking Subcommittee, Jones, S.  
HB 7073 Ratification of Rules/Florida Workers' Compensation Health Care Provider Reimbursement Manual/DFS by Rulemaking Oversight & Repeal Subcommittee, Ray

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., Tuesday, February 16 2016.

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., Tuesday, February 16, 2016.

**NOTICE FINALIZED on 02/15/2016 4:17PM by Ellinor.Martha**



**REGULATORY AFFAIRS COMMITTEE  
CS/HB 285 by Rep. Ray  
Natural Gas Rebate Program**

**AMENDMENT SUMMARY  
February 17, 2016**

---

**Amendment 1 by Rep. Ray (Strike-all):**

- Revises the process for awarding applicants rebates and additional rebates (above the current cap of \$250,000 per applicant) during June 1st through June 30th and removes reference to rulemaking by the Department of Agriculture and Consumer Services. The amendment conforms the bill to the Senate companion.





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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Ray offered the following:

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (3) of section 377.810, Florida  
8 Statutes, is amended to read:

9 377.810 Natural gas fuel fleet vehicle rebate program.—

10 (3) NATURAL GAS FUEL FLEET VEHICLE REBATE.—The department  
11 shall award rebates for eligible costs as defined in this  
12 section. Forty percent of the annual allocation shall be  
13 reserved for governmental applicants, with the remaining funds  
14 allocated for commercial applicants. A rebate may not exceed 50  
15 percent of the eligible costs of a natural gas fuel fleet  
16 vehicle with a dedicated or bi-fuel natural gas fuel operating  
17 system placed into service on or after July 1, 2013. An



Amendment No. 1

18 applicant is eligible to receive a maximum rebate of \$25,000 per  
 19 vehicle up to a total of \$250,000 per fiscal year. Between June  
 20 1 and June 30 of each fiscal year, the department may receive  
 21 additional applications from applicants that have met the  
 22 program maximum of \$250,000 per fiscal year. Those applicants  
 23 may apply for additional funds for vehicles that have not  
 24 received a rebate, for a maximum rebate of \$25,000 per vehicle  
 25 up to a total of \$250,000. Governmental applicants shall have  
 26 preference, and any other remaining funds may be used by  
 27 commercial applicants. Rebates shall be allocated to eligible  
 28 applicants on a first-come, first-served basis, determined by  
 29 the date the department receives the application, until all  
 30 appropriated funds for the fiscal year are expended. All natural  
 31 gas fuel fleet vehicles eligible for the rebate must comply with  
 32 applicable United States Environmental Protection Agency  
 33 emission standards.

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

35  
 36  
 37 -----  
 38 **T I T L E A M E N D M E N T**

39 Remove everything before the enacting clause and insert:

40 A bill to be entitled

41 An act relating to a natural gas rebate program;  
 42 amending s. 377.810, F.S.; authorizing the Department  
 43 of Agriculture and Consumer Services to receive



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 285 (2016)

Amendment No. 1

44 | additional rebate applications from certain  
45 | applicants; specifying preference for such  
46 | applications; providing an effective date.



**REGULATORY AFFAIRS COMMITTEE**

**CS/HB 445 by Rep. Stevenson  
Viatical Settlements**

**AMENDMENT SUMMARY  
February 17, 2016**

---

**Amendment 1 by Rep. Stevenson (line 394):** Restores the minimum deposit requirement in the Viatical Settlement Act to \$100,000.

**Amendment 2 by Rep. Stevenson (lines 699-700):** Removes an exception from the contestability statute for viatical settlement contracts entered into before July 1, 2000.



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	_____	

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Stevenson offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove line 394 and insert:  
 7 value of not less than \$100,000, ~~however, a viatical~~

8  
 9 -----  
 10 **T I T L E A M E N D M E N T**

11 Remove lines 9-10 and insert:  
 12 licensees; deleting an obsolete



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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Stevenson offered the following:

4

5 **Amendment**

6 Remove lines 699-700 and insert:

7 ~~(4) The viatical settlement contract was entered into~~

8 ~~before July 1, 2000;~~





## REGULATORY AFFAIRS COMMITTEE

CS/CS/HB 641 by Rep. Trumbull  
Department of Agriculture and Consumer Services

### AMENDMENT SUMMARY February 17, 2016

---

**Amendment 1 by Rep. Trumbull:** Removes provisions that would have permitted the International Association of Law Enforcement Firearms Instructors or the Second Amendment Foundation Training Division to provide the certification requirement for Class "K" licensees and removes provisions that would define "lienholder" and "lienor" related to motor vehicle lien law.

**Amendment 2 by Rep. Trumbull:** Clarifies that the fingerprint retention programs for FDLE, and the enrollment in the FBI fingerprint retention program, shall begin on January 1, 2017, and that the processing fee covering the cost of both programs and a full set of fingerprints must be submitted to the Department for any licensee who renews their license after January 1, 2017.

**Amendment 3 by Rep. Trumbull:** Provides several clarifications and technical adjustments to language in the bill dealing with Sellers of Travel.

**Amendment 4 by Rep. Trumbull:** Removes provisions amending motor vehicle lien law in s. 713.585, F.S.

**Amendment 5 by Rep. Trumbull:** Clarifies that the Department may deny an application for a concealed carry permit based on a sealed record of a misdemeanor crime of domestic violence.



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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Trumbull offered the following:

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

Remove lines 281-295 and lines 969-1046

-----

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

Remove line 244 and insert:  
subsection (3) of that

-----

**T I T L E   A M E N D M E N T**

Remove lines 15-111 and insert:



## Amendment No. 1

17 license applications; amending s. 493.6106, F.S.; deleting a  
18 provision requiring that certain applicants submit additional  
19 documentation establishing state residency; amending s.  
20 493.6107, F.S.; waiving the initial license fees for veterans  
21 for certain private investigative, private security, and  
22 repossession service licenses; amending s. 493.6108, F.S.;  
23 requiring the Department of Law Enforcement to retain  
24 fingerprints submitted for private investigative, private  
25 security, and repossession service licenses, to enter such  
26 fingerprints into the statewide automated biometric  
27 identification system and the Federal Bureau of Investigation's  
28 national retained print arrest notification program, and to  
29 report any arrest record information to the Department of  
30 Agriculture and Consumer Services; requiring the department to  
31 provide information about an arrest of a licensee for certain  
32 crime within the state to the agency that employs the licensee;  
33 amending s. 493.6113, F.S.; clarifying the renewal requirements  
34 for Class "K" licenses; requiring a person holding a private  
35 investigative, private security, or repossession service license  
36 issued before a certain date to submit, upon first renewal of  
37 the license, a full set of fingerprints and a fingerprint  
38 processing fee; amending ss. 493.6202, 493.6302, and 493.6402,  
39 F.S.; waiving initial license fees for veterans for certain  
40 private investigative, private security, and repossession  
41 service licenses; amending s. 501.0125, F.S.; revising the  
42 definition of the term "health studio"; defining the term



## Amendment No. 1

43 "personal trainer"; amending s. 501.015, F.S.; requiring the  
44 department to waive the initial health studio registration fee  
45 for certain veterans, the spouses of such veterans, or certain  
46 business entities that have a majority ownership held by such  
47 veterans or spouses; amending s. 501.605, F.S.; prohibiting the  
48 use of a mail drop as a street address for the principal  
49 location of a commercial telephone seller; requiring the  
50 department to waive the initial commercial telephone seller  
51 license fee for certain veterans, the spouses of such veterans,  
52 or certain business entities that have a majority ownership held  
53 by such veterans or spouses; amending s. 501.607, F.S. ;  
54 requiring the department to waive the initial telephone  
55 salesperson license fees for certain veterans, the spouses of  
56 such veterans, or certain business entities that have a majority  
57 ownership held by such veterans or spouses; amending s. 507.03,  
58 F.S.; requiring the department to waive the initial registration  
59 fee for an intrastate mover for certain veterans, the spouses of  
60 such veterans, or certain business entities that have a majority  
61 ownership held by such veterans or spouses; amending s. 527.02,  
62 F.S.; requiring the department to waive the original liquefied  
63 petroleum gas license fee for certain veterans, the spouses of  
64 such veterans, or certain business entities that have a majority  
65 ownership held by such veterans or spouses; amending s. 527.021,  
66 F.S.; deleting a provision requiring a fee for registering  
67 transport vehicles; amending s. 531.37, F.S.; revising the  
68 definition of the term "weights and measures"; amending s.



## Amendment No. 1

69 531.415, F.S.; revising the fees for actual metrology laboratory  
70 calibration and testing services; amending s. 531.60, F.S.;  
71 clarifying the applicability of permits for commercially  
72 operated or tested weights or measures instruments or devices;  
73 requiring a new permit application if a new owner acquires and  
74 moves an instrument or a device; requiring a business to notify  
75 the department of certain information under certain  
76 circumstances; deleting a provision authorizing the department  
77 to test weights and measures instruments or devices under  
78 certain circumstances; amending s. 531.61, F.S.; clarifying  
79 provisions exempting certain instruments or devices from  
80 specified requirements; amending s. 531.62, F.S.; specifying  
81 that the commercial use permit fee is based upon the number and  
82 types of instruments or devices permitted; revising the  
83 expiration date of the commercial use permit; requiring annual  
84 and biennial commercial use permit renewals to meet the same  
85 requirements; amending s. 531.63, F.S.; revising the commercial  
86 use permit fees and fee structures; amending s. 531.65, F.S.;  
87 clarifying that the department may use one or more of the  
88 prescribed penalties for the unauthorized use of a weights and  
89 measures instrument or device; amending s. 539.001, F.S.;  
90 requiring the department to waive the initial pawnbroker license  
91 fee for certain veterans, the spouses of such veterans, or  
92 certain business entities that have a majority ownership held by  
93 such veterans or spouses; amending s. 559.904, F.S.; requiring  
94 the department to waive the initial motor vehicle repair shop



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 641 (2016)

Amendment No. 1

95 registration fee for certain veterans, the spouses of such  
96 veterans, or certain business entities that have a majority  
97 ownership held by such veterans or spouses; amending s. 559.927,  
98 F.S.; revising



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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Trumbull offered the following:

4  
5 **Amendment**

6 Remove lines 344-386 and insert:

7 (4) Beginning January 1, 2017, the Department of Law

8 Enforcement shall:

9 (a) Retain and enter into the statewide automated  
10 biometric identification system established in s. 943.05(2)(b)  
11 all fingerprints submitted to the Department of Agriculture and  
12 Consumer Services pursuant to this chapter.

13 (b) When the Department of Law Enforcement begins  
14 participation in the Federal Bureau of Investigation's national  
15 retained print arrest notification program, enroll such  
16 fingerprints in the program. The fingerprints must thereafter be  
17 available for arrest notifications and all purposes and uses



Amendment No. 2

18 authorized for arrest fingerprint submissions entered into the  
19 statewide automated biometric identification system established  
20 in s. 943.05(2)(b).

21 (c) Search all arrest fingerprints against fingerprints  
22 retained.

23 (d) Report to the Department of Agriculture and Consumer  
24 Services any arrest record that it identifies or that is  
25 identified by the Federal Bureau of Investigation.

26 (5) If the department receives information about an arrest  
27 within the state of a person who holds a valid license issued  
28 under this chapter for a crime that could potentially disqualify  
29 the person from holding such a license, the department must  
30 provide the arrest information to the agency that employs the  
31 licensee.

32 Section 7. Subsections (1) and (3) of section 493.6113,  
33 Florida Statutes, are amended to read:

34 493.6113 Renewal application for licensure.—

35 (1) A license granted under the provisions of this chapter  
36 shall be renewed biennially by the department, except for Class  
37 "A," Class "B," Class "AB," Class "K," Class "R," and branch  
38 agency licenses, which shall be renewed every 3 years.

39 (3) Each licensee is responsible for renewing his or her  
40 license on or before its expiration by filing with the  
41 department an application for renewal accompanied by payment of  
42 the renewal fee and the fingerprint retention fee to cover the  
43 cost of ongoing retention in the statewide automated biometric





Amendment No. 2

44 identification system established in s. 943.05(2)(b) ~~prescribed~~  
45 license fee. A person holding a valid license issued under this  
46 chapter before January 1, 2017, must submit, upon first renewal  
47 of the license, a full set of fingerprints and a fingerprint  
48 processing fee to cover the cost of entering the fingerprints  
49 into the statewide automated biometric identification system  
50 under s. 493.6108(4)(a) and the cost of enrollment in the  
51 Federal Bureau of Investigation's national retained print arrest  
52 notification program. Subsequent renewals may be completed



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Trumbull offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 1047-1616 and insert:

7 Section 28. Subsections (1), (7), (8), (10), (11), and (13)  
8 of section 559.927, Florida Statutes, are amended to read:

9 559.927 Definitions.—For the purposes of this part, the  
10 term:

11 (1) "Accommodations" means any hotel or motel room,  
12 condominium or cooperative unit, cabin, lodge, or apartment; any  
13 other commercial structure designed for occupancy by one or more  
14 individuals; or any lodging establishment as provided by law.

15 The term does not include long-term home rentals covered under a  
16 lease pursuant to chapter 83.

17 (7) "Prearranged travel or tourist-related services, ~~or~~  
18 ~~tour guide services~~" includes, but is not limited to, car



Amendment No. 3

19 rentals, lodging, transfers, and ~~sightseeing tours~~ and all other  
20 such services that ~~which~~ are reasonably related to air, sea,  
21 rail, motor coach, or other medium of transportation, or  
22 accommodations for which a purchaser receives a premium or  
23 contracts or pays before ~~prior to~~ or after departure. This term  
24 ~~These terms~~ also includes ~~include~~ services for which a  
25 purchaser, whose legal residence is outside the United States,  
26 contracts or pays before ~~prior to~~ departure, and any arrangement  
27 by which a purchaser prepays for, receives a reservation or any  
28 other commitment to provide services before ~~prior to~~ departure  
29 for, or otherwise arranges for travel directly to a terrorist  
30 state and which originates in Florida.

31 (8) "Purchaser" means the purchaser of, or person otherwise  
32 entitled to receive, prearranged travel or, ~~tourist-related~~  
33 ~~services, or tour guide services,~~ for a fee or commission, or  
34 who has acquired a vacation certificate for personal use.

35 (10) "Satisfactory consumer complaint history" means no  
36 unresolved complaints regarding prearranged travel or, ~~tourist-~~  
37 ~~related services, or tour guide services~~ are on file with the  
38 department. A complaint is unresolved when a seller of travel  
39 does not respond to the department's efforts to mediate the  
40 complaint or a complaint where the department has determined  
41 that a violation of this part has occurred and the complaint has  
42 not been satisfied by the seller of travel.

43 (11) "Seller of travel" means any resident or nonresident  
44 person, firm, corporation, or business entity that ~~who~~ offers  
45 ~~for sale, directly or indirectly, at wholesale or retail,~~  
46 prearranged travel or, ~~tourist-related services, or tour guide~~

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

47 ~~services~~ for individuals or groups, including, but not limited  
48 to, vacation ~~or tour~~ packages, or vacation certificates in  
49 exchange for a fee, commission, or other valuable consideration.  
50 The term includes such person, firm, corporation, or business  
51 entity who sells a vacation certificate to third-party merchants  
52 for a fee, or in exchange for a commission, or who offers such  
53 certificates to consumers in exchange for attendance at sales  
54 presentations. The term also includes any business entity  
55 offering membership in a travel club or travel services for an  
56 advance fee or payment, even if no travel contracts or  
57 certificates or vacation or tour packages are sold by the  
58 business entity. The term does not include third parties who may  
59 offer prearranged travel or tourist-related services, but do not  
60 participate in travel fulfillment or vacation certificate  
61 redemption.

62 (13) "Vacation certificate" means any arrangement, plan,  
63 program, ~~or~~ vacation package, or advance travel purchase that  
64 promotes, discusses, or discloses a destination or itinerary or  
65 type of travel, whereby a purchaser ~~for consideration paid in~~  
66 ~~advance~~ is entitled to the use of travel, accommodations, or  
67 facilities for any number of days, whether certain or uncertain,  
68 during the period in which the certificate can be exercised, and  
69 no specific date or dates for its use are designated. A vacation  
70 certificate does not include prearranged travel or, tourist-  
71 related services, ~~or tour guide services~~ when a seller of travel  
72 remits full payment for the cost of such services to the  
73 provider or supplier within 10 business days of the purchaser's  
74 initial payment to the seller of travel. The term does not

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

75 include travel if exact travel dates are selected, guaranteed,  
76 and paid for at the time of the purchase.

77 Section 29. Subsections (2) through (9) of section 559.928,  
78 Florida Statutes, are amended to read:

79 559.928 Registration.—

80 (2)(a) Registration fees shall be as follows:

81 1. Three hundred dollars per year per registrant certifying  
82 its business activities under s. 559.9285(1)(a).

83 2. One thousand dollars per year per registrant certifying  
84 its business activities under s. 559.9285(1)(b).

85 3. Twenty-five hundred dollars per year per registrant  
86 certifying its business activities under s. 559.9285(1)(c).

87 (b) All amounts collected shall be deposited by the Chief  
88 Financial Officer to the credit of the General Inspection Trust  
89 Fund of the Department of Agriculture and Consumer Services  
90 pursuant to s. 570.20, for the sole purpose of administration of  
91 this part.

92 (c) The department shall waive the initial registration fee  
93 for an honorably discharged veteran of the United States Armed  
94 Forces, the spouse of such a veteran, or a business entity that  
95 has a majority ownership held by such a veteran or spouse if the  
96 department receives an application, in a format prescribed by  
97 the department, within 60 months after the date of the veteran's  
98 discharge from any branch of the United States Armed Forces. To  
99 qualify for the waiver, a veteran must provide to the department  
100 a copy of his or her DD Form 214, as issued by the United States  
101 Department of Defense, or another acceptable form of  
102 identification as specified by the Department of Veterans'

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

103 Affairs; the spouse of a veteran must provide to the department  
104 a copy of the veteran's DD Form 214, as issued by the United  
105 States Department of Defense, or another acceptable form of  
106 identification as specified by the Department of Veterans'  
107 Affairs, and a copy of a valid marriage license or certificate  
108 verifying that he or she was lawfully married to the veteran at  
109 the time of discharge; or a business entity must provide to the  
110 department proof that a veteran or the spouse of a veteran holds  
111 a majority ownership in the business, a copy of the veteran's DD  
112 Form 214, as issued by the United States Department of Defense,  
113 or another acceptable form of identification as specified by the  
114 Department of Veterans' Affairs, and, if applicable, a copy of a  
115 valid marriage license or certificate verifying that the spouse  
116 of the veteran was lawfully married to the veteran at the time  
117 of discharge.

118 (3) Each independent agent shall annually file an  
119 application affidavit with the department before ~~prior to~~  
120 engaging in business in this state. This application affidavit  
121 must include the independent agent's full name, legal business  
122 or trade name, mailing address, business address, telephone  
123 number, and the name and address of each seller of travel  
124 represented by the independent agent. A letter evidencing proof  
125 of filing must be issued by the department and must be  
126 prominently displayed in the independent agent's primary place  
127 of business. Each independent agent must also submit an annual  
128 registration fee of \$50. All moneys collected pursuant to the  
129 imposition of the fee shall be deposited by the Chief Financial  
130 Officer into the General Inspection Trust Fund of the Department

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

131 of Agriculture and Consumer Services for the sole purpose of  
132 administrating this part. As used in this subsection, the term  
133 "independent agent" means a person who represents a seller of  
134 travel by soliciting persons on its behalf; who has a written  
135 contract with a seller of travel which is operating in  
136 compliance with this part and any rules adopted thereunder; who  
137 does not receive a fee, commission, or other valuable  
138 consideration directly from the purchaser for the seller of  
139 travel; who does not at any time have any unissued ticket stock  
140 or travel documents in his or her possession; and who does not  
141 have the ability to issue tickets, vacation certificates, or any  
142 other travel document. The term "independent agent" does not  
143 include an affiliate of the seller of travel, as that term is  
144 used in s. 559.935(3), or the employees of the seller of travel  
145 or of such affiliates.

146 (4) A ~~Any~~ person applying for or renewing a local business  
147 tax receipt to engage in business as a seller of travel must  
148 exhibit a current registration certificate from the department  
149 before the local business tax receipt may be issued or reissued.

150 (5) Each contract, advertisement, certificate, or travel  
151 document of a seller of travel must include the phrase "... (NAME  
152 OF FIRM) ... is registered with the State of Florida as a Seller  
153 of Travel. Registration No....."

154 ~~(6) Each advertisement of a seller of travel must include~~  
155 ~~the phrase "Fla. Seller of Travel Reg. No....."~~

156 ~~(6) (7)~~ A ~~No~~ registration is not ~~shall be~~ valid for any  
157 seller of travel transacting business at any place other than  
158 that designated in its application, unless the department is

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

159 first notified in writing in advance of any change of location.  
160 ~~A Nor shall the~~ registration is not ~~be~~ valid for an affiliate of  
161 the seller of travel who engages in the prearranged travel and  
162 tourist business. A registration issued under this part may  
163 ~~shall~~ not be assignable, and the seller of travel may ~~shall~~ not  
164 be permitted to conduct business under more than one name except  
165 as registered. A seller of travel desiring to change its  
166 registered name or location or designated agent for service of  
167 process at a time other than upon renewal of registration shall  
168 notify the department of such change.

169 ~~(7)(8)~~ Applications under this section are ~~shall be~~ subject  
170 to ~~the provisions of~~ s. 120.60.

171 ~~(8)(9)~~ The department may deny, ~~or~~ refuse to renew, or  
172 revoke the registration of any seller of travel based upon a  
173 determination that the seller of travel, or any of its  
174 directors, officers, owners, or general partners while acting on  
175 behalf of the seller of travel:

176 (a) Has failed to meet the requirements for registration as  
177 provided in this part;

178 (b) Has been convicted of a crime involving fraud, theft,  
179 embezzlement, dishonest dealing, or any other act of moral  
180 turpitude or any other act arising out of conduct as a seller of  
181 travel;

182 (c) Has not satisfied a civil fine or penalty arising out  
183 of any administrative or enforcement action brought by any  
184 governmental agency or private person based upon conduct  
185 involving fraud, theft, embezzlement, dishonest dealing, or any  
186 violation of this part; or

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM





Amendment No. 3

187 ~~(d) Has pending against her or him any criminal,~~  
188 ~~administrative, or enforcement proceedings in any jurisdiction,~~  
189 ~~based upon conduct involving fraud, dishonest dealing, or any~~  
190 ~~other act of moral turpitude; or~~

191 (d) ~~(e)~~ Has had a judgment entered against her or him in any  
192 action brought by the department or the Department of Legal  
193 Affairs pursuant to ss. 501.201-501.213 or this act part.

194 (9) The department may deny or refuse to renew the  
195 registration of any seller of travel based upon a determination  
196 by the department that the seller of travel, or any of the  
197 seller's directors, officers, owners, or general partners has  
198 pending against him or her while acting on behalf of the seller  
199 of travel any criminal, administrative, or enforcement  
200 proceedings in any jurisdiction, based upon conduct involving  
201 fraud, theft, embezzlement, dishonest dealing, or any other act  
202 of moral turpitude.

203 Section 30. Subsections (2) through (6) of section 559.929,  
204 Florida Statutes, are amended to read:

205 559.929 Security requirements.—

206 (2) The bond must be filed with the department on a form  
207 adopted by department rule and must be in favor of the  
208 department for the use and benefit of a consumer traveler who is  
209 injured by the fraud, misrepresentation, breach of contract, or  
210 financial failure, or any other violation of this part by the  
211 seller of travel. Such liability may be enforced by proceeding  
212 in an administrative action as specified in subsection (3) or by  
213 filing a civil action. ~~However, in such civil action the bond~~  
214 ~~posted with the department shall not be amenable or subject to a~~



## Amendment No. 3

215 ~~judgment or other legal process issuing out of or from such~~  
216 ~~court in connection with such civil action, but such bond shall~~  
217 ~~be amenable to and enforceable only by and through~~  
218 ~~administrative proceedings before the department. It is the~~  
219 ~~intent of the Legislature that such bond be applicable and~~  
220 ~~liable only for the payment of claims duly adjudicated by order~~  
221 ~~of the department.~~ The bond must be open to successive claims,  
222 but the aggregate amount awarded may not exceed the amount of  
223 the bond. In addition to the foregoing, a bond provided by a  
224 registrant or applicant for registration which certifies its  
225 business activities under s. 559.9285(1)(b) or (c) must be in  
226 favor of the department, with payment in the following order of  
227 priority:

228 (a) The expenses for prosecuting the registrant or  
229 applicant in an administrative or civil action under this part,  
230 including attorney fees and fees for other professionals, court  
231 costs or other costs of the proceedings, and all other expenses  
232 incidental to the action.

233 (b) The costs and expenses of investigation before the  
234 commencement of an administrative or civil action under this  
235 part.

236 (c) An unpaid administrative fine imposed by final order or  
237 an unpaid civil penalty imposed by final judgment under this  
238 part.

239 (d) Damages or compensation for a consumer ~~traveler~~ injured  
240 as provided in this subsection.

241 (3) A consumer ~~traveler~~ may file a claim against the bond.  
242 Such claim, which must be submitted in writing on an affidavit



Amendment No. 3

243 form adopted by department rule, must be submitted to the  
244 department within 120 days after an alleged injury has occurred  
245 or is discovered to have occurred or a judgment has been  
246 entered. The proceedings shall be conducted pursuant to chapter  
247 120. For proceedings conducted pursuant to ss. 120.569 and  
248 120.57, the agency shall act only as a nominal party.

249 (4) A consumer who is injured by the seller of travel, or  
250 the department or another governmental agency acting on behalf  
251 of the injured consumer, may bring and maintain an action to  
252 recover against the bond.

253 (5) Any indebtedness determined by final order of the  
254 department shall be paid by the seller of travel to the  
255 department within 30 days after the order is entered for  
256 disbursement to the consumer. If the seller of travel fails to  
257 make payment within 30 days, the agency shall make a demand for  
258 payment upon the surety which includes an institution issuing a  
259 letter of credit or depository on a certificate of deposit. Upon  
260 failure of a surety to comply with a demand for payment pursuant  
261 to a final order, the department may file an action in circuit  
262 court to recover payment, up to the amount of the bond or other  
263 form of security, pursuant to s. 120.69. If the department  
264 prevails, the department may recover court costs and reasonable  
265 attorney fees.

266 (6)~~(5)~~ If the seller of travel is currently the subject of  
267 an administrative, civil, or criminal action by the department,  
268 the Department of Legal Affairs, or the state attorney relating  
269 to compliance with this part, the right to proceed against the  
270 bond as provided in subsection (3) is suspended until any

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

271 enforcement action becomes final.

272 (7)~~(6)~~ The department may waive the bond requirement on an  
273 annual basis if the seller of travel has had 5 or more  
274 consecutive years of experience as a seller of travel in this  
275 state in compliance with this part, has not had a civil,  
276 criminal, or administrative action instituted against the seller  
277 of travel in the vacation and travel business by a governmental  
278 agency or an action involving fraud, theft, misappropriation of  
279 property, violation of a statute pertaining to business or  
280 commerce with a terrorist state, ~~or~~ moral turpitude, or other  
281 violation of this part and has a satisfactory consumer complaint  
282 history with the department, and certifies its business  
283 activities under s. 559.9285. Such waiver may be revoked if the  
284 seller of travel violates this part. A seller of travel which  
285 certifies its business activities under s. 559.9285(1)(b) or (c)  
286 is not entitled to the waiver provided in this subsection.

287 Section 31. Subsections (2) and (17) of section 559.9295,  
288 Florida Statutes, are amended to read:

289 559.9295 Submission of vacation certificate documents.—  
290 Sellers of travel who offer vacation certificates must submit  
291 and disclose to the department with the application for  
292 registration, and any time such document is changed, but prior  
293 to the sale of any vacation certificate, the following  
294 materials:

295 (2) A copy of each promotional brochure, pamphlet, form  
296 letter, registration form, or any other written material  
297 disseminated in connection with the advertising, promotion, or  
298 sale of any vacation certificate. Any such promotional materials

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



## Amendment No. 3

299 that include terms such "free," "awarded," "prize," "absolutely  
300 without charge," and "free of charge," or similar words or  
301 groups of words, which might reasonably lead a person to believe  
302 that he or she may receive, or has been selected to receive,  
303 something of value without making full or partial compensation  
304 in any form from the recipient must:

305 (a) Clearly and conspicuously display the following  
306 disclosure in at least 12-point type: "... (NAME OF FIRM) ... is  
307 registered with the State of Florida as a seller of travel,  
308 Registration No....THIS IS NOT A FREE OFFER. SEE TERMS AND  
309 CONDITIONS VIA WWW.(OFFER WEBSITE).COM. RESPONSE TO THIS OFFER  
310 DOES NOT GUARANTEE TRAVEL." The offer website referred to in the  
311 disclosure must include, and clearly indicate, the terms and  
312 conditions for such a vacation certificate offer.

313 (b) Disclose the number of individuals who actually  
314 traveled pursuant to the vacation certificate, as opposed to the  
315 number of individuals who submitted or otherwise activated the  
316 vacation certificate, in the 12 months preceding issuance of the  
317 promotional material.

318 ~~(17) Within 10 working days after receipt of any materials~~  
319 ~~submitted subsequent to filing an initial registration~~  
320 ~~application or any annual renewal thereof, the department shall~~  
321 ~~determine whether such materials are adequate to meet the~~  
322 ~~requirements of this section. The department shall notify the~~  
323 ~~seller of travel that materials submitted are in substantial~~  
324 ~~compliance, or shall notify the seller of travel of any specific~~  
325 ~~deficiencies. If the department fails to notify the seller of~~  
326 ~~travel of its determination within the period specified in this~~



Amendment No. 3

327 ~~subsection, the materials shall be deemed in compliance,~~  
328 ~~however, the failure of the department to send notification in~~  
329 ~~either case will not relieve the seller of travel from the duty~~  
330 ~~of complying with this section.~~

331 Neither the submission of these materials nor the department's  
332 response implies approval, recommendation, or endorsement by the  
333 department or that the contents of said materials have been  
334 verified by the department.

335 Section 32. Section 559.932, Florida Statutes, is amended  
336 to read:

337 559.932 Vacation certificate disclosure.—

338 (1) A ~~It shall be unlawful for any seller of travel~~ must to  
339 ~~fail to provide each person solicited with a contract that~~  
340 ~~includes which shall include the following information, which~~  
341 ~~shall be in 12-point type, unless otherwise specified:~~

342 (a) A space for the date, name, address, and signature of  
343 the purchaser.

344 (b) The expiration date of the vacation certificate and the  
345 terms and conditions of its extension or renewal, if available.

346 (c) The name and business address of any seller of travel  
347 who may solicit vacation certificate purchasers for further  
348 purchases, and a full and complete statement as to the nature  
349 and method of that solicitation.

350 (d) The total financial obligation of the purchaser which  
351 shall include the initial purchase price and any additional  
352 charges to which the purchaser may be subject, including, but  
353 not limited to, any per diem, seasonal, reservation, or  
354 recreational charge.

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

355 (e) The name and street address of any person who has the  
356 right to alter, amend, or add to the charges to which the  
357 purchaser may be subject and the terms and conditions under  
358 which such charges may be imposed.

359 (f) If any accommodation or facility which a purchaser  
360 acquires the right to use pursuant to the vacation certificate  
361 is not completed at the time the certificate is offered for  
362 sale, the date of availability of each component of the  
363 accommodation or facility.

364 (g) By means of a section entitled "terms and conditions":

365 1. All eligibility requirements for use of the vacation  
366 certificate, including, but not limited to, age, sex, marital  
367 status, group association, residency, or geographic limitations.

368 2. All eligibility requirements for use of any discount or  
369 complimentary coupon or ticket.

370 3. A statement as to whether transportation and meals are  
371 provided pursuant to use of the certificate.

372 4. Any room deposit requirement, including all conditions  
373 for its return or refund.

374 5. The manner in which reservation requests are to be made  
375 and the method by which they are to be confirmed.

376 6. Any identification, credential, or other means by which  
377 a purchaser must establish her or his entitlement to the rights,  
378 benefits, or privileges of the vacation certificate.

379 7. Any restriction or limitation upon transfer of the  
380 vacation certificate or any right, benefit, or privilege  
381 thereunder.

382 8. Any other term, limitation, condition, or requirement

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

383 material to use of the vacation certificate or any right,  
384 benefit, or privilege thereunder.

385 (h) In immediate proximity to the space reserved in the  
386 contract for the date and the name, address, and signature of  
387 the purchaser, the following statement in boldfaced type of a  
388 size of 10 points:

389  
390 "YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR  
391 OBLIGATION WITHIN 30 DAYS FROM THE DATE OF PURCHASE OR RECEIPT  
392 OF THE VACATION CERTIFICATE, WHICHEVER OCCURS LATER."

393 "YOU MAY ALSO CANCEL THIS CONTRACT IF ACCOMMODATIONS OR  
394 FACILITIES ARE NOT AVAILABLE PURSUANT TO A REQUEST FOR USE AS  
395 PROVIDED IN THE CONTRACT."

396 "TO CANCEL THIS AGREEMENT, A SIGNED AND DATED COPY OF A  
397 STATEMENT THAT YOU ARE CANCELING THE AGREEMENT SHOULD BE MAILED  
398 AND POSTMARKED, OR DELIVERED TO ... (NAME) ... AT ... (ADDRESS) ...  
399 NO LATER THAN MIDNIGHT OF .... (DATE) ....."

400 ~~"IF YOU DECIDE TO CANCEL, YOU MUST NOTIFY THE SELLER IN~~  
401 ~~WRITING OF YOUR INTENT TO CANCEL BY RETURNING THE CERTIFICATE~~  
402 ~~AND SENDING NOTICE TO: ... (NAME OF SELLER) ... AT ... (SELLER'S~~  
403 ~~ADDRESS) ....."~~

404 (i) In immediate proximity to the statement required in  
405 paragraph (h), the following statement in boldfaced type of a  
406 size of 12 ~~10~~ points:

407  
408 "NO PURCHASER SHOULD RELY UPON REPRESENTATIONS OTHER THAN  
409 THOSE INCLUDED IN THIS CONTRACT."

410

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM





Amendment No. 3

411 However, inclusion of this statement shall not impair any  
412 purchaser's right to bring legal action based on verbal  
413 statements.

414 (j) In immediate proximity to the statement required in  
415 paragraph (i), the following statement:

416 "This contract is for the purchase of a vacation  
417 certificate and puts all assignees on notice of the consumer's  
418 right to cancel under section 559.933, Florida Statutes."

419 (2) If a sale or agreement to purchase a vacation  
420 certificate is completed over the telephone, the seller shall  
421 inform the purchaser over the telephone that:

422 (a) The purchaser may cancel the contract without any  
423 penalty or obligation within 30 days from the date of purchase  
424 or receipt of the vacation certificate, whichever occurs later.

425 (b) The purchaser may also cancel the contract if  
426 accommodations or facilities are not available upon request for  
427 use as provided in the contract.

428 (3) Upon receipt of a copy of a vacation certificate or  
429 contract required pursuant to s. 559.9295, the department shall  
430 review the certificate or contract for compliance with the  
431 disclosures required under this section. The submission of the  
432 certificate or contract, and the department's response, do not  
433 imply approval, recommendation, or endorsement by the department  
434 or that the contents of the certificate or contract have been  
435 verified by the department.

436 Section 33. Section 559.933, Florida Statutes, is amended  
437 to read:

438 559.933 Vacation certificate cancellation and refund

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

439 provisions.-

440 (1) A It shall be unlawful for any seller of travel or  
441 assignee must honor a purchaser's request to cancel a vacation  
442 certificate if such request is made:

443 ~~(1) To fail or refuse to honor a purchaser's vacation~~  
444 ~~certificate request to cancel if such request is made:~~

445 (a) Within 30 days after ~~from~~ the date of purchase or  
446 receipt of the vacation certificate, whichever occurs later; or

447 (b) At any time accommodations or facilities are not  
448 available pursuant to a request for use as provided in the  
449 contract, provided that:

450 1. The contract may ~~shall~~ not require notice greater than  
451 60 days in advance of the date requested for use;

452 2. If acceptable to the purchaser, comparable alternate  
453 accommodations or facilities in a city, or reservations for a  
454 date different than that requested, may be provided.

455 (2) A seller of travel or assignee must ~~To fail to~~ refund  
456 any and all payments made by the vacation certificate purchaser  
457 within 30 days after receipt of the certificate and notice of  
458 cancellation made pursuant to this section, if the purchaser has  
459 not received any benefits pursuant to the vacation certificate.

460 (3) A seller of travel or assignee must, if the purchaser  
461 has received any benefits pursuant to the vacation certificate,  
462 ~~to fail to~~ refund within 30 days after receipt of the  
463 certificate and notice of cancellation made pursuant to this  
464 section any and all payments made by the purchaser which exceed  
465 a pro rata portion of the total price, representing the portion  
466 of any benefits actually received by the vacation certificate

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

467 purchaser during the time preceding cancellation.

468 (4) If ~~Where~~ any purchaser has received confirmation of  
469 reservations in advance and is refused accommodations upon  
470 arrival, a seller of travel or assignee must ~~to fail to~~ procure  
471 comparable alternate accommodations for the purchaser in the  
472 same city at no expense to the purchaser, or ~~to fail to~~ fully  
473 compensate the purchaser for the room rate incurred in securing  
474 comparable alternate accommodations himself or herself.

475 (5) A seller of travel or assignee may not ~~To~~ collect more  
476 than the full contract price from the purchaser.

477 (6) A seller of travel or assignee may not ~~To~~ sell, assign,  
478 or otherwise transfer any interest in a seller of travel  
479 business, or ~~to~~ sell, assign, or otherwise transfer to a third  
480 party any interest in any vacation certificate unless:

481 (a) The third party agrees in writing to fully honor the  
482 rights of vacation certificate purchasers to cancel and to  
483 receive an appropriate refund or reimbursement as provided in  
484 this section.

485 (b) The third party agrees in writing to comply with all  
486 other provisions of this part for as long as the third party  
487 continues the sale of vacation certificates or for the duration  
488 of the period of validity of outstanding vacation certificates,  
489 whichever is longer in time.

490 (c) The seller of travel agrees to be liable for and fully  
491 indemnify a purchaser from any loss occasioned by the failure of  
492 the third party to honor the purchaser's right to cancel and  
493 failure to make prompt and complete refund to the purchaser of  
494 all sums paid to the third party, or occasioned by the third

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

495 party's failure to comply with the provisions of this part.

496 (7) A seller of travel or assignee must ~~To fail to~~ fulfill  
497 the terms of a vacation certificate within 18 months after ~~of~~  
498 the initial payment of any consideration by the purchaser to a  
499 seller of travel or third party.

500 Section 34. Section 559.9335, Florida Statutes, is amended  
501 to read:

502 559.9335 Violations.—It is a violation of this part for any  
503 seller of travel, independent agent, assignee, or other person:

504 (1) To conduct business as a seller of travel without  
505 registering annually with the department unless exempt pursuant  
506 to s. 559.935.

507 (2) To conduct business as a seller of travel without an  
508 annual purchase of a performance bond in the amount set by the  
509 department unless exempt pursuant to s. 559.935.

510 (3) Knowingly to make any false statement, representation,  
511 or certification in any application, document, or record  
512 required to be submitted or retained under this part or in any  
513 response to an inquiry or investigation conducted by the  
514 department or any other governmental agency.

515 (4) Knowingly to sell or market any ~~number of~~ vacation  
516 certificates that exceed the number disclosed to the department  
517 pursuant to this section.

518 (5) Knowingly to sell or market vacation certificates with  
519 an expiration date of more than 18 months from the date of  
520 issuance.

521 ~~(6) Knowingly to require, request, encourage, or suggest,~~  
522 ~~directly or indirectly, that payment for the right to obtain a~~

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

523 ~~travel contract, certificate, or vacation package must be by~~  
524 ~~credit card authorization or to otherwise announce a preference~~  
525 ~~for that method of payment over any other when no correct and~~  
526 ~~true explanation for such preference is likewise stated.~~

527 (6)~~(7)~~ Knowingly to state, represent, indicate, suggest, or  
528 imply, directly or indirectly, that the travel contract,  
529 certificate, or vacation package being offered by the seller of  
530 travel cannot be purchased at some later time or may not  
531 otherwise be available after the initial contact, or that  
532 callbacks by the prospective purchaser are not accepted, when no  
533 such restrictions or limitations in fact exist.

534 (7)~~(8)~~ To misrepresent ~~in any manner~~ the purchaser's right  
535 to cancel and to receive an appropriate refund or reimbursement  
536 as provided by this part.

537 (8)~~(9)~~ To sell any vacation certificate the duration of  
538 which exceeds the duration of any agreement between the seller  
539 and any business entity obligated thereby to provide  
540 accommodations or facilities pursuant to the vacation  
541 certificate.

542 (9)~~(10)~~ To misrepresent or deceptively represent:

543 (a) The amount of time or period of time accommodations or  
544 facilities will be available.

545 (b) The location of accommodations or facilities offered.

546 (c) The price, size, nature, extent, qualities, or  
547 characteristics of accommodations or facilities offered.

548 (d) The nature or extent of other goods, services, or  
549 amenities offered.

550 (e) A purchaser's rights, privileges, or benefits.

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



## Amendment No. 3

551 (f) The conditions under which the purchaser may obtain a  
552 reservation for the use of offered accommodations or facilities.

553 (g) That the recipient of an advertisement or promotional  
554 materials is a winner, or has been selected, or is otherwise  
555 being involved in a select group for receipt, of a gift, award,  
556 or prize, unless this fact is the truth.

557 ~~(10)~~ ~~(11)~~ To fail to inform a purchaser of a nonrefundable  
558 cancellation policy before ~~prior to~~ the seller of travel  
559 accepting any fee, commission, or other valuable consideration.

560 ~~(11)~~ ~~(12)~~ To fail to include, when offering to sell a  
561 vacation certificate, in any advertisement or promotional  
562 material, the following statement: "This is an offer to sell  
563 travel."

564 ~~(12)~~ ~~(13)~~ To fail to honor and comply with all provisions of  
565 the vacation certificate regarding the purchaser's rights,  
566 benefits, and privileges thereunder.

567 ~~(13)~~ ~~(14)~~ (a) To include in any vacation certificate or  
568 contract any provision purporting to waive or limit any right or  
569 benefit provided to purchasers under this part; or

570 (b) To seek or solicit such waiver or acceptance of  
571 limitation from a purchaser concerning rights or benefits  
572 provided under this part.

573 ~~(14)~~ ~~(15)~~ To offer vacation certificates for any  
574 accommodation or facility for which there is no contract with  
575 the owner of the accommodation or facility securing the  
576 purchaser's right to occupancy and use, unless the seller is the  
577 owner.

578 ~~(15)~~ ~~(16)~~ To use a local mailing address, registration



Amendment No. 3

579 facility, drop box, or answering service in the promotion,  
580 advertising, solicitation, or sale of vacation certificates,  
581 unless the seller's fixed business address is clearly disclosed  
582 during any telephone solicitation and is prominently and  
583 conspicuously disclosed on all solicitation materials and on the  
584 contract.

585 ~~(16)-(17)~~ To use any registered trademark, trade name, or  
586 trade logo in any promotional, advertising, or solicitation  
587 materials without written authorization from the holder of such  
588 trademark, trade name, or trade logo.

589 ~~(17)-(18)~~ To represent, directly or by implication, any  
590 affiliation with, or endorsement by, any governmental,  
591 charitable, educational, medical, religious, fraternal, or civic  
592 organization or body, or any individual, in the promotion,  
593 advertisement, solicitation, or sale of vacation certificates  
594 without express written authorization.

595 ~~(18)-(19)~~ To sell a vacation certificate to any purchaser  
596 who is ineligible for its use.

597 ~~(19)-(20)~~ To sell any ~~number of~~ vacation certificates in  
598 excess of exceeding the number of available accommodations  
599 ~~disclosed pursuant to this part.~~

600 ~~(20)-(21)~~ During the period of a vacation certificate's  
601 validity, in the event, for any reason whatsoever, of lapse or  
602 breach of an agreement for the provision of accommodations or  
603 facilities to purchasers, to fail to procure similar agreement  
604 for the provision of comparable alternate accommodations or  
605 facilities in the same city or surrounding area.

606 ~~(21)-(22)~~ To offer to sell, at wholesale or retail,

543715 - h641-line 1047.docx

Published On: 2/16/2016 7:10:24 PM



Amendment No. 3

607 prearranged travel ~~or~~, tourist-related services, ~~or tour guide~~  
608 ~~services~~ for individuals or groups directly to any terrorist  
609 state and which originate in Florida, without disclosing such  
610 business activities in a certification filed under s.  
611 559.9285(1)(b) or (c).

612 ~~(22)~~~~(23)~~ To violate any state or federal law restricting or  
613 prohibiting commerce with terrorist states.

614 ~~(23)~~~~(24)~~ To engage in ~~de~~ any other action that act ~~which~~  
615 constitutes fraud, misrepresentation, or failure to disclose a  
616 material fact, or to commit any other violation of, or fail to  
617 comply with, this part.

618 ~~(24)~~~~(25)~~ To refuse or fail, or for any of its principal  
619 officers to refuse or fail, after notice, to produce any  
620 document or record or disclose any information required to be  
621 produced or disclosed.

622 ~~(25)~~~~(26)~~ Knowingly to make a material false statement in  
623 response to any request or investigation by the department, the  
624 Department of Legal Affairs, or the state attorney.

625 Section 35. Subsections (3) and (4) of section 559.935,  
626 Florida Statutes, are amended to read:

627 559.935 Exemptions.—

628 (3) Sections 559.928, 559.929, 559.9295, 559.931, and  
629 559.932 ~~shall~~ also do not apply to a seller of travel that is an  
630 affiliate of an entity exempt pursuant to subsection (2) subject  
631 to the following conditions:

632 (a) If ~~In the event~~ the department finds the affiliate  
633 does not have a satisfactory consumer complaint history or the





Amendment No. 3

634 affiliate fails to respond to a consumer complaint within 30  
635 days, the related seller of travel exempt pursuant to subsection  
636 (2) ~~is shall be~~ liable for the actions of the affiliate, subject  
637 to the remedies provided in ss. 559.9355 and 559.936.

638 (b) ~~If In the event~~ the department is unable to locate an  
639 affiliate, the related seller of travel exempt pursuant to  
640 subsection (2) ~~is shall be~~ fully liable for the actions of the  
641 affiliate, subject to the remedies provided in ss. 559.9355 and  
642 559.936.

643 ~~(c) In order to obtain an exemption under this subsection,~~  
644 ~~the affiliate shall file an affidavit of exemption on a form~~  
645 ~~prescribed by the department and shall certify its business~~  
646 ~~activities under s. 559.9285(1)(a). The affidavit of exemption~~  
647 ~~shall be executed by a person who exercises identical control~~  
648 ~~over the seller of travel exempt pursuant to subsection (2) and~~  
649 ~~the affiliate. Failure to file an affidavit of exemption or~~  
650 ~~certification under s. 559.9285(1)(a) prior to engaging in~~  
651 ~~seller of travel activities shall subject the affiliate to the~~  
652 ~~remedies provided in ss. 559.9355 and 559.936.~~

653 ~~(c)(d)~~ Revocation by the department of an exemption  
654 provided to a seller of travel under subsection (2) shall  
655 constitute automatic revocation by law of an exemption obtained  
656 by an affiliate under the subsection.

657 ~~(d)(e)~~ This subsection does ~~shall~~ not apply to:

658 1. An affiliate that independently qualifies for another  
659 exemption under this section.



Amendment No. 3

660 2. An affiliate that sells, or offers for sale, vacation  
661 certificates.

662 3. An affiliate that certifies its business activities  
663 under s. 559.9285(1)(b) or (c).

664 ~~(e)(f)~~ For purposes of this section, the term an  
665 "affiliate" means an entity that meets the following:

666 1. The entity has the identical ownership as the seller of  
667 travel that is exempt under subsection (2).

668 2. The ownership controlling the seller of travel that is  
669 exempt under subsection (2) also exercises identical control  
670 over the entity.

671 3. The owners of the affiliate hold the identical  
672 percentage of voting shares as they hold in the seller of travel  
673 that is exempt under subsection (2).

674 (4) The department may revoke the exemption provided in  
675 subsection (2) or subsection (3) if the department finds that  
676 the seller of travel does not have a satisfactory consumer  
677 complaint history, has been convicted of a crime involving  
678 fraud, theft, embezzlement, misappropriation of property,  
679 deceptive or unfair trade practices, or moral turpitude, or has  
680 not complied with the terms of any order or settlement agreement  
681 arising out of an administrative or enforcement action brought  
682 by a governmental agency or private person based on conduct  
683 involving fraud, theft, embezzlement, misappropriation of  
684 property, deceptive or unfair trade practices, or moral  
685 turpitude.



Amendment No. 3

686 Section 36. Subsection (3) of section 559.936, Florida  
687 Statutes, is amended to read:

688 559.936 Civil penalties; remedies.—

689 (3) The department may seek a civil penalty in the Class  
690 III category pursuant to s. 570.971 for each act or omission in  
691 violation of s. 559.9335(21) or (22) ~~s. 559.9335(22) or (23)~~.

692

693

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

694  
695 Remove lines 115-146 and insert:

696 repair shops; amending s. 559.927, F.S.; revising definitions;  
697 amending s. 559.928, F.S.; requiring the department to waive the  
698 initial seller of travel registration fee for certain veterans,  
699 the spouses of such veterans, or certain business entities that  
700 have a majority ownership held by such veterans or spouses;  
701 requiring each advertisement, each certificate, or any other  
702 travel document to include a specified phrase; deleting a  
703 provision requiring an advertisement to include a specified  
704 phrase; revising the circumstances under which the department  
705 may deny or refuse to renew a registration; authorizing the  
706 department to revoke the registration of a seller of travel  
707 under certain circumstances; amending s. 559.929, F.S.; revising  
708 certain security requirements; providing requirements for  
709 consumer claims against a bond; amending s. 559.9295, F.S.;  
710 revising the requirements that certain sellers of travel submit  
711 and disclose to the department; deleting provisions relating to



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 641 (2016)

Amendment No. 3

712 the duties of the department; amending s. 559.932, F.S.;

713 requiring a specified typeface point size for certain

714 disclosures; requiring the department to review copies of

715 certain certificates and contracts for compliance with

716 disclosure requirements; amending s. 559.933, F.S.; making

717 technical changes; amending s. 559.9335, F.S.; revising

718 violations relating to the sale of travel; amending s. 559.935,

719 F.S.; deleting a provision requiring an affidavit of exemption

720 to obtain a seller of travel affiliate exemption; adding

721 embezzlement as a crime for which the department may revoke

722 certain exemptions; amending s. 559.936, F.S.; conforming cross-

723 references; amending s. 616.242,



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Trumbull offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 1817-1966

7

8

9



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

11 Remove lines 154-165 and insert:

12 employee training; amending s. 790.06, F.S.; revising the



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 641 (2016)

Amendment No. 5

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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Trumbull offered the following:

4

5 **Amendment**

6 Remove line 2067 and insert:

7 the record has been expunged;



## REGULATORY AFFAIRS COMMITTEE

CS/CS/HB 651 by Rep. Beshears  
Department of Financial Services

### AMENDMENT SUMMARY February 17, 2016

---

**Amendment 1 by Rep. Beshears (Line 320):** the amendment revises the standards for carbon monoxide detector devices in public lodging establishments, shifts the State Fire Marshall's authority to exempt carbon monoxide detector devices to the local fire official or his designee, and provides an alternative method for installing such devices.

**Amendment 2 by Rep. Beshears (Line 396):** the amendment revises the applicability of the term "public adjuster" by creating an exception for licensed health insurance agents who assist an insured with understanding the claims filing process, filing a claim, coverage questions, medical procedure coding issues, or balance billing issues, related to coverage under a health insurance policy. The amendment conforms the House bill to the Senate companion.

**Amendment 3 by Rep. Beshears (Line 465):** the amendment provides that the DFS, rather than the Division of Insurance Fraud, investigate violations of certain crimes arising from violations of specific statutes. The amendment adds additional statutes applicable under the Anti-Fraud Reward Program. The amendment conforms the House bill to the Senate companion.

**Amendment 4 by Rep. Beshears (Line 574):** the amendment removes the county limitation for the annual award of grants under the Firefighter Assistance Grant Program and makes the granting of such awards subject to the annual Florida Fire Service Needs Assessment Survey. The amendment conforms the House bill to the Senate companion.

**Amendment 5 by Rep. Beshears (Line 762):** the amendment clarifies that the DFS's authority to adopt rules pursuant to the Florida Disposition of Unclaimed Property Act applies to all unclaimed property reported and remitted to the CFO. The amendment conforms the House bill to the Senate companion.





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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Beshears offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 320-333 and insert:

7 carbon monoxide detector ~~sensor~~ devices that are listed as  
8 complying with ANSI/UL 2075, Standard for Gas and Vapor  
9 Detectors and Sensors, by a Nationally Recognized Testing  
10 Laboratory accredited by the Occupational Safety and Health  
11 Administration ~~bear the label of a nationally recognized testing~~  
12 ~~laboratory and have been tested and listed as complying with the~~  
13 ~~most recent Underwriters Laboratories, Inc., Standard 2034, or~~  
14 ~~its equivalent,~~ unless it is determined that carbon monoxide  
15 hazards have otherwise been adequately mitigated as determined  
16 by the local fire official, or his designee. ~~the Division of~~  
17 ~~State Fire Marshall of the Department of Financial Services.~~



Amendment No. 1

18 Such devices shall be integrated with the public lodging  
19 establishment's fire detection system. Any such installation ~~or~~  
20 ~~determination~~ shall be made in accordance with rules adopted by  
21 the Division of State Fire Marshall. In lieu of connecting the  
22 carbon monoxide detector to the fire detection system described  
23 above, the connector may be connected to a control unit listed  
24 as complying with UL 2017 or a combination system in accordance  
25 with NFPA 720. Either the control unit or the combination system  
26 shall be connected to the boiler safety circuit such that the  
27 boiler is prevented from operating when carbon monoxide is  
28 detected until it is reset manually.

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

32 Remove lines 38-40 and insert:

33 public lodging establishments; shifting a provision authorizing  
34 the State Fire Marshall of the department to exempt a device  
35 from such standards to the local fire official or his designee;  
36 providing an alternative method of installing such devices;  
37 amending s.



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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Beshears offered the following:

**Amendment (with title amendment)**

6 Between lines 396 and 397, insert:

7 Section 12. Subsection (2) of section 626.854, Florida  
8 Statutes, is amended to read:

9 626.854 "Public adjuster" defined; prohibitions.—The  
10 Legislature finds that it is necessary for the protection of the  
11 public to regulate public insurance adjusters and to prevent the  
12 unauthorized practice of law.

13 (2) This definition does not apply to:

14 (a) A licensed health care provider or employee thereof  
15 who prepares or files a health insurance claim form on behalf of  
16 a patient.





Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Beshears offered the following:

4  
5 **Amendment (with title amendment)**

6 Between lines 465 and 466, insert:

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

9 626.9892 Anti-Fraud Reward Program; reporting of insurance  
10 fraud.—

11 (2) The department may pay rewards of up to \$25,000 to  
 12 persons providing information leading to the arrest and  
 13 conviction of persons committing crimes investigated by the  
 14 department ~~Division of Insurance Fraud~~ arising from violations  
 15 of s. 440.105, s. 624.15, s. 626.9541, s. 626.989, s. 790.164,  
 16 s. 790.165, s. 790.166, s. 806.031, s. 806.10, s. 806.111, s.  
 17 817.233, or s. 817.234.



Amendment No. 3

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

-----

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

Remove line 61 and insert:

Office board of governors; amending s. 626.9892, F.S.; providing  
that the department, rather than the Division of Insurance  
Fraud, investigates certain crimes; adding violations of  
specified statutes to the Anti-Fraud Reward Program; amending s.  
627.7074, F.S.;



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 651 (2016)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
 2 Committee

3 Representative Beshears offered the following:

4  
5 **Amendment**

6 Remove lines 574-575 and insert:

7 prioritize the annual award of grants to such combination fire  
 8 departments and volunteer fire departments demonstrating need as  
 9 a result of participating in the annual Florida Fire Service  
 10 Needs Assessment Survey.



Amendment No. 5

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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Beshears offered the following:

**Amendment (with title amendment)**

6 Between lines 762 and 763, insert:

7 Section 24. Section 717.138, Florida Statutes, is amended  
8 to read:

9 717.138 Rulemaking authority.—The department shall  
10 administer and provide for the enforcement of this chapter. The  
11 department has authority to adopt rules pursuant to ss.  
12 120.536(1) and 120.54 to implement the provisions of this  
13 chapter. The department may adopt rules to allow for electronic  
14 filing of fees, forms, and reports required by this chapter. The  
15 authority to adopt rules pursuant to this chapter applies to all  
16 unclaimed property reported and remitted to the Chief Financial  
17 Officer, including, but not limited to, property reported and





Amendment No. 5

18 remitted pursuant to ss. 43.19, 45.032, 732.107, 733.816, and  
19 744.534.

20

21

22 -----

23

**T I T L E   A M E N D M E N T**

24

Remove line 101 and insert:

25

specified circumstances; amending s. 717.138, F.S.; providing

26

applicability for the department's rulemaking authority;

27

providing an appropriation



**Regulatory Affairs Committee**

**CS/HB 659 by Rep. Santiago  
Automobile Insurance**

**AMENDMENT SUMMARY  
February 17, 2016**

---

**Amendment 1 by Rep. Santiago (Line 33):** The amendment provides that the use a single zip code rating territory is not unfairly discriminatory if it is actuarially sound and meets the ratemaking standard.

**Amendment 2 by Rep. Santiago (Line 91):** The amendment requires that insureds receive a specified notice whenever a motor vehicle repair shop will seek reimbursement for motor vehicle glass repair or replacement from an insurance company.



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	_____	

---

1 Committee/Subcommittee hearing bill: Regulatory Affairs  
2 Committee

3 Representative Santiago offered the following:

**Amendment (with title amendment)**

6 Between lines 33 and 34, insert:

8 Section 1. Subsection (8) of section 627.0651, Florida  
9 Statutes, is amended to read:

10 627.0651 Making and use of rates for motor vehicle  
11 insurance.-

12 (8) Rates are not unfairly discriminatory if averaged  
13 broadly among members of a group; nor are rates unfairly  
14 discriminatory even though they are lower than rates for  
15 nonmembers of the group. However, such rates are unfairly  
16 discriminatory if they are not actuarially measurable and  
17 credible and sufficiently related to actual or expected loss and



Amendment No. 1

18 expense experience of the group so as to assure that nonmembers  
19 of the group are not unfairly discriminated against. Use of a  
20 single United States Postal Service zip code as a rating  
21 territory shall be deemed unfairly discriminatory unless filed  
22 pursuant to paragraph (1)(a) and the justification for its rate  
23 incorporates sufficient actual or expected loss and loss  
24 adjustment expense experience so as to be actuarially sound. The  
25 office shall require that any rate filing resulting from the use  
26 of a single zip code as a rating territory does not contain a  
27 rate or rate change that is excessive, inadequate, or unfairly  
28 discriminatory.

29

30

-----

31

**T I T L E   A M E N D M E N T**

32

Between lines 2 and 3, insert:

33

627.0651, F.S.; providing an exception to a provision that deems  
34 use of a single zip code as a rating territory for insurance  
35 rates to be unfairly discriminatory; requiring the Office of  
36 Insurance Regulation to ensure that rates or rate changes  
37 contained in certain rate filings are not excessive, inadequate,  
38 or unfairly discriminatory; amending s.





Amendment No. 2

18 COMPANY OF HOW, WHEN AND WHERE THE DAMAGE TO MY MOTOR VEHICLE  
19 GLASS HAPPENED AND SHOULD DO SO BEFORE SIGNING THIS DOCUMENT.  
20 MY INSURANCE COMPANY MAY PROVIDE ME WITH ALTERNATIVE OPTIONS FOR  
21 REPAIR OR REPLACEMENT. I ALSO UNDERSTAND I HAVE THE RIGHT TO  
22 CONTACT AND WORK DIRECTLY WITH MY INSURANCE COMPANY ON THE  
23 REPAIR OR REPLACEMENT OF MOTOR VEHICLE GLASS AND PAYMENT FOR  
24 SUCH. I UNDERSTAND IF THE COST OF THIS MOTOR VEHICLE GLASS  
25 REPAIR OR REPLACEMENT BY [INSERT NAME OF MOTOR VEHICLE REPAIR  
26 SHOP] IS NOT FULLY PAID BY MY INSURANCE COMPANY OR IS NOT  
27 COVERED BY MY INSURANCE POLICY, I MAY BE PERSONALLY RESPONSIBLE  
28 FOR PAYMENT TO [ INSERT NAME OF MOTOR VEHICLE REPAIR SHOP] FOR  
29 ANY UNPAID COSTS UNDER THE CONTRACT.";

30 (2) The notice is in at least 16 point boldface type,  
31 whether in paper or electronic form;

32 (3) The motor vehicle repair shop provides to the insured,  
33 prior to commencing the repair or replacement, the notice  
34 required by this section and a detailed repair invoice, which  
35 meets the requirements of s. 559.911;

36 (4) The notice required by this section visibly appears  
37 immediately preceding the signature line or box;

38 (5) The notice, whether in paper or electronic form, must  
39 be signed by the insured;

40 (6) A copy of the signed notice is attached to the invoice  
41 when payment is sought from the insurance company; and

42 (7) The claim is on a separate invoice from any other  
43 repairs covered by the insured's policy other than motor vehicle



Amendment No. 2

44 | glass.

45

46

47 | -----

48

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

49

Remove line 14 and insert:

50

same insurer or insurer group; creating s. 627.7289, F.S.;

51

establishing requirements for direct motor vehicle glass repair

52

or replacement insurance claims; amending s. 627.7295,





**REGULATORY AFFAIRS COMMITTEE**

**CS/HB 743 by Rep. Latvala  
Relating to Mobile Homes**

**AMENDMENT SUMMARY  
February 17, 2016**

---

**Amendment 1 by Rep. Latvala (line 141):** The amendment clarifies that the rights being provided are those of a homeowners' association.

