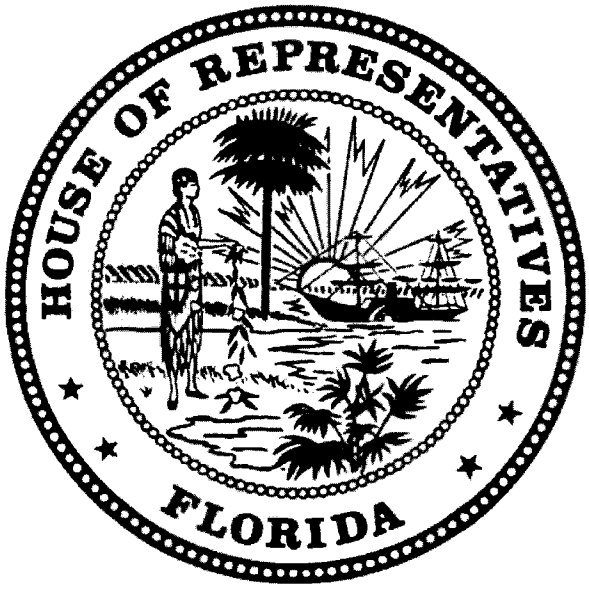

Insurance & Banking Subcommittee

Wednesday, March 25, 2015
8:00 AM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

John Wood
Chair

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Steve Crisafulli
Speaker

John Wood
Chair

AGENDA

Wednesday, March 25, 2015
404 HOB
8:00 am – 11:00 am

I. Call to Order

II. Roll Call

III. Consideration of the following bill(s):

a. CS/HB 269 Experimental Treatments for Terminal Conditions by Health Innovation Subcommittee, Pilon
b. HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers by Artiles
c. HB 887 Unclaimed Property by Trumbull
d. CS/HB 893 Blanket Health Insurance Eligibility by Health Innovation Subcommittee, Ingoglia
e. HB 1021 Health Insurance Coverage for Opioids by Nuñez
f. HB 1081 Consumer Loans by Burton
g. PCS for HB 1087 Depopulation of Citizens Property Insurance Corporation
h. PCS for HB 1127 Insurance Fraud

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Wednesday, March 25, 2015 08:00 am
End Date and Time:	Wednesday, March 25, 2015 11:00 am
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 269 Experimental Treatments for Terminal Conditions by Health Innovation Subcommittee, Pilon
HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers by Artiles
HB 887 Unclaimed Property by Trumbull
CS/HB 893 Blanket Health Insurance Eligibility by Health Innovation Subcommittee, Ingoglia
HB 1021 Health Insurance Coverage for Opioids by Nuñez
HB 1081 Consumer Loans by Burton

Consideration of the following proposed committee substitute(s):

PCS for HB 1087 -- Operations of Citizens Property Insurance Corporation
PCS for HB 1127 -- Insurance Fraud

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, March 24, 2015.

By request of the Chair, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 24, 2015.

NOTICE FINALIZED on 03/23/2015 16:19 by McCloskey.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 269 Experimental Treatments for Terminal Conditions
SPONSOR(S): Health Innovation Subcommittee; Pilon
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	Tuszynski	Poche
2) Insurance & Banking Subcommittee		Haston SH	Cooper
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The Food and Drug Administration (FDA) has regulatory authority over what drugs are marketed and sold within the United States. Investigational or experimental drugs are new drugs that are not approved by the FDA and are in the process of being tested for safety and effectiveness. An investigational drug must go through a lengthy and expensive approval process requiring phased clinical trials. Approval of an investigational drug by the FDA can take as long as 11 years.

The FDA has a procedure to gain access to investigational drugs that have not yet been approved by the FDA, known as expanded access. Under the FDA's expanded access scheme, physicians can request an investigational drug for a single patient using an emergency use application. However, this process is considered burdensome, time-consuming, and confusing. In February of 2015, the FDA announced a draft application that removes many of the burdensome and time-consuming requirements of the old procedure.

The bill creates the "Right to Try Act," which establishes a framework in which a manufacturer may provide a post-phase 1 investigational drug, biological product, or device to an eligible patient with a terminal condition, bypassing the FDA's emergency use expanded access program. The bill defines an eligible patient and a terminal condition. The bill also requires certain information and attestations in a written informed consent document, which must be signed by the patient or the patient's parent, guardian, or health care surrogate and provided to the manufacturer, in order to receive a post-phase 1 investigational drug, biological product, or device.

The bill also protects the licenses of physicians who recommend investigational drugs, biological products, or devices from disciplinary action as a result of making the recommendation. The bill permits insurers to pay for investigational drugs, but does not require such payment. Lastly, the bill provides liability protection for manufacturers, persons, and entities involved in the use of the investigational drug, biological product, or device pursuant to the provisions of the bill.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Regulation of Drugs

The U.S. Food and Drug Administration (FDA) has wide regulatory authority over what drugs are marketed and sold within the United States. The Pure Food and Drug Act, passed in 1906, was the genesis of the federal regulation of drugs.[1] The responsibility of enforcing this act was given to the Bureau of Chemistry, later renamed the Food and Drug Administration in 1927.[2] The Federal Food, Drug and Cosmetic Act (FFDCA) was passed in 1938 and gave authority to the FDA to oversee the safety of food, drugs, and cosmetics.[3] In 1962, in the wake of deaths and birth defects from the tranquilizer thalidomide marketed in Europe, Congress passed the Kefauver-Harris Drug Amendments to the FFDCA, increasing safety provisions and requiring that drugs be proven effective as well as safe.[4]

Approval Process

Investigational or experimental drugs are new drugs that have yet to be approved by the FDA, or are approved drugs that have not been approved by the FDA for a new use, and are in the process of being tested for safety and effectiveness. To bring a drug to market, an investigational drug's sponsor, typically a pharmaceutical company or research entity, must go through a lengthy approval process. It can take up to 11 years[5] from the beginning of the FDA's involvement to bring an investigational drug to market; the average time to market is 8 years.[6] The same process applies to new biological products and devices.

The first step in the process, basic laboratory research, occurs prior to FDA involvement. Research often adds years onto the average time it takes a drug to be approved. Basic laboratory research, often funded by the federal government in federal labs or research universities, investigates chemical components and compounds that may have therapeutic efficacy. If research identifies a component that may be promising as an experimental drug, private industry or private research groups continue development of the drug and begin animal testing. When the drug is ready for human trials, an investigational new drug application (IND) is submitted to the FDA,[7] which includes details on the appropriateness of human testing.[8] Once the IND is approved, the sponsor may begin testing to gather evidence as to the safety and effectiveness of the drug.[9]

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[1] Pure Food and Drug Act of 1906, ch. 3915, 34 Stat. 769 (1906) (Repealed by the Federal Food, Drug, and Cosmetic Act of 1938 [21 U.S.C. Sec 329(a)]), http://www.fda.gov/regulatoryinformation/legislation/ucm148690.htm; The Federal Food and Drugs Act of 1906 is called the "Wiley Act."
[2] Federal Food and Drugs Act of 1906, P.L. 59-384, s. 1.
[3] Food, Drug, and Cosmetic Act of 1938 (21 U.S.C. ch. 9 § 301 et seq.).
[4] Kefaver-Harris Drug Amendments to the FFDCA, P.L. 87-781, (1962).
[5] Christopher P. Adams & Van. V. Brantner, *New Drug Development: Estimating Entry From Human Clinical Trials* 9 (Jul. 7, 2003), available at http://www.ftc.gov/reports/new-drug-development-estimating-entry-human-clinical-trials
[6] *Id.*
[7] 21 U.S.C. § 355(i)(1); *see also* 21 C.F.R. § 312.
[8] 21 C.F.R. § 312.23.
[9] 21 U.S.C. § 355(d)(5).

Generally, the investigation into experimental drugs, biological products, and devices is divided into three clinical development trials, detailed in the chart below. [10][11]

CLINICAL TRIAL PHASES			
Phase	**Participants**	**Purpose**	**Average Time**
Phase 1	20-80	This is the initial introduction of a new drug into humans. These studies are typically closely monitored and designed to determine the metabolism and pharmacologic action of the treatment, side effects associated with increased dosage, and if possible, to gain early evidence of effectiveness.	1.7 years
Phase 2	Several Hundred	These are the controlled clinical studies conducted to evaluate the effectiveness of the treatment for a particular indication or indications, and to determine common short-term side effects and risks.	2.4 years
Phase 3	Several Thousand	These are performed after preliminary evidence suggesting effectiveness of the treatment has been obtained from Phase 2. This phase is intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the treatment and to provide an adequate basis for physician labeling.	3.7 years

When a sponsor believes there is "substantial evidence" [12] of safety and effectiveness, they submit a new drug application (NDA) to the FDA for approval.[13] The NDA must contain full reports of the phased clinical trials detailing the safety and effectiveness of the drug.[14] During the NDA review, the FDA evaluates the clinical trial data, analyzes samples, inspects the facilities where the finished product will be made, and checks the proposed labeling for accuracy.[15] Once the FDA determines that there is substantial evidence of safety and effectiveness, the NDA is approved and the sponsor is allowed to bring the drug to market.

Expanded Access

The FDA established regulations allowing expanded access to, or "compassionate use" of, experimental drugs, biological products, and devices in 1987, and individual patient "emergency use" expanded access in 1997. These regulations provide access to:

1. Individuals on a case-by-case basis, known as "individual patient access";[16]

[10] Adams & Brantner, *supra* note 5.
[11] Phase 4 trials are post-approval clinical trials to test the long term effects of investigational drugs, biological products, and devices.
[12] 21 U.S.C. § 355(d)(5).
[13] 21 U.S.C. § 355(a).
[14] 21 U.S.C. § 355(b)(1)(a).
[15] Adams & Brantner, *supra* note 5.
[16] U.S. Food and Drug Administration, *Expanded Access Categories for Drugs*, http://www.fda.gov/NewsEvents/PublicHealthFocus/ExpandedAccessCompassionateUse/ucm431774.htm. (last visited March 4, 2015).

2. Intermediate sized groups of patients with similar treatment needs who otherwise do not qualify to participate in a clinical trial;[17] and
3. Large groups of patients who do not have other treatment options available.[18]

The access routes for intermediate and large groups are essentially expanded clinical trials. If enough patients are outside of the geographical area of a clinical trial, or were unable to meet the criteria of the specific trial, the FDA can approve concurrent trials.

Individual patient access includes "emergency use." Emergency use requests can be made by phone or other means of electronic communication. A patient may start using the investigational drug, biological product, or device immediately upon FDA authorization of the request.[19] The written emergency use request must be received by the FDA within 15 business days of the telephone authorization.[20] The written emergency use request requires physicians to submit 26 distinct fields of information and seven attachments.[21] This process can take upwards of 100 hours to gather and submit the required information.[22]

The FDA reviews emergency use requests and makes the determination of whether to approve the request based on the following factors:

- The patient has a serious or immediately life-threatening disease or condition, and there is no comparable or satisfactory alternative therapy.[23]
- The potential benefit justifies the potential risks, and that those risks are not unreasonable.[24]
- Provision of the treatment will not interfere with the initiation, conduct, or completion of clinical investigations that could support marketing approval of the expanded access use or otherwise compromise the development of the expanded access use.[25]
- A determination by the patient's physician that the probable risk to the person is not greater than the risk of the disease or condition.[26]
- A determination by the FDA that the patient cannot obtain the treatment under another IND or protocol.[27]

Between October 1, 2013 and September 30, 2014, the FDA approved 1,066 of the 1,069 emergency use requests it received. [28]

"Right to Try" Laws and FDA Response

Five states have passed laws in the past 12 months providing terminally ill patients access to experimental drugs outside of the FDA's normal regulatory scheme:

- Colorado[29]
- Louisiana[30]

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[17] 21 U.S.C. § 312.315.
[18] 21 U.S.C. § 312.320.
[19] Peter D. Jacobson, J.D., M.P.H. & Wendy E. Parmet, J.D., *A New Era of Unapproved Drugs: The Case of Abigail Alliance v. Von Eschenbach*, 297 JAMA 205 (2007).
[20] *Id.*
[21] Peter Lurie, M.D., M.P.H., *A Big step to help the patients most in need*, FDA Voice, February 4, 2015, *available at* http://blogs.fda.gov/fdavoice/index.php/tag/individual-patient-expanded-access-applications-form-fda-3926/. (last visited February 17, 2015).
[22] *Id.*
[23] 21 U.S.C. § 312.305(a)(1)
[24] 21 U.S.C. § 312.305(a)(2)
[25] 21 U.S.C. § 312.305(a)(3)
[26] 21 U.S.C. § 312.310(a)(1)
[27] 21 U.S.C. § 312.310(a)(2)
[28] Expanded Access Submission Receipts Report: Oct 1, 2013 - Sep 30, 2014, http://www.fda.gov/downloads/Drugs/DevelopmentApprovalProcess/HowDrugsareDevelopedandApproved/DrugandBiologicApprovalReports/INDActivityReports/UCM430188.pdf (last visited February 10, 2015).
[29] Colo. R.S.A. §§ 25-45-101 to -108

- Missouri[31]
- Arizona[32]
- Michigan[33]

These state laws allow, but do not require, manufacturers of experimental treatments to make these treatments available to eligible patients with terminal illnesses. The laws also require written informed consent from patients stating that they are aware of the dangers associated with the experimental treatment. The laws also include provisions that protect the licenses of physicians who recommend or prescribe experimental treatments; exempt insurers from having to pay for experimental treatment; and provide liability protection to manufacturers and distributors of experimental treatments.

On February 4, 2015, the FDA issued new draft guidance for Individual Patient Expanded Access, or "compassionate use," applications. The draft guidance addresses a new "compassionate use" form, a streamlined alternative for submitting an IND application for use in cases requesting individual patient expanded access to an investigational drug, biological product, or device. The old form, FDA 1571, was designed for large experimental drug sponsors and manufacturers to apply for expanded access, not physicians.[34] The new form, FDA 3926, is designed for physicians seeking authorization on behalf of an individual patient. The new form requires only eight distinct fields of information and one attachment.[35] The FDA estimates that it will take approximately 45 minutes to complete the new form.[36]

Abigail Alliance Case

In 1999, Abigail Burroughs, a 19-year-old college student, was diagnosed with head and neck cancer. Despite undergoing chemotherapy and radiation therapy, her tumor showed increased expression of the cell surface membrane receptor EGFR.[37] She did not meet the inclusion criteria for either of the two clinical trials targeting EGFR at the time. Shortly after her death in 2001, her father formed the Abigail Alliance for Better Access to Developmental Drugs[38] and, in 2003, sued the FDA. The Abigail Alliance argued that terminal cancer patients have a constitutional right to experimental drugs, positing self-defense theories as well as 5th amendment substantive due process claims, and that the FDA should grant access to experimental drugs for use by terminally ill patients.

In 2007, after years of protracted litigation, the U.S. Court of Appeals for the District of Columbia, sitting *en banc*, upheld the previous trial court decision finding no constitutional right to unapproved drugs by terminally ill patients.[39] The Supreme Court of the United States declined to review the case.

Dispensing in an Approved Clinical Trial in Florida

Section 465.0276, F.S., limits the dispensing of medicinal drugs to licensed pharmacists, unless otherwise authorized by the statute. The statute allows dispensing pursuant to an approved clinical trial.[40] An "approved clinical trial" is defined as a clinical research study or clinical investigation that, in whole or in part, is state or federally funded or is conducted under an investigational new drug application that is reviewed by the FDA.[41]

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[30] La. R.S. § 1300.381-386
[31] V.A. Mo. S. § 191.480
[32] Ariz. R.S.A. §36-1311 to -1314
[33] Mich. C.L.A. §§ 16221, 26451
[34] Lurie, *supra* note 21.
[35] *Id.*
[36] *Id.*
[37] Jacobson & Parnet, *supra* note 19.
[38] *Id.*
[39] *Abigail Alliance for Better Access to Developmental Drugs v. Eschenbach*, 495 F.3d 695 (D.C. Cir. 2007).
[40] s. 465.0276(1)(b)(4), F.S.
[41] *Id.*

Effect of Proposed Changes

The bill creates the "Right to Try Act" (Act), establishing a framework in which a manufacturer may provide an investigational drug, biological product, or device to an eligible patient with a terminal illness without utilizing the FDA's emergency use expanded access program.

The bill defines the following terms as used in the Act:

- An "eligible patient" is a person with a terminal condition, attested to by the patient's physician, and confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty for that condition; who has considered all other approved treatment options currently available, has given written informed consent, and has documentation from his or her treating physician that the patient meets the requirements of the Act.
- An "investigational drug, biological product, or device" is any drug, biological product, or device that has successfully completed a phase 1 clinical trial, is currently undergoing an approved clinical trial, and has not yet been approved for general use by the FDA.
- A "terminal condition" is a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered reversible with the available treatments currently approved by the FDA, and, without the administration of life-sustaining procedures, will result in death within one year of diagnosis if the condition runs its normal course.

The bill requires the patient, a parent of a minor patient, a court-appointed guardian for the patient, or a health care surrogate designated by the patient to provide written informed consent prior to accessing an investigational drug, biological product, or device under the Act. The written informed consent must include:

- An explanation of the currently approved products and treatments for the patient's terminal condition;
- An attestation that the patient agrees with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient's life;
- The specific name of the investigational drug, biological product, or device;
- A realistic description of the most likely outcome, detailing the possibility of unanticipated or worse symptoms.
- A statement that death could be hastened by use of the investigational drug, biologic product, or device.
- A statement that the patient's health plan or third-party administrator and physician are not obligated to pay for treatment consequent to the use of the investigational drug, biological product, or device, unless required to do so by law;
- A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins treatment, and reinstated if curative treatment ends and the patient meets hospice eligibility requirements; and
- A statement that the patient understands he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that liability extends to the patient's estate, unless negotiated otherwise.

The bill provides that there is no obligation on the part of any manufacturer to provide a requested investigational drug, biologic product, or device under the Act, but that a manufacturer may do so with or without compensation. The eligible patient may be required to pay the costs of, or associated with, the manufacture of the investigational drug, biological product, or device.

The bill allows a health plan, third-party administrator, or governmental agency to cover the cost of an investigational drug, biological product, or device. The bill does not mandate insurance coverage for an investigational drug, biological product, or device, nor does it affect any mandatory coverage for participation in clinical trials.

The bill states that health care facilities are not required to provide new or additional services associated with a patient's use of an investigational drug, biologic product, or device under the Act, unless it is approved by the health care facility.

The bill exempts a patient's heirs from any outstanding debt associated with the patient's use of the investigational drug, biological product, or device.

The bill prohibits a regulatory board from revoking, suspending, or denying renewal of a physician's license based solely on the physician's recommendation to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device. The bill also prohibits action against a physician's Medicare certification for the same reason.

The bill provides liability protection, except for willful torts, for any person, including a physician, pharmacist, manufacturer, or distributor who possesses, stores, or administers an investigational drug, biological product, or device in compliance with the provisions of the bill.

The bill provides an effective date of July 1, 2015

B. SECTION DIRECTORY:

Section 1: Creates s. 499.0295, F.S., relating to experimental treatments for terminal conditions.

Section 2: Provides for 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 bill permits manufacturers of investigational drugs, biologic products, and devices to provide such drugs, products, and devices to patients with a terminal condition without the approval of the FDA. A manufacturer can track the safety and effectiveness of the drug, biological product, or device on a human subject much earlier than through the traditional FDA approval process, which may quicken the development process and the shorten the amount of time it takes for a drug, biological product, or device to get to market.

The bill also permits a manufacturer to charge an eligible patient for use of the investigational drug, biological product, or device.

The bill provides liability protection to manufacturers, persons, and entities involved with the use of an investigational drug, biological product, or device.

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:

Access to and the use of investigational drugs is controlled by the FDA through the "expanded access" provisions of 21 U.S.C. § 360bbb and 21 C.F.R. § 312. The language of this bill creates a framework that bypasses this federal regulatory scheme.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill language protects a physician's license and Medicare certification from action for recommending an investigational drug, biological product, or device, but not for administering the same investigational drug, biological product, or device.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 10, 2015, the Health Innovation Subcommittee adopted a strike-all amendment and reported the bill favorable as a committee substitute. The amendment made the following changes:

- Changed "terminal illness" to "terminal condition."
- Required confirmation of a patient's terminal condition by a second, board-certified physician in an appropriate specialty for that condition.
- Clarified that a terminal condition is a condition that will result in death within one year of diagnosis if the condition runs its normal course.
- Replaced "health care provider" with "physician."
- Removed the explicit exemption for a governmental agency from paying the costs associated with providing an investigational drug, biological product or device.
- Removed the section that prohibited an official, employee, or agent of the state from blocking or attempting to block an eligible patient's access to an investigational drug, biological product, or device.
- Strengthened the liability protection for a manufacturer, person, and entity involved in the use of the investigational drug, biological product, or device, except for willful torts.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.

A bill to be entitled

An act relating to experimental treatments for terminal conditions; creating s. 499.0295, F.S.; providing a short title; providing definitions; providing conditions for a manufacturer to provide certain drugs, products, or devices to an eligible patient; specifying insurance coverage requirements and exceptions; providing conditions for provision of certain services by a hospital or health care facility; providing immunity from liability; providing protection from disciplinary or legal action against a physician who makes certain treatment recommendations; providing that a cause of action may not be asserted against the manufacturer of certain drugs, products, or devices or a person or entity caring for a patient using such drug, product, or device; providing applicability; providing an effective date.

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

Section 1. Section 499.0295, Florida Statutes, is created to read:

499.0295 Experimental treatments for terminal conditions.—

(1) This section may be cited as the "Right to Try Act."

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

(a) "Eligible patient" means a person who:

1. Has a terminal condition that is attested to by the patient's physician and confirmed by a second independent evaluation by a board-certified physician in an appropriate specialty for that condition;

2. Has considered all other treatment options for the terminal condition currently approved by the United States Food and Drug Administration;

3. Has given written informed consent for the use of an investigational drug, biological product, or device; and

4. Has documentation from his or her treating physician that the patient meets the requirements of this paragraph.

(b) "Investigational drug, biological product, or device" means a drug, biological product, or device that has successfully completed phase 1 of a clinical trial but has not been approved for general use by the United States Food and Drug Administration and remains under investigation in a clinical trial approved by the United States Food and Drug Administration.

(c) "Terminal condition" means a progressive disease or medical or surgical condition that causes significant functional impairment, is not considered by a treating physician to be reversible even with the administration of available treatment options currently approved by the United States Food and Drug Administration, and, without the administration of life-sustaining procedures, will result in death within 1 year after diagnosis if the condition runs its normal course.

(d) "Written informed consent" means a document that is signed by a patient, a parent of a minor patient, a court-appointed guardian for a patient, or a health care surrogate designated by a patient and includes:

1. An explanation of the currently approved products and treatments for the patient's terminal condition.

2. An attestation that the patient concurs with his or her physician in believing that all currently approved products and treatments are unlikely to prolong the patient's life.

3. Identification of the specific investigational drug, biological product, or device that the patient is seeking to use.

4. A realistic description of the most likely outcomes of using the investigational drug, biological product, or device. The description shall include the possibility that new, unanticipated, different, or worse symptoms might result and death could be hastened by the proposed treatment. The description shall be based on the physician's knowledge of the proposed treatment for the patient's terminal condition.

5. A statement that the patient's health plan or third-party administrator and physician are not obligated to pay for care or treatment consequent to the use of the investigational drug, biological product, or device unless required to do so by law or contract.

6. A statement that the patient's eligibility for hospice care may be withdrawn if the patient begins treatment with the

investigational drug, biological product, or device and that hospice care may be reinstated if the treatment ends and the patient meets hospice eligibility requirements.

7. A statement that the patient understands he or she is liable for all expenses consequent to the use of the investigational drug, biological product, or device and that liability extends to the patient's estate, unless a contract between the patient and the manufacturer of the investigational drug, biological product, or device states otherwise.

(3) Upon the request of an eligible patient, a manufacturer may:

(a) Make its investigational drug, biological product, or device available under this section.

(b) Provide an investigational drug, biological product, or device to an eligible patient without receiving compensation.

(c) Require an eligible patient to pay the costs of, or the costs associated with, the manufacture of the investigational drug, biological product, or device.

(4) A health plan, third-party administrator, or governmental agency may provide coverage for the cost of, or the cost of services related to the use of, an investigational drug, biological product, or device.

(5) A hospital or health care facility licensed under chapter 395 is not required to provide new or additional services unless those services are approved by the hospital or health care facility.

(6) If an eligible patient dies while using an investigational drug, biological product, or device pursuant to this section, the patient's heirs are not liable for any outstanding debt related to the patient's use of the investigational drug, biologic product, or device.

(7) A licensing board may not revoke, fail to renew, suspend, or take any action against a physician's license issued under chapter 458 or chapter 459 based solely on the physician's recommendations to an eligible patient regarding access to or treatment with an investigational drug, biological product, or device. A state entity responsible for Medicare certification may not take action against a physician's Medicare certification based solely on the physician's recommendation that an eligible patient have access to an investigational drug, biological product, or device.

(8) There shall be no liability on the part of, and no cause of action of any nature shall arise against, any person, including a physician, pharmacist, manufacturer, or distributor, who possesses, stores, or administers an investigational drug, biological product, or device in compliance with this section. Such immunity does not apply to any willful tort.

(9) This section does not expand the coverage an insurer must provide under the Florida Insurance Code and does not affect mandatory health coverage for participation in clinical trials.

Section 2. This act shall take effect July 1, 2015.

Insurance & Banking Subcommittee

CS/HB 269 by Rep. Pilon
Experimental Treatments for Terminal Conditions

AMENDMENT SUMMARY
March 25, 2015

Amendment 1 by Rep. Pilon (lines 120-125): The amendment replaces the language relating to liability and provides that the section does not create a private cause of action for harm to an eligible patient resulting from the use of an investigational drug, biological product, or device if the manufacturer or other entity or person involved in the care of the eligible patient complies in good faith with the terms of the section and exercises reasonable care.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 269 (2015)

Amendment No. 1

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Pilon offered the following:

Amendment

Remove lines 120-125 and insert:

(8) This section does not create a private cause of action against the manufacturer of an investigational drug, biological product, or device; against a person or entity involved in the care of an eligible patient who is using the investigational drug, biological product, or device; or for any harm to the eligible patient that is a result of the use of the investigational drug, biological product, or device if the manufacturer or other person or entity complies in good faith with the terms of this section and exercises reasonable care.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 491 Property Insurance Appraisal Umpires and Property Insurance Appraisers
SPONSOR(S): Artiles
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson KP	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

An appraisal clause is commonly found in insurance policies. The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance loss appraiser.

The bill creates parts XXVII and XXVIII, F.S., establishing a licensing program for "property insurance appraisal umpires" and "property insurance loss appraisers" within the Department of Business and Professional Regulation. The bill creates definitions and requirements for licensure, including fees, background screening, examination, and education; continuing education; mandatory and discretionary grounds for refusal, suspension, or revocation; and a code of conduct. In addition, the bill creates a mandatory process for resolving disputes involving claims occurring as a result of a covered loss.

The bill should have a neutral fiscal impact on state government because the licensure fees are required by statute to offset program costs and no fiscal impact on local government. The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an umpire of loss appraiser and the cost to obtain those services, but it may improve appraisal results which will benefit both insurers and policyholders.

The bill takes effect July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Claims Dispute Resolution

Property Insurance Appraisers and Umpires

An appraisal clause is commonly found in insurance policies.[1] The purpose of the appraisal clause is to establish a procedure to allow disputed amounts to be resolved by disinterested parties. The appraisal clause is used only to determine disputed values. An appraisal cannot be used to determine what is covered under an insurance policy. Coverage issues are litigated and determined by the courts.

The appraisal process generally works as follows:

- The insurance company and the policyholder each appoint an independent, disinterested appraiser.
- Each appraiser evaluates the loss independently.
- The appraisers negotiate and reach an agreed amount of the damages.
- If the appraisers agree as to the amount of the claim, the insurer pays the claim.
- If the appraisers cannot agree on the amount, they together choose a mutually acceptable umpire.
- Once the umpire has been chosen, the appraisers each present their loss assessment to the umpire.
- The umpire will subsequently provide a written decision to both parties. The umpire's decision becomes binding only by a majority agreement between the two appraisers and the umpire.
- Either party may challenge the umpire's impartiality and disqualify a proposed umpire based on criteria set forth in statute.[2]

Current law does not limit or restrict who may act as a property insurance appraisal umpire or property insurance loss appraiser.

Department of Financial Services Alternative Dispute Resolution Programs

The Department of Financial Services (DFS) administers alternative dispute resolution programs for various types of insurance. The DFS has mediation programs for property insurance[3] and automobile insurance[4] claims. The DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[5] The DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[6]

To qualify as a mediator for the property or automobile mediation programs, a person must be certified as a Florida Supreme Court certified circuit court mediator, or have been approved by the DFS prior to July 1, 2014 and have conducted at least one mediation within the prior four years.[7]

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[1] *Citizens Property Insurance Corporation v. Mango Hill Condominium Association 12 Inc.*, 54 So.3d 578 (Fla.3d DCA 2011) and *Intracoastal Ventures Corp. v. Safeco Ins. Co. of America,* 540 So.2d 162 (Fla. 3d DCA 1989), contain examples of appraisal provisions.
[2] *See* s. 627.70151, F.S.
[3] *See* s. 627.7015, F.S.
[4] *See* s. 626.745, F.S.
[5] *See* s. 627.7074, F.S.
[6] *See* ss. 627.7015, 627.7074, and 627.745, F.S.
[7] *See* ss. 627.7015, 627.745(3), F.S.

To qualify as a neutral evaluator for sinkhole insurance claims, a neutral evaluator must be a professional engineer who has experience or expertise in the identification of sinkhole activity and other causes of structural damage or a professional geologist who has completed a course of study in alternative dispute resolution approved by the DFS and who is determined by DFS to be fair and impartial.[8]

The Impact of the Bill on Insurance Loss Appraisals

The bill creates a mandatory process for resolving disputes involving claims occurring as a result of a covered loss. As such, the bill appears to preempt the application of an appraisal clause contained in an insurance policy and the right of consumers to litigate the value of claims in circuit court. The bill also appears to eliminate the option to pursue mediation through the DFS program.

Public Adjusters

A public adjuster is a person, other than a licensed attorney, who, for compensation, prepares or files an insurance claim form for an insured or third-party claimant in negotiating or settling an insurance claim on behalf of the insured or third party.[9] The responsibilities of property insurance public adjusters include inspecting the loss site, analyzing damages, assembling claim support data, reviewing the insured's coverage, determining current replacement costs, and conferring with the insurer's representatives to adjust the claim. The DFS and must meet specified age, residency, examination, and surety bond requirements.[10] The conduct of a public adjuster is governed by statute and by rule.[11] A company employee adjuster (known as a "company adjuster") performs the same services as a public adjuster except he or she is employed by the insurer.[12]

Department of Business and Professional Regulation

The Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[13] The DBPR is created in s. 20.165 F.S., and includes the following eleven divisions:

- Division of Administration
- Division of Alcoholic Beverages and Tobacco
- Division of Certified Public Accounting
- Division of Florida Condominiums, Timeshares, and Mobile Homes
- Division of Hotels and Restaurants
- Division of Pari-mutuel Wagering
- Division of Professions
- Division of Real Estate
- Division of Regulation
- Division of Technology
- Division of Service Operations
- Division of Drugs, Devices and Cosmetics

The following boards and professions are established within the Division of Professions:

- Board of Architecture and Interior Design, created under part I of ch. 481, F.S.
- Florida Board of Auctioneers, created under part VI of ch. 468, F.S.

[8] *See* s. 627.706, F.S.
[9] Section 626.854(1), F.S.
[10] Section 626.865, F.S.
[11] *See generally,* ss. 626.854, 626.8698, 626.876, 626.878, 626.8795 and 626.8796, F.S., and Rule 69B-220, F.A.C.
[12] Section 626.856, F.S.
[13] Ch. 93-220, Laws of Fla.

- Barbers' Board, created under ch. 476, F.S.
- Florida Building Code Administrators and Inspectors Board, created under part XII of ch. 468, F.S.
- Construction Industry Licensing Board, created under part I of ch. 489, F.S.
- Board of Cosmetology, created under ch. 477, F.S.
- Electrical Contractors' Licensing Board, created under part II of ch. 489, F.S.
- Board of Employee Leasing Companies, created under part XI of ch. 468, F.S.
- Board of Landscape Architecture, created under part II of ch. 481, F.S.
- Board of Pilot Commissioners, created under ch. 310, F.S.
- Board of Professional Engineers, created under ch. 471, F.S.
- Board of Professional Geologists, created under ch. 492, F.S.
- Board of Veterinary Medicine, created under ch. 474, F.S.
- Home Inspection Services Licensing Program, created under part XV of ch. 468, F.S.
- Mold-Related Services Licensing Program, created under part XVI of ch. 468, F.S.

The following board and commissions are established within the Division of Real Estate:
- Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S.
- Florida Real Estate Commission, created under part I of ch. 475, F.S.
- Florida Building Commission under ch. 553, F.S.

The Board of Accountancy, created under ch. 473, F.S., is established within the Division of Certified Public Accounting.

In addition to administering the professional boards, the DPBR processes applications for licensure and license renewal. The department also receives and investigates complaints made against licensees and, if necessary, brings administrative charges.

Chapter 455, F.S., provides the general powers of the department and sets forth the procedural and administrative frame-work for all of the professional boards housed under the DBPR, the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.

The Sunrise Act

Florida does not currently license or regulate property insurance appraisal umpires or property insurance appraisers. A proposal for new regulation of a profession must meet the requirements of s. 11.62, F.S., the Sunrise Act.

The act sets forth policy and minimum requirements for legislative review of bills proposing regulation of an unregulated function. In general, the act states that regulation should not occur unless it is:
- Necessary to protect the public health, safety, or welfare from significant and discernible harm or damage;
- Exercised only to the extent necessary to prevent the harm; and
- Limited so as not to unnecessarily restrict entry into the practice of the profession or adversely affect public access to the professional services.

In determining whether to regulate a profession of occupation, the act requires the Legislature to consider the following:
- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;

- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The act requires proponents of legislation proposing new regulation to provide the following information to document the need for regulation:

- The number of individuals or businesses that would be subject to the regulation;
- The name of each association that represents members of the profession or occupation, together with a copy of its codes of ethics or conduct;
- Documentation of the nature and extent of the harm to the public caused by the unregulated practice of the profession or occupation, including a description of any complaints that have been lodged against persons who have practiced the profession or occupation in this state during the preceding 3 years;
- A list of states that regulate the profession or occupation, and the dates of enactment of each law providing for such regulation and a copy of each law;
- A list and description of state and federal laws that have been enacted to protect the public with respect to the profession or occupation and a statement of the reasons why these laws have not proven adequate to protect the public;
- A description of the voluntary efforts made by members of the profession or occupation to protect the public and a statement of the reasons why these efforts are not adequate to protect the public;
- A copy of any federal legislation mandating regulation;
- An explanation of the reasons why other types of less restrictive regulation would not effectively protect the public;
- The cost, availability, and appropriateness of training and examination requirements;
- The cost of regulation, including the indirect cost to consumers, and the method proposed to finance the regulation;
- The cost imposed on applicants or practitioners or on employers of applicants or practitioners as a result of the regulation; and
- The details of any previous efforts in this state to implement regulation of the profession or occupation.

In determining whether to recommend regulation, the legislative committee reviewing the proposal is directed to assess whether the proposed regulation is:

- Justified based on the statutory criteria and the information provided by both the proponents of regulation and the agency responsible for its implementation;
- The least restrictive and most cost-effective regulatory scheme necessary to protect the public; and
- Technically sufficient and consistent with the regulation of other professions under existing law.

Proponents' Response to the Sunrise Act

The sponsor of the bill has submitted a response[14] in support of the need for regulation. It states that the unregulated profession poses a substantial harm to the public health, safety, or welfare. In pertinent part, the response provides:

> Currently, the state licenses adjusters in three categories, company adjuster, independent adjuster and public adjuster, if an individual is unable to pass these tests, or if they lose their license, they are able to become an insurance property

[14] On file with the House Insurance & Banking Subcommittee.

appraisers [sic] and/or an insurance property umpire with no regulation. Further, convicted felons are able to become insurance property appraisers and/or insurance property umpires.

The Courts have ruled that a decision of the insurance appraisal panel (any 2 of the 3 members of the panel) is binding on the parties unless fraud is involved, (appraisals are for the dollar amount of the insurance loss and the panels are not empowered to determine coverage).

In the past, the public has been harmed when roofers, contractors and non-insurance people are involved and they don't properly appraise the amount of damages, for example, roofers have been known to appraise the roof of a home only without considering the interior of a home thus injuring the public in that they don't receive the proper insurance funds for the interior of their home and thus they fail to repair the interior making the damages worse and affecting the value of the home.

Licensing of Property Insurance Appraisal Umpires and Property Insurance Loss Appraisers

The bill creates parts XXVII and XXVIII, F.S., establishing a licensing program for "property insurance appraisal umpires" and "property insurance loss appraisers" within the Department of Business and Professional Regulation. Except as noted, the regulatory requirements are the same for both, as provided below.

- *Definitions*

The bill provides definitions of terms, including "property insurance appraisal umpire "and "property insurance loss appraiser."

- *Licensure Requirements*

The bill establishes licensure requirements for an applicant, which include:

- A completed application;
- Payment of fees;
- Background screening;
- Successful completion of an examination; and,
- Satisfaction of one of the following conditions:

Option 1

- Has taught or successfully completed 4 hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the DBPR and is
- A licensed or retired engineer;
- Has, within the preceding 5 years, been licensed as a general contractor, building contractor, residential contractor, architect, geologist, certified public accountant, attorney; or
- Has received a baccalaureate degree from an accredited 4–year college or university in the field of engineering, architecture, or building construction;

Option 2

- Has been licensed as an adjuster for a minimum of 5 (if applying for a property insurance appraisal umpire license) or 3 (if applying for a property insurance loss appraisal license) years whose license covers all lines of insurance, except life and annuities.

Option 3

- Has received a minimum of 8 semester hours/12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

Option 4

- Has successfully completed 40 hours of classroom coursework, approved by the DBPR, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the DBPR.

- *Continuing Education*

The bill requires a minimum of 30 hours of approved continuing education (CE) and five hours of ethics biennially, prior to renewal and authorizes the DBPR to establish standards for CE providers and courses.

- *Inactive Status*

The bill allows a licensee to place a license on inactive status and to reactivate the license upon filing an application, paying a fee, and completing a maximum of 14 hours of CE.

- *Certification of Corporation*

The bill authorizes licensees to offer services through a partnership, corporation, or other business entity, but prohibits the entity, itself, from being licensed. The entity remains responsible for the conduct of its employees; the licensees remain liable for their individual performance and are not relieved of responsibility by reason of employment.

- *Grounds for Refusal, Suspension, or Revocation of a License.*

The bill establishes conditions for mandatory and discretionary denial, suspension, or revocation of licensure.

- *Code of Conduct*

The bill establishes ethical standards related to confidentiality; recordkeeping; fees and expenses; maintenance of records; advertising; integrity and impartiality; skill and experience; gifts and solicitation; and, with respect to property insurance loss appraisal licensees, communications with parties.

B. SECTION DIRECTORY:

Section 1: Creates Part XXVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, relating to property insurance appraisal umpires.

Section 2: Creates Part XXVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.862, relating to property insurance appraisal umpires.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes license fees for property insurance appraisal umpires and appraisers up to the following caps:[15]

[15] Section 455.219, F.S., requires the DBPR to develop a long-range estimate of the revenue required to implement a professional licensing program and fees must be set accordingly. Fees must be sufficient to cover costs and provide for a reasonable cash balance. and adjusted if the profession's trust fund becomes too low or high.

- Application: $200 (nonrefundable)
- Examination: $200
- Initial license: $250
- Initial certificate of authorization: $250
- Biennial license renewal: $500
- Application for inactive status: $125
- Reactivation of an inactive license: $250
- Continuing education providers: $600

The DBPR estimates receiving 4,000 applications the first year, 3,000 the second year, and 2,000 per year thereafter for an estimated license base of 10,000.[16] Using the maximum allowable fee amount results in estimated revenues from licensing fees of $2,467,000 for FY 2015-2016; $1,850,250 for FY 2016-2017; and $2,304,500 for FY 2017-2018.

2. Expenditures:

The DBPR estimates expenditures of $1,001,936 for FY 2015-2016; $918,023 for FY 2016-2017; and $918,203 for FY 2017-2018. This estimate includes 11.73 additional FTEs to implement the new licensing requirements in the first year, a slightly lower number thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative fiscal impact on the private sector to the extent that it imposes licensing fees and ongoing costs of licensure in order to practice as an umpire of loss appraiser and the cost to obtain those services, but it may improve appraisal results which will benefit both insurers and policyholders.

D. FISCAL COMMENTS:

FDLE recommends[17] including the fingerprints in the state's and federal fingerprint retention program to ensure that all arrests occurring after the initial criminal history screening. Both the FDLE and the Federal Bureau of Investigation (FBI) (when the federal program becomes operational) will retain the fingerprints, search the fingerprints against incoming arrests and notify the DBPR if the retained fingerprints match an incoming arrest. The fiscal impact along with language necessary to participate in the program is provided below.

To facilitate level 2 background checks and the retention of fingerprints, the FDLE recommends replacing lines 194 – 221 and 683 – 710 with the following language:[18]

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[16] These estimates are based on estimates provided by the Department of Financial Services to the Florida Department of Law Enforcement when a similar bill was filed in 2011. (Florida Department of Business & Professional Regulation, Agency Analysis of 2015 House Bill 491, p. 10 (March 11, 2015).

[17] Florida Department of Law Enforcement, Agency Analysis of 2015 Senate Bill 744, p. 4 (Feb. 24, 2015).

[18] The DBPR notes that the bill includes the cost of the background screening within the application fee. The preferred method is to have applicants use an FDLE approved vendor and pay the vendor directly. The DBPR does not currently have an FDLE approved vendor under contract. (Florida Department of Business & Professional Regulation, Agency Analysis of 2015 House Bill 491, p. 11 (March 11, 2015).

(4) An applicant must submit a full set of fingerprints to the department or to a vendor, entity, or agency authorized by s. 943.053(13). The department, vendor, entity, or agency shall forward the fingerprints to the Department of Law Enforcement for state processing, and the Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing.

(5) Fees for state and federal fingerprint processing and retention shall be borne by the applicant. The state cost for fingerprint processing shall be as provided in s. 943.053(3)(b) for records provided to persons or entities other than those specified as exceptions therein.

(6) Fingerprints submitted to the Department of Law Enforcement pursuant to this paragraph shall be retained by the Department of Law Enforcement as provided in s. 943.05(2)(g) and (h) and, when the Department of Law Enforcement begins participation in the program, enrolled in the Federal Bureau of Investigation's national retained print arrest notification program. The fingerprints shall be submitted to the Department of Law Enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history check. Any arrest record identified shall be reported to the department.

The FDLE notes that while the impact of this bill does not necessitate additional FTE or other resources, this bill in combination with additional background screening bills could rise to the level requiring additional staffing and other resources.

FDLE Fiscal Impact – Revenue, if fingerprints retained at federal level:

The current cost for a state record check is $24 + $6.00 for state retention (first year included in the cost of the record check).

Fiscal Impact – Private Sector, if fingerprints retained at federal level:

The cost for a state and national criminal history record check is $38.75. $24 goes into the FDLE Operating Trust Fund and $14.75 from each request is forwarded to the Federal Bureau of Investigation. $13.00 lifetime federal fingerprint retention fee and $6.00 for state retention (first year included with record check)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The bill appears to create a mandatory appraisal process as an alternative to a proceeding in circuit court. As such, the bill may violate Article I, section 21 of the State Constitution, which guarantees access to the courts. The constitution states: "The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." The access to courts provision limits the power of the Legislature to abolish causes of action.

B. RULE-MAKING AUTHORITY:

The bill provides the DBPR with rulemaking authority to:

- Establish fees, up to maximum amounts established in statute, for: initial licensure ($650); biennial renewal ($500); certificate of authorization ($250); inactivation ($125); reactivation ($250); certificate of authorization ($250); background screening; certification of continuing education providers ($600); and a delinquency fee.
- Establish a process for determining compliance with the pre-licensure requirements.
- Adopt forms.
- Prescribe procedures for biennial renewal and inactivating or reactivating a license.
- Establish standards for CE providers and courses, a process for determining compliance with the pre-licensure requirements, and rules prescribing the forms necessary to administer the pre-licensure requirements.
- Requiring CE and additional CE hours for failure to complete the required CE hours by the end of the renewal period and prescribing CE requirements as a condition for the reactivation of an inactive license.
- Adopt the uniform application.
- Adopt any rules as may be necessary to administer the respective parts.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 149 – 150 and 638 - 639 reference a fee cap for initial certificate of authorization of $250; however, the fee is not included within the DBPR's rulemaking authority to adopt.

The bill does not protect the title of "property insurance loss appraiser" or "property insurance appraisal umpire" or the practice of loss appraising or umpiring. It requires the use of a licensed umpire or appraiser during the required loss appraisal process, but would not preclude an unlicensed person from performing those functions outside of that process.

The DBPR notes the following operational issues:

- Lines 124-127 and 613-616 reference the use of a uniform application for nonresident licensure of the National Association of Insurance Commissioners for nonresident agent licensing. The DBPR was unable to locate such a form on the association's website. The available form related to individual producer license/registration and did not contain a category applicable to insurance appraisers or umpires or any category or licensee/registrant regulated by the DBPR; or an option to disclose native language or highest level of education, as required by the bill.
- Lines 163-171 and 652-660 reference a written application, which suggests that online application may not be allowed.
- Lines 294-295 and 782-783 create a licensing option for a licensed adjuster "whose license covers all lines of insurance except the life and annuities class." This appears to have the unintended consequence of disqualifying those adjusters whose licenses do include this class.
- Lines 332-337 and 820-825 require that an applicant for licensure via endorsement not be approved pending the outcome of any ongoing licensure investigation in the licensing state. The DBPR is concerned with its ability to verify licensure status and whether the obligation to hold an application in abeyance violates ch. 120, F.S.
- The DBPR will not have adequate time to make the licensing program operational by July 1, 2015. It requests that the rulemaking be authorized effective July 1, 2015, but that implementation of licensure be delayed until March 1, 2016.
- Lines 313 and 801 describe an applicant who is "untrustworthy" or "incompetent" as unqualified for licensure,[19] but do not define those terms or the criteria for making the determination.

[19] Likewise, the bill defines both umpires and loss appraisers as "competent, licensed, and independent and impartial third party[ies]," which is not a standard licensing construct. Instead, those characteristics would more typically be included as required standards of practice. The Department of Financial Services notes "While conceptually the premise of having impartial appraisers is ideal, if the claimant and insurer each chose their own appraiser it will be difficult to achieve impartiality. Currently, a public adjuster can also be the appraiser on the same claim as long as the public adjuster does not charge for their services as an appraiser. When the public adjuster's compensation is based on a percentage of the claim it would seem impossible to reach total impartiality; however the

- In lines 428 and 916 the phrase "or will be used" should be removed since it would require discipline based on conduct that has not happened.
- Either ch. 20, F.S., or newly-created s. 468.85(1), F.S., should be amended to put the licensing programs under the Division of Professions.

The Department of Financial Services notes the following:[20]

- The bill requires adjusters who seek licensure as a property insurance loss appraiser or property insurance appraisal umpire to have been licensed for five years. It does not impose a similar obligation on other licensed professionals, e.g. attorneys, engineers. Adjusting is more like appraising than any of the other professions who are required only to take a four-hour class.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

claimant does not incur additional expenses for the appraiser services. If the public adjuster were not allowed to perform both duties it is likely they would recommend another public adjuster with whom they have a working relationship as the insured's appraiser. This would still limit their ability to be impartial and cause the claimant to pay more in fees which are not regulated in this legislation." . (Florida Department of Financial Services, Agency Analysis of 2015 House Bill 491, p. 1 (March 23, 2015).

[20] *Id.*

A bill to be entitled

An act relating to property insurance appraisal umpires and property insurance appraisers; creating part XXVII of chapter 468, F.S., relating to property insurance appraisal umpires; creating the property insurance appraisal umpire licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraisal umpire; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraisal umpire services; providing grounds for compulsory refusal, suspension, or revocation of an umpire's license; providing

grounds for discretionary denial, suspension, or revocation of an umpire's license; providing ethical standards for property insurance appraisal umpires; creating part XXVIII of chapter 468, F.S., relating to property insurance appraisers; creating the property insurance appraiser licensing program within the Department of Business and Professional Regulation; providing legislative findings; providing applicability; authorizing the department to adopt rules; providing definitions; authorizing the department to establish fees; limiting fee amounts; providing licensing application requirements; providing authority and procedures regarding submission and processing of fingerprints; providing examination requirements; providing application requirements for licensure as a property insurance appraiser; providing licensure renewal requirements; authorizing the department to adopt rules; providing continuing education requirements; providing requirements for the inactivation of a license by a licensee; providing requirements for renewing an inactive license; establishing license reactivation fees; providing for certification of partnerships and corporations offering property insurance appraiser services; providing grounds for compulsory refusal, suspension, or revocation of an appraiser's license;

providing grounds for discretionary denial, suspension, or revocation of an appraiser's license; providing ethical standards; providing requirements for certain residential or commercial property insurance contracts that provide for the process of appraisal when the insured and the insurer fail to mutually agree to the actual cash value, the amount of loss, or the cost of repair or replacement of property for which a claim has been filed; providing for the selection of appraisers and umpires; providing for compensation; providing applicability with respect to the Florida Arbitration Code; prohibiting the appraisal process from addressing issues involving coverage or lack thereof under an insurance contract; providing an effective date.

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

Section 1. Part XXVII of chapter 468, Florida Statutes, consisting of sections 468.85 through 468.8519, is created to read:

PART XXVII

PROPERTY INSURANCE APPRAISAL UMPIRES

468.85 Property insurance appraisal umpire licensing program; legislative purpose; scope of part.—

(1) The property insurance appraisal umpire licensing

program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary in the interest of the public safety and welfare to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as property insurance appraisal umpires.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer this part.

468.851 Definitions.—As used in this part, the term:

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable of performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party. An independent umpire shall conduct his or her investigation, evaluation, and estimation without instruction by an appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8511 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and

renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for each background check.

468.85115 Application for license as a property insurance appraisal umpire.—

(1) The department shall not issue a license as a property insurance appraisal umpire to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraisal umpire. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements for

licensure as a property insurance appraisal umpire as required under ss. 468.8511 and 468.8512, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraisal umpire, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8511. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is

required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisal umpires.

468.8512 Examinations.-

(1) A person desiring to be licensed as a property insurance appraisal umpire must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraisal umpire if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005

or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years

immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of

engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 5 years to qualify for a property insurance appraisal umpire's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisal umpires.

(4) The department may not issue a license as a property insurance appraisal umpire to any individual found by it to be

untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.85115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements of this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8513 Licensure.-

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8511, 468.85115, and 468.8512.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraisal umpire license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8514 Renewal of license.-

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8515.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8515 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours by the end of the renewal period.

(3) Each umpire course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisal umpires may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8516 Inactive license.-

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive

licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8517 Certification of partnerships, corporations, and other business entities.-The practice of or the offer to practice as a property insurance appraisal umpire by licensees through a partnership, corporation, or other business entity offering property insurance appraisal umpire services to the public, or by a partnership, corporation, or other business entities through licensees under this part as agents, employees, officers, or partners is permitted, subject to the provisions of this part. This section does not allow a corporation or other business entities to hold a license to practice property insurance appraisal umpire services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraisal umpire is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8518 Grounds for compulsory refusal, suspension, or revocation of an umpire's license.-The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraisal umpire or licensee and shall suspend or revoke the

eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this chapter.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this chapter.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraisal umpire.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this chapter.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United

States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10)(a) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or implied, in an appraisal;

(b) Has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or

(c) Has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme.

It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11)(a) Had a registration, license, or certification as an umpire revoked, suspended, or otherwise acted against;

(b) Has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other

state, any nation, or any possession or district of the United States; or

(c) Has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an umpire if the appointment is contingent upon the umpire reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the umpire is contingent upon the opinion, conclusion, or valuation reached by the umpire.

468.85185 Grounds for discretionary denial, suspension, or revocation of an umpire's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraisal umpire if the applicant or licensee has:

(1) Failed to timely communicate with the appraisers without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the appraisers.

(3) Violated any ethical standard for property insurance appraisal umpires set forth in s. 468.8519.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraisal umpire.

468.8519 Ethical standards for property insurance appraisal umpires.—

(1) CONFIDENTIALITY.—An umpire shall maintain confidentiality of all information revealed during an appraisal except where disclosure is required by law.

(2) RECORDKEEPING.—An umpire shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An umpire shall be guided by the following in determining fees:

(a) All charges for services as an umpire based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually

incurred.

(c) An umpire may not charge, agree to, or accept as compensation or reimbursement any payment, commission, or fee that is based on a percentage basis, or that is contingent upon arriving at a particular value or any future happening or outcome of the assignment.

(4) MAINTENANCE OF RECORDS.—An umpire shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An umpire licensed under this part shall retain original or true copies of any contracts engaging the umpire's services, appraisal reports, and supporting data assembled and formulated by the umpire in preparing appraisal reports for at least 5 years. The period for retaining the records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the umpire for inspection and copying by the department upon reasonable notice to the umpire. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An umpire may not engage in marketing practices that contain false or misleading information. An umpire shall ensure that any advertisements of the umpire's qualifications, services to be rendered, or the appraisal

process are accurate and honest. An umpire may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An umpire may not engage in any business, provide any service, or perform any act that would compromise the umpire's integrity or impartiality.

(7) SKILL AND EXPERIENCE.—An umpire shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the umpire's skill or experience.

(8) GIFTS AND SOLICITATION.—An umpire may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the umpire's reasonable fee. During the appraisal process, an umpire may not solicit or otherwise attempt to procure future professional services.

Section 2. Part XXVIII of chapter 468, Florida Statutes, consisting of sections 468.86 through 468.862, is created to read:

PART XXVIII

PROPERTY INSURANCE APPRAISERS

468.86 Property insurance appraiser licensing program; legislative purpose; scope of part.—

(1) The property insurance appraiser licensing program is created within the Department of Business and Professional Regulation.

(2) The Legislature finds it necessary and in the interest

of the public safety and welfare, to prevent damage to real and personal property, to avert economic injury to the residents of this state, and to regulate persons and companies that hold themselves out to the public as qualified to perform as a property insurance appraiser.

(3) This part applies to residential and commercial residential property insurance contracts and to the umpires and appraisers who participate in the appraisal process.

(4) The department may adopt rules to administer the requirements of this part.

468.861 Definitions.—As used in this part, the term:

(1) "Appraisal" means the process of estimating or evaluating actual cash value, the amount of loss, or the cost of repair or replacement of property for the purpose of quantifying the monetary value of a property loss claim when an insurer and an insured have failed to mutually agree on the value of the loss pursuant to a residential or commercial residential property insurance contract that is required in such contracts for the resolution of a claim dispute by appraisal.

(2) "Competent" means properly licensed, sufficiently qualified, and capable to performing an appraisal.

(3) "Department" means the Department of Business and Professional Regulation.

(4) "Independent" means not subject to control, restriction, modification, and limitation by the appointing party.

(5) "Property insurance appraisal umpire" or "umpire" means a competent, independent, licensed, and impartial third party selected by the licensed appraisers for the insurer and the insured to resolve issues that the licensed appraisers are unable to reach an agreement during the course of the appraisal process pursuant to a residential or commercial property insurance contract that is required to provide for resolution of a claim dispute by appraisal.

(6) "Property insurance loss appraiser" or "appraiser" means a competent, licensed, and independent and impartial third party selected by an insurer or an insured to develop an appraisal for purposes of the appraisal process under a residential or commercial property insurance contract that provides for resolution of a claim dispute by appraisal.

(7) "Uniform application" means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the department.

468.8611 Fees.—

(1) The department, by rule, may establish fees to be paid for application, examination, reexamination, licensing and renewal, inactive status application, reactivation of inactive licenses, and application for providers of continuing education. The department may also establish by rule a delinquency fee. Fees shall be based on department estimates of the revenue required to implement the provisions of this part. Fees shall be

remitted with the application, examination, reexamination, licensing and renewal, inactive status application, and reactivation of inactive licenses, and application for providers of continuing education.

(2) The application fee shall not exceed $200 and is nonrefundable. The examination fee shall not exceed $200 plus the actual per applicant cost to the department to purchase the examination, if the department chooses to purchase the examination. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination.

(3) The fee for an initial license shall not exceed $250.

(4) The fee for an initial certificate of authorization shall not exceed $250.

(5) The fee for a biennial license renewal shall not exceed $500.

(6) The fee for application for inactive status shall not exceed $125.

(7) The fee for reactivation of an inactive license shall not exceed $250.

(8) The fee for applications from providers of continuing education may not exceed $600.

(9) The fee for fingerprinting shall be included in the department's costs for the background check.

468.86115 Application for license as a property insurance

appraiser.—

(1) The department shall not issue a license as a property insurance appraiser to any person except upon written application previously filed with the department, with qualification and advance payment of all applicable fees. Any such application shall be made under oath or affirmation of and signed by the applicant. The department shall accept the uniform application for a nonresident property insurance appraiser. The department may adopt revised versions of the uniform application by rule.

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, mailing address, contact telephone numbers, including a business telephone number, and e-mail address.

(b) Proof that he or she has completed or is in the process of completing any required prelicensing course.

(c) Whether he or she has been refused or has voluntarily surrendered or has had suspended or revoked a professional license by the supervising officials of any state.

(d) Proof that the applicant meets the requirements of licensure as a property insurance appraiser as required under ss. 468.8611 and 468.8612, and this section.

(e) The applicant's gender.

(f) The applicant's native language.

(g) The applicant's highest achieved level of education.

(h) All education requirements that the applicant has completed to qualify as a property insurance appraiser, including the name of the course, the course provider, and the course completion dates.

(3) Each application shall be accompanied by payment of any applicable fee.

(4) At the time of application, the applicant must be fingerprinted by a law enforcement agency or other entity approved by the department and he or she must pay the fingerprint processing fee in s. 468.8611. Fingerprints must be processed by the Department of Law Enforcement.

(5) The Department of Law Enforcement may, to the extent provided for by federal law, exchange state, multistate, and federal criminal history records with the department or office for the purpose of the issuance, denial, suspension, or revocation of a certificate of authority, certification, or license to operate in this state.

(6) The Department of Law Enforcement may accept fingerprints of any other person required by statute or rule to submit fingerprints to the department or office or any applicant or licensee regulated by the department or office who is required to demonstrate that he or she has not been convicted of or pled guilty or nolo contendere to a felony or a misdemeanor.

(7) The Department of Law Enforcement shall, upon receipt of fingerprints from the department or office, submit the fingerprints to the Federal Bureau of Investigation for a

federal criminal history records check.

(8) Statewide criminal records obtained through the Department of Law Enforcement, federal criminal records obtained through the Federal Bureau of Investigation, and local criminal records obtained through local law enforcement agencies shall be used by the department and office for the purpose of issuance, denial, suspension, or revocation of certificates of authority, certifications, or licenses issued to operate in this state.

(9) The department shall develop and maintain as a public record a current list of licensed property insurance appraisers.

468.8612 Examinations -

(1) A person desiring to be licensed as a property insurance appraiser must apply to the department after satisfying the examination requirements of this part.

(2) An applicant may practice in this state as a property insurance appraiser if he or she passes the required examination, is of good moral character, and meets one of the following requirements:

(a) The applicant is currently licensed, registered, certified, or approved as an engineer as defined in s. 471.005 or as a retired professional engineer as defined in s. 471.005, and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedures, appraisal preparation, and any other related material deemed appropriate by the department.

(b) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed, registered, certified, or approved as a general contractor, building contractor, or residential contractor as defined in s. 489.105 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(c) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed or registered as an architect to engage in the practice of architecture pursuant to part I of chapter 481 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(d) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a qualified geologist or professional geologist as defined in s. 492.102 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal

preparation, and any other related material deemed appropriate by the department.

(e) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been licensed as a certified public accountant as defined in s. 473.302 and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(f) The applicant is currently or, within the 5 years immediately preceding the date on which the application is filed with the department, has been a licensed attorney in this state and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(g) The applicant has received a baccalaureate degree from an accredited 4-year college or university in the field of engineering, architecture, or building construction and has taught or successfully completed 4 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, and any other related material deemed appropriate by the department.

(h) The applicant is a currently licensed adjuster whose license covers all lines of insurance except the life and annuities class. The adjuster's license must include the property and casualty class of insurance. The currently licensed adjuster must be licensed for at least 3 years to qualify for a property insurance appraiser's license.

(i) The applicant has received a minimum of 8 semester hours or 12 quarter hours of credit from an accredited college or university in the field of accounting, geology, engineering, architecture, or building construction.

(j) The applicant has successfully completed 40 hours of classroom coursework, approved by the department, specifically related to construction, building codes, appraisal procedure, appraisal preparation, property insurance, and any other related material deemed appropriate by the department.

(3) The department shall review and approve courses of study for the continuing education of property insurance appraisers.

(4) The department may not issue a license as a property insurance appraiser to any individual found by it to be untrustworthy or incompetent or who:

(a) Has not filed an application with the department in accordance with s. 485.86115.

(b) Is not a natural person who is at least 18 years of age.

(c) Is not a United States citizen or legal alien who

possesses work authorization from the United States Citizenship and Immigration Services.

(d) Has not completed the education, experience, or licensing requirements in this section.

(5) An incomplete application expires 6 months after the date it is received by the department.

(6) An applicant seeking to become licensed under this part may not be rejected solely by virtue of membership or lack of membership in any particular appraisal organization.

468.8613 Licensure.—

(1) The department shall license any applicant who the department certifies has completed the requirements of ss. 468.8611, 468.86115, and 468.8612.

(2) The department shall not issue a license by endorsement to any applicant for a property insurance appraiser license who is under investigation in another state for any act that would constitute a violation of this part until such time that the investigation is complete and disciplinary proceedings have been terminated.

468.8614 Renewal of license.—

(1) The department shall renew a license upon receipt of the renewal application and fee and upon certification by the department that the licensee has satisfactorily completed the continuing education requirements of s. 468.8615.

(2) The department shall adopt rules establishing a procedure for the biennial renewal of licenses.

468.8615 Continuing education.—

(1) The department may not renew a license until the licensee submits satisfactory proof to the department that, during the 2 years before his or her application for renewal, the licensee completed at least 30 hours of continuing education in addition to 5 hours of ethics. Criteria and course content shall be approved by the department by rule.

(2) The department may prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total required hours, for failure to complete the required hours for renewal by the end of the renewal period.

(3) Each appraiser course provider, instructor, and classroom course must be approved by and registered with the department before prelicensure courses for property insurance appraisers may be offered. Each classroom course must include a written examination at the conclusion of the course and must cover all of the material contained in the course. A student may not receive credit for the course unless the student achieves a grade of at least 75 on the examination.

(4) The department shall adopt rules establishing:

(a) Standards for the approval, registration, discipline, or removal from registration of course providers, instructors, and courses. The standards must be designed to ensure that instructors have the knowledge, competence, and integrity to fulfill the educational objectives of the prelicensure requirements of this part.

(b) A process for determining compliance with the prelicensure requirements of this part.

The department shall adopt rules prescribing the forms necessary to administer the prelicensure requirements of this part.

(5) Approval to teach prescribed or approved appraisal courses does not entitle the instructor to teach any courses outside the scope of this part.

468.8616 Inactive license.—

(1) A licensee may request that his or her license be placed on inactive status by filing an application with the department.

(2) A license that has become inactive may be reactivated upon application to the department. The department may prescribe by rule continuing education requirements as a condition for reactivation of an inactive license. The continuing education requirements for reactivating a license may not exceed 14 hours for each year the license was inactive.

(3) The department shall adopt rules relating to licenses that have become inactive and for the renewal of inactive licenses. The department shall prescribe by rule a fee not to exceed $250 for the reactivation of an inactive license and a fee not to exceed $250 for the renewal of an inactive license.

468.8617 Certification of partnerships, corporations, and other business entities.—The practice of or the offer to practice as a property insurance appraiser by licensees through

a partnership, corporation, or other business entity offering property insurance appraiser services to the public, or by a partnership, corporation, or other business entity through licensees under this part as agents, employees, officers, or partners is permitted subject to the provisions of this part. This section does not allow a corporation or other business entity to hold a license to practice property insurance appraiser services. A partnership, corporation, or other business entity is not relieved of responsibility for the conduct or acts of it agents, employees, or officers by reason of its compliance with this section. An individual practicing as a property insurance appraiser is not relieved of responsibility for professional services performed by reason of his or her employment or relationship with a partnership, corporation, or other business entity.

468.8618 Grounds for compulsory refusal, suspension, or revocation of an appraiser's license.—The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, property insurance appraiser or licensee and shall suspend or revoke the eligibility to hold a license or appointment of any such person if it finds that any one or more of the following applicable grounds exist:

(1) Lack of one or more of the qualifications for the license as specified in this part.

(2) Material misstatement, misrepresentation, or fraud in

obtaining the license or in attempting to obtain the license or appointment.

(3) Failure to pass to the satisfaction of the department any examination required under this act.

(4) That the license or appointment was willfully used, or will be used, to circumvent any of the requirements or prohibitions of this code.

(5) Demonstrated a lack of fitness or trustworthiness to engage as a property insurance appraiser.

(6) Demonstrated a lack of reasonably adequate knowledge and technical competence to engage in the transactions authorized by the license.

(7) Fraudulent or dishonest practices in the conduct of business under the license.

(8) Willful failure to comply with, or willful violation of, any proper order or rule of the department or willful violation of any provision of this act.

(9) Having been found guilty of or having plead guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

(10) Violated a duty imposed upon her or him by law or by the terms of a contract, whether written, oral, expressed, or

implied, in an appraisal; has aided, assisted, or conspired with any other person engaged in any such misconduct and in furtherance thereof; or has formed an intent, design, or scheme to engage in such misconduct and committed an overt act in furtherance of such intent, design, or scheme. It is immaterial to a finding that a licensee has committed a violation of this subsection that the victim or intended victim of the misconduct has sustained no damage or loss, that the damage or loss has been settled and paid after the discovery of misconduct, or that such victim or intended victim was a customer or a person in a confidential relationship with the licensee or was an identified member of the general public.

(11) Had a registration, license, or certification as an appraiser revoked, suspended, or otherwise acted against; has had his or her registration, license, or certificate to practice or conduct any regulated profession, business, or vocation revoked or suspended by this or any other state, any nation, or any possession or district of the United States; or has had an application for such registration, licensure, or certification to practice or conduct any regulated profession, business, or vocation denied by this or any other state, any nation, or any possession or district of the United States.

(12)(a) Made or filed a report or record, written or oral, which the licensee knows to be false;

(b) Has willfully failed to file a report or record required by state or federal law;

(c) Has willfully impeded or obstructed such filing; or

(d) Has induced another person to impede or obstruct such filing.

(13) Accepted an appointment as an appraiser if the appointment is contingent upon the appraiser reporting a predetermined result, analysis, or opinion, or if the fee to be paid for the services of the appraiser is contingent upon the opinion, conclusion, or valuation reached by the appraiser.

468.86185 Grounds for discretionary denial, suspension, or revocation of an appraiser's license.-The department may deny an application for and suspend, revoke, or refuse to renew or continue a license as a property insurance appraiser if the applicant or licensee has:

(1) Failed to timely communicate with the opposing party's appraiser without good cause.

(2) Failed or refused to exercise reasonable diligence in submitting recommendations to the opposing party's appraiser.

(3) Violated any ethical standard for property insurance appraisers set forth in s. 468.8619.

(4) Failed to inform the department in writing within 30 days after pleading guilty or nolo contendere to, or being convicted or found guilty of, a felony.

(5) Failed to timely notify the department of any change in business location, or has failed to fully disclose all business locations from which he or she operates as a property insurance appraiser.

468.8619 Ethical standards for property insurance appraisers.—

(1) CONFIDENTIALITY.—An appraiser shall maintain confidentiality of all information revealed during an appraisal except to the party that hired the appraiser and except where disclosure is required by law.

(2) RECORDKEEPING.—An appraiser shall maintain confidentiality in the storage and disposal of records and may not disclose any identifying information when materials are used for research, training, or statistical compilations.

(3) FEES AND EXPENSES.—Fees charged for appraisal services shall be reasonable and consistent with the nature of the case. An appraiser shall be guided by the following in determining fees:

(a) All charges for services as an appraiser based on time may not exceed actual time spent or allocated.

(b) Charges for costs shall be for those actually incurred.

(4) MAINTENANCE OF RECORDS.—An appraiser shall maintain records necessary to support charges for services and expenses, and upon request shall provide an accounting of all applicable charges to the parties. An appraiser licensed under this part shall retain for at least 5 years original or true copies of any contracts engaging the appraiser's services, appraisal reports, and supporting data assembled and formulated by the appraiser in preparing appraisal reports. The period for retaining the

records applicable to each engagement starts on the date of the submission of the appraisal report to the client. The records must be made available by the appraiser for inspection and copying by the department upon reasonable notice to the appraiser. If an appraisal has been the subject of, or has been admitted as evidence in, a lawsuit, reports, and records the appraisal must be retained for at least 2 years after the date that the trial ends.

(5) ADVERTISING.—An appraiser may not engage in marketing practices that contain false or misleading information. An appraiser shall ensure that any advertisements of the appraiser's qualifications, services to be rendered, or the appraisal process are accurate and honest. An appraiser may not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(6) INTEGRITY AND IMPARTIALITY.—An appraiser may not accept any engagement, provide any service, or perform any act that would compromise the appraiser's integrity or impartiality.

(a) An appraiser may not accept an appointment unless he or she can:

1. Serve impartially;

2. Serve independently from the party appointing him or her;

3. Serve competently; and

4. Be available to promptly commence the appraisal, and thereafter devote the time and attention to its completion in a

manner expected by all involved parties.

(b) An appraiser shall conduct the appraisal process in a manner that advances the fair and efficient resolution of the matters submitted for decision. A licensed appraiser shall make all reasonable efforts to prevent delays in the appraisal process, the harassment of parties or other participants, or other abuse or disruption of the appraisal process.

(c) Once a licensed appraiser has accepted an appointment, the appraiser may not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impracticable to continue.

(d) The licensed appraiser shall, after careful deliberation, decide all issues submitted for determination and no other issues. A licensed appraiser shall decide all matters justly, exercising independent judgment, and may not allow outside pressure to affect the decision. An appraiser may not delegate the duty to decide to any other person.

(7) SKILL AND EXPERIENCE.—An appraiser shall decline an appointment or selection, withdraw, or request appropriate assistance when the facts and circumstances of the appraisal are beyond the appraiser's skill or experience.

(8) GIFTS AND SOLICITATION.—An appraiser may not give or accept any gift, favor, loan, or other item of value in an appraisal process except for the appraiser's reasonable fee. During the appraisal process, an appraiser may not solicit or otherwise attempt to procure future professional services.

(9) COMMUNICATIONS WITH PARTIES.—

(a) If an agreement of the parties establishes the manner or content of the communications between the appraisers, the parties and the umpire, the appraisers shall abide by such agreement. In the absence of agreement, an appraiser may not discuss a proceeding with any party or with the umpire in the absence of any other party, except in the following circumstances:

1. If the appointment of the appraiser or umpire is being considered, the prospective appraiser or umpire may ask about the identities of the parties, counsel, and the general nature of the case, and may respond to inquiries from a party, its counsel or an umpire designed to determine his or her suitability and availability for the appointment;

2. To consult with the party who appointed the appraiser concerning the selection of a neutral umpire.

3. To make arrangements for any compensation to be paid by the party who appointed the appraiser; or

4. To make arrangements for obtaining materials and inspection of the property with the party who appointed the appraiser. Such communication is limited to scheduling and the exchange of materials.

(b) There may be no communications whereby a party dictates to an appraiser what the result of the proceedings must be, what matters or elements may be included or considered by the appraiser, or what actions the appraiser may take.

468.862 Residential or commercial property insurance loss appraisal.—The Legislature has determined that our court system is overwhelmed with litigation better served in the property insurance appraisal process. Appraisal is the preferred method of resolving disputes involving the scope of the damages occurring as the result of a covered loss. When the insured and the insurer agree that a residential or commercial residential property has been damaged by a covered peril in the policy, the best method to resolve the issues of scope will be the property insurance appraisal process.

(1) When the only issue remaining between an insured and an insurer on a residential or commercial residential property is the actual cash value, the amount of loss, or the cost of repair or replacement of property for which a claim has been filed, that process shall be governed by this section.

(2) Either party may submit a written demand to enter into the process of appraisal.

(3) The insurer may refuse to accept the demand only if the insured materially fails to comply with the proof-of-loss obligations of the insured as set forth in the policy conditions.

(4) The insurer is deemed to have waived its right to demand an appraisal if it fails to invoke an appraisal within 30 days after the insured substantially complies with the proof-of-loss obligation as set forth in the policy conditions.

(5) Each party shall select a competent, licensed, and

independent appraiser and notify the other party of the appraiser selected within 20 days after the date of the demand for an appraisal. The appraisers shall select a competent, independent, and impartial umpire who is on the department's list of licensed property insurance appraisal umpires as qualified under s. 468.85. If the appraisers are unable to agree on an umpire within 15 days, the insured or the insurer may file a petition with a county or circuit court in the jurisdiction in which the covered property is located to designate a licensed property insurance appraisal umpire for the appraisal.

(6) Appraisal proceedings are informal unless the insured and the insurer mutually agree otherwise. For purposes of this section, "informal" means that no formal discovery shall be conducted, including depositions, interrogatories, requests for admission, or other forms of formal civil discovery; no formal rules of evidence shall be applied; and no court reporter shall be used for the proceedings. However, either appraiser may rely on experts in reaching the value of loss.

(7) Within 60 days after being appointed, each appraiser shall appraise the loss and submit a written report to the other appraiser, separately stating the cost of the loss, the actual cash value, or the cost to repair or replace each item. Within 30 days after submitting the reports, the appraisers shall attempt to resolve any differences in the appraisals and reach a mutual agreement on all matters. If the appraisers are unable to agree, they shall, within 5 days, submit the differences in

their findings in writing to the umpire. However, the appraisers have an additional 60 days after appointment to appraise the loss and submit a written report if the loss is covered under a commercial residential property insurance policy and the insured structure is 10,000 square feet or more, or is covered under a commercial residential or residential insurance policy and the claim is based on and made subsequent to a hurricane designated by the National Hurricane Center or a declared emergency by the Governor.

(8) The umpire shall review any differences in appraisals submitted by the appraisers and determine the amount of the loss for each item submitted. Within 10 days after receipt of any differences in appraisals, the umpire shall submit the umpire's conclusions in writing to each appraiser.

(9) If either appraiser agrees with the conclusions of the umpire, an itemized written appraisal award signed by the umpire and the appraiser shall be filed with the insurer and shall determine the amount of the loss.

(10) The appraisal award is binding on the insurer and the insured with regard to the amount of the loss. If the insurance policy so provides, the insurer may assert that there is no coverage under the policy for the loss as a whole or that there has been a violation of the policy conditions with respect to fraud, lack of notice, or failure to cooperate.

(11) Each appraiser shall be paid by the party who selects the appraiser and the expenses of the appraisal and fees of the

umpire shall be paid by the parties equally, except that if the final determination of the amount of the loss is 50 percent greater than the insurer's preappraisal estimate of the loss communicated to the insured in writing, the insurer shall pay all the expenses, including any fees and expenses charged by the insured's appraiser and all fees and expenses of the umpire. This subsection does not affect an insured's claim for attorney's fees under s. 627.428.

(12) The provisions of the Florida Arbitration Code do not apply to residential and commercial residential property insurance loss appraisal proceedings. However, the provisions regarding proceedings to compel and stay arbitration in s. 682.03; procedures for correcting, vacating, or modifying an award in ss. 682.10, 682.13, and 682.14; procedures for entry of judgment on the award in s. 682.15; and procedures regarding confirmation of an award in s. 682.12 do apply.

(13) The appraisal process may not address issues involving whether or not the loss or damage is covered under the terms of the insurance contract. However, the appraisers and the umpire may consider causation issues, if necessary, to determine the amount of loss.

Section 3. This act shall take effect July 1, 2015.

Insurance & Banking Subcommittee

HB 491 by Rep. Artiles
Property Insurance Appraisal Umpires and Property Insurance Appraisers

AMENDMENT SUMMARY
March 25, 2015

Amendment 1 by Rep. Tobia (Line 1093): The amendment removes the language creating a mandatory appraisal process.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 491 (2015)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Tobia offered the following:

Amendment (with directory and title amendments)

Remove lines 1093-1191

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

Remove line 563 and insert:

consisting of sections 468.86 through 468.8619, is created to

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

Remove lines 55-66 and insert:

providing ethical standards;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 887 Unclaimed Property
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 1138

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain period of time. Savings and checking accounts, stocks, bonds, insurance policy payments, refunds, and contents of safe deposit boxes are potentially unclaimed property. Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property, pursuant to the Florida Disposition of Unclaimed Property Act (ch. 717, F.S.).

U.S. savings bonds are debt securities issued by the U.S. Department of the Treasury (Treasury) to help pay for the federal government's borrowing needs. Most of the bonds at issue (Series E) were issued between 1941 and 1980. As contracts between the U.S. government and the bond's owner, they are backed by the full faith and credit of the U.S. government. Given the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, Treasury currently holds nearly 50 million unredeemed Series E savings bonds and will do so in perpetuity. Federal law does not require an unclaimed property process to reunite the bond owner with the bond, as state unclaimed property law does. Treasury policy dictates that Treasury will not release bonds to a state with a custody-based unclaimed property law, but will do so if the state can take title to the bonds. The state of Florida currently holds custody of unclaimed, physical bonds *(bonds in possession)* with a face value of more than $1.2 million. However, federal law prohibits the transfer of U.S. savings bonds to anyone other than the named beneficiary except in limited circumstances, including pursuant to a valid judicial proceeding. Currently, the custody-based nature of the Act precludes recovery of these physical bonds. In addition, DFS estimates there is an even greater number of *absent bonds* issued to individuals whose last known address is in Florida, but have been lost, stolen, or destroyed.

The bill creates a judicial process whereby DFS may seek a court order to obtain title to the bonds in possession, similar to a Kansas statute that led to a recent favorable recovery of proceeds from physical U.S. savings bonds issued to Kansas residents. The bill establishes a post-maturity period of time which will indicate that the bonds are lost, stolen, or destroyed, allowing DFS to initiate escheat proceeds. If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S., as with any other unclaimed property. The bill creates a claims process that requires DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication. Even after the bonds escheat to the state, the original bond owner may still recover the bond proceeds under the claims process set forth in the bill, and may make a claim to DFS for the proceeds of the bond. Once DFS obtains title to these bonds, it may petition Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.

The fiscal impact to the state and the private sector is indeterminate, as it depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unclaimed Property

Unclaimed property constitutes any funds or other property, tangible or intangible, that has remained unclaimed by the owner for a certain number of years. Unclaimed property may include savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes.[1]

Florida Disposition of Unclaimed Property Act

In 1987, Florida adopted the Uniform Unclaimed Property Act and enacted the Florida Disposition of Unclaimed Property Act (ch. 717, F.S., "the Act").[2] The Act serves to protect the interests of missing owners of property, while the state derives a benefit from the unclaimed and abandoned property until the property is claimed, if ever. Under the Act, the Department of Financial Services (DFS) Bureau of Unclaimed Property is responsible for receiving property, attempting to locate the rightful owners, and returning the property or proceeds to them. There is no statute of limitations in the Act, and citizens may claim their property at any time and at no cost.

Generally, all intangible property, including any income less any lawful charges, which is held in the ordinary course of the holder's business, is presumed to be unclaimed when the owner fails to claim the property for more than 5 years after the property becomes payable or distributable, unless otherwise provided in the Act.[3] Holders of unclaimed property (which typically include banks and insurance companies) are required to use due diligence to locate apparent owners within 180 days after an account becomes inactive.[4] Once this search period expires, holders must file an annual report with DFS for all property, valued at $50 or more, that is presumed unclaimed for the preceding year.[5] The report must contain certain identifying information, such as the apparent owner's name, social security number or federal employer identification number, and last known address. The holder must deliver all reportable unclaimed property to DFS when it submits its annual report.[6]

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.[7] The original property owner retains the right to recover the proceeds of the property, and any person claiming an interest in the property delivered to DFS may file a claim for the property, subject to certain requirements.[8] DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the department is to deliver or pay over to the claimant the property or the amount the department actually received or the proceeds, if it has been sold by the DFS.[9]

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[1] ss. 717.104 – 717.116, F.S.
[2] Ch. 87-105, Laws of Fla. *See also* UNIFORM LAW COMMISSION, *Unclaimed Property Act Summary*, http://www.uniformlaws.org/ActSummary.aspx?title=Unclaimed%20Property%20Act
[3] s. 717.102(1), F.S.
[4] s. 717.117(4), F.S.
[5] s. 717.117, F.S.
[6] s. 717.119, F.S.
[7] s. 717.1201, F.S.
[8] ss.717.117 and 717.124, F.S.
[9] s.717.124, F.S.

If the property remains unclaimed, all proceeds from abandoned property are then deposited by DFS into the Unclaimed Property Trust Fund.[10] DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Fund.[11]

Like many other state unclaimed property act, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.[12]

U.S. Savings Bonds[13]

Pursuant to its constitutional power "to borrow money on the credit of the United States,"[14] Congress delegated authority to the United States Department of the Treasury ("Treasury"), with approval of the President, to issue savings bonds "for expenditures authorized by law."[15] U.S. savings bonds are debt securities issued by Treasury to help pay for the federal government's borrowing needs and are backed by the full faith and credit of the U.S. government. A U.S. savings bond is a contract between the federal government and the bond's owner that is controlled by federal law. However, in disputes which do not concern the rights and duties of the United States, questions of title are to be decided by state law.[16]

The federal government began selling savings bonds in 1941 for World War II defense spending, and subsequently to encourage thrift and savings by small investors. The majority of the bonds at issue are Series E bonds (known informally as Defense Bonds), which were issued between 1941 and 1980 and had maturity terms of 30-40 years. In 2011, the last Series E bonds matured and stopped earning interest.[17]

Due to the passage of time, the long maturities of these bonds, the deaths or relocations of registered owners, and bonds being lost, stolen, or destroyed, a significant number of bonds remain unclaimed. As of January 31, 2015, Treasury holds nearly 49.3 million matured, unredeemed savings bonds, with a maturity value of $16.5 billion.[18] The federal regulations do not impose any time limits for bond owners to redeem Series E savings bonds.

There are two types of unclaimed savings bonds:

- *Bonds in possession* are U.S. savings bonds physically held by an unclaimed property administrator's office, typically discovered from expired safe-deposit boxes. These bonds are delivered to DFS pursuant ot the Act. However, as described in further detail blow, DFS

[10] s. 717.123, F.S.
[11] Id.
[12] Ch. 717, F.S., was intended to replace ch. 716, F.S. (Escheats), which was enacted in 1947 and has not been repealed. While ch. 716, F.S., does provide that funds in the possession of federal agencies (including Treasury) shall escheat to the state upon certain conditions, it does not contain the necessary administrative processes and receipt mechanism (such as a Trust Fund) that the Act contains.
[13] Except where specifically identified, this portion of the analysis is derived from the facts and background in *Treasurer of New Jersey v U..S. Dep't of Treasury*, 684 F.3d 382 (3rd Cir. 2012).
[14] U.S. CONST. art. I, § 8, cl. 2
[15] 31 U.S.C. § 3105(a). The federal legislation authorizing Treasury to sell U.S. savings bonds was signed into law in 1935. *See* TREASURY DIRECT, *The History of U.S. Savings Bonds*, http://www.treasurydirect.gov/timeline.htm
[16] 91 C.J.S. United States § 249 (Government bonds, generally).
[17] TREASURYDIRECT, *The Volunteer Program and Series E Savings Bonds*, http://www.treasurydirect.gov/indiv/research/history/history_ebond.htm. The federal government sold the Series E bonds at a discount and paid interest on them only at maturity. While Series E bonds have stopped earning interest, owners of E bonds may still redeem them. Series E bonds were replaced by the Series EE bond in 1980.
[18] TREASURYDIRECT, *Matured, Unredeemed Debt and Unclaimed Moneys Reports: Statistical report of matured, unredeemed savings bonds and notes* (Jan. 21, 2015), http://www.treasurydirect.gov/foia/foia_mud.htm

currently cannot redeem bonds in possession without first taking title to these bonds via escheatment.

- *Absent bonds* are the class of U.S. savings bonds issued to an individual whose last known address is in Florida, but have been lost, stolen, or destroyed. As such, these bonds are not physically in the possession of DFS. The records regarding absent bonds (such as registration information, serial numbers, and addresses) are exclusively held by Treasury. Treasury's online unredeemed bonds database, Treasury Hunt, does not contain a record of all savings bonds. The system only provides information on Series E bonds issued in 1974 or after, and is organized by social security number. Additionally, pursuant to the Privacy Act of 1974, Treasury Hunt only provides limited information to anyone who is not the bond owner or co-owner.[19]

In Florida, DFS presently is in possession of unclaimed *physical* U.S. savings bonds with a face value of more than $1.2 million. According to DFS, the total amount of unclaimed, matured *absent* U.S. savings bonds registered to persons with a last known address in Florida is estimated to be well over $100 million.[20]

Unlike many other types of securities, "savings bonds are not transferable and are payable only to the owners named on the bonds," except as specifically provided for in the federal regulations.[21] There are limited exceptions to this general rule against transferability of savings bonds, including cases in which a third party attains an interest in a bond through valid judicial proceedings.[22] A registered owner of a bond is presumed conclusively to be its owner, absent errors in registration.[23]

While federal law pervades the terms and conditions of the U.S. savings bond program (including the authority to fix the bonds' investment yield, transfer, redemption, and sales prices),[24] there is no federal escheat or unclaimed property law requiring the federal government to search for and reunite bond owners with the bonds. Instead, the federal government will hold these bonds in perpetuity. State unclaimed property laws, on the other hand, govern the significant public policy concerns of the abandonment of intangible personal property.[25]

For several decades, various states have sought to recover the proceeds from matured but unredeemed savings bonds. In 1952, Treasury issued a bulletin (referred to as the "Escheat Decision") explaining that it would pay the proceeds of savings bonds to the state of New York if it actually obtained *title* to the bonds, but would not do so if the state merely obtained a right to the *custody* of the proceeds.[26] In 2000, Treasury published online guidance consistent with the 1952 Escheat Decision.[27] Both articulations of Treasury policy raised serious concerns with releasing U.S. bonds to states with custody-based statutes, because such a state that steps into the shoes of the *payor* (Treasury) merely as a custodian would not discharge Treasury of its contractual obligation and liability to bond holders.[28] On the other hand, the Treasury guidance appears to accept a state stepping into the shoes of the *payee* (the bond owner) through a valid judicial determination made under a title-based law.

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[19] TREASURYDIRECT, *Treasury Hunt*, at http://www.treasurydirect.gov/indiv/tools/tools_treasuryhunt.htm
[20] Department of Financial Services, Agency Analysis of House Bill 887, p. 1 (Mar. 17, 2015).
[21] 31 C.F.R. §§ 315.15, 353.15.
[22] 31 C.F.R. §§ 315.20(b), 353.20(b).
[23] 31 C.F.R. §§315.15, 353.15.
[24] 31 U.S.C. § 3105.
[25] Other scenarios involving the application of state unclaimed property laws to unclaimed intangible property in the federal government's possession include unclaimed accounts from liquidated nationally-chartered financial institutions or property subject to administration by the U.S. bankruptcy courts.
[26] *New Jersey v. Treasury*, at 390-391.
[27] TREASURYDIRECT, *EE/E Savings Bonds FAQs*, http://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds_eefaq.htm
[28] In *New Jersey v. Treasury*, several states with custody-based statutes offered to indemnify Treasury in exchange for the bond proceeds; however, Treasury declined.

Kansas Title-Based Statute and Recovery of Proceeds from Bonds in Possession

In 2000, the state of Kansas enacted a change in state law to designate its state treasurer's office as the official *title owner* of unclaimed U.S. savings bonds,[29] in order to align with long-standing Treasury policy. Based on this state law, Kansas obtained a favorable declaratory judgment in state trial court awarding title to 1,447 fully matured and unclaimed U.S. savings bonds in possession found in unclaimed safe deposit boxes. In January 2014, the Kansas state treasurer announced the receipt of $861,908 from Treasury for those physical bonds (bonds in possession).[30]

In contrast to the outcome in Kansas, a federal appeals court in 2012 denied an attempt by several state unclaimed property administrators to recover proceeds of unredeemed physical U.S. savings bonds from Treasury, based on several constitutional grounds.[31] However, a significant aspect of the court's holding turned on the fact that these states' unclaimed property acts were "custody" statutes, not "title" statutes, thus conflicting with Treasury's policy.[32]

To date, seven states have enacted similar title-based unclaimed property laws based on the Kansas statute, in an effort to seek the proceeds of bonds in possession. Title-based unclaimed property legislation is currently pending in at least nine other states.

Unclaimed Absent Bonds

Following its receipt of proceeds from Treasury for unclaimed physical bonds, Kansas next petitioned Treasury to redeem the remaining class of matured *absent* savings bonds issued to owners with a last known address in Kansas. While Treasury made limited information available to Kansas about matured savings bonds issued after 1974 on its Treasury Hunt website, Treasury did not provide other information necessary to search the database (such as the original owners' social security numbers) or any information about older bonds.

In December 2014, the Kansas state treasurer initiated suit against Treasury in the U.S. Court of Federal Claims,[33] seeking payment for $151 million in unclaimed absent bonds and for records identifying the original owners.[34] This lawsuit is still pending. The parties recently completed supplemental briefing on Treasury's motion to dismiss, but a final ruling has not yet been issued.[35]

Effect of the Bill

The bill, similar to the Kansas law, creates a judicial process in the Act, whereby DFS may file a civil action in a court of competent jurisdiction in Leon County, Florida to determine that title to unclaimed U.S. savings bonds escheat to the state. If DFS obtains title to these bonds, it places DFS in the same position as the record owner of the bond, which is necessary to recover proceeds from Treasury.

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[29] Kan. Stat. Ann. §§ 58-3979 and 3980 (2014).

[30] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[31] The constitutional issues in *New Jersey v. Treasury* involved preemption, intergovernmental immunity, and waiver of sovereign immunity under the federal Administrative Procedures Act.

[32] *New Jersey v. Treasury*, at 389. The plaintiff states were New Jersey, North Carolina, Montana, Kentucky, Oklahoma, Missouri, and Pennsylvania.

[33] *Ron Estes, Treasurer of the State of Kansas v. United States*, U.S. Ct. of Fed. Claims (Case No. 1:13-cv-01011-EDK). The U.S. Court of Federal Claims is an Article I, congressionally created court that has exclusive jurisdiction over claims for monetary damages against the federal government and that arise from federal constitutional, statutory, and regulatory laws, as well as contracts with the U.S. government. *See* 28 U.S.C. § 1491.

[34] KANSAS STATE TREASURER, *Media Release: State Treasurer Estes Announces Kansas the First State in Nation to Receive Title & Payment for U.S. Savings Bonds* (Jan. 14, 2014), at: https://www.kansasstatetreasurer.com/prodweb/news/mr-2014-01-14.php

[35] Supplemental briefs in *Estes v. United States*, on file with the Insurance & Banking Subcommittee staff.

Under the bill, U.S. savings bonds are not considered unclaimed until they have matured and have remained unclaimed for five years after the bond maturity date (typically 30-40 years). This 5-year post-maturity period will indicate that the bonds are lost, stolen, or destroyed, allowing DFS to initiate escheat proceedings.

If or when the proceeds are received, the bill requires the proceeds to be deposited in accordance with s. 717.123, F.S. (as with any other unclaimed property), which requires deposit of proceeds into the Unclaimed Property Trust Fund, allows DFS to retain $15 million to pay proceeds and administrative expenses, and requires deposit of remaining funds into the State School Fund.

The bill creates a claims process to return the money to valid claimants and requires DFS to comport with due process prior to any escheat hearing, in that it must undertake specific efforts to notify registered owners, co-owners, and beneficiaries of the escheat proceedings through notice of publication,[36] as it must do when parties cannot be found through reasonable and customary due diligence efforts. Even after the bonds escheat to the state, an original bond owner may still recover the proceeds of the bond under the claims process set forth in the bill, and may make a claim to DFS for the proceeds of the bond. This "second chance" provision allows originally named bond owners who did no or could not comply with Treasury's regulations for redemption.

Once DFS obtains title to these bonds, it may petition Treasury for redemption of these bonds in possession, and if necessary, to render a full accounting of the necessary information of absent bonds, which would identify the class of bonds registered with the last known address in Florida.[37]

The bill applies to any U.S. savings bonds that reach maturity on, before, or after the bill's effective date (July 1, 2015).

B. SECTION DIRECTORY:

Section 1. Creates s. 717.1382, F.S., relating to United States savings bond; unclaimed property; escheatment; procedure.

Section 2. Creates s. 717.1383, F.S., relating to U.S. savings bond; claim for bond.

Section 3. Provides a statement of applicability.

Section 4. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate.[38] See Fiscal Comments.

2. Expenditures:

   Indeterminate.[39] See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[36] Service of process by publication is set forth in ch. 49, F.S. (Constructive Service of Process).
[37] If necessary, the state may join the lawsuit against Treasury. Because the value of absent bonds is significantly higher than the bonds in possession, it is likely that the state will have to file suit to recover the proceeds from the absent bonds.
[38] Department of Financial Services, Agency Analysis of House Bill 887, p. 2 (Mar. 17, 2015).
[39] *Id.*

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.[40] See Fiscal Comments.

D. FISCAL COMMENTS:

The fiscal impact to the state and the private sector is indeterminate, as it depends on whether the state prevails in obtaining title to the physical bonds, whether it prevails in a petition to Treasury for information and ultimate release of absent bond proceeds, and the extent to which originally registered bond owners may make a claim.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[40] *Id.*

A bill to be entitled

An act relating to unclaimed property; creating s. 717.1382, F.S.; providing for escheatment to the state of unclaimed United States savings bonds; providing for judicial determination of escheatment; providing procedures for challenging escheatment; providing for deposit of the proceeds of escheatment; creating s. 717.1383, F.S.; providing that a person claiming a United States savings bond may file a claim with the Department of Financial Services; providing limitations on such claim; providing applicability; providing an effective date.

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

Section 1. Section 717.1382, Florida Statutes, is created to read:

717.1382 United States savings bond; unclaimed property; escheatment; procedure.—

(1) Notwithstanding any other provision of law, a United States savings bond in possession of the department or registered to a person with a last known address in the state, including a bond that is lost, stolen, or destroyed, is presumed abandoned and unclaimed 5 years after the bond reaches maturity and no longer earns interest and shall be reported and remitted to the department by the financial institution or other holder

in accordance with ss. 717.117(1) and (3) and 717.119, if the department is not in possession of the bond.

(2)(a) After a United States savings bond is abandoned and unclaimed in accordance with subsection (1), the department may commence a civil action in a court of competent jurisdiction in Leon County for a determination that the bond shall escheat to the state. Upon determination of escheatment, all property rights to the bond or proceeds from the bond, including all rights, powers, and privileges of survivorship of an owner, coowner, or beneficiary, shall vest solely in the state.

(b) Service of process by publication may be made on a party in a civil action pursuant to this section. A notice of action shall state the name of any known owner of the bond, the nature of the action or proceeding in short and simple terms, the name of the court in which the action or proceeding is instituted, and an abbreviated title of the case.

(c) The notice of action shall require a person claiming an interest in the bond to file a written defense with the clerk of the court and serve a copy of the defense by the date fixed in the notice. The date must not be less than 28 or more than 60 days after the first publication of the notice.

(d) The notice of action shall be published once a week for 4 consecutive weeks in a newspaper of general circulation published in Leon County. Proof of publication shall be placed in the court file.

(e)1. If no person files a claim with the court for the

bond and if the department has substantially complied with the provisions of this section, the court shall enter a default judgment that the bond, or proceeds from such bond, has escheated to the state.

2. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is not entitled to the bonds claimed by such claimant, the court shall enter a judgment that such bonds, or proceeds from such bonds, have escheated to the state.

3. If a person files a claim for one or more bonds and, after notice and hearing, the court determines that the claimant is entitled to the bonds claimed by such claimant, the court shall enter a judgment in favor of the claimant.

(3) The department may redeem a United States savings bond escheated to the state pursuant to this section or, in the event that the department is not in possession of the bond, seek to obtain the proceeds from such bond. Proceeds received by the department shall be deposited in accordance with s. 717.123.

Section 2. Section 717.1383, Florida Statutes, is created to read:

717.1383 United States savings bond; claim for bond.—A person claiming a United States savings bond escheated to the state under s. 717.1382, or for the proceeds from such bond, may file a claim with the department. The department may approve the claim if the person is able to provide sufficient proof of the validity of the person's claim. Once a bond, or the proceeds

from such bond, are remitted to a claimant, no action thereafter may be maintained by any other person against the department, the state, or any officer thereof, for or on account of such funds. The person's sole remedy, if any, shall be against the claimant who received the bond or the proceeds from such bond.

Section 3. This act applies to any United States savings bond that reaches maturity on, before, or after the effective date of this act.

Section 4. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 893 Blanket Health Insurance Eligibility
SPONSOR(S): Health Innovation Subcommittee; Ingoglia
TIED BILLS: **IDEN./SIM. BILLS:** SB 1134

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	11 Y, 0 N, As CS	Tuszynski	Poche
2) Insurance & Banking Subcommittee		Haston SH	Cooper
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A blanket health insurance policy and contract is issued to a policyholder, such as a school, business, or an organization, to provide coverage to a group of individuals or participants for an activity or event. This is in contrast to group health insurance coverage, in which a contract exists between the insurer and a policyholder, such as an employer, for individual employees and their dependents as a benefit. Coverage under a blanket health insurance policy normally expires at the conclusion of the activity or event.

The bill adds specific groups that are eligible to purchase blanket health insurance policies and expands the categories of individuals who are eligible for coverage under such policies.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Office of Insurance Regulation

The Florida Legislature created the Office of Insurance Regulation (OIR) within the Department of Financial Services in 2003.[1] OIR is responsible for regulating all insurers and other risk bearing entities doing business in the state. OIR regulatory activities include:

- Licensing;
- Rate and form approval;
- Market conduct review;
- Issuing certificates of authority;
- Ensuring insurer solvency; and
- Administrative supervision.

The Insurance Commissioner (the Commissioner) is the agency head of OIR, and executes and enforces all regulatory responsibilities. The Commissioner oversees the review of company rate and form filings across regulated lines of insurance and takes appropriate action; monitors the financial strength, solvency and enterprise risk of insurance companies doing business in this state; and ensures that contract provisions keep up with changing legal and market conditions. The Commissioner also advises the Governor, Financial Services Commission, and Legislature on matters affecting the insurance marketplace, and implements applicable statutory and regulatory policies.[2]

Blanket Health Insurance

A blanket health insurance policy or contract is issued to a policyholder, such as a school, business, or organization, to provide coverage to a group of individuals or participants as a class who share a common activity or operation of the policyholder.[3] Blanket health policies are for specific policyholders, covering specific people, for a specific event. This is in contrast to group health insurance coverage, in which a contract is issued to a policyholder, such as an employer, for individual employees and their dependents as a benefit.[4] An individual application is not required from an individual covered under a blanket health insurance policy or contract.[5] Generally, the insurer is not required to provide a written certificate of the insurance coverage to each insured person.[6]

Under current law, blanket health insurance covers certain groups of people under a policy or contract issued to the following groups:

- A common carrier – covering passengers;[7]
- An employer – covering employees defined by reference to exceptional hazards incident to employment;[8]

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[1] Ch. 02-404, Laws of Fla.
[2] Florida Office of Insurance Regulation, *Annual Report 2014*, available at http://www.floir.com/siteDocuments/2014AnnualReort.pdf (last visited March 13, 2015).
[3] s. 627.659, F.S.
[4] s. 627.653, F.S.
[5] s. 627.660(1), F.S.
[6] *Id.* An insurer is required to furnish a written certificate disclosing the essential features of the coverage to each person covered under a policy issued pursuant to s. 627.659(3), F.S., relating to policies issued to a school, district school system, college, university, or other institution of learning. s. 627.660(6), F.S. These certificates are subject to the filing requirements of ss. 627.410 and 627.640, F.S.
[7] s. 627.659(1), F.S.

- A school, school district, college, university, or other institution of learning – covering students and teachers; and may cover spouses and dependent children of students;[9]
- A volunteer fire department, first aid group, or other such volunteer group – covering the members of those groups; [10]
- An organization or branch of the Boys Scouts of America, Future Farmers of America, religious or educational organizations, or similar organizations – covering attendees, instructors, counselors, and administrators at meetings and camps;[11]
- A newspaper – covering independent contractor delivery persons;[12]
- A health care provider – covering patients;[13] and
- An HMO – covering subscribers.[14]

Effect of Proposed Changes

The bill expands the list of existing groups and individuals in statute that are eligible to purchase blanket health insurance coverage or eligible to be covered under a blanket health insurance policy. Specifically, the bill adds:

- Any operator, owner or lessee of a means of transportation.
- Coverage for dependents or guests of an employee; the bill removes the reference to coverage for "exceptional hazards incident to such employment" and replaces it with "activity or activities or operations of the policyholder," which expands the types of activities for which blanket health coverage may be purchased by an employer.
- Coverage for employees, and dependents and spouses of teachers or employees of a school, college, and university.
- Emergency management groups and expands coverage to any group of participants defined by reference to activities or operations sponsored or supervised by a volunteer fire department, first aid group, or other such volunteer group.
- Instructive, charitable, recreational, and civic groups and expands coverage to any or all persons participating in the activities or operations sponsored or supervised by the policyholder.
- Other publishers as eligible policyholders and expands coverage to delivery persons employed by such publications.
- Other arrangers of health services as eligible policyholders and expands coverage to donors and surrogates.

The bill also adds the following eligible policyholder groups to statute:

- A sports team, camp, or sponsor of a team or camp – covering members, campers, participants, employees, officials or supervisors.[15]
- A travel agency or other organization that provides travel related services – covering any and all persons receiving travel-related services.
- An association that has a constitution and bylaws, comprised of at least 25 members and having been organized and maintained in good faith for at least 1 year for purposes other than obtaining insurance – covering all members of the association.
- A bank, association, financial or other institution, vendor, parent holding company, or the trustees or agents designated by such entities – covering accountholders, cardholders, debtors, guarantors, or purchasers.

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[8] s. 627.659(2), F.S.
[9] s. 627.659(3), F.S.
[10] s. 627.659(4), F.S.
[11] s. 627.659(5), F.S.
[12] s. 627.659(6), F.S.
[13] s. 627.659(7), F.S.
[14] s. 627.659(8), F.S.
[15] This provision emulates statutes in 26 other states (AL, AK, AZ, AR, CA, DE, GA, ID, IL, IN, KS, KY, LA, ME, MD, MA, MI, MN, MT, NV, NH, OK, OR, PA, UT, and WY).

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.659, F.S., relating to blanket health insurance; eligible groups.

Section 2: Provides an effective date of July 1, 2015.

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 allows insurers to offer blanket health insurance plans covering more eligible policyholders for more risks or activities. The eligible policyholders can secure coverage for activities or events outlined in the bill, limiting the policyholder's exposure to risk of financial loss.

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:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Health Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed discretionary authority of the Insurance Commissioner to determine, without further legislative action, additional groups who are eligible to purchase blanket health insurance coverage and additional individuals who may be covered under such a policy.

The analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.

A bill to be entitled

An act relating to blanket health insurance eligibility; amending s. 627.659, F.S.; revising the list of special groups of individuals covered by a policy or contract for blanket health insurance; providing an effective date.

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

Section 1. Section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket health insurance is that form of health insurance which covers special groups of individuals as enumerated in one of the following subsections:

(1) Under a policy or contract issued to any common carrier or to any operator, owner, or lessee of a means of transportation, which shall be deemed the policyholder, covering a group defined as all persons who may become passengers on such common carrier or such means of transportation.

(2) Under a policy or contract issued to an employer, who shall be deemed the policyholder, covering any group of employees or the employees' dependents or guests defined by reference to activities or operations of the policyholder ~~exceptional hazards incident to such employment~~, or under a policy or contract issued to an employer when all employees are

covered under any such policy or contract.

(3) Under a policy issued to a school, district school system, college, university, or other institution of learning, or to the official or officials of such institution insuring all or any class of its ~~the~~ students, ~~and~~ teachers, and employees. Any such policy issued may insure the spouse or dependent children of the insured student, teacher, or employee.

(4) Under a policy or contract issued in the name of a ~~any~~ volunteer fire department, ~~or~~ first aid group, emergency management group, or other such volunteer group, which shall be deemed the policyholder, covering any group ~~all~~ of the members or employees of such department or group, or covering any group of participants defined by reference to activities or operations sponsored or supervised by such department or group.

(5) Under a policy or contract issued to an organization, or branch thereof, such as the Boy Scouts of America, the Future Farmers of America, any religious, instructive, ~~or~~ educational, charitable, recreational, or civic bodies, or similar organizations, or to an individual, firm, or corporation, holding or operating meetings such as summer camps or other meetings for religious, instructive, educational, charitable, ~~or~~ recreational, or civic purposes, who shall be deemed the policyholder, covering any or all of those participating in the activities or operations sponsored or supervised by the policyholder, including attending such camps or meetings, including counselors, instructors, and persons in other

administrative positions.

(6) Under a policy or contract issued in the name of a newspaper or other publisher, which shall be deemed the policyholder, covering independent contractor newspaper or publication delivery persons.

(7) Under a policy or contract issued in the name of a health care provider or other arranger of health services, which shall be deemed the policyholder, covering patients, donors, or surrogates. This coverage may be offered to patients, donors, or surrogates of a health care provider or other arranger of health services but may not be made a condition of receiving care. The benefits provided under such policy or contract shall not be assignable to any health care provider.

(8) Under a policy or contract issued to any health maintenance organization licensed pursuant to the provisions of part I of chapter 641, which shall be deemed the policyholder, covering the subscribers of the health maintenance organization. Payment may be made directly to the health maintenance organization by the blanket health insurer for health care services rendered by providers pursuant to the health care delivery plan.

(9) Under a policy or contract issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, participants, employees, officials, or supervisors.

(10) Under a policy or contract issued to a travel agency

or other organization that provides travel-related services, which shall be deemed the policyholder, to cover any or all persons for whom travel and travel-related services are provided.

(11) Under a policy or contract issued to an association, if the association has a constitution and bylaws, has at least 25 individual members, and has been organized and maintained in good faith for at least 1 year for purposes other than obtaining insurance, covering all or any class of members of such association.

(12) Under a policy or contract issued to a bank, association, financial or other institution, vendor, or parent holding company, or to the trustees or agents designated by one or more banks, associations, financial or other institutions, or vendors, which shall be deemed the policyholder, covering accountholders, cardholders, debtors, guarantors, or purchasers.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1021 Health Insurance Coverage for Opioids
SPONSOR(S): Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N	McElroy	Poche
2) Insurance & Banking Subcommittee		Cooper	Cooper
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Deaths from drug overdose have steadily increased over the past few decades and are the leading cause of accidental deaths in the United States. Every day in the United States,120 people die as a result of a drug overdose, and another 6,748 are treated in emergency departments for the misuse or abuse of drugs. The vast majority of these deaths and emergency department visits involved an overdose related to opioid analgesics drug products (opioids), which are narcotic pain relievers derived from the opium poppy, or its synthetic analogues.

Opioids can be abused in numerous ways including being swallowed, snorted, smoked, or injected. These delivery methods create a more rapid onset of the effects of the opioid than intended by the manufacturer and a greater euphoria. Abuse-deterrent opioids are formulated to deter this type of abuse by making product alteration more difficult (crush resistant) or by making the altered product less attractive or rewarding (crushing renders the drug essentially ineffective).

HB 1021 allows a health insurance policy providing coverage for opioids to impose a prior authorization requirement for an abuse-deterrent opioid only if the policy requires prior authorization for opioids without an abuse-deterrence labeling claim. The bill also prohibits a policy from requiring the use of an opioid without an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid.

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

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Opioids

The drug overdose death rate has more than doubled from 1999 through 2013 and has now become the leading cause of accidental deaths in the United States.[1] In 2013, there were 43,982 drug overdose deaths in the United States, of which 22,767, or 51.8 percent, were related to pharmaceuticals.[2] The majority of the pharmaceutical related deaths, 16,235, or 71.3 percent, involved opioid analgesic drug products (opioids).[3]

Opioids also play a prominent role in drug overdose deaths in Florida. In 2013, there were 8,286 drug-related deaths in the state.[4] Opioids were listed as the cause of death in 2,573 cases and were present in an additional 2,730 cases.[5] The four most harmful drugs, found in more than 50 percent of the deaths in which these drugs were present, were all opioids.[6]

Opioids are psychoactive substances derived from the opium poppy or their synthetic analogues.[7] They are commonly used as pain relievers to treat acute and chronic pain. An individual experiences pain as a result of a series of electrical and chemical exchanges among his or her peripheral nerves, spinal cord and brain.[8] Opioid receptors occur naturally and are distributed widely throughout the central nervous system and in peripheral sensory and autonomic nerves.[9] When an individual experiences pain the body releases hormones, such as endorphins, which bind with targeted opioid receptors.[10] This disrupts the transmission of pain signals through the central nervous system and reduces the perception of pain.[11] Opioids function in the same way by binding to specific opioid receptors in the brain, spinal cord and gastrointestinal tract, thereby reducing the perception of pain.[12] Opioids include:[13]

- Buprenorphine (Subutex, Suboxone)
- Codeine
- Fentanyl (Duragesic, Fentora)
- Heroin
- Hydrocodone (Vicodin, Lortab, Norco)

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[1] More deaths occur each year due to drug overdose than deaths caused by motor vehicle crashes. *Prescription Drug Overdose in the United States: Fact Sheet*, Centers for Disease Control and Prevention. http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html (last viewed March 13, 2015).
[2] *Prescription Drug Overdose in the United States: Fact Sheet*, Centers for Disease Control and Prevention. http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html (last viewed March 13, 2015).
[3] Id.
[4] *Drugs Identified in Deceased Persons by Florida Medical Examiners 2013 Report,* Florida Department of Law Enforcement, October 2014.
[5] Id. A decedent may have more than one drug listed as the cause of death.
[6] Id. Heroin (97%), Methadone (67%), Fentanyl (63.4%), Morphine (59.9%).
[7] *Information Sheet on Opioid Overdose*, World Health Organization, November 2014. http://www.who.int/substance_abuse/information-sheet/en/ (last viewed March 13, 2015).
[8] Mayo Clinic Health Library, http://www.riversideonline.com/health_reference/Nervous-System/PN00017.cfm (last viewed March 13, 2015).
[9] *Imaging of Opioid Receptors in the Central Nervous System,* Gjermund Henriksen, Frode Willoch; Brain (2008) 131 (5): 1171-1196.
[10] Id.
[11] Id.
[12] *SAMHSA Opioid Overdose Toolkit: Facts for Community Members*, Department of Health and Human Services- Substance Abuse and Mental Health Services Administration. http://store.samhsa.gov/product/Opioid-Overdose-Prevention-Toolkit-Updated-2014/SMA14-4742 (last viewed on March 16, 2015).
[13] *Supra* at footnote 4.

- Hydromorphone (Dilaudid, Exalgo)
- Meperidine
- Methadone
- Morphine
- Oxycodone (OxyContin, Percodan, Percocet)
- Oxymorphone
- Tramadol

Opioid formulations are classified as either short-acting opioids (SAOs) or long-acting opioids (LAOs), which relate to the onset and duration of the effects of the drug in the body. SAOs are typically prescribed for transient pain types, such as acute, breakthrough or chronic intermittent pain and include immediate release (IR) formulation of various opioids.[14] The effects of an IR opioid begin shortly after ingestion and generally lasts between three to four hours. LAOs are typically prescribed for chronic pain and are designed to gradually release the drug in the blood stream and include the extended release (ER) formulation of various opioids.[15] The effects of an ER opioid generally last between eight to twelve hours with some formulations of LAOs having effect for up to seventy-two hours.[16]

Opioid Abuse and Misuse

The abuse and misuse of opioids is a serious and growing public health concern. In the United States:

- Approximately 4.5 million individuals use prescription pain medications for nonmedical purposes.[17]
- In 2011, approximately 1.4 million emergency departments (ED) visits involved nonmedical use of pharmaceuticals.[18]
- Every day 120 people die as a result of drug overdose, and another 6,748 are treated in ED for the misuse or abuse of drugs.[19]
- Nearly 9 out of 10 poisoning deaths are caused by drugs.[20]
- Prescription opioid abuse costs were about $55.7 billion in 2007.[21]

Opioids can be abused and misused in a variety of ways. For example, an abuser may swallow a greater quantity of the unaltered drug than what is prescribed. This typically occurs with IR opioids. Also, abusers may crush ER opioids and ingest the drug in a number of ways, including:[22]

- Swallowing;
- Snorting;

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[14] *A Comparison of Long and Short-Acting Opioids for the Treatment of Chronic Noncancer Pain: Tailoring Therapy to Meet the Patient Need*, Charles E. Argoff and Daniel I. Silverstein, Mayo Clin Proc. Jul; 84(7): 602-621. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2704132/ (last viewed March 13, 2015).

[15] Id.

[16] Id.

[17] *The NSDUH Report: Substance and Use and Mental Health Estimates from the 2013 National Survey on Drug Use and health: Overview of Findings*, Substance Abuse and Mental Health Services Administration, Center for Behavioral Health Statistics and Quality, September 4, 2014. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fstore.samhsa.gov%2Fshin%2Fcontent%2FNSDUH14-0904%2FNSDUH14-0904.pdf&ei=WwQDVY2ZMsuXNobrgNAH&usg=AFQjCNEFZtjCu4cxzFBucykETY7MMsY2Fg (last visited March 13, 2015).

[18] *Prescription Drug Overdose in the United States: Factsheet*, Centers for Disease Control. http://www.cdc.gov/homeandrecreationalsafety/overdose/facts.html (last viewed March 13, 2015).

[19] Id.

[20] Id.

[21] Id. Of this amount, 46% was attributable to workplace costs (e.g., lost productivity), 45% to healthcare costs (e.g., abuse treatment), and 9% to criminal justice costs.

[22] *Draft Guidance for Industry: Abuse-Deterrent Opioids-Evaluation and Labeling*, U.S. Food and Drug Administration, January 2013. http://www.google.com/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CB4QFjAA&url=http%3A%2F%2Fwww.fda.gov%2Fdownloads%2Fdrugs%2Fguidancecomplianceregulatoryinformation%2Fguidances%2Fucm334743.pdf&ei=HykDVaWHDpLRggTIgoT4Cg&usg=AFQjCNHvX1Wg3qdmw6C3Jz97t3ulJ5-bxw&bvm=bv.88198703,d.eXY (last viewed March 13, 2015).

- Smoking; and
- Dissolving and injecting.

Opioids are commonly abused due to the euphoric effect created by their use.[23] ER opioids hold a greater attraction for abusers than IR opioids because of their higher concentrations of the drug.[24] When ER opioids are altered, the higher concentrations of the drug are immediately absorbed in the bloodstream rather than the gradual release and absorption of the drug as originally designed. This creates a more rapid onset of the effects of the opioids than the manufacturer intended and a greater euphoria.[25] This is the effect the abusers seek; however, this commonly can lead to overdose and death.

Continued use or abuse of opioids can lead to the development of tolerance and psychological and physical dependence.[26] This dependence is characterized by a strong desire to take opioids, impaired control over opioid use, persistent opioid use despite harmful consequences, a higher priority given to opioid use than to other activities and obligations, and a physical withdrawal reaction when opioids are discontinued.[27] This issue is widespread as an estimated 15 million people worldwide suffer from opioid dependence.[28]

Abuse-Deterrent Opioids

Abuse-deterrent opioids are formulated to deter abuse and misuse of the drug.[29] The goal of abuse-deterrent opioids is to limit access or attractiveness of the highly desired active ingredient for abusers while assuring the safe and effective release of the medication for patients.[30]

In 2013, the Food and Drug Administration (FDA) released draft guidance to assist the pharmaceutical industry in developing new formulations of opioid drugs with abuse-deterrent properties. The document provides guidance on the studies that should be conducted to demonstrate that a given formulation has abuse-deterrent properties, how the studies will be evaluated, and what labeling clams may be approved based on the results of the studies.[31]

The FDA guidance provides that abuse-deterrent formulations are categorized in one of the following groups:[32]

- **Physical/Chemical barriers** – Physical barriers can prevent chewing, crushing, cutting, grating, or grinding. Chemical barriers can resist extraction of the opioid using common solvents like water, alcohol, or other organic solvents. Physical and chemical barriers can change the physical form of an oral drug rendering it less amenable to abuse.
- **Agonist/Antagonist combinations** – An opioid antagonist can be added to interfere with, reduce, or defeat the euphoria associated with abuse. The antagonist can be sequestered and released only upon manipulation of the product. For example, a drug product may be formulated

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[23] Opioids affect the regions of the brain involved with pleasure and reward and can thereby create a euphoric effect. *How Do Opioids Affect the Brain and Body?,* National Institute on Drug Abuse. http://www.drugabuse.gov/publications/research-reports/prescription-drugs/opioids/how-do-opioids-affect-brain-body (last viewed March 13, 2015).
[24] *A Review of Abuse-Deterrent Opioids for Chronic Nonmalignant Pain*, Robin Moorman-Li, Carol Motycka, et al., P.T. 2012 Jul; 37(7): 412-418. http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3411218/ (last viewed March 13, 2015).
[25] Id.
[26] *Supra* at footnote 9.
[27] *Supra* at footnote 7.
[28] Id.
[29] The National Addictions Vigilance Intervention and Prevention Program (NAVIPPRO) database was created to track drugs of abuse, their current popularity and their preferred method of use by abusers. Pharmaceutical companies can review this database to determine the drugs of abuse the most concern and to identify the routes of delivery that new formulations should specifically strive to deter. *Supra* at footnote 24.
[30] Id.
[31] *Supra* at footnote 22.
[32] Id.

such that the substance that acts as an antagonist is not clinically active when the product is swallowed but becomes active if the product is crushed and injected or snorted.
- **Aversion** – Substances can be combined to produce an unpleasant effect if the dosage form is manipulated prior to ingestion or a higher dosage than directed is used.
- **Delivery System**– Certain drug release designs or the method of drug delivery can offer resistance to abuse. For example, a sustained-release depot injectable formulation that is administered intramuscularly or a subcutaneous implant can be more difficult to manipulate.
- **Prodrug** – A prodrug that lacks opioid activity until transformed in the gastrointestinal tract can be unattractive for intravenous injection or intranasal routes of abuse.
- **Combination** – Two or more of the above methods can be combined to deter abuse.

Abuse Deterrence Labeling

The FDA guidance provides that it is critical that labeling claims regarding abuse-deterrent properties be based on robust, compelling, and accurate data and analysis, and that any characterization of a product's abuse-deterrent properties or potential to reduce abuse be clearly and fairly communicated.[33] Labeling language regarding abuse deterrence should describe the product's specific abuse-deterrent properties as well as the specific routes of abuse that the product has been developed to deter.[34] The FDA provides four general tiers of label claims available to describe the potential abuse-deterrent properties of a product:[35]

- **Tier 1**: Product is formulated with physiochemical barriers to abuse.
- **Tier 2**: Product is expected to reduce or block effect of the opioid when it is manipulated.
- **Tier 3**: Product is expected to reduce abuse.
- **Tier 4**: Product has demonstrated reduced abuse in the community.

Health Insurer Prior Authorization

Insurers use cost containment strategies to manage medical and drug spending and utilization. For example, plans may place utilization management requirements on the use of certain drugs on their formulary, such as requiring enrollees to obtain prior authorization from their plan before being able to fill a prescription, requiring enrollees to first try a preferred drug to treat a medical condition before being able to obtain an alternate drug for that condition, or limiting the quantity of drugs that they cover over a certain period of time.[36]

Under prior authorization, a health care provider is required to seek approval from an insurer before a patient may receive a specified diagnostic or therapeutic treatment or specified prescription drugs under the plan.[37] A preferred drug list (PDL) is an established list of one or more prescription drugs within a therapeutic class deemed clinically equivalent and cost effective.[38] In order to obtain another drug within the therapeutic class, not part of the PDL, prior authorization is required.[39]

Health insurers are increasingly turning to step therapy (or "fail first") policies in pharmacy benefit design.[40] This designation requires an insured to try one drug first to treat his or her medical condition

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[33] Id.
[34] Id.
[35] Id.
[36] *Prescription for Prior Authorizations: A Better Way*, Leah Krieger, Policy Matters Journal, Fall 2014- Special Edition. http://www.policymattersjournal.org/krieger.html (last viewed on March 13, 2015).
[37] *Administrative Simplification and Fair Contracting*, American Medical Association. http://www.ama-assn.org/ama/pub/advocacy/state-advocacy-arc/state-advocacy-campaigns/private-payer-reform/admin-simp-fair-contracting.page (last viewed March 13, 2015).
[38] *Health Cost Containment and Efficiencies, NCSL Briefs for State Legislators*, National Conference of State Legislatures, No.9, June 2010. www.ncsl.org/documents/health/IntroandBriefsCC-16.pdf (last viewed on March 16, 2015).
[39] Id.
[40] *The Ethics Of 'Fail First': Guidelines And Practical Scenarios For Step Therapy Coverage Policies*, Rahul K. Nayak and Steven D. Pearson, Health Aff October 2014, vol. 33, no. 10, 1779-1785.

before the insurer will cover another drug for that condition.[41] For example, if Drug A and Drug B both treat a medical condition, a plan may require doctors to prescribe Drug A first. If Drug A does not work for a beneficiary, then the plan will cover Drug B.

Effect of the Proposed Changes

HB 1021 allows a health insurance policy providing coverage for opioids to impose a prior authorization requirement for an abuse-deterrent opioid only if the policy imposes the same prior authorization requirement for opioids without an abuse-deterrence labeling claim. The bill defines "abuse-deterrent opioid analgesic drug product" as a brand or generic opioid analgesic drug product approved by the U.S. Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse. The bill defines "opioid analgesic drug product" as a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

The bill prohibits a policy from requiring the use of an opioid without an abuse-deterrent labeling claim before providing coverage for an abuse-deterrent opioid. As a result, a physician may prescribe an abuse-deterrent opioid for a patient as an initial treatment, rather than waiting for a patient to fail in the use of a non-abuse deterrent opioid.

The bill provides an effective date of July 1, 2015.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.64194, F.S., relating to requirements for opioid coverage.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers may pay higher costs for abuse-deterrent opioids prescribed by a physician as an initial treatment, rather than paying for lower cost opioids without an abuse deterrence claim.

[41] Id.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to health insurance coverage for opioids; creating s. 627.64194, F.S.; defining terms; providing that a health insurance policy that covers opioid analgesic drug products may impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the insurer imposes the same requirement for each opioid analgesic drug product without an abuse-deterrence labeling claim; prohibiting such health insurance policy from requiring use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product; providing an effective date.

WHEREAS, the Legislature finds that the abuse of opioids is a serious problem that affects the health, social, and economic welfare of this state, and

WHEREAS, the Legislature finds that an estimated 2.1 million people in the United States suffered from substance use disorders related to prescription opioid pain relievers in 2012, and

WHEREAS, the Legislature finds that the number of unintentional overdose deaths from prescription pain relievers has more than quadrupled since 1999, and

WHEREAS, the Legislature is convinced that it is imperative

for people suffering from pain to obtain the relief they need while minimizing the potential for negative consequences, NOW, THEREFORE,

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

Section 1. Section 627.64194, Florida Statutes, is created to read:

627.64194 Requirements for opioid coverage.—

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

(a) "Abuse-deterrent opioid analgesic drug product" means a brand or generic opioid analgesic drug product approved by the United States Food and Drug Administration with an abuse-deterrence labeling claim that indicates the drug product is expected to deter abuse.

(b) "Opioid analgesic drug product" means a drug product in the opioid analgesic drug class prescribed to treat moderate to severe pain or other conditions in immediate-release, extended-release, or long-acting form regardless of whether or not combined with other drug substances to form a single drug product or dosage form.

(2) COVERAGE REQUIREMENTS.—A health insurance policy that provides coverage for opioid analgesic drug products:

(a) May impose a prior authorization requirement for an abuse-deterrent opioid analgesic drug product only if the policy imposes the same prior authorization requirement for each opioid

analgesic drug product without an abuse-deterrence labeling claim which is covered by the policy.

(b) May not require use of an opioid analgesic drug product without an abuse-deterrence labeling claim before providing coverage for an abuse-deterrent opioid analgesic drug product.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1081 Consumer Loans
SPONSOR(S): Burton and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1012

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Bauer	Cooper
2) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and compliance investigations for licensed entities to determine compliance with Florida law. One of the regulatory programs administered by OFR is the Florida Consumer Finance Act (ch. 516, F.S., "the Act"), which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The Act sets forth maximum interest rates for *consumer finance loans*, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases. Pursuant to federal law, the annual percentage rate (APR) for each consumer finance loan must be computed and disclosed to the borrower.

The bill creates an alternative small loan option under the Act, referred to as a *consumer installment loan*, with principal amounts ranging between $300 and $2,000 and terms of 6-24 months. Under current law, loans in these amounts would normally be subject to the 30% interest rate. Instead, the bill allows licensed lenders to charge "nonrefundable processing fees" and "installment loan handling charges" expressed in flat dollar amounts or percentages in proportion to the loan principal. As calculated, the APR on these alternative consumer installment loans are generally higher than consumer finance loans under current law. Additionally, the bill:

- Permits specified certain fees or charges, but does not authorize insurance premiums, unlike consumer finance loans under current law.
- Permits a borrower to cancel an installment loan up to 5 days after the loan is made, and requires the lender to "promptly" refund all fees and charges to the borrower.
- Permits licensed lenders to compensate persons for referring loan applicants, so long as those referral fees are not charged to the borrower.
- Provides that borrowers who repay installment loans in full with cash, a new loan, or a renewal of the existing loan at least 30 days before the date that the final installment is due, the licensee must refund or credit the unearned portion of any *loan handling charge* made in connection with the loan.

The bill does not have a fiscal impact on state or local government. The bill has an indeterminate impact on the private sector, in that while it may provide another source of non-bank credit for consumers, the rate of borrower default and subsequent re-borrowing cannot be projected.

The bill provides an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

State Regulation of Consumer Loans

The Florida Office of Financial Regulation (OFR)'s Division of Consumer Finance is responsible for the licensing and regulation of non-depository financial service entities and individuals, and conducts examinations and compliance investigations for licensed entities to determine compliance with Florida law. One of the regulatory programs administered by OFR is the Florida Consumer Finance Act (ch. 516, F.S., "the Act"), which sets forth licensing requirements for consumer finance lenders and the terms and conditions under which a consumer finance loan is permitted in Florida. The Act sets forth maximum interest rates for *consumer finance loans*, which are "loan[s] of money, credit, goods, or a provision of a line of credit, in an amount or to a value of $25,000 or less at an interest rate greater than 18 percent per annum.[1]"

Consumer finance loans may be secured or unsecured. The allowable interest rates on consumer finance loans are tiered and limited based on the principal amount that falls within each tier of the loan. As the principal amount increases, the allowable interest rate decreases. In 2013, the Legislature increased the principal amounts that would be subject to the maximum amount of interest within each tier, so that consumer finance lenders licensed with the OFR may charge a maximum interest rate of:

- 30% a year, computed on the first $3,000 of the principal amount,
- 24% a year on that part of principal between $3,001 to $4,000, and
- 18% per year on that part of principal between $4,001 to $25,000.[2]

These principal amounts are the same as the financed amounts determined by the Federal Truth-in-Lending Act (TILA), and Regulation Z (Reg Z) of the Board of Governors of the Federal Reserve System.[3] The maximum interest rates and finance charges under the Act are computed on a simple-interest basis, and not a compounding or other basis. The APR for all loans under the Act may equal, but cannot exceed, the APR for the loan as required to be computed and disclosed by TILA and Reg Z.[4]

Other than the applicable interest rates described above, the Act allows consumer finance lenders to charge borrowers the following charges and fees[5]:

- Up to $25 for investigating the credit and character of the borrower,
- A $25 annual fee on the anniversary date of each line-of-credit account,
- Brokerage fees for certain loans and appraisals of real property offered as security,
- Intangible personal property tax, if secured by a loan note on real property,
- Documentary excise tax and lawful fees,
- Insurance premiums,
- Actual and reasonable attorney fees and court costs,
- Actual and commercially reasonable expenses for recovering the collateral property,
- Delinquency charges of up to $15 for each payment in default for at least 10 days, if agreed upon in writing before the charge is imposed,
- A bad check charge of up to $20.

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[1] s. 516.01(2), F.S.
[2] Ch. 2013-123, Laws of Fla. TILA is codified at 15 U.S.C. §1601 et seq.; Reg Z is at 12 C.F.R. pt. 226.
[3] s. 516.031(1), F.S.
[4] s. 516.031(2), F.S.
[5] s 516.031(3), F.S.

Add-on credit insurance products for consumer finance loans must be optional (and not made a condition of the loan), and must comply with the applicable Insurance Code provisions.[6] In particular, credit insurance insures the debtor for loss of life, involuntary unemployment, illness, or damage or loss to any collateral property. Credit insurance forms and rates must be approved by the Office and Insurance Regulation (OIR),[7] and may be As described below, TILA and Reg Z does not include credit insurance premiums in the finance charge.

The Act provides the grounds for denial of a license of other disciplinary action by the OFR. In particular, s. 516.07(1)(k), F.S, provides that it is grounds for administrative action, for any person to pay money or anything else of value, either directly or indirectly, to any person as compensation, inducement, or reward for referring a loan applicant to a licensed consumer finance lender.

The Act does not apply to persons doing business under state or federal laws governing banks, savings banks, trust companies, building and loan associations, credit unions, or industrial loan and investment companies.[8] As of December 2014, there are 142 licensed consumer finance loan companies operating in 349 locations in Florida.[9]

The OFR also has regulatory authority over other small consumer loans authorized under ch. 520 (retail installment sellers), ch. 537 (title loans), and part IV of ch. 560 (deferred presentment or payday loans), F.S.:

- *Title lenders* provide loans secured through transfer of a motor vehicle certificate of title, with the loan amount dependent on the vehicle's value. Title lenders charge tiered interest rates according to principal amount, similar to the Act. The maturity date of a title loan is 30 days after the agreement date, but the loan can extended for one or more 30-day periods by mutual consent of the lender and the borrower.[10] One major difference between consumer finance loans and title loans is that title lenders are prohibited from selling or charging for any type of insurance in connection with a title loan.[11]
- *Retail installment lenders* under ch. 520, F.S., authorizes retail installment businesses, motor vehicle sellers, and home improvement businesses to finance personal, family, or household goods or services sold by an installment contract or a revolving charge account to a retail buyers.[12] Finance charges under ch. 520, F.S., are expressed in dollar amounts (e.g., $12 per $100 per year for retail installment contracts).[13]
- *Deferred presentment or payday lenders* under part IV of ch. 560, F.S., offer currency or a payment instrument (e.g., electronic funds transfer, check, or money order) in exchange for a person's paycheck up to $500 and agree to hold it for a specified period. Repayment terms range from 7 to 31 days, and the maximum allowable fees is 10% of the currency or payment instrument provided, as well as a verification fee of up to $5.00 per transaction. Borrowers may have only one active payday loan at a time, but are permitted to secure a new loan 24 hours after paying off the original loan.[14]

Current law does not require any underwriting or determination of the borrower's ability to repay for any of these loans. Additionally, retail installment loans and consumer finance loans are excluded from the 18 percent per year simple interest cap set forth in the usury statute.[15]

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[6] s. 516.35, F.S.; see also pt. IX, ch. 627, F.S. (Credit Life and Disability Insurances).
[7] ss. 627.682 and 627.6785, F.S. Credit insurers must meet specified loss ratios for credit life and credit disability insurance. Rules 69O-163.009 - 69O-163.011, Fla. Admin. Code.
[8] s. 516.02(4), F.S.
[9] Office of Financial Regulation, *Fast Facts* (2nd edition, Dec. 2014), http://flofr.com/StaticPages/documents/FastFacts2015.pdf
[10] s. 537.011(3), F.S.
[11] s. 537.013(1)(h), F.S.
[12] Pts. I, II, and IV, ch. 520, F.S.
[13] s. 520.34(6)(a), F.S.
[14] s. 560.404(6) and (8), F.S.; Rule 69V-560.801, Fla. Admin. Code.
[15] s. 687.02, F.S.

Federal Regulation of Consumer Lending

Truth in Lending Act and Regulation Z

The purpose of TILA and Reg Z is to promote the informed use of credit through "a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him."[16] As mentioned above, TILA and Reg Z requires the calculation and disclosure of Annual Percentage Rate (APR) for all consumer loans.[17] TILA does not include premiums for credit life, accident, or health insurance when calculating the loan's finance charge, as long as the insurance products are voluntary, the lender tells borrower in writing that these products are voluntary, and the borrower consents in writing.[18]

Consumer Financial Protection Bureau

On July 21, 2010, the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub.L. 111-203, H.R. 4173, commonly referred to as "Dodd-Frank") was signed into law. It has widely been described as the most expansive financial regulatory legislation since the 1930s, and was formed with the intent "to focus directly on consumers, rather than on bank safety and soundness or on monetary policy."[19] Title X of Dodd-Frank created the Consumer Financial Protection Bureau (CFPB) as an independent bureau housed within the Federal Reserve System, and reassigned most general rulemaking authority of TILA to the CFPB effective July 21, 2011. Dodd-Frank also:

- Assigned the CFPB broad authority to examine and enforce consumer protection regulations over all mortgage-related businesses, large non-bank financial companies, and banks and credit unions with assets greater than $10 billion. In essence, Dodd-Frank makes the CFPB the primary regulator over non-depository lenders.
- Consolidated and transferred most federal consumer financial protection authority under the CFPB's jurisdiction.[20]
- Granted enforcement and rulemaking authority to the CFPB to protect consumers from unfair, deceptive, or abusive acts or practices under federal law in connection with consumer financial products or services.[21] The CFPB is also authorized to write rules to ensure consumers receive full, accurate, and effective disclosures relating to consumer financial products and services.[22]

Additionally, Title XII of Dodd-Frank, titled "Improving Access to Mainstream Financial Institutions,"[23] which authorizes the Secretary of the Treasury to establish a multiyear program of grants, cooperative and financial agency agreements, and similar contracts to promote expanded access to mainstream financial institutions and low-cost alternatives to small dollar loans. Title XII also authorizes grants and financial assistance to help community development financial institutions to establish and maintain small dollar loan programs.[24]

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[16] 15 U.S.C. §1601(a).
[17] 15 U.S.C. §§ 1604 – 1606.
[18] 15 U.S.C. §1605(b).
[19] CONSUMER FINANCIAL PROTECTION BUREAU, *Creating the Consumer Bureau*, at http://www.consumerfinance.gov/the-bureau/creatingthebureau/ (last viewed Mar. 22, 2015).
[20] Dodd-Frank required the Secretary of the U.S. Treasury to establish a designated transfer date by which the CFPB would receive certain rulemaking, supervision, and enforcement powers from seven existing federal agencies. The Treasury Secretary established July 11, 2011, or one year after the enactment of Dodd-Frank, as the designated transfer date. *See* 75 FR 57272 (Sept. 20, 2010) and 76 FR 43569 (July 21, 2011).
[21] 12 U.S.C. §5531.
[22] 12 U.S.C. §5532.
[23] 12 U.S.C. subchapter VII. "The purpose of th[e] subchapter is to encourage initiatives for financial products and services that are appropriate and accessible for millions of American who are not fully incorporated into the financial mainstream." 12 U.S.C. § 5621.
[24] "Community development financial institutions" must be depository institutions (such banks and credit unions) which meet the definition and criteria in 12 U.S.C. §2702(5).

Recent media reports indicate that the CFPB will soon release proposed rules on payday lending, focusing on stricter underwriting requirements (including borrowers' ability to repay), rollovers, an "off-ramp" for repaying the debt, and restricting lenders' access to a borrower's checking account. However, it is unknown what types of loans will fall within the CFPB's proposed rules, such as auto title loans and installment loans.[25] It appears that the CFPB's proposed rules will address recent loopholes in various state lending laws.[26]

Effect of the Bill

The bill creates an alternative "consumer installment loan" within the Act to permit loans ranging between $300 and $2,000, for terms of 6-24 months. Under current law, loans in these amounts would normally be subject to the 30% interest rate. The bill provides that instead of the interest rate, the licensee lender may charge:

- A "nonrefundable processing fee" not to exceed the lesser of 10% of the amount financed or $150; and
- An "installment loan handling charge" that does not exceed:
    - $5 per $100 of the amount financed per month for installment loans between $300-$500; or
    - $4 per $100 of the amount financed per month for installment loans between $501-$2,000.

The bill does not specify when the handling charge is to be assessed (on a monthly basis) or front-loaded in a lump-sum assessment. Additionally, the bill does not specify whether the "one-time processing fee" is assessed one time as a customer or for each loan.

The bill provides that no other charges are authorized for installment loans, except for:

- Actual, reasonable attorney fees and court costs;
- A delinquency charge of up to $15 for each payment in default for 10 days or more, if the charge is agreed upon in writing between the parties at the time the loan is made; and
- A bad check charge, as allowed for consumer finance loans under current law (which is capped at $20).

Unlike the current Act, the bill appears not to allow any insurance premiums for these alternate installment loans.

According to advocates of the bill, these loans may be easier for consumers to understand due to the use of flat dollar charges, as opposed to interest rates and add-on products such as credit insurance. Additionally, some advocates state that APR is misleading as a cost of credit, because it is assumes a one-year term and accordingly distorts rate caps for smaller, shorter term loans.[27] For example, a $300 loan at 36% results in a $108 rate. On the other hand, the cost of the loan over 6 months is $120, which is only $12 more (or $2 more per month) than a 36% rate; the higher APR is due to the shorter loan term.[28]

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[25] Alan Zibel, *CFPB Sets Sights on Payday Loans*, WALL STREET JOURNAL (Jan. 4, 2015), http://www.wsj.com/articles/cfpb-sets-sights-on-payday-loans-1420410479; Jessica Silver-Greenberg, *Consumer Protection Agency Seeks Limits on Payday Lenders*, NEW YORK TIMES (Feb.8, 2015), http://dealbook.nytimes.com/2015/02/08/consumer-protection-agency-seeks-limits-on-payday-lenders/?module=BlogPost-Title&version=Blog%20Main&contentCollection=Legal/Regulatory&action=Click&pgtype=Blogs&region=Body&_r=0

[26] Jeff Guo, *Many states have cracked down on payday loans. Here's how lenders still get away with it*, THE WASHINGTON POST (Feb. 9, 2015), http://www.washingtonpost.com/blogs/govbeat/wp/2015/02/09/many-states-have-cracked-down-on-payday-loans-heres-how-lenders-still-get-away-with-it/

[27] Nevertheless, the prevailing and required standard for measuring and disclosing the cost of credit to consumers is the APR, as required by TILA.

[28] Background information on HB 1081 and SB 1012, on file with the Insurance & Banking Subcommittee.

According to APR calculations provided by various stakeholders, loans under these bills amount to a higher APR than if they were made with a 30% interest rate under current law. APRs calculated on hypothetical loan amounts and terms under current law (which would be a 30% interest rate):

APRs under current law:[29]

Amount of Loan	Term of Loan	APR
$300	6 months	90.407%
$300.06	12 months	77.59%
$500	6 months	87.3%
$500	12 months	76.097%
$1,000	12 months	71.914%
$1,500	6 months	80.341%
$2,000	12 months	72.667%

APRs under the bill:[30]

Amount of Loan	Term of Loan	APR
$300	6 months	126.624%
$300.06	12 months	111.427%
$500	6 months	126.634%
$500	12 months	111.417%
$1,000	12 months	94.208%
$1,500	6 months	108.747%
$2,000	12 months	90.542%

Rescission and Refund
The bill permits a borrower to cancel an installment loan up to 5 days after the loan is made, and requires the lender to "promptly" refund all fees and charges to the borrower. However, the bill does not provide a specific timeframe for refunds.

"Exit Ramp"

The bill provides that borrowers who repay installment loans in full with cash, a new loan, or a renewal of the existing loan at least 30 days before the date that the final installment is due, the licensee must refund or credit the unearned portion of any *loan handling charge* made in connection with the loan. The refund or credit shall be calculated according to the actuarial method from the date of the loan until the date the loan is paid in full.[31] However, the bill does not provide for the refundability of the processing fee upon early repayment.

Advocates characterize this provision as an "exit ramp" so that borrowers can avoid a cycle of debt. However, opponents note that this feature incentivizes loan churning (subsequent re-borrowing). Although the bill proposes a minimum 6-month loan term, the nonrefundability of the processing fee may encourage a series of single balloon-payment loans, whereby the lender encourages the borrower to pay off the loan early and then quickly refinance, which is not prohibited in either current law or in the bill. For example, on a $500 6-month loan, the lender may charge a $50 processing fee and a $150 handling fee (for a total of $200). If the borrower exercises the "exit ramp" option under the bill and repays the principal within one month, the lender must refund or credit $125 of the handling fee.

[29] Florida Proposed Chart under Chapter 516, on file with the Insurance & Banking Subcommittee staff.
[30] Id.
[31] "Actuarial method" means that the installment lender must first apply the amount tendered to pay the loan in full to any accrued interest, with the remainder of the amount tendered applied to the unpaid principal balance of the loan.

However, because the $50 processing fee is nonrefundable, the borrower will have paid $75 for a $500 one-month loan, which effectively means a 182% APR.[32]

Credit History

While the bill does not make mention of credit reporting, advocates of the bill have stated that these alternate installment loans may help individuals with little or no credit to establish and build a good credit rating, especially as they currently may not qualify for traditional bank loans or credit cards.

However, the federal Fair Credit Reporting Act only governs the permissible use and reporting of consumers' credit information.[33] It does not require creditors to report consumers' information to credit reporting agencies (TransUnion, Experian, and Equifax). However, if a creditor does report, FCRA requires that the information be complete and accurate. FCRA gives remedies to contest inaccurate information, which is particularly important to detect identify theft or if an application for credit has been denied based on inaccurate information.

Referral Fees
Section 2 of the bill amends s. 516.07(1)(k), F.S., to permit a licensed consumer finance lender to pay money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee, only if such amount is not charged directly or indirectly to the borrower. This would apply to both consumer finance loans as well as the alternative consumer installment loans.

B. SECTION DIRECTORY:

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

Section 2. Amends s. 516.07, F.S., relating to grounds for denial of license or for disciplinary action.

Section 3. Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   OFR reported that the bill does not have an impact on state revenues.[34]

2. Expenditures:

   OFR reported that the bill does not have an impact on state expenditures.[35]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[32] FLORIDA ALLIANCE FOR CONSUMER PROTECTION, *White Paper on SB 1012 & HB 1081* (Mar. 8, 2015), on file with the Insurance & Banking Subcommittee staff.
[33] 15 U.S.C. §§ 1681 et seq.
[34] Office of Financial Regulation, Agency Analysis of House Bill 1081.
[35] *Id.*

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. While the bill's alternative loan product may increase credit options for some borrowers, the rates of default and subsequent borrowing cannot be projected.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The bill does not define "consumer installment loan."
- The bill does not specify when the handling charge is to be assessed (on a monthly basis) or front-loaded in a lump-sum assessment. Additionally, the bill does not specify whether the "one-time processing fee" is assessed one time as a customer or for each loan.
- The bill permits a borrower to cancel an installment loan up to 5 days after the loan is made, and requires the lender to "promptly" refund all fees and charges to the borrower. However, the bill does not provide a specific timeframe for refunds.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to consumer loans; amending s. 516.031, F.S.; providing terms for certain consumer loans made by licensees; specifying authorized amounts of certain fees and charges; authorizing a borrower to rescind an installment loan within a specified period; requiring the licensee to refund or credit the borrower certain charges under specified conditions; amending s. 516.07, F.S.; prohibiting a licensee from making payments to a person as a reward for referring loan applications to the licensee under certain circumstances; providing an effective date.

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

Section 1. Subsection (1) of section 516.031, Florida Statutes, is amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—

(a) A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 30 percent per annum, computed on the first $3,000 of the principal amount; 24 percent per annum on that part of the principal amount

exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and up to $25,000. The original principal amount as used in this section is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations used shall be simple interest and not add-on interest or any other computations. If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.

(b) As an alternative to charging the rates set forth in paragraph (a), a licensee may provide a consumer installment loan of not less than $300 or more than $2,000 for a loan term that is not less than 6 months or more than 24 months where the licensee may charge:

1. A nonrefundable processing fee not to exceed the lesser of 10 percent of the amount financed or $150; and

2. An installment loan handling charge that does not exceed:

a. Five dollars per $100 of the amount financed per month on an installment loan for loan amounts of at least $300 but not more than $500; or

b. Four dollars per $100 of the amount financed per month on an installment loan for loan amounts of more than $500 but not more than $2,000.

(c) No further charges are authorized in connection with an installment loan made pursuant to paragraph (b), except:

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

2. A delinquency charge of up to $15 for each payment that is in default for 10 days or more if the charge is agreed upon in writing between the parties at time the loan is made.

3. A bad check charge as set forth in paragraph (3)(b).

(d) A borrower may rescind an installment loan made under paragraph (b) by returning the amount of the loan to the licensee no later than the end of the 5th business day after the day on which the loan was made. Upon such return, the licensee shall promptly cancel the processing fee and the installment loan handling charge.

(e) If the outstanding balance of an installment loan made pursuant to paragraph (b) is paid in full with cash, a new loan, or renewal of the existing loan at least 30 days before the date that the final installment is due, the licensee shall refund or credit to the borrower the unearned portion of any installment loan handling charge made in connection with the loan. The

refund or credit shall be calculated according to the actuarial method from the date of the loan until the date the loan is paid in full.

Section 2. Paragraph (k) of subsection (1) of section 516.07, Florida Statutes, is amended to read:

516.07 Grounds for denial of license or for disciplinary action.—

(1) The following acts are violations of this chapter and constitute grounds for denial of an application for a license to make consumer finance loans and grounds for any of the disciplinary actions specified in subsection (2):

(k) Paying money or anything else of value, directly or indirectly, to any person as compensation, inducement, or reward for referring loan applicants to a licensee if such amount is charged directly or indirectly to the borrower.

Section 3. This act shall take effect July 1, 2015.

PCS for HB 1087

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1087 Depopulation of Citizens Property Insurance Corporation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Peterson KP	Cooper

SUMMARY ANALYSIS

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

By law, Citizens is required to adopt programs to reduce the number of new and renewal policies it writes. The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure. During the three-year period beginning January 1, 2012 and ending December 31, 2014, more than 1 million policies insuring properties valued at more than $300 billion have been taken out of Citizens through the depopulation program.

The Proposed Committee Substitute (PCS) requires a series of reforms to the depopulation program to increase consumer choice; provide consumers and agents with more information regarding takeout offers and standardize the information; and improve consumer satisfaction with the depopulation process.

- *Consumer Choice*
  The PCS requires that the consumer, working with the agent of record, be given the option to choose from among competing offers. This applies to takeouts occurring after January 1, 2016.

- *Transparency*
  The PCS prohibits any policy from being taken out from Citizens after January 1, 2016 unless the agent of record receives an offer of insurance containing the amount of the estimated renewal premium, the renewal coverage, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy. The agent is required to communicate the offer to the policyholder. Citizens is directed to develop a uniform format for required communications, which would include information related to premium, coverage, and policies on a takeout company's wish list.

- *Consumer Satisfaction*
  Effective July 1, 2015, the PCS allows a consumer to elect not to be solicited for takeout more than once in a six-month period. In addition, the PCS allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more than 10 percent above its original estimate or increases the rate on the policy more than 10 percent during the 36 months following takeout.

Citizens operates under the direction of a nine-member Board of Governors (board). By law, board members with the required insurance expertise can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board. There is also a consumer representative on the board that is appointed by the Governor. The PCS provides the consumer representative on the Citizens' board with the same exemption from the conflict of interest statute as that provided in current law to the board members with insurance expertise.

The bill has no fiscal impact on state or local government expenditures and should have a positive impact on the private sector. The bill is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market. It is not a private insurance company.

As of March 12, 2015, Citizens is the largest property insurer in Florida with over 630,000 policies extending approximately $197 billion of property coverage to Floridians.[1] Citizens insures over 278,000 residential and commercial policies in Florida's coastal areas and over 350,000 residential policies in Florida's non-coastal areas. The remaining policies are commercial policies insured in Florida's non-coastal areas.

Citizens was created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (FRPCJUA) and the Florida Windstorm Underwriting Association (FWUA). The FRPCJUA provided full-coverage personal and commercial residential property policies in all counties of Florida, while the FWUA provided personal and commercial residential property wind-only coverage in designated territories.

Citizens writes property insurance in three separate accounts:[2]

- Personal Lines Account – personal residential[3] multiperil[4] policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Commercial Lines Account – commercial residential[5] and commercial non-residential policies
  - With wind coverage, on properties located outside the Coastal Account area; and
  - Without wind coverage, on properties located within the Coastal Account Area.
- Coastal Account – personal residential, commercial residential, and commercial non-residential wind-only[6] and multiperil policies[7] for properties in limited eligible coastal areas.[8]

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million—about 26% of the Florida residential market.[9] Factors that drove the increase included the catastrophic hurricane season of 2004-2005;[10] subsequent changes in law authorizing broader coverage and expanded eligibility for Citizens coverage (thereby placing it in more

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[1] CITIZENS PROPERTY INSURANCE CORPORATION,*Book of Business: Policies in Force*, https://www.citizensfla.com/about/bookofbusiness/ (last viewed March 20, 2015).

[2] s. 627.351(6)(b)2., F.S.

[3] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.

[4] A multiperil policy is defined as a package policy, such as a homeowners or business insurance policy that provides coverage against several different perils. It also refers to the combination of property and liability coverage in one policy. Multiperil property insurance policies may include coverage for damage from windstorm and from other perils, such as fire, theft, and liability.

[5] Commercial residential policies include condominium association, apartment building, homeowner's association policies

[6] A wind-only policy is a property insurance policy that provides coverage against windstorm damage only. Coverage against non-windstorm events such as fire, theft, and liability are available in a separate policy.

[7] Effective July 1, 2014, Citizens may no longer offer new commercial residential policies providing multiperil coverage, but may continue to renew existing policies. (s. 627.351(6)(b)2.a.(III), F.S.)

[8] These include areas eligible for coverage by the FWUA as those areas were defined on January 1, 2002. (s. 627.351(6)(a)2., F.S.)

[9] CITIZENS PROPERTY INSURANCE CORPORATION, *Press Release: How low can it go? Citizens is at its smallest since its creation in 2002* (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

[10] Four hurricanes hit Florida in each year resulting in $39 billion in estimated gross losses.

direct competition with the voluntary market)[11] and granting agents and policyholders greater control in programs implemented by Citizens to reduce its policy count; and a court order requiring Citizens to assume policies from three insolvent companies.

Citizens Property Insurance Depopulation

History[12]

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure.[13] The depopulation program, as it is known, encourages insurance companies licensed in Florida to assume policies currently covered by Citizens, thus reducing Citizens' policy count and exposure.[14]

Initially, the Citizens depopulation program paid insurers either dollar amount or percentage bonuses for the removal of policies. The bonus program ended in 2006, however, when the Legislature restricted the bonus amount to $100 per policy and required the insurer to renew the policy for at least five years. The Legislature has adopted two additional reforms affecting depopulation. In 2007, it permitted policyholders to remain eligible for coverage with Citizens, even if they received an offer of coverage from another insurer. A policyholder remains eligible for coverage through the end of the assumption period, which enables the policyholder, in effect, to "opt-out" of any assumption.[15] The 2007 Legislature also clarified the authority of a policyholder to retain his or her agent regardless of any takeout offer.[16] An agent must be appointed by the insurer for the insurer to assume a policy. If a policyholder's agent declines appointment, the policy cannot be assumed.

The depopulation programs for personal and commercial residential policies in place now were adopted by the Citizens board and approved by the Office of Insurance Regulation (OIR) in 2008.[17] A program for commercial nonresidential was adopted in 2012. All programs are non-bonus and specify the number of policies an insurer must takeout during the contract period and require the insurer to retain the policy for a minimum of three years. To create further incentive for insurers to participate in the program, Citizens revised the plans in 2012 to remove the requirement that insurers pay Citizens the 16% ceding commission.[18]

The following reflects the history of policies removed since 2003.

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[11] FLORIDA HOUSE OF REPRESENTATIVES, *Staff Analysis HB 7077*, 7 (March 26, 2007), *available at* http://myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=36814 (last visited March 20, 2015).

[12] CITIZENS PROPERTY INSURANCE CORPORATION, *History of Depopulation* (Feb. 2012), *available at* https://www.citizensfla.com/about/mDetails_boardmtgs.cfm?show=PDF&link=/bnc_meet/docs/431/01A_Historical_Report_of_Depopulation_Activity.pdf&event=431&when=Past (last visited March 20, 2015).

[13] s. 627.351(q)3.a., F.S.

[14] *See generally* s. 627.3511, F.S.

[15] *See* ch. 2007-90, s. 11, Laws of Fla.; s. 627.351(6)(c)5., F.S.

[16] *See* ch. 2007-90, s. 14, Laws of Fla.; s. 627.3517, F.S.

[17] The OIR has responsibility for the financial oversight and regulation of assumptions and the approval of new insurers to assume policies.

[18] A fee charged by a reinsurance company to the original issuer of a policy or group of policies being ceded to the reinsurer to cover business and administrative costs and a percentage of the profits from the premiums collected. INVESTORWORDS, *Ceding Commission* http://www.investorwords.com/19018/ceding_commission.html (last visited March 20, 2015).

Citizens Depopulation Policy Types and Exposure Removed (2003 – to present*)							
	PLA PRM	Coastal PRM	Coastal PRW	CLA CRM	Coastal CNRW, CRW	Total # of Policies	
Year	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	# of Policies	Exposure Removed
2003	28,219		-			28,219	$ 8,140,681,906
2004	145,959		12,457			158,416	$ 30,663,076,480
2005	218,128		75,556			293,684	$ 53,658,840,059
2006	26,225		41,628			67,853	$ 15,637,589,369
2007	247,887		-			247,887	$ 68,259,426,361
2008	362,964	21,519	-	601		385,084	$ 106,870,490,165
2009	132,803	16,842	-	-		149,645	$ 37,784,506,743
2010	57,561	2,231	-	-		59,792	$ 13,888,913,857
2011	45,827	7,750	-	-		53,577	$ 14,473,700,490
2012	252,968	24,034	-	-		277,002	$ 75,927,165,347
2013	301,383	37,368	19,567	-	7,449	365,767	$ 112,265,410,122
2014	323,167	44,779	43,686	2,493	2,498	416,623	$ 117,530,082,371
*2015	66,785	14,867	13,368	387	-	95,407	$ 19,186,004,850
TOTAL	2,209,876	169,390	206,262	3,481	9,947	2,598,956	$ 674,285,888,120

*As of February 19, 2015

Procedure

The depopulation programs are administered on a monthly cycle according to the following sequence of events:

- The OIR issues a consent order approving authorized admitted carriers to participate in a specific assumption.[19]
- Citizens provides a data file of policies in force to an approved carrier (takeout company or TOC) to use to select policies for assumption.
- The TOC solicits new agent appointments or notifies appointed agents if the TOC wishes to assume any of an agent's policies.[20]
- The TOC provides Citizens with the list of policies it has selected to assume and a list of policies assigned to agents who did not respond to the TOC's solicitation or declined to be appointed.
- Citizens reviews the takeout lists of the participating TOCs and sends each TOC the policy selections it is assigned to assume. If more than one TOC has selected the same policy for removal, Citizens uses an algorithm[21] to assign the duplicate selections.
- Each TOC reviews and may reweight[22] its list. The TOC sends the reweighted list to Citizens.

[19] To assume policies from Citizens, admitted carriers must submit documentation to the OIR verifying that they meet required standards and have the financial resources and business plan in place to properly pay claims.

[20] Agents are not required to contact the policyholder regarding the offer and are not permitted to opt out of an assumption on the policyholder's behalf.

[21] The depopulation algorithm attempts to allocate the policies to the various takeout companies by a methodology that groups the duplicates based on the number of companies that has selected them; sorts the policies within each batch by policy form, zip code, and total premium; and assigns each policy to one of the TOCs that has selected it in a way that equitably allocates premium among the companies. (CITIZENS PROPERTY INSURANCE COMPANY, *Depopulation Algorithm Allocation* (Nov. 15, 2013), *available at* *https://www.citizensfla.com/about/depopinfo.cfm?type=links&show=pdf&link=/shared/depop/documents/AlgorithmAllocationExplanation.pdf (last visited March 20, 2015).*

[22] If the list does not have a desirable ratio of policies, for example is too heavily weighted in one geographic area, the TOC may remove policies from the list. This process is called re-weighting.

- Citizens then sends a letter of encouragement[23] to all policyholders on a TOC's final mailing list and notifies those policyholders whose agents did not respond to the TOCs solicitation or declined to be appointed.
- The TOC then sends a letter in a form approved by the OIR to policyholders indicating that the TOC is extending an offer to assume the policyholder's coverage and notifying the policyholder of the right to reject or opt out of the offer. The letter may include a link to a coverage comparison chart on the TOC's website.

A policyholder selected for a takeout does not need to take any additional action to be assumed by the takeout company. If the policyholder takes no action, the policyholder and the policyholder's mortgage company, if any, will receive a Notice of Assumption and Nonrenewal and Certificate of Assumption verifying that the policy has been assumed by the takeout company and that the takeout company will make a renewal offer before the current policy expires. Currently, 59 percent of private-market offers are accepted for takeout.

A policyholder who wishes to remain with Citizens must take action to opt out of the assumption by returning the opt out form provided with the takeout offer to the TOC. A policyholder has 30 days prior to and following an assumption to complete the opt out process.

A Citizens policy that is assumed by a TOC is, as of the date of assumption, direct insurance issued by the TOC. The TOC is liable to pay any claims that may arise, although Citizens continues to service the policy. During the period before the policy expires, Citizens pays to the TOC unearned premiums on the policy that it has received adjusted to reflect any changes in coverage or conditions as may occur during the period. Forty-five days before the Citizens policy expires, the TOC issues the initial offer on renewal coverage with the premium amount. At this time (or any time after the assumption and prior to the policy's expiration) the policyholder may return to Citizens, unless the Clearinghouse presents an offer of coverage with a premium equal to or less than the Citizens renewal premium.[24]

The TOC is required to offer renewals with substantially similar coverage as the assumed policies. The TOC's renewal rate must be filed and approved by the OIR and may be higher than what Citizens charged for the assumed policy. Citizens encourages TOCs "to assume policies for which the renewal rate is expected to be at or lower than the [Citizens] rate; thereby increasing insured participation in the assumption."[25]

Consumer Complaints[26]

In 2014, 595,738 takeout offer letters were mailed to consumers. During the same time period Citizens received 10,195 depopulation related phone calls from consumers, 242 written complaints and 1,072 written inquiries (not expressing dissatisfaction, which is the statutory definition of a complaint). The result is a total of 11,510 consumer contacts in response to 595,738 offers mailed. This represents less than a 2% complaint/inquiry ratio on the takeout offers made.

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[23] Prior to February 2015, Citizens sent the letter of encouragement after the TOC had sent its offer letter. When some policyholders received the offer letter, they discarded the letter without reading it, since the letter was not from a person or company familiar to the policyholder. In other cases, the policyholder may have read the TOC letter, but not understood the significance of the opt out requirement. As a result, Citizens changed the timing of its letter of encouragement..

[24] CITIZENS PROPERTY INSURANCE CORPORATION, *Agent Technical Bulletin: New Process for Returning a Risk to Citizens After Assumption/Depopulation/Takeout*, ATB # 014-14 (September 16, 2014), *available at* https://www.citizensfla.com/agent/ac_techbulletins.cfm?show=pdf&year=2014&link=/shared/IE/IE002-14.pdf (last visited March 21, 2015).

[25] CITIZENS PROPERTY INSURANCE CORPORATION, *Depopulation Guide for Takeout Companies*, (Feb. 20, 2013) (on file with the House Insurance & Banking Subcommittee).

[26] E-mail from Christine Turner Ashburn, Vice President for Communications, Legislative and External Affairs, Citizens Property Insurance Corporation, RE: Takeout complaints (March 18, 2015) (on file with the House Insurance & Banking Subcommittee).

Depopulation Work Group

In December 2014, Citizens established a depopulation work group as one of a series of changes to the depopulation program to provide policyholders with more information in deciding whether to accept a TOC offer or to remain with Citizens. The work group includes representatives from the OIR, insurance agents, private insurers, and consumer advocates. In its preliminary meeting, the work group discussed options for increasing consumer choice, providing consumers and agents with more information regarding takeout offers and standardizing the information; and improving consumer satisfaction.

The Impact of the Proposed Committee Substitute (PCS) on Depopulation

The PCS requires Citizens to revise the depopulation program to address a series of issues identified by the work group and others which are aimed at maximizing the free market principles of competition and consumer choice and encouraging full participation by insurers, policyholders, and agents.

- *Transparency*

Currently, TOCs are required to provide consumers with information about the premium amount, but may do so either by including the estimate in the takeout letter or providing the consumer with a telephone number to call for more information. Coverage information is made available through links to the OIR website. Currently, the information TOCs provide to agents about policies they may wish to assume is not provided in a standard format.

The PCS prohibits any policy from being taken out from Citizens after January 1, 2016 unless the agent of record receives an offer of insurance containing the amount of the estimated renewal premium, the renewal coverage, and a comparison of both the premium and coverage to the premium and coverage of the Citizens renewal policy. The agent is required to communicate the offer to the policyholder. Citizens is directed to develop a uniform format for required communications, which would include information related to premium, coverage, and policies on a TOC's wish list.

- *Consumer Choice*

Currently, a consumer is not given the opportunity to choose from among TOCs when more than one has indicated an interest in assuming the consumer's policy. Instead, Citizens assigns the policy to one TOC using an algorithm and only that company solicits the consumer.

The PCS requires that the consumer, working with the agent of record, be given the option to choose from among competing offers. This applies to takeouts occurring after January 1, 2016.

- *Consumer Satisfaction*

Because the depopulation process cycles each month, a single policyholder may receive more than one offer from different companies in any given year. This can be confusing and can result in "takeout fatigue," thereby reducing the chances that a consumer who has opted out once will accept a subsequent takeout offer. In addition, some reported takeout offers are substantially higher than Citizens renewal rates. A consumer who fails to opt out, particularly a consumer whose insurance is paid from escrow by a mortgage holder, may lose Citizens coverage and incur substantial costs for some period of time before realizing the full consequences of what has happened.

Effective July 1, 2015, the PCS allows a consumer to elect not to be solicited for takeout more than once in a six-month period. In addition, the PCS allows a consumer to retain eligibility for Citizens insurance through the Clearinghouse if the insurer increases its initial premium more

than 10 percent above its original estimate or increases the rate on the policy more than 10 percent during the 36 months following takeout.

Board of Governors of Citizens Property Insurance Corporation

Citizens operates under the direction of a nine member Board of Governors (board). The board members are not Citizens' employees and are not paid. The Governor, Chief Financial Officer, Senate President, and Speaker of the House of Representatives each appoint two members of the board, with one member appointed chair by the Chief Financial Officer. Board members serve three year staggered terms.

At least one of the two board members appointed by each appointing officer must have demonstrated expertise in insurance. By law, board members with the required insurance expertise fall within the exemption in the conflicting employment or contractual relationship statute that applies to public officers and agency employees.[27] Thus, these board members can maintain employment in the private sector in jobs involving business with Citizens without violating the conflict of interest statute because the board member is required by law to have insurance expertise in order to sit on the board.

There is also a consumer representative on the board that is appointed by the Governor.

The Impact of the PCS on the Composition of the Citizens Board

The PCS provides the consumer representative on the Citizens' board with the same exemption from the conflicting employment or contractual relationship statute for public officers and agency employees as that provided in current law to the board members with insurance expertise.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 2: Provides an effective date of July 1, 2015

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[27] Board members of Citizens fall under the definition of "public officer" in s. 112.313(1), F.S., because that definition includes any person appointed to hold office in any agency, including serving on an advisory board. "Agency" is defined in s. 112.312, F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provision in the PCS that allows properties to remain eligible for Citizens coverage if a TOC increases its initial premium more than 10% above its original estimate or increases its rate more than 10% during the 36 months after takeout will limit the risk of consumers experiencing substantial and unanticipated rate increases in their insurance coverage.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to operations of Citizens Property Insurance Corporation; amending s. 627.351, F.S.; providing that an appointee of a consumer representative by the Governor is not prohibited from practicing in a certain profession if required or permitted by law or ordinance; requiring the corporation, by a specified date, to provide a property insurance agent of record specified information; authorizing certain actions of a policyholder when multiple offers for coverage are offered; requiring the corporation to develop uniform standards for required communications; allowing a policyholder to limit solicitations of a policyholder during a six month period; providing eligibility for renewal in the corporation for specified premium or rate increases; providing an effective date.

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

Section 1. Paragraph (c) of subsection (6) of section 627.351, Florida Statutes, is amended and paragraph (ii) is created to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(c) The corporation's plan of operation:

1. Must provide for adoption of residential property and casualty insurance policy forms and commercial residential and nonresidential property insurance forms, which must be approved by the office before use. The corporation shall adopt the following policy forms:

a. Standard personal lines policy forms that are comprehensive multiperil policies providing full coverage of a residential property equivalent to the coverage provided in the private insurance market under an HO-3, HO-4, or HO-6 policy.

b. Basic personal lines policy forms that are policies similar to an HO-8 policy or a dwelling fire policy that provide coverage meeting the requirements of the secondary mortgage market, but which is more limited than the coverage under a standard policy.

c. Commercial lines residential and nonresidential policy forms that are generally similar to the basic perils of full coverage obtainable for commercial residential structures and commercial nonresidential structures in the admitted voluntary market.

d. Personal lines and commercial lines residential property insurance forms that cover the peril of wind only. The forms are applicable only to residential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

e. Commercial lines nonresidential property insurance forms that cover the peril of wind only. The forms are

applicable only to nonresidential properties located in areas eligible for coverage under the coastal account referred to in sub-subparagraph (b)2.a.

f. The corporation may adopt variations of the policy forms listed in sub-subparagraphs a.-e. which contain more restrictive coverage.

g. Effective January 1, 2013, the corporation shall offer a basic personal lines policy similar to an HO-8 policy with dwelling repair based on common construction materials and methods.

2. Must provide that the corporation adopt a program in which the corporation and authorized insurers enter into quota share primary insurance agreements for hurricane coverage, as defined in s. 627.4025(2)(a), for eligible risks, and adopt property insurance forms for eligible risks which cover the peril of wind only.

a. As used in this subsection, the term:

(I) "Quota share primary insurance" means an arrangement in which the primary hurricane coverage of an eligible risk is provided in specified percentages by the corporation and an authorized insurer. The corporation and authorized insurer are each solely responsible for a specified percentage of hurricane coverage of an eligible risk as set forth in a quota share primary insurance agreement between the corporation and an authorized insurer and the insurance contract. The responsibility of the corporation or authorized insurer to pay

its specified percentage of hurricane losses of an eligible risk, as set forth in the agreement, may not be altered by the inability of the other party to pay its specified percentage of losses. Eligible risks that are provided hurricane coverage through a quota share primary insurance arrangement must be provided policy forms that set forth the obligations of the corporation and authorized insurer under the arrangement, clearly specify the percentages of quota share primary insurance provided by the corporation and authorized insurer, and conspicuously and clearly state that the authorized insurer and the corporation may not be held responsible beyond their specified percentage of coverage of hurricane losses.

(II) "Eligible risks" means personal lines residential and commercial lines residential risks that meet the underwriting criteria of the corporation and are located in areas that were eligible for coverage by the Florida Windstorm Underwriting Association on January 1, 2002.

b. The corporation may enter into quota share primary insurance agreements with authorized insurers at corporation coverage levels of 90 percent and 50 percent.

c. If the corporation determines that additional coverage levels are necessary to maximize participation in quota share primary insurance agreements by authorized insurers, the corporation may establish additional coverage levels. However, the corporation's quota share primary insurance coverage level may not exceed 90 percent.

d. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation must provide for a uniform specified percentage of coverage of hurricane losses, by county or territory as set forth by the corporation board, for all eligible risks of the authorized insurer covered under the agreement.

e. Any quota share primary insurance agreement entered into between an authorized insurer and the corporation is subject to review and approval by the office. However, such agreement shall be authorized only as to insurance contracts entered into between an authorized insurer and an insured who is already insured by the corporation for wind coverage.

f. For all eligible risks covered under quota share primary insurance agreements, the exposure and coverage levels for both the corporation and authorized insurers shall be reported by the corporation to the Florida Hurricane Catastrophe Fund. For all policies of eligible risks covered under such agreements, the corporation and the authorized insurer must maintain complete and accurate records for the purpose of exposure and loss reimbursement audits as required by fund rules. The corporation and the authorized insurer shall each maintain duplicate copies of policy declaration pages and supporting claims documents.

g. The corporation board shall establish in its plan of operation standards for quota share agreements which ensure that there is no discriminatory application among insurers as to the

terms of the agreements, pricing of the agreements, incentive provisions if any, and consideration paid for servicing policies or adjusting claims.

h. The quota share primary insurance agreement between the corporation and an authorized insurer must set forth the specific terms under which coverage is provided, including, but not limited to, the sale and servicing of policies issued under the agreement by the insurance agent of the authorized insurer producing the business, the reporting of information concerning eligible risks, the payment of premium to the corporation, and arrangements for the adjustment and payment of hurricane claims incurred on eligible risks by the claims adjuster and personnel of the authorized insurer. Entering into a quota sharing insurance agreement between the corporation and an authorized insurer is voluntary and at the discretion of the authorized insurer.

3. May provide that the corporation may employ or otherwise contract with individuals or other entities to provide administrative or professional services that may be appropriate to effectuate the plan. The corporation may borrow funds by issuing bonds or by incurring other indebtedness, and shall have other powers reasonably necessary to effectuate the requirements of this subsection, including, without limitation, the power to issue bonds and incur other indebtedness in order to refinance outstanding bonds or other indebtedness. The corporation may seek judicial validation of its bonds or other indebtedness

under chapter 75. The corporation may issue bonds or incur other indebtedness, or have bonds issued on its behalf by a unit of local government pursuant to subparagraph (q)2. in the absence of a hurricane or other weather-related event, upon a determination by the corporation, subject to approval by the office, that such action would enable it to efficiently meet the financial obligations of the corporation and that such financings are reasonably necessary to effectuate the requirements of this subsection. The corporation may take all actions needed to facilitate tax-free status for such bonds or indebtedness, including formation of trusts or other affiliated entities. The corporation may pledge assessments, projected recoveries from the Florida Hurricane Catastrophe Fund, other reinsurance recoverables, policyholder surcharges and other surcharges, and other funds available to the corporation as security for bonds or other indebtedness. In recognition of s. 10, Art. I of the State Constitution, prohibiting the impairment of obligations of contracts, it is the intent of the Legislature that no action be taken whose purpose is to impair any bond indenture or financing agreement or any revenue source committed by contract to such bond or other indebtedness.

4. Must require that the corporation operate subject to the supervision and approval of a board of governors consisting of nine individuals who are residents of this state and who are from different geographical areas of the state, one of whom is appointed by the Governor and serves solely to advocate on

behalf of the consumer. The appointment of a consumer representative by the Governor is deemed to be within the scope of the exemption provided in s. 112.313(7)(b) and is in addition to the appointments authorized under sub-subparagraph a.

a. The Governor, the Chief Financial Officer, the President of the Senate, and the Speaker of the House of Representatives shall each appoint two members of the board. At least one of the two members appointed by each appointing officer must have demonstrated expertise in insurance and be deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Chief Financial Officer shall designate one of the appointees as chair. All board members serve at the pleasure of the appointing officer. All members of the board are subject to removal at will by the officers who appointed them. All board members, including the chair, must be appointed to serve for 3-year terms beginning annually on a date designated by the plan. However, for the first term beginning on or after July 1, 2009, each appointing officer shall appoint one member of the board for a 2-year term and one member for a 3-year term. A board vacancy shall be filled for the unexpired term by the appointing officer. The Chief Financial Officer shall appoint a technical advisory group to provide information and advice to the board in connection with the board's duties under this subsection. The executive director and senior managers of the corporation shall be engaged by the board and serve at the pleasure of the board. Any executive director appointed on or

after July 1, 2006, is subject to confirmation by the Senate. The executive director is responsible for employing other staff as the corporation may require, subject to review and concurrence by the board.

b. The board shall create a Market Accountability Advisory Committee to assist the corporation in developing awareness of its rates and its customer and agent service levels in relationship to the voluntary market insurers writing similar coverage.

(I) The members of the advisory committee consist of the following 11 persons, one of whom must be elected chair by the members of the committee: four representatives, one appointed by the Florida Association of Insurance Agents, one by the Florida Association of Insurance and Financial Advisors, one by the Professional Insurance Agents of Florida, and one by the Latin American Association of Insurance Agencies; three representatives appointed by the insurers with the three highest voluntary market share of residential property insurance business in the state; one representative from the Office of Insurance Regulation; one consumer appointed by the board who is insured by the corporation at the time of appointment to the committee; one representative appointed by the Florida Association of Realtors; and one representative appointed by the Florida Bankers Association. All members shall be appointed to 3-year terms and may serve for consecutive terms.

(II) The committee shall report to the corporation at each

board meeting on insurance market issues which may include rates and rate competition with the voluntary market; service, including policy issuance, claims processing, and general responsiveness to policyholders, applicants, and agents; and matters relating to depopulation.

5. Must provide a procedure for determining the eligibility of a risk for coverage, as follows:

a. Subject to s. 627.3517, with respect to personal lines residential risks, if the risk is offered coverage from an authorized insurer at the insurer's approved rate under a standard policy including wind coverage or, if consistent with the insurer's underwriting rules as filed with the office, a basic policy including wind coverage, for a new application to the corporation for coverage, the risk is not eligible for any policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a personal lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain such offer, the risk is eligible for a standard policy including wind coverage or a basic policy including wind coverage issued by the corporation; however, if the risk could not be insured under a

standard policy including wind coverage regardless of market conditions, the risk is eligible for a basic policy including wind coverage unless rejected under subparagraph 8. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period. The corporation shall determine the type of policy to be provided on the basis of objective standards specified in the underwriting manual and based on generally accepted underwriting practices.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or to the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of

policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

b. With respect to commercial lines residential risks, for a new application to the corporation for coverage, if the risk is offered coverage under a policy including wind coverage from an authorized insurer at its approved rate, the risk is not

eligible for a policy issued by the corporation unless the premium for coverage from the authorized insurer is more than 15 percent greater than the premium for comparable coverage from the corporation. Whenever an offer of coverage for a commercial lines residential risk is received for a policyholder of the corporation at renewal from an authorized insurer, if the offer is equal to or less than the corporation's renewal premium for comparable coverage, the risk is not eligible for coverage with the corporation. If the risk is not able to obtain any such offer, the risk is eligible for a policy including wind coverage issued by the corporation. However, a policyholder removed from the corporation through an assumption agreement remains eligible for coverage from the corporation until the end of the assumption period.

(I) If the risk accepts an offer of coverage through the market assistance plan or through a mechanism established by the corporation other than a plan established by s. 627.3518, before a policy is issued to the risk by the corporation or during the first 30 days of coverage by the corporation, and the producing agent who submitted the application to the plan or the corporation is not currently appointed by the insurer, the insurer shall:

(A) Pay to the producing agent of record of the policy, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of

the corporation; or

(B) Offer to allow the producing agent of record of the policy to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance with sub-sub-sub-subparagraph (A).

(II) If the corporation enters into a contractual agreement for a take-out plan, the producing agent of record of the corporation policy is entitled to retain any unearned commission on the policy, and the insurer shall:

(A) Pay to the producing agent of record, for the first year, an amount that is the greater of the insurer's usual and customary commission for the type of policy written or a fee equal to the usual and customary commission of the corporation; or

(B) Offer to allow the producing agent of record to continue servicing the policy for at least 1 year and offer to pay the agent the greater of the insurer's or the corporation's usual and customary commission for the type of policy written.

If the producing agent is unwilling or unable to accept appointment, the new insurer shall pay the agent in accordance

with sub-sub-sub-subparagraph (A).

c. For purposes of determining comparable coverage under sub-subparagraphs a. and b., the comparison must be based on those forms and coverages that are reasonably comparable. The corporation may rely on a determination of comparable coverage and premium made by the producing agent who submits the application to the corporation, made in the agent's capacity as the corporation's agent. A comparison may be made solely of the premium with respect to the main building or structure only on the following basis: the same coverage A or other building limits; the same percentage hurricane deductible that applies on an annual basis or that applies to each hurricane for commercial residential property; the same percentage of ordinance and law coverage, if the same limit is offered by both the corporation and the authorized insurer; the same mitigation credits, to the extent the same types of credits are offered both by the corporation and the authorized insurer; the same method for loss payment, such as replacement cost or actual cash value, if the same method is offered both by the corporation and the authorized insurer in accordance with underwriting rules; and any other form or coverage that is reasonably comparable as determined by the board. If an application is submitted to the corporation for wind-only coverage in the coastal account, the premium for the corporation's wind-only policy plus the premium for the ex-wind policy that is offered by an authorized insurer to the applicant must be compared to the premium for multiperil

coverage offered by an authorized insurer, subject to the standards for comparison specified in this subparagraph. If the corporation or the applicant requests from the authorized insurer a breakdown of the premium of the offer by types of coverage so that a comparison may be made by the corporation or its agent and the authorized insurer refuses or is unable to provide such information, the corporation may treat the offer as not being an offer of coverage from an authorized insurer at the insurer's approved rate.

6. Must include rules for classifications of risks and rates.

7. Must provide that if premium and investment income for an account attributable to a particular calendar year are in excess of projected losses and expenses for the account attributable to that year, such excess shall be held in surplus in the account. Such surplus must be available to defray deficits in that account as to future years and used for that purpose before assessing assessable insurers and assessable insureds as to any calendar year.

8. Must provide objective criteria and procedures to be uniformly applied to all applicants in determining whether an individual risk is so hazardous as to be uninsurable. In making this determination and in establishing the criteria and procedures, the following must be considered:

a. Whether the likelihood of a loss for the individual risk is substantially higher than for other risks of the same

class; and

b. Whether the uncertainty associated with the individual risk is such that an appropriate premium cannot be determined.

The acceptance or rejection of a risk by the corporation shall be construed as the private placement of insurance, and the provisions of chapter 120 do not apply.

9. Must provide that the corporation make its best efforts to procure catastrophe reinsurance at reasonable rates, to cover its projected 100-year probable maximum loss as determined by the board of governors.

10. The policies issued by the corporation must provide that if the corporation or the market assistance plan obtains an offer from an authorized insurer to cover the risk at its approved rates, the risk is no longer eligible for renewal through the corporation, except as otherwise provided in this subsection.

11. Corporation policies and applications must include a notice that the corporation policy could, under this section, be replaced with a policy issued by an authorized insurer which does not provide coverage identical to the coverage provided by the corporation. The notice must also specify that acceptance of corporation coverage creates a conclusive presumption that the applicant or policyholder is aware of this potential.

12. May establish, subject to approval by the office, different eligibility requirements and operational procedures

for any line or type of coverage for any specified county or area if the board determines that such changes are justified due to the voluntary market being sufficiently stable and competitive in such area or for such line or type of coverage and that consumers who, in good faith, are unable to obtain insurance through the voluntary market through ordinary methods continue to have access to coverage from the corporation. If coverage is sought in connection with a real property transfer, the requirements and procedures may not provide an effective date of coverage later than the date of the closing of the transfer as established by the transferor, the transferee, and, if applicable, the lender.

13. Must provide that, with respect to the coastal account, any assessable insurer with a surplus as to policyholders of $25 million or less writing 25 percent or more of its total countrywide property insurance premiums in this state may petition the office, within the first 90 days of each calendar year, to qualify as a limited apportionment company. A regular assessment levied by the corporation on a limited apportionment company for a deficit incurred by the corporation for the coastal account may be paid to the corporation on a monthly basis as the assessments are collected by the limited apportionment company from its insureds, but a limited apportionment company must begin collecting the regular assessments not later than 90 days after the regular assessments are levied by the corporation, and the regular assessments must

be paid in full within 15 months after being levied by the corporation. A limited apportionment company shall collect from its policyholders any emergency assessment imposed under sub-subparagraph (b)3.d. The plan must provide that, if the office determines that any regular assessment will result in an impairment of the surplus of a limited apportionment company, the office may direct that all or part of such assessment be deferred as provided in subparagraph (q)4. However, an emergency assessment to be collected from policyholders under sub-subparagraph (b)3.d. may not be limited or deferred.

14. Must provide that the corporation appoint as its licensed agents only those agents who also hold an appointment as defined in s. 626.015(3) with an insurer who at the time of the agent's initial appointment by the corporation is authorized to write and is actually writing personal lines residential property coverage, commercial residential property coverage, or commercial nonresidential property coverage within the state.

15. Must provide a premium payment plan option to its policyholders which, at a minimum, allows for quarterly and semiannual payment of premiums. A monthly payment plan may, but is not required to, be offered.

16. Must limit coverage on mobile homes or manufactured homes built before 1994 to actual cash value of the dwelling rather than replacement costs of the dwelling.

17. Must provide coverage for manufactured or mobile home dwellings. Such coverage must also include the following

attached structures:

a. Screened enclosures that are aluminum framed or screened enclosures that are not covered by the same or substantially the same materials as those of the primary dwelling;

b. Carports that are aluminum or carports that are not covered by the same or substantially the same materials as those of the primary dwelling; and

c. Patios that have a roof covering that is constructed of materials that are not the same or substantially the same materials as those of the primary dwelling.

The corporation shall make available a policy for mobile homes or manufactured homes for a minimum insured value of at least $3,000.

18. May provide such limits of coverage as the board determines, consistent with the requirements of this subsection.

19. May require commercial property to meet specified hurricane mitigation construction features as a condition of eligibility for coverage.

20. Must provide that new or renewal policies issued by the corporation on or after January 1, 2012, which cover sinkhole loss do not include coverage for any loss to appurtenant structures, driveways, sidewalks, decks, or patios that are directly or indirectly caused by sinkhole activity. The corporation shall exclude such coverage using a notice of

coverage change, which may be included with the policy renewal, and not by issuance of a notice of nonrenewal of the excluded coverage upon renewal of the current policy.

21. As of January 1, 2012, must require that the agent obtain from an applicant for coverage from the corporation an acknowledgment signed by the applicant, which includes, at a minimum, the following statement:

ACKNOWLEDGMENT OF POTENTIAL SURCHARGE
AND ASSESSMENT LIABILITY:

1. AS A POLICYHOLDER OF CITIZENS PROPERTY INSURANCE CORPORATION, I UNDERSTAND THAT IF THE CORPORATION SUSTAINS A DEFICIT AS A RESULT OF HURRICANE LOSSES OR FOR ANY OTHER REASON, MY POLICY COULD BE SUBJECT TO SURCHARGES, WHICH WILL BE DUE AND PAYABLE UPON RENEWAL, CANCELLATION, OR TERMINATION OF THE POLICY, AND THAT THE SURCHARGES COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

2. I UNDERSTAND THAT I CAN AVOID THE CITIZENS POLICYHOLDER SURCHARGE, WHICH COULD BE AS HIGH AS 45 PERCENT OF MY PREMIUM, BY OBTAINING COVERAGE FROM A PRIVATE MARKET INSURER AND THAT TO BE ELIGIBLE FOR COVERAGE BY CITIZENS, I MUST FIRST TRY TO OBTAIN PRIVATE MARKET COVERAGE BEFORE APPLYING FOR OR RENEWING COVERAGE WITH CITIZENS. I UNDERSTAND THAT PRIVATE MARKET INSURANCE RATES ARE REGULATED AND APPROVED BY THE STATE.

3. I UNDERSTAND THAT I MAY BE SUBJECT TO EMERGENCY

ASSESSMENTS TO THE SAME EXTENT AS POLICYHOLDERS OF OTHER INSURANCE COMPANIES, OR A DIFFERENT AMOUNT AS IMPOSED BY THE FLORIDA LEGISLATURE.

4. I ALSO UNDERSTAND THAT CITIZENS PROPERTY INSURANCE CORPORATION IS NOT SUPPORTED BY THE FULL FAITH AND CREDIT OF THE STATE OF FLORIDA.

a. The corporation shall maintain, in electronic format or otherwise, a copy of the applicant's signed acknowledgment and provide a copy of the statement to the policyholder as part of the first renewal after the effective date of this subparagraph.

b. The signed acknowledgment form creates a conclusive presumption that the policyholder understood and accepted his or her potential surcharge and assessment liability as a policyholder of the corporation.

(ii) For the depopulation programs adopted pursuant to subsection (6)(q)3.a:

1. After January 1, 2016, a policy may not be taken out from the corporation, unless the agent of record receives an offer of insurance containing the amount of the estimated premium, a description of the coverage, and a comparison of the premium and coverage offered by the insurer to the premium and coverage provided by the corporation. If more than one insurer makes an offer for coverage, all offers shall be provided to the agent of record. The agent of record shall communicate to the policyholder any offer received. The policyholder may accept an offer or reject all offers. If the policyholder takes no action,

the policy may be taken out by an insurer according to the depopulation procedure. The corporation shall develop a uniform format for premium and coverage information required by this subparagraph.

2. Effective July 1, 2015, a policyholder may elect not to be solicited for takeout more than once in a six month period. A policyholder whose policy was taken out by an insurer in the previous 36 months shall be considered a renewal under s. 627.3518 if the corporation determines that the insurer continues to insure the policyholder and the first offer exceeded the estimated premium by more than 10 percent or the insurer has increased the rate on the policy in excess of the increase allowed for the corporation under s. 627.351(6)(n)6.

Section 3. This act shall take effect July 1, 2015.

PCS for HB 1127

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1127 Insurance Fraud
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Lloyd	Cooper

SUMMARY ANALYSIS

The Department of Financial Services (DFS) is responsible for regulating certain insurance activities under the Insurance Code (such as eligibility and conduct of insurance agents and agencies and policing fraud). The DFS is required to maintain a Division of Insurance Fraud (DIF). The DIF is charged with investigating all manner of fraudulent insurance activities and employs sworn law enforcement investigators with arrest powers. While the many types of health care facilities operating in the state are generally licensed and regulated by the Agency for Health Care Administration (AHCA), the DIF has the authority to police fraudulent insurance claims and activities that may occur in health care facilities.

Health care clinics are regulated under the Health Care Clinic Act. The Act's purpose 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." 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." However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act. There are 1,849 licensed health care clinics and 10,009 clinics that have received a certificate of exemption. Despite the availability of an exemption, "an entity shall be deemed a clinic and must be licensed under this [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)." 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 charges and reimbursement claims made by an unlicensed health care clinic, which is operating in violation of statute, are unlawful, noncompensable, and unenforceable. The PCS expands the effect of this provision to included charges and reimbursement claims by clinics that are violating AHCA rules. The PCS expressly identifies such prohibited charging and reimbursement claiming activity as theft, regardless of whether payments are made.

Section 400.993, F.S., and subsection 400.9935(4), F.S., establish offenses related to unlicensed clinic activities that are punishable as a felony. The PCS combines these provisions into a single subsection of statute and establishes an additional felony offense for knowingly failing to update certain required information within 21 days.

The DIF is authorized to establish a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud, to be known as the "Automobile Insurance Fraud Strike Force" (Strike Force). The Strike Force filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence. The PCS repeals the statute authorizing the Strike Force. It also removes cross-references regarding Strike Force deposits to and appropriations from the Insurance Regulatory Trust Fund. The DIF's rulemaking authority related to the Strike Force is removed.

The PCS amends the offense severity ranking chart of the Criminal Punishment Code to reflect the changes made by the PCS.

The PCS has no fiscal impact on state or local government. It has an indeterminate positive impact on the private sector.

The PCS is effective July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Department of Financial Services (DFS) is responsible for regulating the certain insurance activities under the Insurance Code[1] (such as eligibility and conduct of insurance agents and agencies and policing fraud). The Financial Services Commission and Office of Insurance Regulation also have responsibilities concerning insurance related to licensing insurance companies, ratemaking, and market conduct, among other things. The DFS is required to maintain a Division of Insurance Fraud (DIF).[2] The DIF is charged with investigating all manner of fraudulent insurance activities and employs armed law enforcement officers with statewide authority and arrest powers.[3] Annual reports of the DIF and other public record information, including summaries of fraud referral, investigation, arrests and convictions, are available on the DIF's web site.[4] While the many types of health care facilities operating in the state are generally licensed and regulated by the Agency for Health Care Administration (AHCA), the DIF has the authority to police fraudulent insurance claims and activities that may occur among health care facilities.

Health Care Clinic Licensing, Charges by Unlicensed Clinics, and Criminal Penalties

Licensing

Health care clinics are regulated under the Health Care Clinic Act.[5] 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."[6] 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."[7] However, there is an extensive list of entities that are exempt from the definition and licensure requirements established by the act.[8] According to the AHCA web site,[9] there are 1,849 licensed Health Care Clinics and 10,009 clinics that have voluntarily received a certificate of exemption from Health Care Clinic licensure.[10, 11]

Despite the availability of an exemption to clinic licensure, "an entity shall be deemed a clinic and must be licensed under this part 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)."[12] 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:

- An entity wholly owned by a physician licensed under chapter 458 or chapter 459, or by the physician and the spouse, parent, child, or sibling of the physician;

[1] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. Section 624.01, F.S.
[2] Section 20.121(2)(e), F.S.
[3] Section 626.989, F.S.
[4] http://www.myfloridacfo.com/division/fraud/. (Last viewed March 22, 2015)
[5] Part X, chapter 400, F.S.
[6] Section 400.990(2), F.S.
[7] Section 400.9905(4), F.S.
[8] Paragraphs 400.9905(4)(a) through (n), F.S.
[9] http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx.
[10] Data as of March 23, 2015, obtained from http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx, with search limited to Facility/Provider Type - "Health Care Clinic" or "Health Care Clinic Exemption." (Last viewed March 23, 2015)
[11] 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.
[12] Section 400.9905(4), F.S.

- An entity wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;
- An entity wholly owned by a chiropractic physician licensed under chapter 460, or by the chiropractic physician and the spouse, parent, child, or sibling of the chiropractic physician;
- A hospital or ambulatory surgical center licensed under chapter 395;
- An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395; 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.

Charges by Unlicensed Clinics

The charges and reimbursement claims made by a health care clinic that is required to be licensed under ss. 400.990-995, F.S., but is not licensed or is operating in violation of the referenced statutes, are unlawful, noncompensable, and unenforceable. The PCS includes health care clinics that are operating in violation of AHCA rules in this provision. In addition, the PCS applies this standard whether or not the charge or claim is paid. The PCS expressly defines the making of such charges or claims as theft within the meaning of s. 812.014, F.S., and subject to the punishments found therein.[13] Depending upon the circumstances, theft is punished as a misdemeanor of the first or second degree or a felony of the first, second, or third degree.[14] This does not establish a new criminal offense; rather, it makes it plain that such activities are criminal theft.

Criminal Penalties

Section 400.993, F.S., and subsection 400.9935(4), F.S., establishes offenses related to unlicensed clinic activities that are punishable as a felony. A person who offers or advertises unlicensed health care services, performs unlicensed health care clinic services, or owns, operates, or maintains an unlicensed health care clinic, as specified in s. 408.812, F.S., commits a felony of the third degree.[15] A second or subsequent such offense is a second degree felony. Also, knowingly filing false or misleading information in a license application or renewal application for health clinic licensure, including information related to an applicable rule, is a third degree felony. To help identify unlicensed clinic activity, health care providers, who know of an unlicensed health care clinic, are required to report such clinics to the AHCA.[16] Those providers that fail to do so, when they knew or should have known that the clinic was unlicensed, must be reported to their licensing board.[17]

The PCS consolidates these existing criminal offense provisions into a single subsection of statute by repealing s. 400.993, F.S., and revising subsection 400.9935(4), F.S.

The PCS creates a new third degree felony offense applicable to any person who knowingly fails to report a change in information contained in the most recent health care clinic license application or a change regarding the required insurance or bonds.[18, 19] Such changes must be reported within 21 days of their occurrence.[20]

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[13] Section 812.014(1), F.S., defines theft as follows:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

[14] Section 812.014, F.S.

[15] Felonies are punished under ss. 775.082, 775.083, or 775.084, F.S.

[16] Section 400.993(3), F.S.

[17] Individual health care providers are regulated by one or more of the boards at the Department of Health.

[18] The required reports go to the AHCA. Section 400.810, F.S.

[19] Section 408.810(3), F.S. There are no express insurance requirements for health care clinic licensure, but an applicant can offer a bond of at least $500,000, payable to the AHCA, as surety for compliance with the law, as an alternative to showing the financial

Direct-Support Organization to Fight Automobile Insurance Fraud

The DIF is authorized to establish a direct-support organization to support the prosecution, investigation, and prevention of motor vehicle insurance fraud, known as the "Automobile Insurance Fraud Strike Force" (Strike Force).[21] The Strike Force is a not-for-profit corporation incorporated under ch. 617, F.S. It is authorized to raise funds, conduct programs and activities, hold, invest, and administer assets in its name, and make grants and expenditures to state attorneys' offices, the statewide prosecutor, the AHCA, and the Department of Health to be used exclusively to prosecute, investigate, or prevent motor vehicle insurance fraud. The Strike Force may make grants and expenditures to the extent that they do not interfere with prosecutorial independence or otherwise create conflicts of interest that threaten the success of prosecutions. The Strike Force is precluded from engaging in lobbying activities or from using grants and expenditures for advertising using the likeness or name of any elected official.

The Strike Force is required to operate under a written contract with the DIF, which must provide for:

- DIF approval of the Strike Force's articles of incorporation and bylaws, and its annual budget (which begins on July 1 and ends on June 30th of the following year).
- DIF certification of the Strike Force's compliance with contract terms and that it is acting in a manner consistent with its goals and purposes.
- Allocation of funds to address motor vehicle insurance fraud, and reversion of moneys and property to DIF if the Strike Force ceases to exist, or to the state if DIF ceases to exist.
- Criteria to be used by the Strike Force's board of directors in evaluating the effectiveness of funding to combat insurance fraud.
- Disclosure of material provisions of the contract, including disclosure on all promotional and fundraising publications of the Strike Force.

The Strike Force's board of directors consists of 11 members as follows: the Chief Financial Officer (CFO) or a designee of the CFO, who serves as the chair; two state attorneys (one appointed by the CFO and the other by the Attorney General); two representatives of motor vehicle insurers appointed by the CFO; two representatives of local law enforcement agencies (one appointed by the CFO and the other by the Attorney General); two representatives of the types of health care providers who regularly make claims for PIP benefits (one appointed by Speaker of the House of Representatives and one appointed by the President of the Senate); a private attorney that has experience representing PIP claimants (appointed by the President of the Senate); and a private attorney with experience representing PIP insurers (appointed by the Speaker of the House of Representatives).

The DFS is required to adopt rules prescribing the procedures by which the Strike Force is to be governed.[22] For regulatory purposes, insurer contributions to the Strike Force are allowed as appropriate business expenses.[23] The Strike Force may place its receipts in a separate depository account in its name, subject to its contract with DIF. Any moneys that DIF receives from the Strike Force are required to be deposited into the Insurance Regulatory Trust Fund.[24]

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responsibility required under s. 400.810(8), F.S. The AHCA has implemented the financial responsibility requirements for licensure through rule 59A-35.062, F.A.C.

[20] Id.

[21] Section 626.9895(2), F.S.

[22] Section 626.9895(5)(c), F.S. The authorized rules were adopted as Chapter 69D-3, F.A.C.

[23] Section 626.9895(6), F.S.

[24] Section 626.9895(7), F.S.

The Strike Force filed its incorporation with the Department of State on April 25, 2012. The Strike Force has engaged in limited organizational activity during its existence.[25] The DFS reports[26] that the Strike Force has not: taken in any donations, paid any grants, established a bank account,[27] or made any transfers into the Insurance Regulatory Trust Fund.

The PCS repeals the statute authorizing the Strike Force. It also removes cross-references to the Strike Force's authorizing statute regarding deposits to and appropriations from the Insurance Regulatory Trust Fund for Strike Force purposes. The DIF loses its rulemaking authority related to the Strike Force.

Criminal Punishment Code Offense Severity Ranking Chart

The Criminal Punishment Code[28] applies to sentencing for felony offenses committed on or after October 1, 1998. Criminal offenses are ranked in the "offense severity ranking chart"[29] from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense as determined by the legislature.[30] A defendant's sentence is calculated based on points assigned for factors (e.g., the offense for which the defendant is being sentenced and injury to the victim). The points are added in order to determine the "lowest permissible sentence" for the offense.

The PCS amends the offense severity ranking chart to reflect the changes made by the PCS. The titles relevant offenses are updated consistent with the PCS and additions are made to the chart consistent with the PCS. Filing a false license application or other required information or failing to report information[31] is classified as a Level 3 offense.[32] A second or subsequent conviction of operating a clinic, or offering services requiring licensure, without a license[33] is classified as a Level 6 offense.[34] While such second or subsequent offenses are currently second degree felonies under s. 400.993(2), F.S., this offense does not appear on the offense severity ranking chart and is added to the chart by the PCS.

B. SECTION DIRECTORY:

Section 1: Repeals s. 400.993, F.S., relating to unlicensed clinics; reporting.

Section 2: Amends s. 40.9935, F.S., relating to clinic responsibilities.

Section 3: Amends s. 626.9894, F.S., relating to gifts and grants.

Section 4: Repeals s. 626.9895, F.S., relating to motor vehicle insurance fraud direct-support organization.

Section 5: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity chart.

Section 6: Provides an effective date of July 1, 2015.

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[25] According to its web site, http://www.myfloridacfo.com/autofraud/meetings.html. (Last viewed March 23, 2013), the Strike Force held four board meetings; August 7, 2012, January 24, 2013, July 9, 2013, and December 9, 2013.
[26] Email from Legislative Affairs, Department of Financial Services, Re: HB 1127 – new proposed strike all, dated March 23, 2015.
[27] The minutes of the board of directors of the Strike Force reflect that a depository account was authorized, but do not indicate where or if the account was established. Minutes of the board, July 9, 2013, Automobile Insurance Fraud Strike Force. Strike Force records are available on the Internet at http://www.myfloridacfo.com/autofraud/index.htm. (Last viewed March 23, 2013)
[28] Section 921.002, F.S.
[29] Section 921.0022, F.S.
[30] Section 921.0024, F.S.
[31] Section 400.9935(4)(e), F.S., as revised by the PCS.
[32] Level 3 offenses carry 16 sentencing points for the primary offense and 2.4 sentencing points for each additional offense. Section 921.0024(1)(a), F.S.
[33] Section 400.9935(4)(c), F.S., as revised by the PCS.
[34] Level 6 offenses carry 36 sentencing points for the primary offense and 18 sentencing points for each additional offense. Section 921.0024(1)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS has an indeterminate impact on the private sector. The private sector will benefit from increased enforcement activities, including restitution orders, due to the criminal penalty provisions of the PCS. Savings realized by the insurance industry should be passed on to consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Department of Financial Services, Division of Insurance Fraud, loses the rulemaking authority to adopt rules related to the Strike Force.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insurance fraud; repealing s. 400.993, F.S., relating to criminal penalties applicable to unlicensed health care clinics and reporting of unlicensed health care clinics; amending s. 400.9935, F.S.; revising provisions related to unlawful, noncompensable, and unenforceable health care clinic charges or reimbursement claims; revising and providing criminal penalties for making unlawful charges, operating or failing to report an unlicensed clinic, filing false or misleading information related to a clinic license application, and other violations of such responsibilities; defining the term "convicted"; amending s. 626.9894, F.S.; conforming provisions to changes made by the act; repealing s. 626.9895, F.S., relating to the establishment of a motor vehicle insurance fraud direct-support organization; amending s. 921.0022, F.S.; conforming provisions of the offense severity ranking chart of the Criminal Punishment Code to changes made by the act; providing an effective date.

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

Section 1. Section 400.993, Florida Statutes, is repealed.

Section 2. Subsections (3) and (4) of section 400.9935,

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Florida Statutes, are amended to read:

400.9935 Clinic responsibilities.—

(3) A charge ~~All charges~~ or reimbursement claim ~~claims~~ made by or on behalf of a clinic that is required to be licensed under this part~~,~~ but that is not so licensed, or that is otherwise operating in violation of this part or rules of the agency, regardless of whether a service is rendered or whether the charge or reimbursement claim is paid, is an~~, are~~ unlawful charge ~~charges,~~ and is ~~therefore are~~ noncompensable and unenforceable. A person who knowingly makes or causes to be made an unlawful charge commits theft within the meaning of, and punishable as provided in, s. 812.014.

(4)(a) Regardless of whether notification is provided by the agency under ~~In addition to the requirements of~~ s. 408.812, a ~~any~~ person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the person knowingly:

1. Establishes, owns, operates, manages, or maintains ~~establishing, operating, or managing~~ an unlicensed clinic ~~otherwise~~ required to be licensed under this part or part II of chapter 408;~~,~~ or

2. Offers or advertises services that require licensure as a clinic under this part or part II of chapter 408 without a license.

(b) If the agency provides notification under s. 408.812 of, or if a person is arrested for, a violation of subparagraph

(a)1. or subparagraph (a)2., each day during which a violation of subparagraph (a)1. or subparagraph (a)2. occurs constitutes a separate offense.

(c) A person convicted of a second or subsequent violation of subparagraph (a)1. or subparagraph (a)2. commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the agency provides notification of, or if a person is arrested for, a violation of this paragraph, each day that this paragraph is violated thereafter constitutes a separate offense. For purposes of this paragraph, the term "convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(d) In addition to the requirements of part II of chapter 408, a health care provider who is aware of the operation of an unlicensed clinic shall report the clinic to the agency. Failure to report a clinic that the provider knows or has reasonable cause to suspect is unlicensed shall be reported to the provider's licensing board.

(e) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the ~~any~~ person ~~who~~ knowingly:

1. Files a false or misleading license application or license renewal application~~,~~ or files false or misleading information related to such application or agency ~~department~~ rule; or

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2. Fails to report information to the agency as required by s. 408.810(3)~~, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084~~.

Section 3. Subsection (5) of section 626.9894, Florida Statutes, is amended to read:

626.9894 Gifts and grants.—

(5) Notwithstanding s. 216.301 and pursuant to s. 216.351, any balance of moneys deposited into the Insurance Regulatory Trust Fund pursuant to this section ~~or s. 626.9895~~ remaining at the end of any fiscal year is available for carrying out the duties and responsibilities of the division. The department may request annual appropriations from the grants and donations received pursuant to this section ~~or s. 626.9895~~ and cash balances in the Insurance Regulatory Trust Fund for the purpose of carrying out its duties and responsibilities related to the division's anti-fraud efforts, including the funding of dedicated prosecutors and related personnel.

Section 4. Section 626.9895, Florida Statutes, is repealed.

Section 5. Paragraphs (c) and (f) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen

		vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell,

		molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license ~~or filing false license application or other required information~~.
400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.

501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than $20,000.
817.233	3rd	Burning to defraud insurer.

817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
817.505(4)	3rd	Patient brokering.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a

		counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1.,

		(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.

893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(f) LEVEL 6

Florida	Felony	Description

Statute	Degree	
316.027(2)(b)	2nd	Leaving the scene of a crash involving serious bodily injury.
316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
<u>400.9935(4)(c)</u>	<u>2nd</u>	<u>Operating a clinic, or offering services requiring licensure, without a license.</u>
499.0051(3)	2nd	Knowing forgery of pedigree papers.
499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
775.0875(1)	3rd	Taking firearm from law enforcement officer.

784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
784.041	3rd	Felony battery; domestic battery by strangulation.
784.048(3)	3rd	Aggravated stalking; credible threat.
784.048(5)	3rd	Aggravated stalking of person under 16.
784.07(2)(c)	2nd	Aggravated assault on law enforcement officer.
784.074(1)(b)	2nd	Aggravated assault on sexually violent predators facility staff.
784.08(2)(b)	2nd	Aggravated assault on a person 65 years of age or older.
784.081(2)	2nd	Aggravated assault on specified

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		official or employee.
784.082(2)	2nd	Aggravated assault by detained person on visitor or other detainee.
784.083(2)	2nd	Aggravated assault on code inspector.
787.02(2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
790.115(2)(d)	2nd	Discharging firearm or weapon on school property.
790.161(2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or damage property.
790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.

790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
794.05(1)	2nd	Unlawful sexual activity with specified minor.
800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years of age; offender less than 18 years.
800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.

810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
812.014(2)(b)1.	2nd	Property stolen $20,000 or more, but less than $100,000, grand theft in 2nd degree.
812.014(6)	2nd	Theft; property stolen $3,000 or more; coordination of others.
812.015(9)(a)	2nd	Retail theft; property stolen $300 or more; second or subsequent conviction.
812.015(9)(b)	2nd	Retail theft; property stolen $3,000 or more; coordination of others.
812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.

825.102(1)	3rd	Abuse of an elderly person or disabled adult.
825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
825.103(3)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than $10,000.
827.03(2)(c)	3rd	Abuse of a child.
827.03(2)(d)	3rd	Neglect of a child.
827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
836.05	2nd	Threats; extortion.
836.10	2nd	Written threats to kill or do

		bodily injury.
843.12	3rd	Aids or assists person to escape.
847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute obscene materials depicting minors.
847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community

		supervision, resulting in great bodily harm.
944.40	2nd	Escapes.
944.46	3rd	Harboring, concealing, aiding escaped prisoners.
944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
951.22(1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.

Section 6. This act shall take effect July 1, 2015.