Insurance & Banking Subcommittee

Tuesday, January 19, 2016
1:00 PM
Sumner Hall (404 HOB)

MEETING PACKET

Steve Crisafulli
Speaker

John Wood
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Tuesday, January 19, 2016 01:00 pm
End Date and Time:	Tuesday, January 19, 2016 03:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.50 hrs

Consideration of the following bill(s):

HB 221 Health Insurance Coverage for Emergency Services by Trujillo
HB 651 Department of Financial Services by Beshears
HB 659 Automobile Insurance by Santiago
HB 747 Digital Assets by Fant
HB 875 Motor Vehicle Service Agreement Companies by Stark, Santiago
HB 931 Operations of Citizens Property Insurance Corporation by Passidomo
HB 1041 Unclaimed Property by Hager

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., Friday, January 15, 2016.

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., Friday, January 15, 2016.

NOTICE FINALIZED on 01/14/2016 4:26PM by McCloskey.Michele

The Florida House of Representatives

Regulatory Affairs Committee

Insurance & Banking Subcommittee

Steve Crisafulli
Speaker

John Wood
Chair

AGENDA

January 19, 2016
404 House Office Building
1:00 PM – 3:30 PM

I. Prayer and Pledge of Allegiance

II. Call to Order & Roll Call

III. Consideration of the following bill(s):

A. HB 221 Health Insurance Coverage for Emergency Services by Trujillo

B. HB 651 Department of Financial Services by Beshears

C. HB 659 Automobile Insurance by Santiago

D. HB 747 Digital Assets by Fant

E. HB 875 Motor Vehicle Service Agreement Companies by Stark, Santiago

F. HB 931 Operations of Citizens Property Insurance Corporation by Passidomo

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

G. HB 1041 Unclaimed Property by Hager

IV. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 221 Health Insurance Coverage for Emergency Services
SPONSOR(S): Trujillo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson KP	Luczynski MJ
2) Appropriations Committee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

A Preferred Provider Organization (PPO) is a health plan that contracts with providers to create a network of providers who participate for an alternative or reduced rate of payment. Generally, the member is responsible only for required cost-sharing amounts if covered services are obtained from network (participating, preferred, or network) providers. However, if a member chooses to obtain services from a non-network (nonparticipating) provider, the member can be billed for the difference between the provider's charges and the PPO's approved reimbursement. In an Exclusive Provider Organization (EPO) arrangement, an insurance company contracts with hospitals, physicians, and other medical facilities. Insured members must use the participating hospitals or providers to receive covered benefits, subject to limited exceptions. A Health Maintenance Organization (HMO) provides health care services pursuant to contractual arrangements with preferred providers who have agreed to supply services to members at pre-negotiated rates. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits.

Current law requires an HMO to provide coverage for emergency services and care without prior authorization and without regard for whether the provider has a contract with the HMO. The HMO must reimburse a nonparticipating provider the lesser of the provider's charges; the usual and customary rate for provider charges in the community; or the rate agreed to between the provider and the HMO. The nonparticipating provider may not collect additional reimbursement from the subscriber.

The bill establishes a payment methodology for emergency services and care provided by nonparticipating providers to members of a PPO or EPO and prohibits those providers from collecting or attempting to collect any additional amount. Plans must reimburse nonparticipating providers the greater of the amount negotiated with the provider; the usual and customary reimbursement for the same service in the community; or the Medicare rate. PPOs and EPOs are required to provide coverage for emergency care without prior authorization and regardless of whether the provider is in-network. Applicable cost-sharing must be the same for network or non-network providers.

In addition, the bill revises the methodology an HMO must use to reimburse nonparticipating providers for emergency services and care to conform to the new methodology applicable to PPOs and EPOs. The effect is to change the existing reimbursement standard from one that is based on provider charges to one that is based on provider reimbursement.

The bill has an indeterminate minimal negative fiscal impact on the State Group Health Insurance Program.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Managed Care Organizations

Types[1]

Preferred Provider Organization[2]
A PPO is a health plan that contracts with providers, such as hospitals and doctors, to create a network of providers who participate for an alternative or reduced rate of payment. A PPO is an insurance product. PPO plan members generally see specialists without prior referral or authorization from the insurer. Generally, the member is only responsible for the policy co-payment, deductible, or co-insurance amounts if covered services are obtained from network providers. However, if a member chooses to obtain services from a non-network provider, those out-of-pocket costs likely will be higher. An insurer that offers a PPO plan must make its current list of preferred providers available to its members.

Exclusive Provider Organization[3]
In an EPO arrangement, an insurance company contracts with hospitals, physicians, and other medical facilities. Insured members must use the participating hospitals or providers to receive covered benefits, subject to limited exceptions.

Health Maintenance Organization[4]
An HMO is an organization that provides a wide range of health care services, including emergency care, inpatient hospital care, physician care, ambulatory diagnostic treatment and preventive health care pursuant to contractual arrangements with preferred providers in a designated service area. The network is made up of providers who have agreed to supply services to members at pre-negotiated rates. Traditionally, an HMO member must use the HMO's network of health care providers in order for the HMO to make payment of benefits. The use of a health care provider outside the HMO's network generally results in the HMO limiting or denying the payment of benefits for non-network services rendered to the member.[5]

Regulation
The Office of Insurance Regulation (OIR) licenses and regulates insurers, health maintenance organizations, and other risk-bearing entities.[6] To operate in Florida, an HMO must obtain a certificate of authority from OIR.[7] The Agency for Health Care Administration (AHCA) regulates the quality of care provided by HMOs under part III of ch. 641, F.S. Before receiving a certificate of authority from OIR, an HMO must receive a Health Care Provider Certificate from AHCA pursuant to part III of ch. 641, F.S.[8]

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[1] *See generally* FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Health Insurance and Health Maintenance Organizations, A Guide for Consumers, available at*: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Commercial_Managed_Care/chmo.shtml (last visited Jan. 16, 2016).
[2] *See generally* s. 627.6471, F.S.
[3] *See generally* s. 627.6472, F.S.
[4] *See generally* part I of chapter 641, F.S.
[5] Section 641.31(38), F.S., creates an exception to this general rule. It authorizes an HMO to offer a point-of-service benefit. The benefit, offered pursuant to a rider, enables a subscriber to select, at the time of service and without referral, a nonparticipating provider for a covered service. The HMO may require the subscriber to pay a reasonable co-payment for each visit for services provided by a nonparticipating provider.
[6] s. 20.121(3)(a)1., F.S.
[7] ss. 641.21(1) and. 641.49, F.S.
[8] ss. 641.21(1) and 641.48, F.S.

As part of the certification process used by AHCA, an HMO must provide information to demonstrate that the HMO has the ability to provide quality of care consistent with the prevailing standards of care.[9]

The Florida Insurance Code requires health insurers and HMOs to provide an outline of coverage or other information describing the benefits, coverages, and limitations of a policy or contract. This may include an outline of coverage describing the principal exclusions and limitations of the policy.[10]

Balance Billing[11]

Balance billing describes the situation where a health care provider seeks to collect payment from a patient for the difference between the provider's billed charges for a covered service and the amount that the managed care organization paid on the claim. Before the rise of managed care, consumers with insurance typically expected some balance billing. Under traditional indemnity insurance, the insured paid the provider directly then sought reimbursement from the insurer. The insurer reimbursed, minus any cost sharing, up to the policy amount. If the reimbursement was below the billed charge, then the patient would not be fully reimbursed.

Today most people with private insurance are covered by a managed care organization (MCO). Members must utilize the services of network providers to minimize out-of-pocket expenses. Typically, contracts between network providers include a "hold harmless" provision that protects members from being balance billed by a network provider for covered services. In consenting to these provisions, participating providers generally agree not to seek reimbursement from a member beyond payment of applicable cost-sharing requirements, such as copayments, co-insurance, or deductibles.

A member may choose to seek care from a nonparticipating provider, for example from a specialist regarded as an expert in the field. A member may utilize non-network providers unknowingly while receiving care at a network hospital. While radiologists, anesthesiologists, pathologists, and increasingly emergency room physicians are hospital-based physicians, generally they are not hospital employees and may or may not contract with the same MCOs as the hospital. Likewise, a member may receive—and be billed for—services from a nonparticipating provider if the member's network physician consults with a nonparticipating specialist. This is generally referred to as "surprise billing." Finally, a member may receive non-network care from a non-network hospital as a result of an emergency transport.

An analysis conducted for the California HealthCare Foundation in 2006 of 1.2 million residents with employer-sponsored commercial (private) insurance found that almost 11 percent of those studied used non-network services at some point during the year. Most non-network utilization occurred as a result of a hospital admission, or an emergency department visit without admission. The average balance bill (across facilities, physicians, and other professional providers) was $1,289 in addition to the average patient cost-sharing amount of $433. The average balance bill for an inpatient admission averaged $6,812.[12]

According to a recent study conducted by the Kaiser Family Foundation and the New York Times, one in five (20 percent) of U.S. adults ages 18 – 64 *with insurance* report that they or someone in their household had problems paying a medical bill.[13] Of those, 75 percent say that the amount they had to

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[9] s. 641.495, F.S.
[10] s. 627.642, F.S.
[11] *See generally* CALIFORNIA HEALTHCARE FOUNDATION, *Unexpected Charges: What States Are Doing About Balance Billing* (April 2009), *available at* http://www.chcf.org/publications/2009/04/unexpected-charges-what-states-are-doing-about-balance-billing (last visited Jan. 15, 2015).
[12] *Id.* at 4.
[13] Liz Hamel, Mira Norton, Karen Pollitz, Larry Levitt, Gary Claxton and Mollyann Brodie, *The Burden of Medical Debt: Results from the Kaiser Family Foundation/New York Times Medical Bills Survey,* Jan. 2016, at 1, *available at* http://kff.org/health-costs/report/the-burden-of-medical-debt-results-from-the-kaiser-family-foundationnew-york-times-medical-bills-survey/?utm_campaign=KFF%3A+2015+December+KFF+NY+Times+Medical+Debt&utm_source=hs_email&utm_medium=email&_hsenc=p2ANqtz-811G5oUaaAYr6uoeChnST13pyBbh3AXerbZqYy-sz9DT7TXvXwILDCoV9tYHvY36G5i73DlRghX6-J-AViQkuqXJhEnA&_hsmi=24816172.

pay for insurance copays, deductibles, or coinsurance was more than they could afford.[14] Another 32 percent say they received care from an out-of-network provider that their insurance did not cover. For many, the bills were a surprise. Sixty-nine percent indicated that they were unaware that the provider was not in their plan's network when they received the care.[15]

Current Prohibitions on Balance Billing

Currently, balance billing is prohibited for services provided under Medicaid,[16] workers compensation insurance;[17] by an exclusive provider who is part of an EPO; [18] or by a provider who is under contract with a prepaid limited service organization.[19] In addition, the law provides that an HMO is liable to pay, and may not balance bill, for covered services provided to a subscriber whether or not a contract exists between the provider and the HMO.[20] However, the statute further qualifies the prohibition by saying that an HMO is liable for services rendered if the provider obtains authorization from the HMO prior to providing services. Thus, a provider can balance bill if authorization is denied or if the provider does not seek prior authorization. [21,22]

Florida Insurance Consumer Advocate

On October 15, 2015, the Insurance Consumer Advocate held a forum to solicit testimony from stakeholders on the issue of balance billing. On November 18, 2015, the Consumer Advocate presented her recommendations for legislation to implement the findings of the forum to the House Subcommittee on Insurance & Banking:[23]

- Hold consumers harmless (prohibit balance billing") in emergency and "surprise billing" situations.
- Establish an alternative dispute resolution process to allow nonparticipating providers to challenge the amount of payment received from an insurer.
- Conduct a study of network adequacy requirements applicable to insurers.
- Require disclosure in all contracts for services involving network providers of the potential billing consequences of using out-of-network providers.
- Require insurers to update their provider directories on a timely basis.
- Require hospitals to make data available regarding hospital-based providers who are not in the network.

Effect of Changes Related to Balance Billing

The bill establishes a payment methodology for emergency services and care provided by noncontract providers to members of a PPO or EPO and prohibits those providers from collecting or attempting to collect any additional amount. In effect, the bill prohibits these providers from balance billing, thereby

[14] *Id.* at 11.
[15] *Id.* at 12.
[16] s. 409.907(3)(j), F.S.; Medicaid managed care plans and their providers are required to comply with the Provider General Handbook, which expressly prohibits balance billing. In addition, the Statewide Medicaid Managed Care Contract (CORE contract) establishes minimum requirements for contracts between plans and providers. The CORE contract requires those contracts to prohibit balance billing, except for any applicable cost sharing. (E-mail from Josh Spagnola, Legislative Affairs Director, Florida Agency for Health Care Administration, excerpting relevant provisions from the Handbook and the CORE contract (March 16, 2015) (on file with the House Insurance & Banking Subcommittee).
[17] s. 440.13(13)(a), F.S.
[18] s. 627.6472(4)(e), F.S.
[19] s. 636.035(3) - (4), F.S.
[20] ss. 641.315(1) and 641.3154(1), F.S.
[21] *But see Joseph L. Riley Anesthesia Associates v. Stein*, 27 So. 3d 140, 145 (Fla. 5th DCA 2010). The Fifth DCA has held that an authorization issued to a contract provider for services (surgery) in a hospital is deemed an authorization for a hospital-based provider of medically necessary services (anesthesia) that are provided under an exclusive contract without regard for the existence of a contract with the HMO. In other words, if the main service is authorized, related services provided under an exclusive contract are deemed authorized and balance billing is prohibited. *See also* Rule 69O-191.049, F.A.C. (prohibiting hospital-based physicians from balance billing an HMO subscriber who receives covered services in a network hospital.)
[22] *See also* FLORIDA MEDICAL ASSOCIATION, *Balance Billing*, http://www.flmedical.org/LRC_Balance_billing.aspx (last visited Jan. 17, 2016).
[23] INSURANCE CONSUMER ADVOCATE, *Recommendations for a Balanced Approach to Unexpected Medical Expenses, Florida House of Representatives Insurance and Banking Subcommittee* (Nov. 18, 2015) (on file with the Insurance and Banking Subcommittee).

applying the same prohibition to members of PPOs and EPOs as currently applies to members of an HMO.

Current Situation

Access to Emergency Services and Care

Hospital Care

In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act (EMTALA) to ensure public access to emergency services regardless of ability to pay. EMTALA imposes specific obligations on hospitals participating in the Medicare program which offer emergency services. Any patient who comes to the emergency department must be provided with a medical screening examination to determine if the patient has an emergency medical condition. If an emergency condition exists, the hospital must provide treatment within its service capability to stabilize the patient. If a hospital is unable to stabilize a patient, or if the patient requests, the hospital must transfer the patient to another appropriate facility.[24] A hospital that violates EMTALA is subject to civil monetary penalty,[25] termination of its Medicare agreement,[26] or civil suit by a patient who suffers personal harm.[27] EMTALA does not provide for civil action against a hospital's physicians.

Florida law imposes a similar duty.[28] The law requires AHCA to maintain an inventory of the service capability of all licensed hospitals that provide emergency care in order to assist emergency medical services (EMS or ambulance) providers and the public in locating appropriate medical care. Hospitals must provide all listed services when requested, whether by a patient, an emergency medical services provider, or another hospital, regardless of the patient's ability to pay. If the hospital is at capacity or does not provide the requested emergency service, the hospital may transfer the patient to the nearest facility with appropriate available services. Each hospital must ensure the services listed can be provided at all times either directly or through another hospital. A hospital is expressly prohibited from basing treatment and care on a patient's insurance status, economic status, or ability to pay. A hospital that violates Florida's access to care statute is subject to administrative penalties; denial, revocation, or suspension of its license; or civil action by another hospital or physician suffering financial loss. In addition, hospital administrative or medical staff are subject to civil suit by a patient who suffers personal harm; and may be found guilty of a second degree misdemeanor for a knowing or intentional violation. Physicians who violate the act are also subject to disciplinary action against their license; or civil action by another hospital or physician suffering financial loss.

Prehospital Care

The Emergency Medical Transportation Services Act[29] similarly regulates the services provided by emergency medical technicians, paramedics, and air and ground ambulances. The act establishes minimum standards for emergency medical services personnel, vehicles, services, and medical direction, and provides for monitoring of the quality of patient care. The standards are administered and enforced by the Department of Health (DOH). Ambulance services operate pursuant to a license issued by DOH and a certificate of public convenience and necessity issued from each county in which the provider operates.[30] A licensee may not deny a person needed prehospital treatment or transport for an emergency medical condition.[31] A violation may result in denial, suspension, or revocation of a license; reprimand; or fine.[32]

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[24] Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. §1395dd.; *see also* CENTERS FOR MEDICARE & MEDICAID SERVICES, *Emergency Medical Treatment & Labor Act (EMTALA),* http://www.cms.gov/Regulations-and-Guidance/Legislation/EMTALA/index.html?redirect=/emtala/ (last visited Jan. 16, 2016).
[25] 42 U.S.C. § 1395dd(d)(1).
[26] 42 C.F.R. § 489.24(f).
[27] 42 U.S.C. § 1395dd(d)(2).
[28] *See* s. 395.1041, F.S.
[29] Part III of chapter 401, F.S. (ss. 401.2101 – 401.465, F.S.).
[30] s. 401.25(2)(d), F.S.
[31] s. 401.45, F.S.
[32] s. 401.411, F.S.

In general, the medical director of an ambulance provider is responsible for issuing standing orders and protocols to the ambulance service provider to ensure that the patient is transported to a facility that offers a type and level of care appropriate to the patient's medical condition,[33] with separate protocols required for stroke patients.[34] Trauma alerts patients are an exception to the general requirement and are required to be transported to an approved trauma center.[35]

State law establishes the provision of ambulance services as a core function of county government.[36] Counties may provide the service directly, under contract with one or more private or municipal providers, or both. In 2015, 61 counties and 97 municipalities were licensed to provide emergency medical services.[37] This represents more than half of all licensed providers.

Payment for Emergency Services and Care

Florida Law
A PPO must charge a member the same copayments for emergency care whether the care is provided by a participating or nonparticipating provider.[38]

An EPO plan must ensure that emergency care is available 24 hours a day and 7 days a week. Insurers issuing exclusive provider contracts must pay for services provided by non-exclusive providers if the services are for symptoms requiring emergency care and a network provider is not reasonably accessible.[39]

An HMO must provide coverage without prior authorization for prehospital transport or treatment or for emergency services and care[40] that is rendered by either a participating or nonparticipating provider.[41] An HMO must charge a subscriber the same copayments for emergency care whether the care is provided by a participating or nonparticipating provider. [42]

The law requires HMOs to pay nonparticipating providers specified minimum reimbursement for emergency services. Specifically, HMOs must reimburse providers the lesser of:[43]

- The provider's charges;
- The usual and customary provider charges for similar services provided in the community; or
- The charge mutually agreed to by the HMO and the provider.

Reimbursement is net of any applicable copayment.

Patient Protection and Affordable Care Act (PPACA)
PPACA was signed into law on March 23, 2010.[44] Among its sweeping changes to the U.S. health care system are requirements for health insurers to make coverage available to all individuals and employers, without exclusions for preexisting conditions and without basing premiums on any health-related factors. PPACA imposes many insurance requirements including required benefits, rating and

[33] Rule 64J-1.004()(a), F.A.C.
[34] s. 395.3041(3), F.S.
[35] s. 395.4045, F.S.
[36] *See* s. 125.01(1)(e), F.S.; *see also* s. 155.22, F.S.
[37] Florida Department of Health, *EMS Provider Type Reports* (March 16, 2015) (on file with the House Insurance & Banking Subcommittee).
[38] s. 627.6405(4), F.S.
[39] s. 627.6472, F.S.
[40] "Emergency services and care" include the medical screening, examination, and evaluation to determine whether an emergency medical condition exists and the care, treatment, or surgery necessary to relieve or eliminate the emergency medical condition. s. 641.47(8), F.S.
[41] ss. 641.31(12) and 641.513(1)(a), F.S.
[42] s. 641.31097(4), F.S.
[43] s. 641.513(5), F.S.
[44] Patient Protection and Affordable Care Act, Pub. L. No. 111-148, H.R. 3590, 11th Cong. (March 23, 2010). On March 30, 2010, PPACA was amended by P.L. 111-152, the Health Care and Education Reconciliation Act of 2010.

underwriting standards, required review of rate increases, coverage for adult dependents, and other requirements.[45]

PPACA requires that coverage for emergency services must be provided without prior authorization and regardless of whether the provider is a network provider. Services provided by non-network providers must be provided with cost-sharing that is no greater than that which would apply for a network provider and without regard to any other restriction other than an exclusion or coordination of benefits, an affiliation or waiting period, and cost-sharing. In addition, plans must reimburse non-network providers the greater of:

- The median in-network rate;
- The usual and customary reimbursement, calculated using the plan's formula; or
- The Medicare rate. [46]

Grandfathered health plans are exempt from these requirements.[47] PPACA does not prohibit balance billing. A guidance document from the U.S. Department of Labor has characterized the requirements as "set[ting] forth minimum payment standards...to ensure that a plan or issuer does not pay an unreasonably low amount to an out-of-network emergency service provider who, in turn, could simply balance bill the patient." The guidance further states that the minimum payment requirements do not apply if state law prohibits balance billing or the plan is contractually responsible for payment.[48]

Effect of Changes Related to Payment for Emergency Services and Care

The bill creates a new section of law that establishes requirements for PPOs and EPOs related to coverage for emergency care that mirror federal law. Specifically, the bill:

- Prohibits prior authorization.
- Requires coverage whether service is provided by a participating or nonparticipating provider.
- Requires cost-sharing to be the same whether services are provided by a participating or nonparticipating provider.

The bill requires PPOs and EPOs to reimburse nonparticipating providers the greater of:

- The amount negotiated with the provider;
- The usual and customary reimbursement for the same service in the community; or
- The Medicare rate.

Reimbursement is net of any applicable copayment. Nonparticipating providers are prohibited from balance billing.

The effect of the changes is to impose a payment methodology applicable to EPO and PPO reimbursement of emergency services provided by nonparticipating providers that is similar to the standard imposed by PPACA. The bill differs from PPACA, however, in that PPACA does not prohibit balance billing and, by interpretation of the U.S. Department of Labor, does not impose the PPACA payment methodology in states that prohibit balance billing.

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[45] Most of the insurance regulatory provisions in PPACA amend Title XXVII of the Public Health Service Act. 42 U.S.C. 300gg et seq.
[46] 45 C.F.R. s. 147.138(b).
[47] For an insured plan, grandfathered health plan coverage is group or individual coverage in which an individual was enrolled on March 23, 2010, subject to conditions for maintaining grandfathered status as specified by law and rule. Grandfathered health plan coverage is tied to the individual or employer who obtained the coverage, not to the policy or contract form itself. An insurer may have both policyholders with grandfathered coverage and policyholders with non-grandfathered coverage insured under the same policy form, depending on whether the coverage was effective before or after March 23, 2010. (PPACA § 1251; 42 U.S.C. § 18011; 45 C.F.R. § 147.140).
[48] U.S. Dept. of Labor, Employee Benefits Security Administration, *FAQs About the Affordable Care Act Implementation Part I,* http://www.dol.gov/ebsa/faqs/faq-aca.html (last visited Jan. 16, 2015).

The bill also revises the methodology for determining reimbursement applicable to HMOs to conform to the new methodology created by the bill that is applicable to PPOs and EPOs. The effect is to change the existing reimbursement standard from one that is based on provider charges to one that is based on provider reimbursement.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.64194, F.S., relating to coverage for emergency services.
Section 2: Amends s. 641.513, F.S., relating to requirements for providing emergency services and care.
Section 3: Provides an effective date of October 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Management Services indicated that the bill will have a low, negative indeterminate fiscal impact on the State Group Health Insurance Program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private providers of emergency services and care may experience a negative fiscal impact from the provisions that prohibit balance billing to the extent that those providers currently rely on that practice. In addition, private providers may see a fiscal impact as a result of the methodology for reimbursement.

The bill will have a positive fiscal impact on consumers due to the prohibition on balance billing, but may have a negative fiscal impact on nonparticipating providers of emergency services and care for this same reason.

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.

3. RULE-MAKING AUTHORITY:

None.

4. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to health insurance coverage for emergency services; creating s. 627.64194, F.S.; defining terms; prohibiting coverage for emergency services from requiring a prior authorization determination; requiring such coverage to be provided regardless of whether the service is furnished by a participating or nonparticipating provider; specifying coinsurance, copayment, limitation of benefits, and reimbursement requirements for nonparticipating providers; prohibiting a nonparticipating provider from collecting or attempting to collect an amount in excess of specified amounts; amending s. 641.513, F.S.; revising the methodology for determining health maintenance organization reimbursement amounts for emergency services and care provided by certain providers; providing an effective date.

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

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

627.64194 Coverage for emergency services.—

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

(a) "Coverage for emergency services" means the coverage provided by a health insurance policy for "emergency services

and care" as defined in s. 641.47.

(b) "Participating provider" means a "preferred provider" as defined in s. 627.6471 and an "exclusive provider" as defined in s. 627.6472.

(2) Coverage for emergency services:

(a) May not require a prior authorization determination.

(b) Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider.

(c) May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

(d) Must reimburse a nonparticipating provider the greater of the following:

1. The amount negotiated with a provider who does not have a contract with the insurer for the service, reduced only by any coinsurance amount or copayment that applies to the provider;

2. The usual and customary reimbursement received by a provider for the same service in the community where the service was provided, reduced only by any coinsurance amount or copayment that applies to the provider; or

3. The amount that would be paid under Medicare for the service, reduced only by any coinsurance amount or copayment that applies to the provider.

(3) A nonparticipating provider may not be reimbursed an amount greater than that provided under paragraph (2)(d) and may

not collect or attempt to collect, directly or indirectly, any excess amount.

Section 2. Subsection (5) of section 641.513, Florida Statutes, is amended to read:

641.513 Requirements for providing emergency services and care.—

(5) Reimbursement for services pursuant to this section by a provider who does not have a contract with the health maintenance organization shall be the greater ~~lesser~~ of:

(a) The Medicare allowable rate ~~provider's charges~~;

(b) The usual and customary reimbursement received by a provider ~~charges~~ for the same service ~~similar services~~ in the community where the service was ~~services were~~ provided; or

(c) The amount negotiated with a provider who does not have a contract with the health maintenance organization for the service ~~charge mutually agreed to by the health maintenance organization and the provider within 60 days of the submittal of the claim~~.

Such reimbursement shall be net of any applicable copayment authorized pursuant to subsection (4).

Section 3. This act shall take effect October 1, 2016.

INSURANCE AND BANKING SUBCOMMITTEE

HB 221 by Rep. Trujillo
Health Insurance Coverage for Emergency Services

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Trujillo (Strike-all amendment):

- Removes the provisions in the bill that revise the methodology in current law used by HMOs to reimburse nonparticipating providers of emergency services and care.
- Adds definitions of "emergency services," "nonemergency services," "facility," and "nonparticipating provider."
- Changes the methodology for determining reimbursement to nonparticipating providers of emergency services to:
  - The billed amount;
  - An amount that is reasonable reimbursement for the services and care; or
  - A charge mutually agreed to by the insurer and the nonparticipating providers.
- Prohibits balance billing for nonemergency services that are provided by a nonparticipating provider in a network facility where the patient had no ability and opportunity to choose a participating provider.
- Authorizes nonparticipating providers of emergency and nonemergency services to initiate arbitration to determine additional reimbursement. In rendering his or her decision, the arbitrator must consider any documentation submitted by either the insurer or the provider relevant to: specified factors about the patient; the provider's qualifications; other reimbursement methodologies; and prior arbitration decisions.
- Provides that the arbitrator's decision is the amount contained in the final settlement offer from either the provider or the insurer.
- Requires the Department of Financial Services to develop and maintain the list of qualified arbitrators.
- Requires all preferred provider organizations (PPO) to publish the list of network providers, including specified demographic information, on their websites, and to update the list with reported changes monthly.
- Requires all PPO contracts to include a notice regarding the implications of using an out-of-network provider and the potential for balance billing.
- Makes certain facilities and providers subject to disciplinary action for violations of the prohibition on balance billing.
- Requires hospitals to publish information on their websites regarding the plans with which the hospital contracts; and providers of hospital-based services with which the hospital has contracted and how those providers may be contacted.

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 Trujillo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) is added to subsection (5) of section 395.003, Florida Statutes, to read:

395.003 Licensure; denial, suspension, and revocation.—

(5)

(d) A hospital, ambulatory surgical center, specialty hospital, or urgent care center shall comply with the provisions of ss. 627.64194 and 641.513 as a condition of licensure.

Section 2. Subsection (13) is added to section 395.301, Florida Statutes, to read:

395.301 Itemized patient bill; form and content prescribed by the agency; patient admission status notification.—

(13) A hospital shall post on its website:

(a) The names and hyperlinks for direct access to the websites of all health insurers and health maintenance organizations for which the hospital contracts as a network provider or participating provider.

(b) A statement that:

1. Services provided in the hospital by health care practitioners may not be included in the hospital's charges;

2. Health care practitioners who provide services in the hospital may or may not participate with the same health insurance plans as the hospital;

3. Prospective patients should contact the health care practitioner arranging for the services to determine the health care plans in which the health care practitioner participates.

(c) As applicable, the name, mailing address and telephone number of the health care practitioners and practice groups that the hospital has contracted with to provide services in the hospital and instruction on how to contact these health care practitioners and practice groups to determine the health insurers and health maintenance organizations for which the hospital contracts as a network provider or participating provider.

Section 3. Paragraph (oo) is added to subsection (1) of section 456.072, Florida Statutes, to read:

456.072 Grounds for discipline; penalties; enforcement.—

(1) The following acts shall constitute grounds for which the disciplinary actions specified in subsection (2) may be taken:

(oo) Failing to comply with the provisions of s. 627.64194 or s. 641.513 with such frequency as to constitute a general business practice.

Section 4. Section 627.64194, Florida Statutes, is created to read:

627.64194 Coverage requirements for services provided by nonparticipating providers.—

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

(a) "Emergency services" means the services and care to treat an emergency medical condition, defined in s. 641.47. For purposes of this section, "emergency services" includes emergency transportation and ambulance services, to the extent permitted by applicable state and federal law.

(b) "Facility" means a licensed facility as defined in s. 395.002(16) and an urgent care center as defined in s. 395.002(30).

(c) "Nonemergency services" means the services and care to treat a condition other than an emergency medical condition, as defined in s. 395.002(8).

(d) "Nonparticipating provider" means a provider who is not a "preferred provider" as defined in s. 627.6471 or an "exclusive provider" as defined in s. 627.6472.

(e) "Participating provider" means a "preferred provider" as defined in s. 627.6471 or an "exclusive provider" as defined in s. 627.6472.

(2) An insurer is solely liable for payment of fees to a nonparticipating provider of emergency services and an insured is not liable for payment of fees to a nonparticipating provider of emergency services, other than applicable copayments and deductibles. An insurer must provide coverage for emergency services that:

(a) May not require prior authorization.

(b) Must be provided regardless of whether the service is furnished by a participating or nonparticipating provider.

(c) May impose a coinsurance amount, copayment, or limitation of benefits requirement for a nonparticipating provider only if the same requirement applies to a participating provider.

(3) An insurer is solely liable for payment of fees to a nonparticipating provider of nonemergency services and an insured is not liable for payment of fees to a nonparticipating provider, other than applicable copayments and deductibles, for nonemergency services that are:

(a) Provided in a facility which has a contract with the insurer; and

(b) Provided under circumstances where the insured has no ability and opportunity to choose a participating provider at the facility.

(4) An insurer must reimburse a nonparticipating provider of emergency services or nonemergency services within the applicable timeframe provided by s. 627.6131:

1. The billed amount;

2. An amount that is a reasonable reimbursement for the services and care rendered; or

3. A charge mutually agreed to by the insurer and the nonparticipating provider.

(5) A nonparticipating provider of emergency services or nonemergency services may not be reimbursed an amount greater than that provided under subsections (4) or (6) by the insurer and may not collect or attempt to collect from the patient, directly or indirectly, any excess amount.

(6)(a) If an insured has assigned his or her benefit of payment to the nonparticipating provider, the provider may, within 60 days after receipt of the reimbursement described in subsection (4), request additional reimbursement by making a final reimbursement offer to the insurer. Within 30 days after receipt of the provider's final reimbursement offer, the insurer shall notify the provider of its final reimbursement offer. The provider may initiate binding arbitration in response within 30 days after receipt of the insurer's final reimbursement offer by notifying the insurer and the department. The initiation notification shall include the final reimbursement offers from both the provider and the insurer. The parties may agree to resolve multiple claims for additional reimbursement.

(b) The department shall publish a list of arbitrators or entities it has approved to provide binding arbitration. The arbitrators shall be American Arbitration Association or American Health Lawyers Association trained arbitrators. Both parties must agree and notify the department of their choice of an arbitrator from the list of arbitrators within ten business days after issuance of the arbitration initiation notification. If the parties cannot reach agreement, the provider shall, within fifteen business days after the arbitration initiation notification, request from the department the names of five arbitrators. The insurer and the provider can each veto two arbitrators. The provider shall be the first party to veto two of the arbitrators and shall within five business days of receiving the names of the five arbitrators notify the insurer and the department of the vetoed names. Upon the receipt of the notice of veto, the insurer shall have five business days to provide notice to the provider and the department of the names of the two arbitrators it has vetoed. The arbitrator remaining after both parties have submitted their vetoes shall be the chosen arbitrator.

(c) In making a determination of whether a provider should receive additional reimbursement pursuant to this subsection, the parties may provide, and the arbitrator shall consider, documentation of the following:

1. Individual patient characteristics.

2. The level of training, education, and experience of the nonparticipating provider.

3. The nonparticipating provider's usual charge for comparable services provided out-of-network with respect to any health care plans.

4. The contracted rate of payment for comparable services by a participating provider for the same or similar services in the same geographic area.

5. The aggregate provider charge, as defined by a public independent database of charges, for the same or similar services in the same geographic area.

6. A percentage of the Medicare allowable rate for comparable or similar services in the same geographic area.

7. The usual and customary provider reimbursement by the insurer for similar services in the community where the services were provided.

8. The nonparticipating provider's billed charges for the services provided;

9. The circumstances and complexity of the particular case, including the time and place of the service;

10. Discounts or rebates applied to charges billed to persons who are uninsured, indigent, or experiencing a financial hardship by the non-participating provider for comparable or similar services.

11. Previous arbitration decisions under this section for comparable services under similar circumstances and characteristics.

(d) The arbitration shall consist only of a review of the final reimbursement offer submitted by each party pursuant to paragraph (a) and any documentation submitted pursuant to paragraph (c). The arbitrator's decision shall be one of the two amounts that were submitted as final reimbursement offers.

(e) The arbitrator shall render a written decision within 60 days after being named the chosen arbitrator and file it with the department. Both parties shall be bound by the arbitrator's decision. The cost of arbitration shall be reasonable and both parties to the arbitration shall equally share the cost of the arbitration. Each party shall be responsible for their own attorney's fees and additional costs.

Section 5. Subsection (2) of section 627.6471, Florida Statutes, is amended and new subsection (7) is added to that section to read:

627.6471 Contracts for reduced rates of payment; limitations; coinsurance and deductibles.—

(2)(a) Any insurer issuing a policy of health insurance in this state, which insurance includes coverage for the services of a preferred provider, must provide each policyholder and certificateholder with a current list of preferred providers and must make the list available on its website. The list must include where applicable and reported, a listing by specialty of

the name, address, and telephone number of all participating providers, including facilities, and in addition, in the case of physicians, board certification, languages spoken and any affiliations with participating hospitals. Information posted to the insurer's website must be updated on at least a calendar month basis with additions or terminations of providers from the insurer's network or reported changes in physician's hospital affiliations ~~must make the list available for public inspection during regular business hours at the principal office of the insurer within the state~~.

(7) Any policy issued under this section must include the following disclosure: " WARNING: LIMITED BENEFITS WILL BE PAID WHEN NONPARTICIPATING PROVIDERS ARE USED. You should be aware that when you elect to utilize the services of a nonparticipating provider for a covered nonemergency service, benefit payments to the provider are not based upon the amount the provider's charges. The basis of the payment will be determined according to your policy's out-of-network reimbursement benefit. Nonparticipating providers may bill insureds for any difference in the amount. YOU MAY BE REQUIRED TO PAY MORE THAN THE COINSURANCE OR COPAYMENT. Participating providers have agreed to accept discounted payments for services with no additional billing to you other than coinsurance and deductible amounts. You may obtain further information about the providers who have contracted with your insurance plan by consulting your insurer's website or contacting your insurer or agent directly."

Section 6. This act shall take effect October 1, 2016.

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

Remove everything before the enacting clause and insert: and insert: An act relating to out-of-network health insurance coverage; amending s. 395.003, F.S.; requiring hospitals, ambulatory surgical centers, specialty hospitals, and urgent care centers to comply with certain provisions as a condition of licensure; amending s. 395.301, F.S.; requiring a hospital to post certain information regarding its contracts with health insurers, health maintenance organizations, and health care practitioners and practice groups and specified notice to patients and prospective patients; amending s. 456.072, F.S.; adding a ground for discipline of referring health care providers by the Department of Health; creating s. 627.64194, F.S.; defining terms; specifying requirements for coverage provided by an insurer for emergency services; providing that an insurer is solely liable for payment of certain fees to a provider; providing limitations and requirements for reimbursements by an insurer to a nonparticipating provider; authorizing a nonparticipating provider or insurer to initiate arbitration to determine additional reimbursement; requiring the Department of Financial Services to maintain and, under certain circumstances, provide a list of qualified arbitrators; specifying timeframes; providing certain documentation that may

be submitted for consideration by the arbitrator; providing responsibility for fees and costs; amending s. 627.6471, F.S.; requiring an insurer that issues a policy including coverage for the services of a preferred provider to post certain information about participating providers; requiring specified notice to be included in policies providing coverage for the services of a preferred provider; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 Department of Financial Services
SPONSOR(S): Beshears
TIED BILLS: **IDEN./SIM. BILLS:** SB 992

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

SUMMARY ANALYSIS

The bill modifies several areas regulated by the Department of Financial Services (DFS), including:

- Authorizing the DFS to create an Internet-based system for the electronic transmission and acceptance of service of process documents served on the Chief Financial Officer of the State(CFO);
- Adding a fee for service of process to unauthorized insurers;
- Revising requirements relating to service of legal process and revising requirements relating to service of process upon insurers or persons representing or aiding insurers;
- Removing the requirement that the Executive Office of the Governor review and approve certain alternative retirement income security programs;
- Clarifying the eligibility requirements for participation in the State's deferred compensation plan;
- Revising requirements for the approval of certain surety bonds;
- Amending the Florida Single Audit Act to conform to new federal standards, eliminating applicability to for-profit organizations, defining the term "higher education entity," and adding specific provisions applicable to higher education entities.
- Providing additional grounds for the disqualification of a neutral evaluator in sinkhole insurance claims disputes;
- Clarifying that the Life Safety Code does not apply to one-and two-family dwellings;
- Amending the requirements for obtaining a firefighter certificate of compliance;
- Providing for the expiration of firefighter and volunteer firefighter certificates of compliance and completion;
- Authorizing, rather than requiring, the Division of the State Fire Marshall to suspend or revoke a firefighter's certification under certain conditions; and
- Amending the requirements to renew firefighter, volunteer firefighter, and fire service instructor certifications.

The bill has no fiscal impact on local government revenue or expenditures. The bill will generate minimal state revenue and slightly reduce state expenditures. The Internet-based system for the electronic transmission and acceptance of service of process documents should have a positive fiscal impact on the private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation - **Service of Process**

Florida law may designate a public officer, board, agency, or commission as the agent for service of process on a person, firm, or corporation in Florida.[1] The Chief Financial Officer (CFO) is designated as the agent for service of process on insurers and other specific entities or persons licensed by the DFS and the Office of Insurance Regulation (OIR).[2] Service of process on the CFO is made by mail or personal service[3] and plaintiffs are required to pay the DFS a $15 fee which is deposited into the Administrative Trust Fund.[4] Once the service of process is received, the CFO retains a record copy in paper or electronic form and promptly forwards the process documents to the defendant's designated agent by registered or certified mail.[5] In lieu of sending the process by registered or certified mail, the CFO may send the process by "any other verifiable means."[6] The language "any other verifiable means" is not defined in statute but, Florida case law has interpreted it to include electronic delivery.[7]

Effect of Proposed Changes - **Service of Process** (sections 1, 7, 8, 9, and 10)

The bill amends s. 48.151(3), F.S., to authorize the DFS to create an Internet-based system for the electronic transmission and acceptance of service of process documents for serving the CFO or his or her assistant or deputy or another person in charge of the office as the agent for *licensed* and *unauthorized* insurers. The purpose of the Internet-based system is to save consumers time and money serving process on the CFO by eliminating the need to copy, package, and mail documents or by eliminating the cost of personal service. The system's electronic transmission should eliminate the 3-7 day period for document delivery through the mail and the 3-7 day period for the DFS to send back a proof of service through the mail.

The bill also modifies several sections of ch. 624, F.S., to provide regulations related to the use of the Internet-based system and other clarifications to service of process. The modified sections of ch. 624, F.S., currently only apply to licensed insurers; however, the bill incorporates "unauthorized insurers" into these sections.

After the CFO receives service of process, he or she may send it by registered or certified mail, or by any other verifiable means to the person to receive the process. The bill modifies these options to permit the process to be sent or made available by any other verifiable means, including by not limited to, making the documents available by electronic transmission from a secure website established by the DFS. If the documents are made available electronically, the CFO is required to send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available and contain a hyperlink to obtain a copy of the process.

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[1] s. 48.151, F.S.

[2] The CFO also serves as the agent for service of process to all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, F.S., domestic reciprocal insurers, fraternal benefit societies under Ch. 632, F.S., warrant associations under Ch. 636, F.S., and persons required to file statements under s. 628.461, F.S.

[3] s. 48.151, F.S.

[4] s. 624.502, F.S.

[5] s. 624.423(1), F.S.

[6] s. 624.307, F.S.

[7] See *Campbell v. Metropolitan Life Ins. Co.*, No. 2:12–cv–616–Ftm–99SPC, 2013 WL 461872, at *1 (M.D. Fla.); *Dunn v. Prudential Ins. Co. of America*, No. 8:10–cv–1626–T–24–TGW, 2011 WL 52867, at *1-2 (M.D. Fla.); *Johnson v. USAA Cas. Ins. Co.*, 900 F. Supp.2d 1310, 1314 fn. 1 (M.D. Fla. 2012).

The bill adds a fee of $25 for service of process to an unauthorized insurer. Currently the procedures for personal service of process on an insurer or person representing or aiding an unauthorized insurer require delivering the service to the CFO or some person in apparent charge of his or her office. The bill adds the assistant or deputy of the CFO or another person in charge of the office as authorized recipients of the service. The bill also requires payment of the new fee of $25.

Current Situation - **Alternative Retirement Income Security Program**

The DFS provides an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services.[8] The DFS is permitted to contract with a private vendor(s) to administer the program under a defined-contribution plan. The DFS may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. The proposal must comply with all necessary federal and state laws and rules. The program requires the review and approval of the Executive Office of the Governor.

Effect of Proposed Changes - **Alternative Retirement Income Security Program** (section 2)

The bill removes the requirement that the Executive Office of the Governor review and approve the alternative retirement income security program.

Current Situation - **Deferred Compensation Program**

The CFO, with approval of the State Board of Administration, is required to establish a deferred compensation plan for state employees under the "Government Employees' Deferred Compensation Act."[9] A deferred compensation plan is a retirement savings plan that allows eligible employees to supplement any existing retirement and pension benefits by saving and investing before-tax dollars through a tax-deferred voluntary salary contribution.[10] Currently, the statutory language is unclear regarding which government entities are eligible to participate in the plan.

Effect of Proposed Changes - **Deferred Compensation Program** (section 3)

The bill clarifies which government entities are eligible to participate in the deferred compensation plan for state employees by re-defining "employee" and creating a definition for "government entity."

"Government entity" is defined as the state, a state agency, a special purpose district or water management district, a county or other political subdivision of the state, a municipality, a state university board of trustees, or a constitutional county officer under article VIII, section 1(d) of the Florida Constitution. The definition of "employee" is expanded to mean a person providing services for a "governmental entity" for which compensation or statutory fees are paid. The bill also adds eligibility for "employees of other governmental entities."

Current Situation - **Surety Bonds**

County Officers: a county officer serving on a board of county commissioners may be required by ordinance to give a surety bond conditioned on the faithful performance of the duties of her or his office.[11] The board of county commissions and the DFS are required to approve each surety bond.[12] This law dates back to 1887, when county officers had to pledge personal property to protect the county in the event that the official embezzled county money or property.[13]

[8] s. 110.1315, F.S.
[9] s. 112.215(4)(a), F.S.
[10] DEPARTMENT OF FINANCIAL SERVICES, *Florida Deferred Compensation Plan FAQ*, https://www.myfloridadeferredcomp.com/SOFWeb/plan.aspx (last visited Jan. 15, 2016).
[11] s. 137.01, F.S.
[12] s. 137.09, F.S.
[13] Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 1-2 (Jan. 1, 2016).

Florida Inland Navigation District (FIND) Commissioners: FIND is an independent special district existing under Florida law.[14] The agency head of FIND is a collegial body known as the Board of Commissioners of Florida Inland Navigation District (Board),[15] comprised of one commissioner from each of the following twelve counties along Florida's east coast: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Indian River, St. Lucie, Martin, Palm Beach, Broward and Miami-Dade.[16] Each commissioner is appointed by the Governor and upon appointment, before assuming office, each commissioner is required to give a surety bond in the sum of $10,000 payable to the Governor, conditioned upon the faithful performance of the duties of the office.[17] The surety bond is approved by and filed with the CFO.[18]

Effect of Proposed Changes - **Surety Bonds** (sections 4 and 6)

County Officers: the bill removes the requirement that the DFS approve each surety bond issued upon county officers. Only the board of county commissioners shall be required to approve each surety bond. The DFS reports that it has no recent inquiries related to the bonds and believes this statutory section has outlived its usefulness and applicability.[19] The Florida Association of Counties reviewed the proposed change and agreed with the DFS, indicating they do not foresee any problems with the change.[20]

Florida Inland Navigation District Commissioners: the bill requires that the $10,000 surety bond provided by Board commissioners be approved by and filed with the Board of Commissioners of FIND, rather than the CFO.

Current Situation - **Florida Single Audit Act**

The Florida Single Audit Act (FSAA) establishes uniform state audit and accountability requirements for state financial assistance provided by state agencies to nonstate entities to carry out state projects.[21] The FSAA is intended to closely parallel the Federal Single Audit Act. Under the FSAA, nonstate entities include nonprofit organizations, for-profit organizations, and local government entities.[22] The Federal Act does not apply to for-profit organizations. Pursuant to the FSAA, certain nonstate entities that exceed the "audit threshold" are subject to a state single audit or a project specific audit.[23] Florida's "audit threshold" is triggered when a nonstate entity spends a total amount of state financial assistance equal to or in excess of $500,000 in any fiscal year.[24]

On December 13, 2013, the Federal Office of Management and Budget (OMB) issued a rule to amend the Federal Single Audit requirements to strengthen oversight and focus audits where there is the greatest risk of waste, fraud, and abuse of taxpayer dollars.[25] OMB increased their "audit threshold"

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[14] FIND has two primary missions: (1) to perform the functions of the "local sponsor" of the Atlantic Intracoastal Waterway project and a portion of the Okeechobee Waterway project in Florida, both of which are State/Federal navigation projects, and (2) provide assistance to other governments to develop waterway access and improvement projects. THE FLORIDA INLAND NAVIGATION DISTRICT, *Our Mission Statement*, http://www.aicw.org/mission.jsp (last visited Jan. 13, 2016).
[15] *Id.*
[16] s. 374.983(2), F.S.
[17] *Id.*
[18] *Id.*
[19] Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 4 (Jan. 1, 2016).
[20] Email from Laura Youmans, Esq., Legislative Associate, Florida Association of Counties, RE: County Surety Bonds (Oct. 22, 2015).
[21] s. 215.97, F.S.
[22] s. 215.97(2)(m), F.S.
[23] s. 215.97(2)(a), F.S.
[24] *Id.*
[25] FEDERAL REGISTER, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*, https://www.federalregister.gov/articles/2013/12/26/2013-30465/uniform-administrative-requirements-cost-principles-and-audit-requirements-for-federal-awards (last visited Jan. 5, 2016).

from $500,000 to $750,000 such that any state, local government, or nonprofit entity that receives and spends an amount equal to or in excess of $750,000 in federal awards is subject to a single audit.[26] Entities that receive state financial assistance typically also receive federal grant awards and must therefore comply with the Federal and State audit requirements. The FSAA provides that every two years, the threshold amount shall be reviewed and may be adjusted in order to be consistent with the purposes of the s. 215.97, F.S.[27]

Effect of Proposed Changes - **Florida Single Audit Act** (section 5)

The bill amends the FSAA to more closely conform to the Federal Single Audit Act, including the following changes:

- Amends the definition of "audit threshold" to raise the amount a nonstate entity must expend from $500,000 to $750,000 of state financial assistance in any fiscal year to be subject to a state single audit or project-specific audit;
- Clarifies the application of the FSAA to higher education entities:
  - Creates a definition for "higher education entity" which means a Florida College System institution or a state university;
  - Amends the definition of "nonstate entity" to include "higher education entity";
  - Exempts higher education entities from the audit threshold provisions and from the audit requirements, while continuing to subject them to the remaining provisions, including contracting and record keeping requirements;
- Further, amends the definition of "nonstate entity" by removing "for-profit organizations," to conform with the Federal Act which does not apply to for-profit organizations.[28]

Current Situation - **Neutral Evaluation for Sinkhole Insurance Claims**

Florida's neutral evaluator program is an alternative process for resolving sinkhole insurance claims disputes. The DFS administers the program and is required to certify engineers and geologists to serve as neutral evaluators. A neutral evaluator is a fair and impartial third party selected mutually by a policyholder and insurer, and is an engineer licensed under ch. 471, F.S., who has experience and expertise in the identification of sinkhole activity as well as other potential causes of structural damage.[29] Following the report or a denial of a claim, the insurer must inform the policyholder, in writing, of their right to participate in the neutral evaluation program and must include an informational pamphlet prepared by the DFS.[30] The neutral evaluation program is mandatory once requested by either party. The insurer must pay all costs associated with the program.[31] At the conclusion of the neutral evaluation, the neutral evaluator prepares a report stating whether the sinkhole loss has been verified or invalidated.[32]

Upon receipt of a request for neutral evaluation, the DFS is required to provide the parties with a list of certified neutral evaluators.[33] The policyholder and insurer may submit requests to the DFS to disqualify neutral evaluators for cause. Cause is based on any of the following grounds:

1) A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party;

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[26] *Id.*
[27] *Id.*
[28] The for-profit organizations submitting an audit report the Auditor General in FY 2013-14 reported state financial assistance at $475,786,018. Email from Marilyn D. Rosetti, CPA, Audit Manager, State of Florida Auditor General, RE: Florida Single Audit Act (Jan. 11, 2016).
[29] s. 627.706(2)(c), F.S.
[30] s. 627.7074(3), F.S.
[31] s. 627.7074(6), F.S.
[32] s. 627.7074(12), F.S.
[33] s. 627.7074(7), F.S.

2) The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter;
3) The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties; or
4) The neutral evaluator has worked as an employer or employee of any party to the case in the preceding 5 years.

Effect of Proposed Changes - **Neutral Evaluation for Sinkhole Insurance Claims** (section 11)

The bill adds an additional basis for the DFS to disqualify a proposed neutral evaluator for cause at the request of a party. A proposed neutral evaluator may be disqualified for cause if, within the preceding 5 years, the neutral evaluator worked for the company or firm that performed the initial testing to determine the presence or absence of sinkhole loss or other causes of damage to the property in question.

Current Situation - **Sinkhole Insurance Coverage**

Every insurer authorized to transact and underwrite property insurance in Florida must provide coverage for catastrophic ground collapse.[34] For an additional premium, an insurer must offer coverage for sinkhole loss to structures and the personal property contained within. Currently, the insurer can require an inspection of the property before issuing sinkhole coverage, even if it is known in advance that the risk is located in an area where coverage is not offered due to the insurer's filed underwriting requirements.

Effect of Proposed Changes - **Sinkhole Insurance Coverage** (section 12)

The bill creates an exception to the requirement that an insurer make available coverage for sinkhole losses on any structure. The bill provides that an insurer is not required to offer coverage for sinkhole loss if the location of the risk does not meet the underwriting requirements for sinkhole coverage filed with the OIR by the insurer and in such circumstances, an inspection may not be required. When the location of the risk fulfills the underwriting requirements, an inspection may be required.

Current Situation - **Minimum Firesafety Standards**

The Life Safety Code (LSC), which is contained in the Florida Fire Prevention Code (FFPC), provides minimum fire safety requirements, with due regard to function, for the design, operation, and maintenance of buildings and structures. The LSC does not apply to one-and two-family dwellings; however, the current statutory language could be misconstrued to suggest that the LSC does apply to "newly constructed" one-and two-family dwellings.

Effect of Proposed Changes - **Minimum Firesafety Standards** (section 13)

The bill removes "newly constructed" from the statute to clarify that the LSC does not apply to existing or newly constructed one-and two-family dwellings.

Current Situation - **Firefighter Certification**

Chapter 633, F.S., governs state law on fire prevention and control. The CFO is designated as the State Fire Marshall, operating through the Division of the State Fire Marshall (Division).[35] The Division is tasked with establishing, by rule, a Minimum Standards Course as the training and educational curriculum of firefighters and volunteers firefighters. A Firefighter is defined as an individual who holds a current and valid Firefighter Certificate of Compliance (FCOC) or Special Certificate of Compliance issued by the Division. A FCOC is issued by the Division to an individual who does all of the following:

[34] s. 627.706(1)(a), F.S.
[35] s. 633.104, F.S

1. Satisfactorily completes the Minimum Standards Course or training in another state determined by the Division to be, at a minimum, the equivalent of the training required for the Minimum Standards Course;
2. Passes the Minimum Standards Course examination; and
3. Meets the character and fitness requirements set forth in s. 633.412, F.S.

The DFS has reported that many applicants wait a year or longer to take the Minimum Standards Course examination after completion of the course, resulting in a high rate of failure and the need to re-take the course.[36]

"Certification" or "certified" is defined as the act of holding a current and valid certificate.[37] If evidence is found to demonstrate that certification was improperly issued, such as issuance on the basis of false or misleading information, an individual's certification may be suspended or revoked by the Division. In such a case, the Division must suspend or revoke all other certificates issued to the individual by the Division.

In order for a firefighter to retain/renew her or his FCOC, every 4 years she or he must:

- Be active as a firefighter;
- Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the Division, which proof must be registered in an electronic database designated by the Division;
- Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule; or
- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.[38]

Currently, there are no separate renewal requirements for a fire service instructor.

Effect of Proposed Changes - **Firefighter Certification** (sections 14, 15, 16, and 17)

The bill requires the Minimum Standards Course examination to be taken and passed within 6 months of completing the Minimum Standards Course. Retention of a certificate of compliance or completion now requires an individual to apply for renewal, rather than meet the statutorily provided retention requirements every 4 years. Failure to apply for renewal results in the expiration of the certificates of compliance or completion issued under s. 633.408, F.S., 4 years after the date of issuance.[39]

The bill changes the mandatory requirement of a suspension or revocation of all other certifications issued to an individual following the suspension or revocation of an individual's certificate by giving the Division rulemaking authority to create discretionary standards.

The definition of "certification" or "certified" is amended to mean the act of holding a current and valid certificate that meets the requirements for renewal of certification pursuant to ch. 633, F.S., and by rule.

The bill adds certification renewal requirements to be provided under ch. 633, F.S., and by rule. In order for a firefighter to retain her or his FCOC, every 4 years she or he must apply for renewal with the Division and:

- Be active as a firefighter;
- Within 6 months before the 4-year period expires, successfully complete the Firefighter Retention Refresher Course; or

[36] Florida Department of Financial Services, Agency Analysis of 2015 House Bill 651, p. 5 (Jan. 1, 2016).
[37] s. 633.426(1)(b), F.S.
[38] s. 633.414(1), F.S.
[39] The certificates issued under s. 633.408, F.S., subject to expiration under the bill's language are a Firefighter Certificate of Compliance, Volunteer Firefighter Certificate of Completion, Special Certificate of Compliance, and Forestry Certificate of Compliance.

- Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination.

The certificate of a firefighter, volunteer firefighter, or fire service instructor who fails to meet the renewal requirements of this section will expire. Additionally, the State Fire Marshall is provided grounds to deny, refuse to renew, suspend, or revoke the certificate of an individual. The bill creates separate requirements for a fire service instructor to retain her or his Fire Service Instructor Certificate. Every 4 years, she or he must:

- Maintain a current and valid Fire Service Instructor Certificate;
- Instruct at least 40 hours during the 4-year period; and
- Provide proof of such instruction to the Division.

B. SECTION DIRECTORY:

Section 1: amends s. 48.151, F.S., authorizing the creation of an Internet-based system for the electronic transmission and acceptance of service of process documents.

Section 2: amends s. 110.1315, F.S., eliminating the requirement for the Executive Office of the Governor to review and approve the alternative retirement income security program.

Section 3: amends s. 112.215, F.S., revising the definition of the term "employee"; adding a definition for the term "governmental entity"; clarifying the governmental entities eligible to participate in the State's deferred compensation program.

Section 4: amends s. 137.09, F.S., eliminating the DFS's duty to approve county officer surety bonds.

Section 5: amends s. 215.97, F.S., revising the Florida Single Audit Act to more closely parallel the Federal Single Audit Act.

Section 6: amends s. 374.983, F.S., eliminating the requirement that surety bonds for FIND commissioners be approved by and filed with the CFO.

Section 7: amends s. 624.307, F.S., relating to general powers; duties.

Section 8: amends s. 624.423, F.S., authorizing service of process to be served on the CFO through electronic transmission and defining the term "insurer" to include "unauthorized insurers" for the purposes of this section.

Section 9: amends s. 624.502, F.S., specifying the applicable fees due by a plaintiff serving process on the CFO.

Section 10: amends s. 626.907, F.S., permitting service of process to be made to the CFO's assistant or deputy and requiring a defendant's last known principal place of business to be provided by the party serving process documents.

Section 11: amends s. 627.7074, F.S., adding a new cause for disqualifying a neutral evaluator.

Section 12: amends s. 627.706, F.S., specifying the circumstances an insurer is not required to offer coverage for sinkhole loss and when an inspection may be required.

Section 13: amends s. 633.208, F.S., clarifying that the Life Safety Code does not apply to one-and two-family dwellings.

Section 14: amends s. 633.408, F.S., revising the requirements to obtain a firefighter certificate of compliance and adding a provision to specify when such certificate expires.

Section 15: amends s. 633.412, F.S., providing discretion to suspend or revoke all certifications issued to an individual following the suspension or revocation of an individual's firefighter certificate of compliance.

Section 16: amends s. 633.414, F.S., revising the requirements to renew a firefighter certificate of compliance, adding requirements to renew a Fire Service Instructor Certificate, and providing specific grounds by which the State Fire Marshall may deny, refuse renewal, suspend, or revoke a certification.

Section 17: amends s. 633.426, F.S., revising the definition of "certification" and specifying circumstances whereby a certification may not be renewed.

Section 18: providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill adds a fee of $25 for service of process to unauthorized insurers which will generate minimal revenue for the DFS.

2. Expenditures:

Recurring

Internet-based system for service of process documents

Elimination of current IT support	($15,000)
Reduction in postage and printing	($42,000)
Creation and maintenance of system	$2,500
Total recurring costs	($54,500)

Additionally, the DFS estimates that 2-3 OPS positions will be eliminated due to the proposed Internet-based system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Internet-based system for service of process may save money for consumers by eliminating the need to print, package, and mail service of process documents or by saving the cost of personal service.

Currently, insurers can require an inspection of properties for sinkhole coverage even if the insurer knows in advance that the location of the risk does not meet their underwriting requirements for sinkhole coverage as filed with OIR. The bill amends s. 627.706, F.S., to prohibit insurers from requiring an inspection if the risk is located in an area where the risk does not meet the underwriting requirements for sinkhole coverage. This could reduce costs for some consumers.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Section 12 of the bill may implicate the constitutional single subject rule pursuant to article III, section 6 of the Florida Constitution, which states "[e]very law shall embrace but one subject and matter properly connected therewith...." The single subject rule is implicated by enacting a section affecting the Office of Insurance Regulation. The bill sponsor has filed an amendment that removes the offending section.

B. RULE-MAKING AUTHORITY:

Section 15 of the bill provides that upon the suspension or revocation of an individual's certificate, the Division has rulemaking authority to establish standards to suspend or revoke all other certificates issued to an individual.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 3 of the bill creates a definition for the term "governmental entity." On line 144, the word "other" is used to modify "governmental entity," creating a definitional ambiguity for this term.

Section 8 of the bill defines the term "insurer" through a cross reference to s. 624.422, F.S. Lines 332-334 create an ambiguous use of this term as the bill redefines "insurer" to include any unauthorized insurer under s. 626.906, F.S., or s. 626.937, F.S.

Section 14 of the bill creates a 6 month timeframe in which the Minimum Standards Course examination must be passed after completion of the Minimum Standards Course. This provision appears to create an unintended conflict with s. 633.408(7), F.S., which provides for a 6 month time frame in which an individual who has failed the exam may retake the exam. Additionally, an ambiguity is created within s. 633.408(4), F.S., which lists the 3 primary requirements for obtaining an FCOC. The requirement in subsection (a) provides that in lieu of completing the Minimum Standards Course, an individual may complete firefighter training in another state which has been determined by the Division to be at least the equivalent to the Minimum Standards Course. However, the bill requirement that the Minimum Standards Course exam must be passed within 6 months after completing the Minimum Standards Course appears to preclude substitution of the equivalent out-of-state training.

Section 14 of the bill, lines 466-468, state that a certificate issued under s. 633.408, F.S., expires 4 years after the date of issuance unless renewed as provided in s. 633.414, F.S.; however, this referenced section does not provide renewal standards for Special Certificate of Compliance or Forestry Certificate of Compliance, which are issued under s. 633.408, F.S.

The bill sponsor has filed an amendment that resolves these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the department to create an Internet-based system for the electronic transmission and acceptance of service of process documents; amending s. 110.1315, F.S.; deleting a requirement that the Executive Office of the Governor review and approve certain alternative retirement income security programs; amending s. 112.215, F.S.; revising and providing definitions; revising responsibilities of the Chief Financial Officer; amending s. 137.09, F.S.; revising requirements for the approval of certain bonds; amending s. 215.97, F.S.; revising and providing definitions; exempting certain entities from certain auditing requirements; providing requirements for certain contracts and agreements funded by state financial assistance; amending s. 374.983, F.S.; revising membership requirements for the governing body of the Florida Inland Navigation District; amending s. 624.307, F.S.; revising requirements relating to the Chief Financial Officer serving as the attorney to receive service of legal process; amending s. 624.423, F.S.; authorizing the department to create an Internet-based system for the electronic transmission and acceptance of service of process

documents; providing duties of the Chief Financial Officer; revising procedures for process served upon the Chief Financial Officer; providing a definition; amending s. 624.502, F.S.; adding a fee for service of process to an unauthorized insurer; amending s. 626.907, F.S.; revising requirements related to service of process upon an insurer or person representing or aiding such insurer; amending s. 627.7074, F.S.; providing an additional ground for the disqualification of a neutral evaluator; amending s. 627.706, F.S.; providing requirements related to sinkhole insurance coverage; amending s. 633.208, F.S.; revising applicability of the Life Safety Code; amending s. 633.408, F.S.; providing for the expiration of firefighter and volunteer firefighter certificates of compliance and completion; amending s. 633.412, F.S.; authorizing, instead of requiring, the Division of State Fire Marshal to suspend or revoke a firefighter's certification under certain conditions; amending s. 633.414, F.S.; providing and revising requirements for the retention of firefighter and fire service instructor certification; amending s. 633.426, F.S.; revising a definition; revising requirements related to ineligibility to apply for or renew certain firefighter certification; providing an effective date.

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

Section 1. Subsection (3) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. For purposes of this subsection, the department may create an Internet-based system for the electronic transmission and acceptance of service of process documents.

Section 2. Subsection (1) of section 110.1315, Florida Statutes, is amended to read:

110.1315 Alternative retirement benefits; other-personal-services employees.—

(1) ~~Upon review and approval by the Executive Office of the Governor,~~ The Department of Financial Services shall provide

an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code. The Department of Financial Services may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

Section 3. Subsection (2) and paragraph (a) of subsection (4) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(2) For the purposes of this section, the term:

(a) "Employee" means a ~~any~~ person, whether appointed, elected, or under contract, providing services for a governmental entity for which compensation or statutory fees are paid.

(b) "Governmental entity" means the state; a ~~any~~ state agency; a special purpose district or water management district; a ~~or~~ county or other political subdivision of the state; a ~~any~~

municipality; a ~~any~~ state university board of trustees; or a ~~any~~ constitutional county officer under s. 1(d), Art. VIII of the State Constitution ~~for which compensation or statutory fees are paid~~.

(4)(a) The Chief Financial Officer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may include employees of other governmental entities in the plan and approve one or more such plans for implementation by and on behalf of the state or other governmental entity and its agencies and employees.

Section 4. Section 137.09, Florida Statutes, is amended to read:

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. Every such bond shall be approved by the board of county commissioners ~~and by the Department of Financial Services~~ when the board ~~they and it~~ determines that such bond ~~are satisfied in their judgment that the same~~ is legal, sufficient, and proper ~~to be approved~~.

Section 5. Paragraphs (a), (b), (g), (j), (m), and (v) of

subsection (2), paragraph (e) of subsection (4), and paragraph (o) of subsection (8) of section 215.97, Florida Statutes, are amended, subsections (9) through (11) are renumbered as subsections (10) through (12), respectively, and a new subsection (9) is added to that section, to read:

215.97 Florida Single Audit Act.—

(2) Definitions; as used in this section, the term:

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 ~~$500,000~~ in any fiscal year of such nonstate entity shall be required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section.

(b) "Auditing standards" means the auditing standards as stated in the rules of the Auditor General as applicable to ~~for-profit organizations,~~ nonprofit organizations~~,~~ or local governmental entities.

(g) "Higher education entity" means a Florida College

System institution, as defined in s. 1000.21(3), or a state university, as defined in s. 1000.21(6). ~~"For-profit organization" means any organization or sole proprietor that is not a governmental entity or a nonprofit organization.~~

(j) "Local governmental entity" means a county as a whole, municipality, or special district or any other entity excluding a district school board or~~,~~ charter school~~, Florida College System institution, or public university~~, however styled, which independently exercises any type of governmental function within the state.

(m) "Nonstate entity" means a local governmental entity, higher education entity, or nonprofit organization~~, or for-profit organization~~ that receives state financial assistance.

(v) "State project-specific audit" means an audit of one state project performed in accordance with the requirements of subsection (11) ~~(10)~~.

(4) The Department of Financial Services shall:

(e) Make enhancements to the state's accounting system to provide for the:

1. Recording of state financial assistance and federal financial assistance appropriations and expenditures within the state awarding agencies' operating funds.

2. Recording of state project number identifiers, as provided in the Catalog of State Financial Assistance, for state financial assistance.

3. Establishment and recording of an identification code

for each financial transaction, including awarding state agencies' disbursements of state financial assistance and federal financial assistance, as to the corresponding type or organization that is party to the transaction (e.g., other governmental agencies and~~,~~ nonprofit organizations~~, and for-profit organizations~~), and disbursements of federal financial assistance, as to whether the party to the transaction is or is not a nonstate entity.

(8) Each recipient or subrecipient of state financial assistance shall comply with the following:

(o) A higher education entity is exempt from the requirements in paragraph (2)(a) and this subsection. ~~A contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:~~

~~1. A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;~~

~~2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;~~

~~3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or~~

~~4. A combination of the contract forms described in subparagraphs 1., 2., and 3.~~

(9) The following applies to any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance:

(a) The contract or agreement must be:

1. A fixed-price contract or agreement that entitles the provider to receive compensation for the fixed-price contract or agreement amount upon completion of all contract or agreement deliverables;

2. A fixed-rate-per-unit contract or agreement that entitles the provider to receive compensation for each contract or agreement deliverable provided;

3. A cost-reimbursable contract or agreement that entitles the provider to receive compensation for actual allowable costs incurred in performing contract or agreement deliverables; or

4. A combination of the contract or agreement forms described in subparagraphs 1., 2., and 3.

(b) The contract or agreement must comply with the provisions of s. 215.971(1).

(c) The contract or agreement must comply with the provisions of s. 216.3475.

(d) If a higher education entity has extremely limited or no required activities related to the administration of a state project and only acts as a conduit of state financial assistance, the requirements of this subsection do not apply to the higher education entity. However, the subrecipient that is provided state financial assistance by such higher education

entity is subject to the requirements of this subsection.

(e) This subsection does not exempt a higher education entity from compliance with any provision of law relating to maintaining records concerning state financial assistance to a higher education entity or allowing access and examination of such records by the state awarding agency, the higher education entity, the Department of Financial Services, or the Auditor General.

(f) This subsection does not prohibit the state awarding agency from including terms and conditions in the contract or agreement which require additional assurances that the state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

Section 6. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. The Governor shall appoint the

commissioner from Nassau County for an initial term that coincides with the period remaining in the current terms of the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties. Thereafter, the commissioner from Nassau County shall be appointed to a 4-year term. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such bond to be approved by and filed with the board of commissioners of the district ~~Chief Financial Officer~~. Any and all premiums upon such surety bonds shall be paid by the board of commissioners of the ~~such~~ district as a necessary expense of the district.

Section 7. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or unauthorized insurer under s. 626.906 or s. 626.937 required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the Chief Financial

Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website established by the department, to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process documents are made available electronically, the Chief Financial Officer shall send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available to the regulated person or unauthorized insurer being served and contain an Internet hyperlink to obtain a copy of the process.

Section 8. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer (under s. 624.422) shall be made by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. In lieu of serving a copy of the process by mail to or personal service upon the Chief Financial Officer or her or his assistant, deputy, or other person in charge of her or his office, the department may create an Internet-based

system for the electronic transmission and acceptance of service of process documents. Upon receiving such service, the Chief Financial Officer shall retain a record copy and promptly forward one copy of the process by registered or certified mail or by other verifiable means, as provided in s. 624.307(9), to the person last designated by the insurer to receive the same, as provided in ~~under~~ s. 624.422(2). For purposes of this section, records may be retained as paper or electronic copies.

(2) When ~~Where~~ process is served upon the Chief Financial Officer as an insurer's process agent, the insurer shall not be required to answer or plead except within 20 days after the date upon which the Chief Financial Officer sent or made available by other verifiable means ~~mailed~~ a copy of the process served upon her or him as required by subsection (1).

(3) Process served upon the Chief Financial Officer and sent or made available in accordance with this section and s. 624.307(9) ~~copy thereof forwarded as in this section provided~~ shall for all purposes constitute valid and binding service thereof upon the insurer.

(4) For purposes of this section, the term "insurer" includes any unauthorized insurer under s. 626.906 or s. 626.937.

Section 9. Section 624.502, Florida Statutes, is amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3)

in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the plaintiff shall pay to the department or office a fee of $15 for such service of process to an authorized insurer or $25 for such service of process to an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 10. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer or his or her assistant or deputy or another ~~some~~ person in ~~apparent~~ charge of the ~~his or her~~ office two copies thereof and the service of process fee as required in s. 624.502. The Chief Financial Officer shall forthwith mail by registered mail one of the copies of such process to the defendant at the defendant's last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender

of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 11. Paragraph (a) of subsection (7) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are

materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

5. The proposed neutral evaluator has, within the preceding 5 years, worked for the company or firm that performed the initial testing described in s. 627.7072.

Section 12. Paragraph (b) of subsection (1) of section 627.706, Florida Statutes, is amended to read:

627.706 Sinkhole insurance; catastrophic ground cover collapse; definitions.—

(1)

(b) The insurer shall make available, for an appropriate additional premium, coverage for sinkhole losses on any structure, including the contents of personal property contained therein, to the extent provided in the form to which the coverage attaches, unless the location of the risk does not meet the underwriting requirements for sinkhole coverage filed with the office by the insurer. If the location of the risk fulfills such underwriting requirements, the insurer may require an inspection of the property before issuance of sinkhole loss coverage. An inspection of the property is not required if the location of the risk does not meet such underwriting

requirements. A policy for residential property insurance may include a deductible amount applicable to sinkhole losses equal to 1 percent, 2 percent, 5 percent, or 10 percent of the policy dwelling limits, with appropriate premium discounts offered with each deductible amount.

Section 13. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to ~~newly constructed~~ one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one- or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one- or two-family dwellings or any proposed residential subdivision. The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from

any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

Section 14. Paragraph (b) of subsection (6) of section 633.408, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a firefighter certificate of compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course examination <u>within 6 months after completing the Minimum Standards Course</u>.

<u>(9) A certificate of compliance or completion issued under this section expires 4 years after the date of issuance unless renewed as provided in s. 633.414.</u>

Section 15. Subsection (2) of section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—

(2) If the division suspends or revokes an individual's certificate, the division may, in accordance with standards provided by rule, ~~must~~ suspend or revoke all other certificates issued to the individual by the division pursuant to this part.

Section 16. Subsections (3) through (5) of section 633.414, Florida Statutes, are renumbered as sections (4) through (6), respectively, subsection (1) is amended, and subsections (3), (7), and (8) are added to that section, to read:

633.414 Retention of firefighter certification.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must apply to the division on forms provided by it and demonstrate that he or she meets the requirements for renewal provided in this chapter and by rule, which must include the following:

(a) Be active as a firefighter;

~~(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division;~~

(b) ~~(c)~~ Within 6 months before the 4-year period expires,

successfully complete the Firefighter Retention ~~a~~ Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule; or

(c) ~~(d)~~ Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(3) In order for an instructor to retain her or his Fire Service Instructor Certificate, every 4 years he or she must:

(a) Maintain a current and valid Fire Service Instructor Certificate.

(b) Instruct at least 40 hours during the 4-year period.

(c) Provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.

(7) The certification of a firefighter, volunteer firefighter, or instructor who fails to meet the requirements of this section will expire.

(8) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter, volunteer firefighter, or instructor if the State Fire Marshal finds that any of the following grounds exist:

(a) Any cause for which issuance of a certificate could have been denied had it existed and been known to the division when the firefighter, volunteer firefighter, or instructor initially applied for his or her certificate.

(b) Violation of this chapter or any rule or order of the

State Fire Marshal.

(c) Falsification of records relating to any certificates issued by the division.

Section 17. Paragraph (b) of subsection (1) and subsection (2) of section 633.426, Florida Statutes, are amended to read:

633.426 Disciplinary action; standards for revocation of certification.—

(1) For purposes of this section, the term:

(b) "Certification" or "certified" means the act of holding a current and valid certificate that meets the requirements for renewal of certification pursuant to this chapter and by rule.

(2) An individual is ineligible to apply for certification or renew certification after July 1, 2013, if the individual has~~, at any time,~~ been:

(a) Convicted of a misdemeanor relating to the certification or to perjury or false statements.

(b) Convicted of 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.

(c) Dishonorably discharged from any of the Armed Forces of the United States.

Section 18. This act shall take effect July 1, 2016.

INSURANCE & BANKING SUBCOMMITTEE

HB 651 by Rep. Beshears
Department of Financial Services

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Beshears (Strike-all amendment):

- Amends the deferred compensation program by removing the updated definition of "employee," removing the newly defined term "governmental entity," and clarifying that the program applies to state employees, and may include persons employed by a state university, a special district, or a water management district.
- Revises the Florida Single Audit Act to restore applicability to "for-profit organizations."
- Amends newly added s. 322.142, F.S., to authorize the DFS to access the digital image of a driver's license for purposes of the investigation of an alleged violation of the insurance code.
- Amends newly added s. 509.211, F.S., concerning carbon monoxide detector regulations in public lodging establishments.
- Clarifies language regarding the Internet-based system for the electronic transmission of service of process documents.
- Amends newly added s. 626.916, F.S., exempting commercial residential property insurance from conditions required before insurance coverage may be eligible for export to surplus lines.
- Removes s. 627.706, F.S., from the bill.
- Amends newly added s. 626.921, F.S., revising the procedure for appointing the board of governors of the Florida Surplus Lines Association.
- Amends the definition of "fire service provider."
- Creates s. 633.107, F.S., providing exemption provisions from the disqualification of firefighter licensure or certification.
- Creates s. 633.135, F.S., establishing the Firefighter Assistance Grant Program.
- Clarifies language regarding firefighter and volunteer firefighter certification, certification retention, and revocation of certification.
- Repeals subsection (2) of 633.412, F.S.

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 Beshears offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (3) of section 48.151, Florida Statutes, is amended to read:

48.151 Service on statutory agents for certain persons.—

(3) The Chief Financial Officer or his or her assistant or deputy or another person in charge of the office is the agent for service of process on all insurers applying for authority to transact insurance in this state, all licensed nonresident insurance agents, all nonresident disability insurance agents licensed pursuant to s. 626.835, any unauthorized insurer under s. 626.906 or s. 626.937, domestic reciprocal insurers, fraternal benefit societies under chapter 632, warranty

associations under chapter 634, prepaid limited health service organizations under chapter 636, and persons required to file statements under s. 628.461. As an alternative to service of process made by mail or personal service on the Chief Financial Officer, on his or her assistant or deputy, or on another person in charge of the office, the Department of Financial Services may create an Internet-based transmission system to accept service of process by electronic transmission of documents.

Section 2. Subsection (1) of section 110.1315, Florida Statutes, is amended to read:

110.1315 Alternative retirement benefits; other-personal-services employees.—

(1) ~~Upon review and approval by the Executive Office of the Governor,~~ The Department of Financial Services shall provide an alternative retirement income security program for eligible temporary and seasonal employees of the state who are compensated from appropriations for other personal services. The Department of Financial Services may contract with a private vendor or vendors to administer the program under a defined-contribution plan under ss. 401(a) and 403(b) or s. 457 of the Internal Revenue Code, and the program must provide retirement benefits as required under s. 3121(b)(7)(F) of the Internal Revenue Code. The Department of Financial Services may develop a request for proposals and solicit qualified vendors to compete for the award of the contract. A vendor shall be selected on the basis of the plan that best serves the interest of the

participating employees and the state. The proposal must comply with all necessary federal and state laws and rules.

Section 3. Paragraph (a) of subsection (4) and subsection (12) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(4)(a) The Chief Financial Officer, with the approval of the State Board of Administration, shall establish such plan or plans of deferred compensation for state employees and may include persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012, including all such investment vehicles or products incident thereto, as may be available through, or offered by, qualified companies or persons, and may approve one or more such plans for implementation by and on behalf of the state and its agencies and employees.

(12) The Chief Financial Officer may adopt any rule necessary to administer and implement this act with respect to deferred compensation plans for state employees and persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012.

Section 4. Section 137.09, Florida Statutes, is amended to read:

137.09 Justification and approval of bonds.—Each surety upon every bond of any county officer shall make affidavit that he or she is a resident of the county for which the officer is to be commissioned, and that he or she has sufficient visible property therein unencumbered and not exempt from sale under legal process to make good his or her bond. Every such bond shall be approved by the board of county commissioners ~~and by the Department of Financial Services~~ when the board is ~~they and it are~~ satisfied in its ~~their~~ judgment that the bond ~~same~~ is legal, sufficient, and proper to be approved.

Section 5. Paragraphs (h) through (y) of subsection (2) of section 215.97, Florida Statutes, are redesignated as paragraphs (i) through (z), respectively, a new paragraph (h) is added to that subsection, present paragraphs (a), (m), and (v) of that subsection and paragraph (o) of subsection (8) are amended, subsections (9), (10), and (11) are renumbered as subsections (10), (11), and (12), respectively, and a new subsection (9) is added to that section, to read:

215.97 Florida Single Audit Act.—

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

(a) "Audit threshold" means the threshold amount used to determine when a state single audit or project-specific audit of a nonstate entity shall be conducted in accordance with this section. Each nonstate entity that expends a total amount of state financial assistance equal to or in excess of $750,000 ~~$500,000~~ in any fiscal year of such nonstate entity shall be

required to have a state single audit, or a project-specific audit, for such fiscal year in accordance with the requirements of this section. Every 2 years the Auditor General, after consulting with the Executive Office of the Governor, the Department of Financial Services, and all state awarding agencies, shall review the threshold amount for requiring audits under this section and may adjust such threshold amount consistent with the purposes of this section.

(h) "Higher education entity" means a Florida College System institution or a state university, as those terms are defined in s. 1000.21.

(n) ~~(m)~~ "Nonstate entity" means a local governmental entity, higher education entity, nonprofit organization, or for-profit organization that receives state financial assistance.

(w) ~~(v)~~ "State project-specific audit" means an audit of one state project performed in accordance with the requirements of subsection (11) ~~(10)~~.

(8) Each recipient or subrecipient of state financial assistance shall comply with the following:

(o) A higher education entity is exempt from the requirements of paragraph (2)(a) and this subsection ~~A contract involving the State University System or the Florida College System funded by state financial assistance may be in the form of:~~

~~1. A fixed-price contract that entitles the provider to receive full compensation for the fixed contract amount upon completion of all contract deliverables;~~

~~2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided;~~

~~3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables; or~~

~~4. A combination of the contract forms described in subparagraphs 1., 2., and 3.~~

(9) This subsection applies to any contract or agreement between a state awarding agency and a higher education entity that is funded by state financial assistance.

(a) The contract or agreement must comply with ss. 215.971(1) and 216.3475 and must be in the form of one or a combination of the following:

1. A fixed-price contract that entitles the provider to receive compensation for the fixed contract amount upon completion of all contract deliverables.

2. A fixed-rate-per-unit contract that entitles the provider to receive compensation for each contract deliverable provided.

3. A cost-reimbursable contract that entitles the provider to receive compensation for actual allowable costs incurred in performing contract deliverables.

(b) If a higher education entity has extremely limited or no required activities related to the administration of a state project and acts only as a conduit of state financial assistance, none of the requirements of this section apply to the conduit higher education entity. However, the subrecipient that is provided state financial assistance by the conduit higher education entity is subject to the requirements of subsection (8) and this subsection.

(c) Regardless of the amount of the state financial assistance, this subsection does not exempt a higher education entity from compliance with provisions of law that relate to maintaining records concerning state financial assistance to the higher education entity or that allow access and examination of those records by the state awarding agency, the higher education entity, the Department of Financial Services, or the Auditor General.

(d) This subsection does not prohibit the state awarding agency from including terms and conditions in the contract or agreement which require additional assurances that the state financial assistance meets the applicable requirements of laws, regulations, and other compliance rules.

Section 6. Paragraph (j) of subsection (4) of section 322.142, Florida Statutes, is amended to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital

image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(j) To the Department of Financial Services pursuant to an interagency agreement to facilitate the location of owners of unclaimed property, the validation of unclaimed property claims, ~~and~~ the identification of fraudulent or false claims, and the investigation of allegations of violations of the insurance code by licensees and unlicensed persons;

Section 7. Subsection (2) of section 374.983, Florida Statutes, is amended to read:

374.983 Governing body.—

(2) The present board of commissioners of the district shall continue to hold office until their respective terms shall expire. Thereafter the members of the board shall continue to be appointed by the Governor for a term of 4 years and until their successors shall be duly appointed. Specifically, commencing on January 10, 1997, the Governor shall appoint the commissioners from Broward, Indian River, Martin, St. Johns, and Volusia Counties and on January 10, 1999, the Governor shall appoint the commissioners from Brevard, Miami-Dade, Duval, Flagler, Palm Beach, and St. Lucie Counties. The Governor shall appoint the commissioner from Nassau County for an initial term that coincides with the period remaining in the current terms of the commissioners from Broward, Indian River, Martin, St. Johns, and

Volusia Counties. Thereafter, the commissioner from Nassau County shall be appointed to a 4-year term. Each new appointee must be confirmed by the Senate. Whenever a vacancy occurs among the commissioners, the person appointed to fill such vacancy shall hold office for the unexpired portion of the term of the commissioner whose place he or she is selected to fill. Each commissioner under this act before he or she assumes office shall be required to give a good and sufficient surety bond in the sum of $10,000 payable to the Governor and his or her successors in office, conditioned upon the faithful performance of the duties of his or her office, such bond to be approved by and filed with the board of commissioners of the district ~~Chief Financial Officer~~. Any and all premiums upon such surety bonds shall be paid by the board of commissioners of such district as a necessary expense of the district.

Section 8. Subsection (4) of section 509.211, Florida Statutes, is amended to read:

509.211 Safety regulations.—

(4) Every enclosed space or room that contains a boiler regulated under chapter 554 which is fired by the direct application of energy from the combustion of fuels and that is located in any portion of a public lodging establishment that also contains sleeping rooms shall be equipped with one or more carbon monoxide detector ~~sensor~~ devices that bear the certification mark from a testing and certification organization accredited in accordance with ISO/IEC Guide 65, General

Requirements for Bodies Operating Product Certification Systems, ~~label of a nationally recognized testing laboratory~~ and that have been tested and listed as complying with the most recent Underwriters Laboratories, Inc., Standard 2075 ~~2034~~, or its equivalent~~, unless it is determined that carbon monoxide hazards have otherwise been adequately mitigated as determined by the Division of State Fire Marshal of the Department of Financial Services~~. Such devices shall be integrated with the public lodging establishment's fire detection system. Any such installation or determination shall be made in accordance with rules adopted by the Division of State Fire Marshal.

Section 9. Subsection (9) of section 624.307, Florida Statutes, is amended to read:

624.307 General powers; duties.—

(9) Upon receiving service of legal process issued in any civil action or proceeding in this state against any regulated person or any unauthorized insurer under s. 626.906 or s. 626.937 which is required to appoint the Chief Financial Officer as its attorney to receive service of all legal process, the Chief Financial Officer, as attorney, may, in lieu of sending the process by registered or certified mail, send the process or make it available by any other verifiable means, including, but not limited to, making the documents available by electronic transmission from a secure website established by the department to the person last designated by the regulated person or the unauthorized insurer to receive the process. When process

documents are made available electronically, the Chief Financial Officer shall send a notice of receipt of service of process to the person last designated by the regulated person or unauthorized insurer to receive legal process. The notice must state the date and manner in which the copy of the process was made available to the regulated person or unauthorized insurer being served and contain the uniform resource locator (URL) for a hyperlink to access files and information on the department's website to obtain a copy of the process.

Section 10. Section 624.423, Florida Statutes, is amended to read:

624.423 Serving process.—

(1) Service of process upon the Chief Financial Officer as process agent of the insurer ~~(~~under s. 624.422 and s. 626.937~~)~~ shall be made by serving a copy of the process upon the Chief Financial Officer or upon her or his assistant, deputy, or other person in charge of her or his office. Service may also be made by mail or electronically as provided in s. 48.151. Upon receiving such service, the Chief Financial Officer shall retain a record copy and promptly forward one copy of the process by registered or certified mail or by other verifiable means, as provided under s. 624.307(9), to the person last designated by the insurer to receive the same, as provided under s. 624.422(2). For purposes of this section, records may be retained as paper or electronic copies.

(2) If ~~Where~~ process is served upon the Chief Financial Officer as an insurer's process agent, the insurer is ~~shall~~ not ~~be~~ required to answer or plead except within 20 days after the date upon which the Chief Financial Officer sends or makes available by other verifiable means ~~mailed~~ a copy of the process served upon her or him as required by subsection (1).

(3) Process served upon the Chief Financial Officer and sent or made available in accordance with this section and s. 624.307(9) ~~copy thereof forwarded as in this section provided~~ shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 11. Notwithstanding the expiration date in section 41 of chapter 2015-222, Laws of Florida, section 624.502, Florida Statutes, as amended by chapter 2013-41, Laws of Florida, is reenacted and amended to read:

624.502 Service of process fee.—In all instances as provided in any section of the insurance code and s. 48.151(3) in which service of process is authorized to be made upon the Chief Financial Officer or the director of the office, the party requesting service ~~plaintiff~~ shall pay to the department or office a fee of $15 for such service of process on an authorized insurer or $25 for such service of process on an unauthorized insurer, which fee shall be deposited into the Administrative Trust Fund.

Section 12. Subsection (1) of section 626.907, Florida Statutes, is amended to read:

626.907 Service of process; judgment by default.—

(1) Service of process upon an insurer or person representing or aiding such insurer pursuant to s. 626.906 shall be made by delivering to and leaving with the Chief Financial Officer, his or her assistant or deputy, or another person in charge of the ~~or some person in apparent charge of his or her~~ office two copies thereof and the service of process fee as required in s. 624.502. The Chief Financial Officer shall forthwith mail by registered mail, commercial carrier, or any verifiable means one of the copies of such process to the defendant at the defendant's last known principal place of business as provided by the party submitting the documents and shall keep a record of all process so served upon him or her. The service of process is sufficient, provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiff or plaintiff's attorney to the defendant at the defendant's last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow.

Section 13. Paragraph (b) of subsection (3) of section 626.916, Florida Statutes, is amended to read:

626.916 Eligibility for export.—

(3)

(b) Paragraphs (1)(a)-(d) do not apply to commercial residential property insurance or to classes of insurance which are subject to s. 627.062(3)(d)1. These classes may be exportable under the following conditions:

1. The insurance must be placed only by or through a surplus lines agent licensed in this state;

2. The insurer must be made eligible under s. 626.918; and

3. The insured must sign a disclosure that substantially provides the following: "You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer." If the notice is signed by the insured, the insured is presumed to have been informed and to know that other coverage may be available, and, with respect to the diligent-effort requirement under subsection (1), there is no liability on the part of, and no cause of action arises against, the retail agent presenting the form.

Section 14. Paragraph (a) of subsection (4) of section 626.921, Florida Statutes, is amended to read:

626.921 Florida Surplus Lines Service Office.—

(4) The association shall operate under the supervision of a board of governors consisting of:

(a) Five individuals nominated by the Florida Surplus Lines Association and appointed by the department from the regular membership of the Florida Surplus Lines Association.

Each board member shall be appointed to serve beginning on the date designated by the plan of operation and shall serve at the pleasure of the department for a 3-year term, such term initially to be staggered by the plan of operation so that three appointments expire in 1 year, three appointments expire in 2 years, and three appointments expire in 3 years. Members may be reappointed for subsequent terms. The board of governors shall elect such officers as may be provided in the plan of operation.

Section 15. Paragraph (a) of subsection (7) of section 627.7074, Florida Statutes, is amended to read:

627.7074 Alternative procedure for resolution of disputed sinkhole insurance claims.—

(7) Upon receipt of a request for neutral evaluation, the department shall provide the parties a list of certified neutral evaluators. The department shall allow the parties to submit requests to disqualify evaluators on the list for cause.

(a) The department shall disqualify neutral evaluators for cause based only on any of the following grounds:

1. A familial relationship within the third degree exists between the neutral evaluator and either party or a representative of either party.

2. The proposed neutral evaluator has, in a professional capacity, previously represented either party or a representative of either party in the same or a substantially related matter.

3. The proposed neutral evaluator has, in a professional capacity, represented another person in the same or a substantially related matter and that person's interests are materially adverse to the interests of the parties. The term "substantially related matter" means participation by the neutral evaluator on the same claim, property, or adjacent property.

4. The proposed neutral evaluator has, within the preceding 5 years, worked as an employer or employee of any party to the case.

5. The proposed neutral evaluator has, within the preceding 5 years, worked for any entity that performed any sinkhole loss testing, review, or analysis for the property.

Section 16. Subsection (13) of section 633.102, Florida Statutes, is amended to read:

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

(13) "Fire service provider" means a municipality or county, the state, the division, or any political subdivision of the state, including authorities and special districts, that

employs ~~employing~~ firefighters or uses ~~utilizing~~ volunteer firefighters to provide fire extinguishment or fire prevention services for the protection of life and property. The term includes any organization under contract or other agreement with such entity to provide such services.

Section 17. Section 633.107, Florida Statutes, is created to read:

633.107 Exemption from disqualification from licensure or certification.—

(1) The department may grant an exemption from disqualification to any person disqualified from licensure or certification by the Division of State Fire Marshal under this chapter because of a criminal record or dishonorable discharge from the United States Armed Forces if the applicant has paid in full any fee, fine, fund, lien, civil judgment, restitution, cost of prosecution, or trust contribution imposed by the court as part of the judgment and sentence for any disqualifying offense and:

(a) At least 5 years have elapsed since the applicant completed or has been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for a disqualifying offense; or

(b) At least 5 years have elapsed since the applicant was dishonorably discharged from the United States Armed Forces.

(2) For the department to grant an exemption, the applicant must clearly and convincingly demonstrate that he or

she would not pose a risk to persons or property if permitted to be licensed or certified under this chapter, evidence of which must include, but need not be limited to, facts and circumstances surrounding the disqualifying offense, the time that has elapsed since the offense, the nature of the offense and harm caused to the victim, the applicant's history before and after the offense, and any other evidence or circumstances indicating that the applicant will not present a danger if permitted to be licensed or certified.

(3) The department has discretion whether to grant or deny an exemption. The department shall provide its decision in writing which, if the exemption is denied, must state with particularity the reasons for denial. The department's decision is subject to proceedings under chapter 120, except that a formal proceeding under s. 120.57(1) is available only if there are disputed issues of material fact that the department relied upon in reaching its decision.

(4) An applicant may request an exemption, notwithstanding the time limitations of paragraphs (1)(a) and (b), if by executive clemency his or her civil rights are restored, or he or she receives a pardon, from the disqualifying offense. The fact that the applicant receives executive clemency does not alleviate his or her obligation to comply with subsection (2) or in itself require the department to award the exemption.

(5) The division may adopt rules to administer this section.

Section 18. Section 633.135, Florida Statutes, is created to read:

633.135 Firefighter Assistance Grant Program.—

(1) The Firefighter Assistance Grant Program is created within the division to improve the emergency response capability of volunteer fire departments and combination fire departments. The program shall provide financial assistance to improve firefighter safety and enable such fire departments to provide firefighting, emergency medical, and rescue services to their communities. For purposes of this section, the term "combination fire department" means a fire department composed of a combination of career and volunteer firefighters.

(2) The division shall administer the program and annually award grants to volunteer fire departments and combination fire departments using the annual Florida Fire Service Needs Assessment Survey. The purpose of the grants is to assist such fire departments in providing volunteer firefighter training and procuring necessary firefighter personal protective equipment, self-contained breathing apparatus equipment, and fire engine pumper apparatus equipment. However, the division shall prioritize the annual award of grants to such fire departments in a county having a population of 75,000 or less.

(3) The State Fire Marshal shall adopt rules and procedures for the program that require grant recipients to:

(a) Report their activity to the division for submission in the Fire and Emergency Incident Information Reporting System created pursuant to s. 633.136;

(b) Annually complete and submit the Florida Fire Service Needs Assessment Survey to the division;

(c) Comply with the Florida Firefighters Occupational Safety and Health Act, ss. 633.502-633.536;

(d) Comply with any other rule determined by the State Fire Marshal to effectively and efficiently implement, administer, and manage the program; and

(e) Meet the definition of the term "fire service provider" in s. 633.102.

(4) Funds shall be used to:

(a) Provide firefighter training to individuals to obtain a Volunteer Firefighter Certificate of Completion pursuant to s. 633.408. Training must be provided at no cost to the fire department or student by a division-approved instructor and must be documented in the division's electronic database.

(b) Purchase firefighter personal protective equipment, including structural firefighting protective ensembles and individual ensemble elements such as garments, helmets, gloves, and footwear, that complies with NFPA No. 1851, "Standard on Selection, Care, and Maintenance of Protective Ensembles for Structural Fire Fighting and Proximity Fire Fighting," by the National Fire Protection Association.

(c) Purchase self-contained breathing apparatus equipment that complies with NFPA No. 1852, "Standard on Selection, Care, and Maintenance of Open-Circuit Self-Contained Breathing Apparatus."

(d) Purchase fire engine pumper apparatus equipment. Funds provided under this paragraph may be used to purchase the equipment or subsidize a federal grant from the Federal Emergency Management Agency to purchase the equipment.

Section 19. Subsection (8) of section 633.208, Florida Statutes, is amended to read:

633.208 Minimum firesafety standards.—

(8) The provisions of the Life Safety Code, as contained in the Florida Fire Prevention Code, do not apply to ~~newly constructed~~ one-family and two-family dwellings. However, fire sprinkler protection may be permitted by local government in lieu of other fire protection-related development requirements for such structures. While local governments may adopt fire sprinkler requirements for one- and two-family dwellings under this subsection, it is the intent of the Legislature that the economic consequences of the fire sprinkler mandate on home owners be studied before the enactment of such a requirement. After the effective date of this act, any local government that desires to adopt a fire sprinkler requirement on one- or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one- or two-family dwellings or any proposed residential subdivision.

The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property. The report must include an assessment of the cost savings from any reduced or eliminated impact fees if applicable, the reduction in special fire district tax, insurance fees, and other taxes or fees imposed, and the waiver of certain infrastructure requirements including the reduction of roadway widths, the reduction of water line sizes, increased fire hydrant spacing, increased dead-end roadway length, and a reduction in cul-de-sac sizes relative to the costs from fire sprinkling. A failure to prepare an economic report shall result in the invalidation of the fire sprinkler requirement to any one- or two-family dwelling or any proposed subdivision. In addition, a local jurisdiction or utility may not charge any additional fee, above what is charged to a non-fire sprinklered dwelling, on the basis that a one- or two-family dwelling unit is protected by a fire sprinkler system.

Section 20. Paragraph (b) of subsection (4) and subsection (8) of section 633.408, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

633.408 Firefighter and volunteer firefighter training and certification.—

(4) The division shall issue a firefighter certificate of compliance to an individual who does all of the following:

(b) Passes the Minimum Standards Course examination <u>within 12 months after completing the required courses</u>.

(8)(a) Pursuant to s. 590.02(1)(e), the division shall establish a structural fire training program of not less than 206 hours. The division shall issue to a person satisfactorily complying with this training program and who has successfully passed an examination as prescribed by the division and who has met the requirements of s. 590.02(1)(e), a Forestry Certificate of Compliance.

(b) An individual who holds a current and valid Forestry Certificate of Compliance is entitled to the same rights, privileges, and benefits provided for by law as a firefighter.

(9) A Firefighter Certificate of Compliance or a Volunteer Firefighter Certificate of Completion issued under this section expires 4 years after the date of issuance unless renewed as provided in s. 633.414.

Section 21. Subsection (2) of section 633.412, Florida Statutes, is amended to read:

633.412 Firefighters; qualifications for certification.—

~~(2) If the division suspends or revokes an individual's certificate, the division must suspend or revoke all other certificates issued to the individual by the division pursuant to this part.~~

Section 22. Section 633.414, Florida Statutes, is amended to read:

633.414 Retention of firefighter, volunteer firefighter, and fire investigator certifications ~~certification~~.—

(1) In order for a firefighter to retain her or his Firefighter Certificate of Compliance, every 4 years he or she must meet the requirements for renewal provided in this chapter and by rule, which must include at least one of the following:

(a) Be active as a firefighter.~~;~~

(b) Maintain a current and valid fire service instructor certificate, instruct at least 40 hours during the 4-year period, and provide proof of such instruction to the division, which proof must be registered in an electronic database designated by the division.~~;~~

(c) Within 6 months before the 4-year period expires, successfully complete a Firefighter Retention Refresher Course consisting of a minimum of 40 hours of training to be prescribed by rule.~~; or~~

(d) Within 6 months before the 4-year period expires, successfully retake and pass the Minimum Standards Course examination pursuant to s. 633.408.

(2) In order for a volunteer firefighter to retain her or his Volunteer Firefighter Certificate of Completion, every 4 years he or she must:

(a) Be active as a volunteer firefighter; or

(b) Successfully complete a refresher course consisting of a minimum of 40 hours of training to be prescribed by rule.

(3) Subsection (1) does not apply to state-certified firefighters who are certified and employed full-time, as determined by the fire service provider, as firesafety

inspectors or fire investigators, regardless of their ~~her or his~~ employment status as firefighters or volunteer firefighters ~~a firefighter~~.

(4) For the purposes of this section, the term "active" means being employed as a firefighter or providing service as a volunteer firefighter for a cumulative period of 6 months within a 4-year period.

(5) The 4-year period begins upon issuance of the certificate or separation from employment~~:~~

~~(a) If the individual is certified on or after July 1, 2013, on the date the certificate is issued or upon termination of employment or service with a fire department~~.

~~(b) If the individual is certified before July 1, 2013, on July 1, 2014, or upon termination of employment or service thereafter.~~

(6) A certificate for a firefighter or volunteer firefighter expires if he or she fails to meet the requirements of this section.

(7) The State Fire Marshal may deny, refuse to renew, suspend, or revoke the certificate of a firefighter or volunteer firefighter if the State Fire Marshal finds that any of the following grounds exists:

(a) Any cause for which issuance of a certificate could have been denied if it had then existed and had been known to the division.

(b) A violation of any provision of this chapter or any rule or order of the State Fire Marshal.

(c) Falsification of a record relating to any certificate issued by the division.

Section 23. Subsections (1) and (2) of section 633.426, Florida Statutes, are amended to read:

633.426 Disciplinary action; standards for revocation of certification.—

(1) For purposes of this section, the term:

(a) "Certificate" means any of the certificates issued under s. 633.406.

(b) "Certification" or "certified" means ~~the act of~~ holding a certificate that is current and valid and that meets the requirements for renewal of certification pursuant to this chapter and the rules adopted under this chapter ~~certificate~~.

(c) "Convicted" means a finding of guilt, or the acceptance of a plea of guilty or nolo contendere, in any federal or state court or a court in any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the case.

(2) Effective July 1, 2013, an individual who holds a certificate is subject to revocation for any of the following ~~An individual is ineligible to apply for certification if the individual has, at any time, been~~:

(a) Conviction ~~Convicted~~ of a misdemeanor relating to the certification or to perjury or false statements.

(b) Conviction ~~Convicted~~ of 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.

(c) Dishonorable discharge ~~Dishonorably discharged~~ from any of the Armed Forces of the United States.

Section 24. This act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 48.151, F.S.; authorizing the Department of Financial Services to create an Internet-based transmission system to accept service of process; amending s. 110.1315, F.S.; removing a requirement that the Executive Office of the Governor review and approve a certain alternative retirement income security program provided by the department; amending s. 112.215, F.S.; authorizing the Chief Financial Officer, with the approval of the State Board of Administration, to include specified employees other than state employees in a deferred compensation plan; conforming a provision to a change made by the act; amending s. 137.09, F.S.; removing a

requirement that the department approve certain bonds of county officers; amending s. 215.97, F.S.; revising and providing definitions; increasing the amount of a certain audit threshold; revising applicability to remove for-profit organizations; exempting specified higher education entities from certain audit requirements; revising the requirements for state-funded contracts or agreements between a state awarding agency and a higher education entity; providing an exception; providing applicability; conforming provisions to changes made by the act; amending s. 322.142, F.S.; authorizing the Department of Highway Safety and Motor Vehicles to provide certain driver license images to the department for the purpose of investigating allegations of violations of the insurance code; amending s. 374.983, F.S.; naming the Board of Commissioners of the Florida Inland Navigation District, rather than the Chief Financial Officer, as the entity that receives and approves certain surety bonds of commissioners; amending s. 509.211, F.S.; revising certain standards for carbon monoxide detector devices in specified spaces or rooms of public lodging establishments; deleting a provision authorizing the State Fire Marshal of the department to exempt a device from such standards; amending s. 624.307, F.S.; conforming

provisions to changes made by the act; specifying requirements for the Chief Financial Officer in providing notice of electronic transmission of process documents; amending s. 624.423, F.S.; authorizing service of process by specified means; reenacting and amending s. 624.502, F.S.; specifying fees to be paid by a party requesting service to the department or Office of Insurance Regulation for certain service of process on authorized and unauthorized insurers; amending s. 626.907, F.S.; requiring a service of process fee for certain service of process made by the Chief Financial Officer; revising methods by which copies of the service of process may be provided to a defendant; specifying the determination of a defendant's last known principal place of business; amending s. 626.916, F.S.; revising applicability of certain provisions relating to insurance coverage eligibility for export under the Surplus Lines Law; amending s. 626.921, F.S.; revising membership requirements of the Florida Surplus Lines Service Office board of governors; amending s. 627.7074, F.S.; providing an additional ground for disqualifying a neutral evaluator for disputed sinkhole insurance claims; amending s. 633.102, F.S.; redefining the term "fire service provider"; creating s. 633.107, F.S.; authorizing the department to grant exemptions from

disqualification for licensure or certification by the Division of State Fire Marshal under certain circumstances; specifying the information an applicant must provide; providing the manner in which the department must render its decision to grant or deny an exemption; providing procedures for an applicant to contest the decision; providing an exception from certain requirements; authorizing the division to adopt rules; creating s. 633.135, F.S.; establishing the Firefighter Assistance Program for certain purposes; requiring the division to administer the program and annually award grants to qualifying fire departments; defining the term "combination fire department"; providing eligibility requirements; requiring the State Fire Marshal to adopt rules and procedures; providing program requirements; amending s. 633.208, F.S.; revising applicability of the Life Safety Code to exclude one-family and two-family dwellings, rather than only such dwellings that are newly constructed; amending s. 633.408, F.S.; revising firefighter and volunteer firefighter certification requirements; specifying the duration of certain firefighter certifications; amending s. 633.412, F.S.; deleting a requirement that the division suspend or revoke all issued certificates if an individual's certificate is suspended or revoked; amending s.

633.414, F.S.; conforming provisions to changes made by the act; revising alternative requirements for renewing specified certifications; providing grounds for denial of, or disciplinary action against, certifications for a firefighter or volunteer firefighter; amending s. 633.426, F.S.; revising a definition; providing a date after which an individual is subject to revocation of certification under specified circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 659 Automobile Insurance
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 1036

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

SUMMARY ANALYSIS

Private passenger motor vehicle insurance (automobile insurance) is written to individuals, and family members in the same household, for coverage of automobiles that are not used for commercial purposes. The bill makes the following changes regarding automobile insurance:

- **The Florida Automobile Joint Underwriting Association (Auto JUA)** – an insurer, including the Auto JUA, may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium. The bill allows the Auto JUA to cancel personal or commercial policies within the first 60 days for non-payment and prohibits insureds from cancelling coverage in the first 90 days, except in certain circumstances.
- **Methods of payment** – Florida law requires payment of premiums by certain methods. The bill adds payments by a "draft" to the list of acceptable payment methods.
- **Insufficient funds fee** - in certain instances, a property, casualty, or surety insurer or a premium finance company may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). The bill authorizes all insurers to charge $15, pursuant to policy terms, if a premium payment fails due to insufficient funds.
- **Return of unearned premium at cancellation** – when a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium. The bill allows the insured to apply the unearned premium to any other policies issued by the insurer or the insurer's group.
- **Prepayment of premium** – Subject to certain exceptions, insurers are required to collect two months of premium prior to issuing a private passenger motor vehicle policy or binder for personal injury protection (PIP) and property damage liability coverage. The bill allows an exception to this requirement if the insured has agreed to recurring credit or debit card payments with the insurer.
- **Medical diagnosis coding manuals** – Florida law requires PIP medical providers to code their diagnoses using the International Classification of Diseases, 9th Revision (ICD-9). The bill ends the use of the ICD-9 and begins use of the International Classification of Diseases, 10th Revision (ICD-10).
- **Deductibles** – PIP insurers must offer certain deductibles and they may limit medical reimbursement to a schedule of maximum charges. The bill provides that where the insurer limits medical reimbursement, the deductible will apply to the reimbursements due, not the amount billed.
- **Preinsurance inspections** – subject to certain exceptions, insurers are required to conduct preinsurance motor vehicle inspections in seven counties. The bill allows insurers to opt-out of the required inspections upon a filing with the Office of Insurance Regulation and the authority to implement their own preinsurance inspection program.

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

The bill is effective July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Private passenger motor vehicle insurance[1] is casualty coverage[2] within the personal lines[3] segment of insurance business. Insurers issue it to individuals, or related individuals in the same household, for coverage of private passenger automobiles that are not used as public conveyances, for rental to others, or in the occupation, profession, or business of the insured (excluding farm business use).[4] Commercial motor vehicles are those that are not private passenger motor vehicles.[5] Motor vehicle[6] owners in the state are required to maintain proof of coverage for Personal Injury Protection (PIP)[7] under the Florida Motor Vehicle No-Fault Law[8] and financial responsibility, under the Financial Responsibility Law,[9] for damages arising due to the operation of a motor vehicle.

Cancellation of Florida Automobile Joint Underwriting Association Policies

Insurers[10] that offer motor vehicle insurance in the state must participate in the Florida Automobile Joint Underwriting Association (Auto JUA).[11] The Auto JUA exists to provide motor vehicle insurance to individuals who cannot obtain such coverage in the voluntary insurance market. The Auto JUA distributes this risk among its members. It is subject to various limitations regarding issuance and cancellation of coverage, and provision of premium credits/discounts to protect its solvency, the coverage of its insureds, and to avoid Auto JUA policies being competitive with the voluntary market.

Motor vehicle insurers, including the Auto JUA, are limited regarding the cancellation of insurance policies.[12] An insurer may not cancel a policy within 60 days of the effective date of the policy, except for non-payment of premium.[13] The bill gives the Auto JUA the specific authority to cancel private passenger and commercial motor vehicle policies within the first 60 days of coverage for non-payment, if the reason is the check is dishonored for any reason or if any other payment type is rejected or deemed invalid (e.g., credit or debit card transactions). The bill also prohibits someone covered by the Auto JUA from cancelling their coverage in the first 90 days of the policy period, unless the vehicle is destroyed, they transfer ownership of the insured vehicle, or they purchase a voluntary market policy for the insured vehicle.[14] This provision guarantees the Auto JUA a minimum of three months of premium revenue on each policy, while allowing the cancellation of policies for non-payment.

Insurance Premium Payments

Florida law requires cash payment of insurance premiums.[15] Acceptable forms of payment are coins, currency, checks, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction. The bill allows consumers to also use a draft[16] to pay premiums.

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[1] s. 627.041(8), F.S.
[2] s. 627.021(3), F.S.
[3] Personal lines insurance is property and casualty insurance sold to individuals and families for non-commercial purposes. s. 626.015(15), F.S.
[4] s. 627.041(8) and 627.728(1)(a), F.S.
[5] s. 627.732(3)(a), F.S.
[6] s. 627.732(3), F.S.
[7] s. 627.736, F.S.
[8] ss. 627.730-627.7405, F.S.
[9] ch. 324, F.S.
[10] s. 624.03, F.S.
[11] s. 627.311, F.S.
[12] ss. 627.7295 and 627.728, F.S.
[13] s. 627.7295(4), F.S.
[14] Proof of such coverage is required by statute. s. 627.311(3)(l), F.S.
[15] s. 627.4035, F.S.

In certain instances, an insurer may charge a fee to the insured if their payment fails due to insufficient funds (this is in addition to any fees charged by their financial provider). If a check or draft for payment to a property, casualty, or surety insurer, including a workers' compensation insurer, is returned due to insufficient funds, the insurer may charge a fee of $20.00 or 5 percent of the payment, whichever is greater.[17] Also, a premium finance company[18] may charge a fee of $15.00 for checks or drafts that are returned due to insufficient funds.[19] The bill authorizes any insurer to charge $15, pursuant to policy terms, if a premium payment fails due to insufficient funds.

Cancellation of Motor Vehicle Insurance and Return of Unearned Premium

When a motor vehicle insurance policy is cancelled, either by the insurer or policyholder, the insurer is required to return any unearned portion of the premium to the policyholder.[20] The bill allows the insured to choose to apply the unearned premium to any other policies issued by the insurer or the insurer's group.

Personal Injury Protection Insurance

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[21] requires motorists to carry at least $10,000 of no-fault insurance, known as personal injury protection (PIP) coverage. The purpose of PIP insurance under the No-Fault Law is to provide for medical, surgical, funeral, and disability insurance benefits without regard to who is responsible for a motor vehicle accident. In return for assuring payment of these benefits, the No-Fault Law provides limitations on the right to bring lawsuits arising from motor vehicle accidents. Florida motorists are required to carry a minimum of $10,000 of PIP insurance.[22]

PIP insurance benefits are payable as follows.

- Up to a limit of $10,000, 80 percent of reasonable medical expenses for:
  1) Initial services and care lawfully provided, supervised, ordered or prescribed by a medical doctor, osteopathic physician, chiropractic physician or that are provided in a hospital or in a facility that owns, or is wholly owned by a hospital. Initial services and care may also be provided for emergency transport and treatment.
  2) Upon referral by any of the above-listed providers, follow-up services and care consistent with the underlying medical diagnosis, which may be provided, supervised, ordered, or prescribed only by a medical doctor, osteopathic physician, chiropractic physician, or dentist, or, to the extent permitted under applicable law and under the supervision of such provider, by a physician assistant or advanced registered nurse practitioner. Follow-up services and care may also be provided by:
     a) A licensed hospital or ambulatory surgical center;
     b) An entity wholly owned by a medical doctor, osteopathic physician, chiropractic physician, or by such practitioner(s) and specified family members;
     c) An entity that owns or is wholly owned, directly or indirectly, by a hospital or hospitals;
     d) A licensed physical therapist, based upon a referral by a provider listed in 2); or
     e) A licensed health care clinic that meets specified criteria.

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[16] A draft is a negotiable instrument that orders the payment of a fixed amount of money. s. 673.1041, F.S. Examples of drafts include checks, cashier's checks, teller's checks, and documentary drafts.
[17] s. 627.162, F.S.
[18] s. 627.826, F.S.
[19] s. 627.841(4), F.S.
[20] s. 627.7283, F.S.
[21] ss. 627.730-627.7405, F.S.
[22] s. 627.7275, F.S. Under Florida's Financial Responsibility Law (ch. 324, F.S.), motorists must also provide proof of ability to pay monetary damages for bodily injury and property damage liability at the time of motor vehicle accidents or when serious traffic violations occur. The Financial Responsibility Law requires $10,000, per person, and $20,000, per incident, of bodily injury coverage, and $10,000 of property damage liability coverage.

3) Reimbursement for services and care pursuant to 1) or 2) of up to $10,000 if a medical doctor, osteopathic physician, dentist, physician assistant, or an advanced registered nurse practitioner determines that the injured person had an emergency medical condition.

- Up to a limit of $2,500, 80 percent of reasonable medical expenses when a provider listed in 1) or 2) determines that the injured person did not have an emergency medical condition.

Prepayment of Motor Vehicle Insurance Contracts

Insurers are required to collect two months of premium from the insured prior to issuing a private passenger motor vehicle policy or binder for personal injury protection and property damage liability coverage.[23] This required prepayment must be made from the insured's own funds, as opposed to being paid on their behalf by an insurer, agent, or premium finance company or via an insurer's or agent's periodic payment plan. However, this prepayment requirement does not apply if:

- The insured is active or former military personnel or one of their dependents;
- The insured or a member of their family is renewing or replacing such a policy with the insurer or a member of the insurer's group;
- All policy payments are being made under a:
    - Payroll deduction plan or an automatic funds transfer payment plan from the policyholder; or
    - An automatic funds transfer payment plan from an agent, managing general agent, or premium finance company, if the policy provides:
        - Personal injury protection;
        - Property damage liability coverage (minimum $10,000); and
        - Bodily injury or death liability coverage (minimum $10,000, per accident, for one person, and $20,000, per accident, for two or more persons);
- The insured has had such a policy in effect for 6 months, the insured's agent was terminated by the insurer and the insured obtains replacement coverage with a different insurer through that agent; or
- The insured or a family member has a current policy in effect with the insurer or the insurer's group and is obtaining additional coverage for the same or a new vehicle.

The bill allows an exception to the two-month prepayment requirement if the insured has agreed to recurring credit or debit card payments with the insurer.

Medical Billing and Diagnosis Coding – Materials Incorporated by Reference

Section 627.736, F.S., requires personal injury protection medical providers to bill their services and code their diagnoses using the *Physicians' Current Procedural Terminology (CPT)*, the *Healthcare Correct Procedural Coding System (HCPCS)*,[24] or the *International Classification of Diseases, 9th Revision (ICD-9)*,[25] in effect for the year that the medical service is rendered and to comply with the CMS-1500 medical billing form instructions of the Centers for Medicare & Medicaid Services (CMS), the American Medical Services CPT Editorial Panel, and the HCPCS. Effective October 1, 2015, the CMS ended the use of the ICD-9 for federal reimbursement purposes and began requiring the use of the *International Classification of Diseases, 10th Revision (ICD-10)*. Providers are burdened by having

[23] s. 627.7295, F.S. Such policies must be issued for a minimum coverage period of six months, unless the policy shares a common expiration date with an existing policy or to complete the unexpired portion of a previous policy period. The insured may not cancel the policy within the first two months, unless the insured vehicle is destroyed, ownership of the vehicle is transferred, or after a replacement policy covering the vehicle is purchased.

[24] The CPT and the HCPCS are produced by the American Medical Association. They are available at https://commerce.ama-assn.org/store/ under the Coding & Reimbursement section (last visited Jan. 14, 2016).

[25] The International Classification of Diseases (ICD) manuals are developed by the World Health Organization. Information about the ICD manuals can be obtained at http://www.who.int/classifications/icd/en/ (last visited Jan. 14, 2016).

to code their bills differently for different payors. Maintaining consistency with the federal CMS bill coding requirements will avoid this impact.

The bill clarifies that the diagnosis coding manual for use is the *International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM)*[26] and limits its use for medical services rendered before October 1, 2015. It further provides that the *International Classification of Diseases, 10th Revision, Clinical Modification (ICD-10-CM)* shall be used for all medical services rendered on or after October 1, 2015.

Premium Reducing PIP Deductibles and Limitation on Medical Reimbursement

PIP insurers must offer their customers a deductible that, if selected, will reduce their premium amount.[27] The insurer must offer deductibles of $250, $500, and $1,000; they are not prohibited from offering other deductibles. The insurer is required to make an appropriate premium reduction in consideration of the selected deductible. To protect and educate the consumer, there is a prohibition on preventing an insurance applicant's selection of a deductible. The insurance offer and renewals must include the following statement:

> For personal injury protection insurance, the named insured may elect a deductible and to exclude coverage for loss of gross income and loss of earning capacity ("lost wages"). These elections apply to the named insured alone, or to the named insured and all dependent resident relatives. A premium reduction will result from these elections. The named insured is hereby advised not to elect the lost wage exclusion if the named insured or dependent resident relatives are employed, since lost wages will not be payable in the event of an accident.

The deductible does not apply to PIP death benefits. Otherwise, the deductible must be credited against 100 percent of the expenses and losses for the benefits described in the PIP law.

Medical providers and entities may charge the insurer and injured party only a reasonable amount for services and care rendered.[28] The provider's charge may not exceed the amount they customarily charge for like services or supplies. The reasonableness of the charge is tested against the usual and customary charges and reimbursements the provider accepts, the reimbursement levels in the community and state and federal fee schedules under motor vehicle and other insurance coverages, and other relevant information. However, the insurer may limit reimbursement to a schedule of maximum charges. The schedule of maximum charges is:

- 200 percent of Medicare, for emergency transport and treatment by providers licensed under ch. 401, F.S.;
- 75 percent of the hospital's usual and customary charges, for emergency services and care provided by a hospital licensed under ch. 395, F.S.;
- The usual and customary charges in the community for emergency services and care as defined by s. 395.002, F.S., provided in a facility licensed under ch. 395, F.S., rendered by a physician or dentist, and related hospital inpatient services rendered by a physician or dentist;

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[26] The "clinical modification" of the ICD-9 and ICD-10, which are referred to as the ICD-9-CM and ICD-10-CM, respectively, are developed by the federal National Center for Health Statistics. The clinical modifications manuals allow health care providers to code their diagnoses consistent with the applicable ICD standard. Information about the ICD-9-CM and ICD-10-CM is available from the federal Centers for Disease Control and Prevention (CDC) at http://www.cdc.gov/nchs/icd/icd10cm.htm (last visited Jan. 14, 2016).
[27] s. 627.739, F.S. Since PIP coverage insures the interests of third parties that may be injured in an accident, the deductible only applies to the named insured and their dependent relatives. Anyone else with a claim under a PIP policy will receive their benefits without having to pay the deductible.
[28] s. 627.736(5), F.S.

- 200 percent of the Medicare Part A prospective payment applicable to the specific hospital providing the inpatient services, for hospital inpatient services, other than emergency services and care;
- 200 percent of the Medicare Part A Ambulatory Payment Classification for the specific hospital providing the outpatient services, for hospital outpatient services, other than emergency services and care;
- For all other medical services, supplies, and care, 200 percent of the allowable amount under the participating physicians fee schedule of Medicare Part B, except:
    - Medicare Part B, in the case of services, supplies, and care provided by ambulatory surgical centers and clinical laboratories;
    - The Durable Medical Equipment Prosthetics/Orthotics and Supplies fee schedule of Medicare Part B, in the case of durable medical equipment.

  However, if such services, supplies, or care is not reimbursable under Medicare Part B, the insurer may limit reimbursement to 80 percent of the maximum reimbursable allowance under workers' compensation, as determined under s. 440.13, F.S., and rules adopted thereunder which are in effect at the time such services, supplies, or care is provided. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.

Effective July 1, 2012, insurers that want to utilize the PIP schedule of maximum charges must amend their forms to include the schedule. If the insurer elects to limit provider reimbursement to the schedule of maximum charges, the provider is prohibited from billing or attempting to collect amounts in excess of the schedule of maximum charges from the insured. However, this does not apply once the PIP insurer has paid the limits of its liability.

The bill provides that where the insurer has elected to limit reimbursement to the schedule of maximum charges, the deductible will apply to the amount of the reimbursements that are due, rather than the amount billed. The insured will not receive deductible credit for amounts paid in excess of the applicable reimbursement limit.

Preinsurance Inspection of Private Passenger Motor Vehicles

Section 627.744, F.S., requires insurers to perform preinsurance inspections of private passenger motor vehicles. The requirement applies to a policy issued on a private passenger motor vehicle principally garaged in Duval, Palm Beach, Broward, Dade, Orange, Hillsborough, and Pinellas counties. There are various exemptions from the required preinsurance inspection, including exceptions for new, unused motor vehicles "purchased" from a licensed motor vehicle dealer or leasing company when the insurer is provided with the bill of sale, buyer's order, or copy of the title and certain other documentation.

Despite the exemptions, an insurer may require a preinsurance inspection of any motor vehicle as a condition of issuance of physical damage coverage. Physical damage coverage may not be suspended during the policy period due to the applicant's failure to provide the required documents. However, claim payments are conditioned upon, and are not payable until, the required documents are received by the insurer. Applicants for insurance may be required to pay the cost of the preinsurance inspection, not to exceed five dollars.

The bill allows insurers to opt-out of the preinsurance inspection requirement. When opting-out, the insurer must file a manual rule with the Office of Insurance Regulation stating that the insurer will not be participating in the inspection program and will not require statutory preinsurance inspections. An insurer that has opted-out may establish a preinsurance inspection program of their own.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.311, F.S., relating to joint underwriters and joint reinsurers; public records and public meetings exemptions.

Section 2: Amends s. 627.4035, F.S., relating to cash payment of premiums; claims.

Section 3: Amends s. 627.7283, F.S., relating to cancellation; return of premium.

Section 4: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.

Section 5: Amends s. 627.736, F.S., relating to required personal injury protection benefits; exclusions; priority; claims.

Section 6: Amends s. 627.739, F.S., relating to personal injury protection; optional limitations; deductibles.

Section 7: Amends s. 627.744, F.S., relating to required preinsurance inspection of private passenger motor vehicles.

Section 8: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has positive and negative impacts on the private sector. Positive impacts include: increased insurer efficiencies that may result in premium savings being passed on to consumers; increased flexibility paying premiums and reallocation of unearned premiums; and reduction of premium prepayments in certain circumstances. Negative impacts include: the bill authorizes a new insufficient funds fee for failed payments, which is in addition to fees levied by a financial institution; a new limitation when an Auto JUA policy may be cancelled by the insured; and authority to cancel coverage earlier than currently allowed.

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:

The bill may contain a flaw in the title. The bill relates to automobile insurance. However, section 2 of the bill amending s. 627.4035, F.S., appears to effect all types of insurance contracts. This can be alleviated by amending the bill to place the substance of this portion of the bill within a statute that relates only to automobile insurance.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to automobile insurance; amending s. 627.311, F.S.; authorizing the Florida Automobile Joint Underwriting Association and a joint underwriting plan approved by the Office of Insurance Regulation to cancel personal lines or commercial policies within a specified time for nonpayment of premium due to certain reasons; prohibiting an insured from cancelling a policy or binder within a specified time except under certain conditions; amending s. 627.4035, F.S.; revising the forms of premium payment; authorizing insurers to charge an insufficient funds fee of up to a specified amount; amending s. 627.7283, F.S.; authorizing an insured who cancels a policy to apply the unearned portion of any premium paid to unpaid balances of other policies with the same insurer or insurer group; amending s. 627.7295, F.S.; updating applicability language to include a reference to recurring credit card or debit card payments; amending s. 627.736, F.S.; requiring that a certain standard form be approved by the office and adopted by the Financial Services Commission, rather than approved by the office or adopted by the commission; revising standards for compliance for specified billings for medical services; amending s. 627.739, F.S.; revising applicability; providing a limitation

to an amount of expenses and losses applicable to a deductible related to personal injury protection benefits under a certain condition; amending s. 627.744, F.S.; authorizing an insurer to opt out of the preinsurance inspection of private passenger motor vehicles and to establish its own preinsurance inspection program if it files a certain manual rule with the office; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (3) of section 627.311, Florida Statutes, to read:

627.311 Joint underwriters and joint reinsurers; public records and public meetings exemptions.—

(3) The office may, after consultation with insurers licensed to write automobile insurance in this state, approve a joint underwriting plan for purposes of equitable apportionment or sharing among insurers of automobile liability insurance and other motor vehicle insurance, as an alternate to the plan required in s. 627.351(1). All insurers authorized to write automobile insurance in this state shall subscribe to the plan and participate therein. The plan shall be subject to continuous review by the office which may at any time disapprove the entire plan or any part thereof if it determines that conditions have changed since prior approval and that in view of the purposes of

the plan changes are warranted. Any disapproval by the office shall be subject to the provisions of chapter 120. The Florida Automobile Joint Underwriting Association is created under the plan. The plan and the association:

(m) May cancel personal lines or commercial policies issued by the plan within the first 60 days after the effective date of the policy or binder for nonpayment of premium if the check issued for payment of the premium is dishonored for any reason or if any other form of payment is rejected or deemed invalid. An insured may not cancel a policy or binder within the first 90 days after its effective date, or within a lesser period as required by the plan, except:

1. Upon total destruction of the insured motor vehicle;

2. Upon transfer of ownership of the insured motor vehicle; or

3. After purchase of another policy or binder covering the motor vehicle that was covered under the policy being canceled.

Section 2. Subsection (1) of section 627.4035, Florida Statutes, is amended to read:

627.4035 ~~Cash~~ Payment of premiums; claims.—

(1)(a) The premiums for insurance contracts issued in this state or covering risk located in this state shall be paid in cash consisting of coins, currency, checks, drafts, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan. ~~By July 1, 2007,~~ Insurers issuing personal lines residential and commercial

property policies shall provide a premium payment plan option to their policyholders which allows for a minimum of quarterly and semiannual payment of premiums. Insurers may, but are not required to, offer monthly payment plans. Insurers issuing such policies must submit their premium payment plan option to the office for approval before use.

(b) If a payment of premium under this subsection by debit card, credit card, automatic electronic funds transfer, check, or draft is returned, is declined, or cannot be processed due to insufficient funds, the insurer may impose an insufficient funds fee of up to $15 per occurrence pursuant to the policy terms.

Section 3. Subsections (1), (2), and (3) of section 627.7283, Florida Statutes, are amended to read:

627.7283 Cancellation; return of unearned premium.—

(1) If the insured cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned portion of any premium paid within 30 days after the effective date of the policy cancellation or receipt of notice or request for cancellation, whichever is later. This requirement applies to a cancellation initiated by an insured for any reason. However, the insured may elect to apply the unearned portion of any premium paid to unpaid balances of other policies with the same insurer or insurer group.

(2) If an insurer cancels a policy of motor vehicle insurance, the insurer must mail or electronically transfer the unearned premium portion of any premium within 15 days after the

effective date of the policy cancellation. However, the insured may elect to apply the unearned portion of any premium paid to unpaid balances of other policies with the same insurer or insurer group.

(3) If the unearned premium is not mailed, ~~or~~ electronically transferred, or applied to the unpaid balance of other policies within the applicable period, the insurer must pay to the insured 8 percent interest on the amount due. If the unearned premium is not mailed or electronically transferred within 45 days after the applicable period, the insured may bring an action against the insurer pursuant to s. 624.155.

Section 4. Subsection (7) of section 627.7295, Florida Statutes, is amended to read:

627.7295 Motor vehicle insurance contracts.—

(7) A policy of private passenger motor vehicle insurance or a binder for such a policy may be initially issued in this state only if, before the effective date of such binder or policy, the insurer or agent has collected from the insured an amount equal to 2 months' premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action resulting in the insured having paid from the insured's own funds an amount less than the 2 months' premium required by this subsection. This subsection applies without regard to whether the premium is financed by a premium finance company or is paid pursuant to a periodic payment plan of an insurer or an insurance agent. This subsection does not apply if an insured or

member of the insured's family is renewing or replacing a policy or a binder for such policy written by the same insurer or a member of the same insurer group. This subsection does not apply to an insurer that issues private passenger motor vehicle coverage primarily to active duty or former military personnel or their dependents. This subsection does not apply if all policy payments are paid pursuant to a payroll deduction plan, ~~or~~ an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit card agreement with the insurer. This subsection and subsection (4) do not apply if all policy payments to an insurer are paid pursuant to an automatic electronic funds transfer payment plan from an agent, a managing general agent, or a premium finance company and if the policy includes, at a minimum, personal injury protection pursuant to ss. 627.730-627.7405; motor vehicle property damage liability pursuant to s. 627.7275; and bodily injury liability in at least the amount of $10,000 because of bodily injury to, or death of, one person in any one accident and in the amount of $20,000 because of bodily injury to, or death of, two or more persons in any one accident. This subsection and subsection (4) do not apply if an insured has had a policy in effect for at least 6 months, the insured's agent is terminated by the insurer that issued the policy, and the insured obtains coverage on the policy's renewal date with a new company through the terminated agent.

Section 5. Paragraph (d) of subsection (5) of section

627.736, Florida Statutes, is amended to read:

627.736 Required personal injury protection benefits; exclusions; priority; claims.—

(5) CHARGES FOR TREATMENT OF INJURED PERSONS.—

(d) All statements and bills for medical services rendered by a physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) 1500 form, UB 92 forms, or any other standard form approved by the office and ~~or~~ adopted by the commission for purposes of this paragraph. All billings for such services rendered by providers must, to the extent applicable, comply with the CMS 1500 form instructions, the American Medical Association CPT Editorial Panel, and the Healthcare Common Procedure Coding System (HCPCS); and must follow the Physicians' Current Procedural Terminology (CPT), the HCPCS in effect for the year in which services are rendered, or the ICD-9-CM for services rendered before October 1, 2015, or the ICD-10-CM for services rendered on or after October 1, 2015 ~~follow the Physicians' Current Procedural Terminology (CPT) or Healthcare Correct Procedural Coding System (HCPCS), or ICD-9 in effect for the year in which services are rendered and comply with the CMS 1500 form instructions, the American Medical Association CPT Editorial Panel, and the HCPCS~~. All providers, other than hospitals, must include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier,

Including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the Physicians' Current Procedural Terminology (CPT) or the ~~Healthcare Correct Procedural Coding System (~~HCPCS~~)~~ in effect for the year in which services were rendered, the Office of the Inspector General, Physicians Compliance Guidelines, and other authoritative treatises designated by rule by the Agency for Health Care Administration. A statement of medical services may not include charges for medical services of a person or entity that performed such services without possessing the valid licenses required to perform such services. For purposes of paragraph (4)(b), an insurer is not considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph and are properly completed in their entirety as to all material provisions, with all relevant information being provided therein.

Section 6. Subsection (2) of section 627.739, Florida Statutes, is amended to read:

627.739 Personal injury protection; optional limitations; deductibles.—

(2) Insurers shall offer to each applicant and to each policyholder, upon the renewal of an existing policy, deductibles, in amounts of $250, $500, and $1,000. The deductible amount must be applied to 100 percent of the expenses and losses <u>covered under personal injury protection benefits</u>

coverage issued pursuant to ~~described in~~ s. 627.736. If an insurer has elected to apply the schedule of maximum charges authorized under this chapter, the amount of expenses and losses applicable to the deductible will be limited to 100 percent of such authorized reimbursement limitations or fee schedules. After the deductible is met, each insured is eligible to receive up to $10,000 in total benefits described in s. 627.736(1). However, this subsection shall not be applied to reduce the amount of any benefits received in accordance with s. 627.736(1)(c).

Section 7. Subsection (1) of section 627.744, Florida Statutes, is amended to read:

627.744 ~~Required~~ Preinsurance inspection of private passenger motor vehicles.—

(1) A private passenger motor vehicle insurance policy providing physical damage coverage, including collision or comprehensive coverage, may not be issued in this state unless the insurer has inspected the motor vehicle in accordance with this section or has opted out of the inspection required by this section. An insurer opting out of the inspection must file a manual rule with the office indicating that the insurer will not be participating in the inspection program under this section and will not require the preinsurance inspection of its insureds' motor vehicles. An insurer that files such a manual rule with the office may establish its own preinsurance inspection program.

Section 8. This act shall take effect July 1, 2016.

Insurance & Banking Subcommittee

HB 659 by Santiago
Automobile Insurance

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Santiago (Line 70): The amendment removes the portion of the bill amending the acceptable forms of payment applicable to insurance contracts. The substance of this provision is retained in the bill by the amendment. It is made applicable to motor vehicle insurance contracts, rather than insurance contracts, generally, and establishes the acceptable forms of premium payment, authorizes the insurer to establish certain payment plans and to collect a fee up to $15.00 for premium payments that fail due to insufficient funds.

Amendment 2 by Rep. Santiago (Line 172): The amendment conforms the bill to the Senate companion and relates to the medical coding and billing standards for Personal Injury Protection medical services. It is not substantive.

Amendment 3 by Rep. Santiago (Line 199): The amendment makes corporate owned health care entities that have $250 million or more in annual sales eligible to receive Personal Injury Protection insurance reimbursements without having to be licensed as a health care clinic under Part X of ch. 400, F.S.

Amendment 4 by Rep. Santiago (Line 200): The amendment removes the portion of the bill affecting Personal Injury Protection insurance deductibles.

Amendment 5 by Rep. Santiago (Line 219): The amendment removes the portion of the bill relating to preinsurance inspections of automobiles.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2016)

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 Santiago offered the following:

Amendment (with directory and title amendments)

Remove lines 70-89

Between lines 155 and 156, insert:

(9)(a) The premiums for motor vehicle insurance contracts issued in this state or covering risk located in this state shall be paid in cash consisting of coins, currency, checks, drafts, or money orders or by using a debit card, credit card, automatic electronic funds transfer, or payroll deduction plan. Motor vehicle insurers may, but are not required to, offer monthly payment plans. Motor vehicle insurers issuing such policies must submit their premium payment plan option to the office for approval before use.

(b) If a payment of premium under this subsection by debit card, credit card, automatic electronic funds transfer, check, or draft is returned, is declined, or cannot be processed due to insufficient funds, the insurer may impose an insufficient funds fee of up to $15 per occurrence pursuant to the policy terms.

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

Remove lines 116-117 and insert:

Section 2. Subsection (7) is amended and subsection (9) is added to section 627.7295, Florida Statutes, to read:

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

Between lines 19 and 20, insert:

specifying the forms of premium payment required for motor vehicle insurance premium payment; authorizing use of payment plans; requiring plan submission to the Office of Insurance Regulation; authorizing insurers to charge an insufficient funds fee of up to a specified amount;

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment

Remove lines 172-185 and insert:

HCPCS in effect for the year in which services are rendered, and the International Classification of Diseases (ICD) adopted by the United States Department of Health and Human Services for the year in which services are rendered ~~follow the Physicians' Current Procedural Terminology (CPT) or Healthcare Correct Procedural Coding System (HCPCS), or ICD-9 in effect for the year in which services are rendered and comply with the CMS 1500 form instructions, the American Medical Association CPT Editorial Panel, and the HCPCS~~. All providers, other than hospitals, must include on the applicable claim form the professional license number of the provider in the line or space

provided for "Signature of Physician or Supplier, Including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the ~~Physicians' Current Procedural Terminology (CPT)~~ or the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2016)

Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment (with directory and title amendments)

Between lines 199 and 200, insert:

(h) As provided in s. 400.9905, an entity excluded from the definition of a clinic shall be deemed a clinic and must be licensed under part X of chapter 400 in order to receive reimbursement under ss. 627.730-627.7405. However, this licensing requirement does not apply to:

1. 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;

2. 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;

Amendment No. 3

3. 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;

4. A hospital or ambulatory surgical center licensed under chapter 395;

5. An entity that wholly owns or is wholly owned, directly or indirectly, by a hospital or hospitals licensed under chapter 395;

6. An entity that is a clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows; ~~or~~

7. An entity that is certified under 42 C.F.R. part 485, subpart H; or

8. An entity that is owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners if one or more of the persons responsible for the operations of the entity are health care practitioners who are licensed in this state and who are responsible for supervising the business activities of the entity and the entity's compliance with state law for purposes of this section.

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

Remove lines 156-157 and insert:

Section 5. Paragraphs (d) and (h) of subsection (5) of section 627.736, Florida Statutes, are amended to read:

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

Remove line 25 and insert:

billings for medical services; specifying additional entities that may receive reimbursement under the Florida Motor Vehicle No-Fault Law regardless of whether they meet a specified licensure requirement; amending s. 627.739,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2016)

Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 200-218

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

Remove lines 25-29 and insert:

billings for medical services; amending s.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 659 (2016)

Amendment No. 5

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Remove lines 219-234

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

Remove lines 29-34 and insert:

benefits under a certain condition; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 747 Digital Assets
SPONSOR(S): Fant
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 494

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Malcolm	Bond
2) Insurance & Banking Subcommittee		Yaffe DY	Luczynski MJ
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill creates the Florida Fiduciary Access to Digital Assets Act to provide specified fiduciaries, specifically the personal representative of a decedent, an agent under a power of attorney, a guardian, or a trustee, with the ability to access the digital assets of the decedent, principal, or ward. Digital assets include electronic communications and records such as emails, text messages, online photographs, documents stored on the cloud, electronic bank statements, and other electronic communications or records.

In general, the bill provides that a fiduciary will have access to a catalogue of the user's communications (the "outside of the envelope") but not the content (the "inside of the envelope"), unless the user consented to the disclosure of the content of the communication.

The bill may have an indeterminate negative fiscal impact on state expenditures. The bill does not appear to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Many documents and records that once existed in tangible form, such as letters, contracts, and financial and bank statements, are being replaced by intangible digital assets[1] that are not readily discoverable or accessible. Substantial amounts of valuable electronic data and digital assets are acquired and stored in cell phones, computers, online accounts, and other devices. Consequently, a family member or personal representative often faces substantial challenges when trying to identify, locate, or access the digital assets of a deceased or incapacitated person.

This switch to digital assets raises a number of issues: Upon an account holder's death or incapacity, how does a fiduciary identify and locate that person's digital assets? Who then has control or ownership? How is an account accessed when no one has the decedent's password? Does the original terms-of-service agreement control whether a fiduciary may gain access to an account?

Resolution of these issues require balancing the fiduciary's duty to identify and access the digital assets with the Internet Service Provider's (ISP) duty to protect the original account holder's privacy in accordance with state and federal computer security laws. An additional barrier may exist in the terms-of-service agreement that the original account holder agreed to when initiating a contract with the ISP.

Electronic Communication Laws

Federal Law

Federal laws prohibit the unauthorized access of both computer systems and certain types of protected data. The Stored Communications Act[2] (SCA) establishes privacy rights and prohibits certain electronic communication services or remote computing services from knowingly divulging the contents of certain electronic communications and files. An ISP is prohibited from voluntarily divulging the contents of stored communications unless an exception applies under the SCA. However, a "lawful consent" exception allows an ISP to voluntarily disclose electronic communications if lawful consent is given.[3]

The privacy protections in the SCA are viewed by some as being substantial barriers for family members and fiduciaries who seek to access the contents of a deceased or incapacitated user's online accounts.[4] The ISPs see them as restrictions on their ability to disclose electronic communications to anyone, unless certain exceptions are met. Their reasoning is that if the SCA applies, the ISP is prohibited from disclosing the contents of the communications and files.[5]

The Computer Fraud and Abuse Act[6] (CFAA) is designed to protect computers in which there is a federal interest from certain threats and forms of espionage and from being used to commit fraud.[7] The

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[1] Some examples of digital assets are e-mail, photos, projects, online bank accounts, personal records, digital music, entertainment, presentations, domain names, intellectual property, and client lists. The assets are generally important because of their sentimental or financial value.
[2] 18 U.S.C. s. 2701 *et seq.*
[3] 18 U.S.C. s. 2702(b)(c).
[4] James D. Lamm, Digital Passing: *Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014, 12 (on file with the Civil Justice Subcommittee).
[5] *Id.*
[6] 18 U.S.C. s. 1030, *et seq.*
[7] Charles Doyle, Congressional Research Service, *Cybercrime: A Sketch of 18 U.S.C. 1030 and Related Federal Criminal Laws*, 1 (Oct. 15, 2014).

law imposes penalties for the unauthorized access of stored data, devices, and computer hardware.[8] The Department of Justice has stated that the CFAA is broad enough in scope to permit the federal government to prosecute a person who violates the access terms of a web site's terms-of-service agreement or usage policies.[9]

State Law

Chapter 815, F.S., the "Florida Computer Crimes Act," and ch. 934, F.S., related to security of communications surveillance, address computer related crimes and the security of communications. These provisions are modeled after the federal SCA. Like the SCA, neither provision addresses the ability of a fiduciary to legally access, duplicate, or control digital assets.[10]

The Model Uniform Law

Believing that legislation was needed to ensure that account holders and their fiduciaries retain control of digital property, the Uniform Law Commission developed and adopted the Uniform Fiduciary Access to Digital Assets Act in July 2014. Versions of the model act were introduced in numerous state legislatures in 2015. The Uniform Law Commission reconvened in 2015 to readdress the issue and produced a revised version of the model act for 2016. The bill is a state adaptation of the Revised Uniform Fiduciary Access to Digital Access Act, referred to as the Revised UFADAA.

Effect of the Bill

The bill creates ch. 740, F.S., consisting of ss. 740.001-740.09, F.S., the "Florida Fiduciary Access to Digital Assets Act," (Act) to provide fiduciaries with the authority to access, control, or copy digital assets and accounts. The Act only applies to four types of fiduciaries: personal representatives, guardians, agents acting pursuant to a power of attorney, and trustees. These fiduciaries are already bound to comply with existing fiduciary duties. The provisions of the Act do not extend to family members or others who seek access to the digital assets unless they are a fiduciary.

The bill is also limited by the definition of "digital asset." The Act only applies to an electronic record in which an individual has a right or interest, and does not apply to the underlying asset or liability unless the asset or liability is itself an electronic record.[11]

Definitions (Section 3)

The bill creates s. 740.002, F.S., to define terms used in the Act. The majority of the terms are found in the Florida Probate Code and the Florida Power of Attorney Act, while others are adapted from federal statutes or the Revised UFADAA. Below are some of the most frequently used new terms in the bill:

- An "account" is as an arrangement under a terms-of-service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;
- "Catalogue of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

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[8] William Bissett and David Kauffman, *Surf the Evolving Web of Laws Affecting Digital Assets*, 41 Estate Planning No. 4 (Apr. 2014).
[9] Lamm, *supra* note 4, at 10.
[10] The Real Property, Probate, & Trust Law Section of The Florida Bar, *White Paper: Proposed Enactment of Chapter 740, Florida Statutes*, 2, (2015) (on file with the Civil Justice Subcommittee).
[11] "Digital assets include electronically-stored information, such as: 1) any information stored on a computer and other digital devices; 2) content uploaded onto websites, ranging from photos to documents; and 3) rights in digital property, such as domain names or digital entitlements associated with online games. Both the catalogue and content of an electronic communication are covered by the term 'digital assets.'" *Id.* at 7.

- "Content of an electronic communication" is defined to mean information concerning the substance of an electronic communication which has been sent or received by a user; is in electronic storage, or carried or maintained by a custodian; and, is not readily accessible to the public;[12]
- A "custodian" is defined as a person that carries, maintains, processes, receives, or stores a digital asset of a user, such as an ISP;
- A "designated recipient" is defined as a person chosen by a user through an online tool to administer digital assets of the user;
- A "digital asset" is defined as a record that is electronic but does not include the underlying asset or liability unless the asset or liability is a record that is electronic[13];
- "Electronic communication" has the same meaning as provided in federal law[14]; and
- "Online tool" means an electronic service provided by a custodian that allows the user, in an agreement separate and distinct from the terms-of-service agreement, to provide directions for disclosure or nondisclosure of digital assets to a third person.

A User's Direction for Disclosure of Digital Assets (Section 4)

The bill creates s. 740.003, F.S., to establish a user's ability to direct disclosure of the user's digital assets and the order of preference for his or her direction. It is a three-tiered priority system.

The first priority is a user's online direction for a specific account. If a company provides an online tool for a user to designate a person to have access to his or her account upon death or incapacity, and the user takes advantage of the online tool, then the user's designation prevails over a contrary provision in the user's will or trust provided that the online tool allows the user to modify or delete a direction at any time. The user may direct the custodian to disclose or not disclose some or all of his or her digital assets, even the content of electronic communications.

The second priority is the user's direction contained in a valid will, trust, power of attorney, or other record if the user has not used an online tool to give direction or the custodian has not provided an online tool. If the user makes plans for disposing of his or her digital assets, then the law gives effect to that plan and the custodian of the digital assets is required to comply with the plan.

The third priority is the terms-of-service agreement that governs the account. If the user does not provide for the disposition of his or her digital assets, whether via an online tool or in an estate plan, the terms-of-service governing the account control.

Terms-of-Service Agreement is Preserved (Section 5)

The bill creates s. 740.004, F.S., to provide that a terms-of-service agreement[15] is preserved and the fiduciary has no greater rights than the user has under the terms-of-service agreement. However, a fiduciary's access to digital assets may be modified or eliminated by a user, federal law, or by a terms-of-service agreement if the user has not provided direction under newly-created s. 740.003, F.S.

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[12] In lay terms, this is generally understood to be the "inside of an envelope" or the subject line of an e-mail, the body of an e-mail or attachment, or the body of other types of electronic communications.

[13] Based on this definition, a fiduciary's access to a digital asset does not mean that the fiduciary is entitled to "own" or otherwise engage in transactions with the asset; rather, the fiduciary has access to the electronically-stored information that constitutes the "digital asset." *White Paper*, *supra* note 10, at 7.

[14] 18 U.S.C. § 2510(12) ("Electronic communication" means "any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce, but does not include: any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device; electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.")

[15] A "terms-of-service agreement" is defined in the bill as "an agreement that controls the relationship between a user and a custodian."

Procedure for Custodians When Disclosing Assets (Section 6)

Section 740.005, F.S., is created to provide three options to a custodian for disclosing digital assets. When a custodian discloses a user's digital assets, the custodian may:

- allow the fiduciary or designated recipient full access to the user's account;
- allow the fiduciary or designated recipient partial access to the account that is sufficient to perform necessary tasks; or
- provide the fiduciary or designated recipient with a copy in a record of the digital asset that the user could have accessed if he or she were alive.

If a user directs or a fiduciary requests a custodian to disclose some, but not all of the user's digital assets, the custodian is not required to disclose the assets if segregating the assets would be unduly burdensome. If the custodian believes that an undue burden exists, the custodian or the fiduciary may seek a court order to disclose:

- a subset of the user's digital assets;
- all of the digital assets to the fiduciary or designated recipient, or to the court for a review in chambers; or
- none of the user's digital assets.

A custodian may charge a reasonable administrative fee for the cost of disclosing digital assets, and a custodian is not required to disclose a digital asset that a user has deleted.

Four Types of Fiduciaries Covered (Sections 7—14)

The bill creates ss. 740.006-740.04, F.S., to establish the rights of a personal representative, guardian, agent acting pursuant to a power of attorney, or trustee to access a user's digital assets. In general, fiduciaries will have access to a catalogue of the user's communications (the "outside of the envelope") but not the content (the "inside of the envelope"), unless the user consented to the disclosure of the content of the communication. Because the fiduciary has the same authority as the deceased user (no more and no less), the fiduciary is "authorized" by the deceased user as required under the two federal statutes (the SCA and CFAA) that prohibit unauthorized access.[16]

Disclosure of the Content of Electronic Communications of a Deceased User (Section 7)

The bill creates s. 740.006, F.S., to establish the rights of a personal representative of a decedent to access the contents of an electronic communication of the user (the "inside of the envelope").[17] A personal representative may not access the contents of a decedent's electronic communications unless the user consented to or a court directs such access.

A custodian must disclose the content of an electronic communication if the personal representative provides:

- a written request for disclosure;
- a certified copy of the user's death certificate;
- a certified copy of the letters of administration or similar specified authority;
- a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications unless the user provided direction in an online tool; and
- if the custodian requests, the personal representative must provide specified information that will identify the user's account, evidence linking the account to the user; or a finding by the court that the user had a specific account with the custodian; that disclosure of the contents would not violate the SCA or other federal law relating to privacy of telecommunication carriers' customer

[16] *White Paper*, *supra* note 10, at 3.

[17] Newly-created s. 740.007, F.S., addresses disclosure of non-content and other digital assets of a deceased user.

information; that the user consented to disclosure of the content; or disclosure of the content is reasonably necessary for the administration of the estate.

Disclosure of Other Digital Assets of a Deceased User (Section 8)

Section 740.007, F.S., is created to provide a personal representative default access to the catalogue, or "outside of the envelope," of electronic communications and other digital assets that are not protected by federal privacy laws.[18] A personal representative is permitted to access all of a decedent's other digital assets, excluding the contents of electronic communications, unless the deceased user prohibited disclosure or a court orders otherwise. The custodian must disclose a catalog of the user's electronic communications and the user's digital assets of the user if the personal representative provides:

- a written request for disclosure;
- a certified copy of the user's death certificate;
- a certified copy of the letters of administration or similar specified authority; and
- if the custodian requests, the personal representative must provide information that will identify the user's account; evidence linking the account to the user; an affidavit stating that disclosure is reasonably necessary for the administration of the estate; or a court order finding that the user had an account with the custodian or that disclosure of the digital assets is reasonably necessary for the administration of the estate.

Disclosure of Content of Electronic Communications of a Principal (Section 9)

The bill creates s. 740.008, F.S., to provide that an agent acting pursuant to a power of attorney may access the contents of a principal's electronic communications if the authority is expressly granted by the principal and is not otherwise restricted by the principal or a court. The custodian is required to disclose the contents if the agent provides:

- a written request for disclosure;
- an original or copy of the power of attorney in which the authority over the content is expressly granted to the agent;
- a certification by the agent that the power of attorney is in effect; and
- if requested by the custodian, information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

Disclosure of Other Digital Assets of a Principal (Section 10)

Section 740.009, F.S., is created to provide that an agent acting pursuant to a power of attorney granting specific authority over the digital assets or granting general authority to act on behalf of the principal may access a catalog of the principal's electronic communications and the principal's digital assets, but not the content of electronic communications, unless otherwise ordered by a court, directed by the principal, or provided by a power of attorney. The custodian is required to disclose the digital assets if the agent provides:

- a written request for disclosure;
- an original or a copy of the power of attorney which grants the agent specific authority over digital assets or general authority to act on behalf of the principal;
- a certification by the agent that the power of attorney is in effect; and
- if requested by the custodian, identifying information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

[18] *See* "Electronic Communication Laws" section above.

Disclosure of Digital Assets held in Trust when the Trustee is the Original User (Section 11)

The bill creates s. 740.01, F.S., to provide that a trustee who is an original user may access any digital assets that are held in the trust, including the catalogue and the content of electronic communications, unless it is otherwise ordered by a court or provided in the trust.

Disclosure of Content of Electronic Communications Held in Trust When a Trustee is not the Original User (Section 12)

The bill creates s. 740.02, F.S., to provide that a trustee, who is not an original user, may access the content of an electronic communication that was sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trust instrument consents to the disclosure of the content to the trustee. A trustee's access may be limited by court order, at the direction of the user, or by the trust instrument. The custodian is required to disclose the contents if the agent provides:

- a written request for disclosure;
- a certified copy of the trust instrument or a certification of trust which includes consent to disclosure of the content to the trustee;
- a certification by the trustee that the trust exists and the trustee is a currently acting trustee; and
- if requested by the custodian, certain identifying information assigned by the custodian to identify the trust's account or evidence linking the account to the trust.

Disclosure of Other Digital Assets Held in Trust When the Trustee is not the Original User (Section 13)

The bill creates s. 740.03, F.S., to provide that unless prohibited by a court, the user, or the trust instrument, a trustee who is not the original user may access the catalog of electronic communications and any digital assets, except the content of electronic communications, in an account of the trust. The trustee must supply the custodian with:

- a written request for disclosure;
- a certified copy of the trust instrument or a certification of trust;
- a certification by the trustee that the trust exists and that the trustee is a currently acting trustee; and
- if requested by the custodian, specified information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

Disclosure of Digital Assets to a Guardian of a Ward (Section 14)

Section 740.04, F.S., is created to provide that a guardian is not authorized to access the contents of a ward's electronic communications unless the ward expressly grants consent to do so. A guardian is permitted, however, to access the ward's other digital assets pursuant to letters of guardianship or a court order, unless directed otherwise by a court or the user. The guardian must provide the custodian with:

- a written request for disclosure;
- a certified copy of letters of plenary guardianship of the property or the court order giving the guardian authority over the digital assets of the ward; and
- if requested by the custodian, specified information assigned by the custodian to identify the ward's account or evidence linking the account to the ward.

A custodian of the ward's digital assets may suspend or terminate the ward's account for good cause if requested to do so by a guardian with general authority to manage the ward's property. The request to suspend or terminate must be accompanied by a certified copy of the court order giving the guardian the authority over the ward's property.

Fiduciary Duty and Authority (Section 15)

Section 740.05, F.S., establishes the legal duties of a fiduciary charged with managing digital assets. This includes the duties of care, loyalty, and confidentiality. Section 740.05(2), F.S., establishes the fiduciary's authority to exercise control over the digital assets in conjunction with other statutes. The fiduciary's authority is:

- subject to the terms-of-service agreement, except as directed in the online tool;
- subject to other laws, including copyright law;
- limited by the scope of the fiduciary's duties; and
- may not be used to impersonate the user.

A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access any digital asset in which those persons had or has a right or interest if the digital asset is not held by a custodian or subject to a terms-of-service agreement. For purposes of any applicable computer fraud or unauthorized computer access laws, a fiduciary who acts within the scope of the fiduciary's duties is an authorized user of the property. A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access the property and any digital assets that are stored in it and is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

A custodian is authorized to disclose information in an account to a user's fiduciary if the information is required to terminate an account used to access digital assets licensed to the user.

A fiduciary who requests that a custodian terminate a user's account must submit the request in writing, along with:

- a certified copy of the death certificate of the user, if the user is deceased;
- a certified copy of the letters of administration or other specified court orders; and
- if requested by the custodian, specified information assigned by the custodian to identify the ward's account or evidence linking the account to the ward, or a court finding that the user had a specific account with the custodian, identifiable by certain enumerated information.

Custodian Compliance and Immunity (Section 16)

The bill creates s. 740.06, F.S., to provide that a custodian has 60 days to comply with a request from a fiduciary or designated recipient to disclose digital assets or to terminate an account. If the custodian does not comply, the fiduciary or designated representative may seek a court order directing compliance. An order directing compliance must contain a finding that compliance would not be in violation of 18 U.S.C. s. 2702, related to the disclosure of electronic communications or records.

A custodian may deny a request for disclosure or termination if the custodian is aware of any lawful access to the account after the custodian receives the fiduciary's request. The bill does not limit a custodian's ability to require a fiduciary or designated recipient from obtaining a court order that specifies that an account belongs to the ward or principal, specifies that there is sufficient consent from the ward or principal, and contains any findings required by law other than those required in the Act.

A custodian and its officers, employees, and agents are immune from liability for acts or omissions done in good faith and in compliance with the Act.

Electronic Signatures in Global and National Commerce Act (Section 17)

Section 740.07, F.S., is created to establish the relationship between the Act and the federal Electronic Signatures in Global and National Commerce Act,[19] noting where this Act does and does not modify, limit, or supersede federal law.

Applicability of the Act (Section 18)

Section 740.08, F.S., created by the bill, provides that the powers granted by the Act to a fiduciary, personal representative, guardian, trustee, or agent applies regardless of whether such person's authority arose on, before, or after July 1, 2016 (the effective date of the bill). The bill also provides that the Act applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

The bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

Severability (Section 19)

Section 740.09, F.S., is created to provide a severability provision that provides that if any provision is held invalid, the other provisions of the Act will remain in effect.

Effective Date (Section 20)

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

B. SECTION DIRECTORY:

Section 1 creates ch. 740, F.S., consisting of ss. 740.001-740.09, F.S., to be entitled "Fiduciary Access to Digital Assets."

Section 2 creates s. 740.001, F.S., relating to the short title.

Section 3 creates s. 740.002, F.S., relating to definitions.

Section 4 creates s. 740.003, F.S., relating to user direction for disclosure of digital assets.

Section 5 creates s. 740.004, F.S., relating to terms-of-service agreement preserved.

Section 6 creates s. 740.005, F.S., relating to procedure for disclosing digital assets.

Section 7 creates s. 740.006, F.S., relating to disclosure of content of electronic communications of deceased user.

Section 8 creates s. 740.007, F.S., relating to disclosure of other digital assets of deceased user.

Section 9 creates s. 740.008, F.S., relating to disclosure of content of electronic communications of principal.

Section 10 creates s. 740.009, F.S., relating to disclosure of other digital assets of principal.

[19] The Electronic Signatures in Global and National Commerce Act (ESIGN), 15 U.S.C. ss. 7001 et seq., is designed "to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically." Bureau of Consumer Protection, Federal Trade Commission and National Telecommunications and Information Administration, Department of Commerce, *Report to Congress: Electronic Signatures in Global and National Commerce Act, The Consumer Consent Provision in Section 101(c)(1)(C)(ii)*, i (June 2001) www.ntia.doc.gov/files/ntia/publications/esign7.pdf (last visited Dec. 14, 2015).

Section 11 creates s. 740.01, F.S., relating to disclosure of digital assets held in trust when trustee is the original user.

Section 12 creates s. 740.02, F.S., relating to disclosure of content of electronic communications held in trust when trustee is not the original user.

Section 13 creates s. 740.03, F.S., relating to disclosure of other digital assets held in trust when trustee is not the original user.

Section 14 creates. s. 740.04, F.S., relating to disclosure of digital assets to guardian of ward.

Section 15 creates s. 740.05, F.S., relating to fiduciary duty and authority.

Section 16 creates s. 740.06, F.S., relating to custodian compliance and immunity.

Section 17 creates s. 740.07, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.

Section 18 creates s. 740.08, F.S., relating to applicability.

Section 19 creates s. 740.09, F.S., relating to severability.

Section 20 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   Provisions in the bill allowing application to the circuit courts for orders directing compliance, requests for disclosures segregating assets, assertions by custodians claiming selective disclosures impose an undue burden, and determinations requiring in camera review may increase the expenditure of judicial time and resources. However, these matters will be case-specific and any corresponding increase in judicial time or court workload is indeterminate.[20]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

[20] Office of the State Courts Administrator, 2016 Judicial Impact Statement, SB 494, p. 2 (Nov. 12, 2015) (on file with the Civil Justice Subcommittee).

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:

The preemption doctrine is a principle of law which holds that federal laws take precedence over state laws, and as such, states may not enact laws that are inconsistent with the federal law. Under the Electronic Communications Privacy Act, or ECPA, a service provider, with few exceptions, may not divulge the contents of a communication without the "lawful consent" of the originator, addressee, intended recipient, or the subscriber.[21] Under the provisions of this bill, an online tool is created and controlled by the ISP that is separate from the terms of service agreement. This online tool allows the account holder or user to specifically "opt in" and grant permission to the fiduciary to access his or her digital assets. This affirmative act may be deemed to trigger the "lawful consent" exception to ECPA thus appearing to avoid conflict with the ECPA.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 224-225 state that a custodian is not required to disclose digital assets if segregation of the assets would impose an "undue burden" on the custodian. The bill does not define the term "undue burden" and its use in this subsection creates an ambiguity regarding what would constitute an "undue burden" on a custodian.

A "user" is defined as a person that has an account with a custodian. Sections 11, 12, and 13 modify "user" by reference to an "original user" and "successor user." The intended effect of such modification is not clear. Clarification of the modified use of "user" would be beneficial.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[21] 18 U.S.C. § 2702(b)(3).

A bill to be entitled

An act relating to digital assets; providing a directive to the Division of Law Revision and Information; creating s. 740.001, F.S.; providing a short title; creating s. 740.002, F.S.; defining terms; creating s. 740.003, F.S.; authorizing a user to use an online tool to allow a custodian to disclose or to prohibit a custodian from disclosing digital assets under certain circumstances; providing that specified user's direction overrides a contrary provision in a terms-of-service agreement under certain circumstances; creating s. 740.004, F.S.; providing construction; authorizing the modification of a fiduciary's assets under certain circumstances; creating s. 740.005, F.S.; providing procedures for the disclosure of digital assets; creating s. 740.006, F.S.; requiring a custodian to disclose the content of electronic communications of a deceased user under certain circumstances; creating s. 740.007, F.S.; requiring a custodian to disclose other digital assets of a deceased user under certain circumstances; creating s. 740.008, F.S.; requiring a custodian to disclose the content of electronic communications of a principal under certain circumstances; creating s. 740.009, F.S.; requiring a custodian to disclose other digital assets of a principal under certain

circumstances; creating s. 740.01, F.S.; requiring a custodian to disclose to a trustee who is the original user the digital assets held in trust under certain circumstances; creating s. 740.02, F.S.; requiring a custodian to disclose to a trustee who is not the original user the content of electronic communications held in trust under certain circumstances; creating s. 740.03, F.S.; requiring a custodian to disclose to a trustee who is not the original user other digital assets under certain circumstances; creating s. 740.04, F.S.; authorizing the court to grant a guardian the right to access a ward's digital assets under certain circumstances; requiring a custodian to disclose to a guardian a specified catalog of electronic communications and specified digital assets of a ward under certain circumstances; creating s. 740.05, F.S.; imposing fiduciary duties; providing for the rights and responsibilities of certain fiduciaries; creating s. 740.06, F.S.; requiring compliance of a custodian; providing construction; providing for immunity from liability for a custodian and its officers, employees, and agents acting in good faith in complying with their duties; creating s. 740.07, F.S.; providing construction; creating s. 740.08, F.S.; providing applicability; creating s. 740.09, F.S.; providing severability; providing an

effective date.

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

Section 1. The Division of Law Revision and Information is directed to create chapter 740, Florida Statutes, consisting of ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary Access to Digital Assets."

Section 2. Section 740.001, Florida Statutes, is created to read:

740.001 Short title.—This chapter may be cited as the "Florida Fiduciary Access to Digital Assets Act."

Section 3. Section 740.002, Florida Statutes, is created to read:

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

(1) "Account" means an arrangement under a terms-of-service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

(2) "Agent" means a person that is granted authority to act for a principal under a durable or nondurable power of attorney, whether denominated an agent, an attorney in fact, or otherwise. The term includes an original agent, a co-agent, and a successor agent.

(3) "Carries" means to engage in the transmission of electronic communications.

(4) "Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person.

(5) "Content of an electronic communication" means information concerning the substance or meaning of the communication which:

(a) Has been sent or received by a user;

(b) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(c) Is not readily accessible to the public.

(6) "Court" means a circuit court of this state.

(7) "Custodian" means a person that carries, maintains, processes, receives, or stores a digital asset of a user.

(8) "Designated recipient" means a person chosen by a user through an online tool to administer digital assets of the user.

(9) "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record.

(10) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(11) "Electronic communication" has the same meaning as

provided in 18 U.S.C. s. 2510(12).

(12) "Electronic communication service" means a custodian that provides to a user the ability to send or receive an electronic communication.

(13) "Fiduciary" means an original, additional, or successor personal representative, guardian, agent, or trustee.

(14) "Guardian" means a person who is appointed by the court as guardian of the property of a minor or an incapacitated individual. The term includes an original guardian, a co-guardian, and a successor guardian, as well as a person appointed by the court as an emergency temporary guardian of the property.

(15) "Information" means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like.

(16) "Online tool" means an electronic service provided by a custodian which allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person.

(17) "Person" means an individual, estate, trust, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(18) "Personal representative" means the fiduciary appointed by the court to administer the estate of a deceased

individual pursuant to letters of administration or an order appointing a curator or administrator ad litem for the estate. The term includes an original personal representative, a copersonal representative, and a successor personal representative, as well as a person who is entitled to receive and collect a deceased individual's property pursuant to an order of summary administration issued pursuant to chapter 735.

(19) "Power of attorney" means a record that grants an agent authority to act in the place of a principal pursuant to chapter 709.

(20) "Principal" means an individual who grants authority to an agent in a power of attorney.

(21) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(22) "Remote computing service" means a custodian that provides to a user computer processing services or the storage of digital assets by means of an electronic communications system as defined in 18 U.S.C. s. 2510(14).

(23) "Terms-of-service agreement" means an agreement that controls the relationship between a user and a custodian.

(24) "Trustee" means a fiduciary that holds legal title to property under an agreement, declaration, or trust instrument that creates a beneficial interest in the settlor or other persons. The term includes an original trustee, a cotrustee, and a successor trustee.

(25) "User" means a person that has an account with a custodian.

(26) "Ward" means an individual for whom a guardian has been appointed.

(27) "Will" means an instrument admitted to probate, including a codicil, executed by an individual in the manner prescribed by the Florida Probate Code, which disposes of the individual's property on or after his or her death. The term includes an instrument that merely appoints a personal representative or revokes or revises another will.

Section 4. Section 740.003, Florida Statutes, is created to read:

740.003 User direction for disclosure of digital assets.—

(1) A user may use an online tool to direct the custodian to disclose or not to disclose some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.

(2) If a user has not used an online tool to give direction under subsection (1) or if the custodian has not provided an online tool, the user may allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user, in a will, trust, power of attorney, or

other record.

(3) A user's direction under subsection (1) or subsection (2) overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

Section 5. Section 740.004, Florida Statutes, is created to read:

740.004 Terms-of-service agreement preserved.—

(1) This chapter does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use the digital assets of the user.

(2) This chapter does not give a fiduciary any new or expanded rights other than those held by the user for whom, or for whose estate or trust, the fiduciary acts or represents.

(3) A fiduciary's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under s. 740.003.

Section 6. Section 740.005, Florida Statutes, is created to read:

740.005 Procedure for disclosing digital assets.—

(1) When disclosing the digital assets of a user under this chapter, the custodian may, at its sole discretion:

(a) Grant a fiduciary or designated recipient full access to the user's account;

(b) Grant a fiduciary or designated recipient partial

access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(c) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(2) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this chapter.

(3) A custodian is not required to disclose under this chapter a digital asset deleted by a user.

(4) If a user directs or a fiduciary requests a custodian to disclose under this chapter some, but not all, of the user's digital assets to the fiduciary or a designated recipient, the custodian is not required to disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or the fiduciary may seek an order from the court to disclose:

(a) A subset limited by date of the user's digital assets;

(b) All of the user's digital assets to the fiduciary or designated recipient, or to the court for review in chambers; or

(c) None of the user's digital assets.

Section 7. Section 740.006, Florida Statutes, is created to read:

740.006 Disclosure of content of electronic communications of deceased user.—If a deceased user consented to or a court directs the disclosure of the content of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the personal representative gives to the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letters of administration, the order authorizing a curator or administrator ad litem, the order of summary administration issued pursuant to chapter 735, or other court order;

(4) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(5) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user; or

(c) A finding by the court that:

1. The user had a specific account with the custodian, identifiable by information specified in paragraph (a);

2. Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. ss. 2701 et seq., 47 U.S.C. s. 222, or other applicable law;

3. Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

4. Disclosure of the content of electronic communications of the user is reasonably necessary for the administration of the estate.

Section 8. Section 740.007, Florida Statutes, is created to read:

740.007 Disclosure of other digital assets of deceased user.—Unless a user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalog of electronic communications sent or received by the user and digital assets of the user, except the content of electronic communications, if the personal representative gives to the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) A certified copy of the death certificate of the user;

(3) A certified copy of the letters of administration, the order authorizing a curator or administrator ad litem, the order of summary administration issued pursuant to chapter 735, or other court order; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(b) Evidence linking the account to the user;

(c) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for the administration of the estate; or

(d) An order of the court finding that:

1. The user had a specific account with the custodian, identifiable by information specified in paragraph (a); or

2. Disclosure of the user's digital assets is reasonably necessary for the administration of the estate.

Section 9. Section 740.008, Florida Statutes, is created to read:

740.008 Disclosure of content of electronic communications of principal.—To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives to the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

Section 10. Section 740.009, Florida Statutes, is created to read:

740.009 Disclosure of other digital assets of principal.—Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over the digital assets or with general authority to act on behalf of the principal a catalog of electronic communications sent or received by the principal, and digital assets of the principal, except the content of electronic communications, if the agent gives the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) An original or a copy of the power of attorney which gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(3) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(b) Evidence linking the account to the principal.

Section 11. Section 740.01, Florida Statutes, is created to read:

740.01 Disclosure of digital assets held in trust when trustee is the original user.—Unless otherwise ordered by the court or provided in a trust, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalog of electronic communications of the trustee and the content of electronic communications.

Section 12. Section 740.02, Florida Statutes, is created to read:

740.02 Disclosure of content of electronic communications held in trust when trustee is not the original user.—Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) A certified copy of the trust instrument, or a certification of trust under s. 736.1017, which includes consent to disclosure of the content of electronic communications to the trustee;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust.

Section 13. Section 740.03, Florida Statutes, is created to read:

740.03 Disclosure of other digital assets held in trust when trustee is not the original user.—Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose to a trustee that is not an original user of an account, a catalog of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets in which the trust has a right or interest, other than the content of electronic communications, if the trustee gives the custodian:

(1) A written request for disclosure which is in physical or electronic form;

(2) A certified copy of the trust instrument, or a certification of trust under s. 736.1017;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(a) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(b) Evidence linking the account to the trust.

Section 14. Section 740.04, Florida Statutes, is created to read:

740.04 Disclosure of digital assets to guardian of ward.—

(1) After an opportunity for a hearing under chapter 744, the court may grant a guardian access to the digital assets of a ward.

(2) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a guardian the catalog of electronic communications sent or received by the ward and any digital assets in which the ward has a right or interest, other than the content of electronic communications, if the guardian gives the custodian:

(a) A written request for disclosure which is in physical or electronic form;

(b) A certified copy of letters of plenary guardianship of the property or the court order that gives the guardian

authority over the digital assets of the ward; and

(c) If requested by the custodian:

1. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the ward's account; or

2. Evidence linking the account to the ward.

(3) A guardian with general authority to manage the property of a ward may request a custodian of the digital assets of the ward to suspend or terminate an account of the ward for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the guardian authority over the ward's property.

Section 15. Section 740.05, Florida Statutes, is created to read:

740.05 Fiduciary duty and authority.—

(1) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(a) The duty of care;

(b) The duty of loyalty; and

(c) The duty of confidentiality.

(2) A fiduciary's authority with respect to a digital asset of a user:

(a) Except as otherwise provided in s. 740.003, is subject to the applicable terms-of-service agreement;

(b) Is subject to other applicable law, including

copyright law;

(c) Is limited by the scope of the fiduciary's duties; and

(d) May not be used to impersonate the user.

(3) A fiduciary with authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access any digital asset in which the decedent, ward, principal, or settlor had or has a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(4) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, ward, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including under chapter 815.

(5) A fiduciary with authority over the tangible personal property of a decedent, ward, principal, or settlor:

(a) Has the right to access the property and any digital asset stored in it; and

(b) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including under chapter 815.

(6) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(7) A fiduciary of a user may request a custodian to

terminate the user's account. A request for termination must be in writing, in paper or electronic form, and accompanied by:

(a) If the user is deceased, a certified copy of the death certificate of the user;

(b) A certified copy of the letters of administration; the order authorizing a curator or administrator ad litem; the order of summary administration issued pursuant to chapter 735; or the court order, power of attorney, or trust giving the fiduciary authority over the account; and

(c) If requested by the custodian:

1. A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

2. Evidence linking the account to the user; or

3. A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in subparagraph 1.

Section 16. Section 740.06, Florida Statutes, is created to read:

740.06 Custodian compliance and immunity.—

(1) Not later than 60 days after receipt of the information required under ss. 740.006-740.04, a custodian shall comply with a request under this chapter from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated representative may apply to the court for an order

directing compliance.

(2) An order under subsection (1) directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. s. 2702.

(3) A custodian may notify a user that a request for disclosure or to terminate an account was made under this chapter.

(4) A custodian may deny a request under this chapter from a fiduciary or designated representative for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(5) This chapter does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under this chapter to obtain a court order that:

(a) Specifies that an account belongs to the ward or principal;

(b) Specifies that there is sufficient consent from the ward or principal to support the requested disclosure; and

(c) Contains a finding required by a law other than this chapter.

(6) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this chapter.

Section 17. Section 740.07, Florida Statutes, is created

to read:

740.07 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 18. Section 740.08, Florida Statutes, is created to read:

740.08 Applicability.—

(1) Subject to subsection (3), this chapter applies to:

(a) A fiduciary acting under a will, trust, or power of attorney executed before, on, or after July 1, 2016;

(b) A personal representative acting for a decedent who died before, on, or after July 1, 2016;

(c) A guardian appointed through a guardianship proceeding, whether pending in a court or commenced before, on, or after July 1, 2016; and

(d) A trustee acting under a trust created before, on, or after July 1, 2016.

(2) This chapter applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(3) This chapter does not apply to a digital asset of an employer used by an employee in the ordinary course of the

employer's business.

Section 19. Section 740.09, Florida Statutes, is created to read:

740.09 Severability.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 20. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875 Motor Vehicle Service Agreement Companies
SPONSOR(S): Stark and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1120

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

SUMMARY ANALYSIS

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in Part I, Chapter 634, Florida Statutes. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes licensure, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve forms or rates for warranties.

Under current law, motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.

As defined in statute, "additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle. The bill modifies this definition to indicate the term does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle. The bill also deletes the definition of "paintless dent-removal" but still allows the process to be considered part of a motor vehicle service agreement.

The bill also changes and expands coverage provided in a motor vehicle service agreement to include: a) repair or replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard (and defines the term); b) removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without using replacement body panels, or sanding, bonding, or painting; c) replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen; and 4) other services which may be approved by the Commissioner of Insurance Regulation consistent with Part I.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Motor vehicle service agreement companies are one type of warranty association and are governed by the provisions in Part I, Chapter 634, Florida Statutes. Motor vehicle service agreements generally provide vehicle owners with protection when the manufacturer's warranty expires. While a warranty is not considered a traditional insurance product, it protects purchasers from future risks and associated costs. In Florida, warranty associations are regulated by the Office of Insurance Regulation (OIR). The OIR's regulatory authority of warranty associations includes approval of forms, investigation of complaints, and monitoring of reserve requirements, among other duties. However, the OIR is not required to approve rates for warranties.

Under current law, motor vehicle service agreements indemnify the agreement holder against loss caused by failure of any mechanical or other component part, or any mechanical or other component part of the motor vehicle that does not function as it was originally intended. The term "motor vehicle service agreement" also includes any contract that provides: for coverage which is issued in conjunction with an additive product applied to the motor vehicle that is the subject of such agreement; for payment of vehicle protection expenses (such as meeting applicable deductibles and providing for temporary replacement vehicle rental expenses); and for the payment for paintless dent-removal services.[1]

As defined in statute, "additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle.[2] The bill modifies this definition to indicate the term does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.

The bill deletes the definition of "paintless dent-removal" but still allows the process to be considered part of a motor vehicle service agreement. In revising the process, the bill makes two changes. Currently, coverage for paintless dent-removal is predicated on services being provided by a company whose primary business is providing such services. The bill eliminates this condition, thereby allowing greater flexibility in who offers the service. The second change removes hail damage as a specific example of a cause of a dent, ding and crease. However, because the new language that provides coverage for removal of dents, dings, or creases on a motor vehicle that may be repaired is not limited in any way, this should not affect the right to provide or receive coverage for hail damage. In effect, this change removes superfluous language.

The bill also changes and expands coverage provided in a motor vehicle service agreement to include: a) repair or replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard[3]; b) removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without using replacement body panels, or sanding, bonding, or painting; c) replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen; and d) other services which may be approved by the Commissioner of Insurance Regulation consistent with Part I.

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[1] s. 634.011(8), F.S.

[2] s. 634.011(2), F.S.

[3] "Road hazard" means a danger that is encountered while operating a motor vehicle. The tern includes, but is not limited to, potholes, rocks, wood debris, metal parts, glass, plastics, curbs and composite scraps.

B. SECTION DIRECTORY:

Section 1. Amends s. 634.011, F.S., relating to definitions.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   As previously stated, in addition to the newly enumerated components of motor vehicle service agreements, the bill expands coverage to other services which may be approved by the Commissioner of Insurance Regulation consistent with Part I. The bill's lack of minimal standards and guidelines for the commissioner in using his or her discretion raises separation of powers issues and possible inappropriate delegation of legislative power to an executive agency.

   Florida's separation of powers doctrine aims to avoid an excessive concentration of power in one branch of government. The constitution's language is very explicit. Article II, Section 3, provides, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."

The separation of powers doctrine prevents the Legislature from delegating its constitutional duties. *Florida State Bd. Of Architecture v. Wasserman*, 377 So.2d 653 (Fla. 1979). Legislative power involves the exercise of policy-related discretion over the content of law. *State ex rel. Taylor v. City of Tallahassee*, 177 So. 719 (Fla. 1937). The Florida Supreme Court, in *Askew v. Cross Key Waterways*, 372 So.2d 913 (Fla. 1978), provided a framework for measuring the constitutionality of legislative power delegations. The court adopted a formal interpretation of the delegation of powers doctrine. It acknowledged that, "where the Legislature makes the fundamental policy decision and delegates to some other body the task of implementing that policy under adequate safeguards, there is no violation of the doctrine." *Id.* at 921 (*quoting CEEED v. California Coastal Zone Conservation Comm'n*, 43 Cal.App.3d 306, 325 (Cal. App. 4 Dist. 1974)). However, the court warned, "[w]hen legislation is so lacking in guidelines that neither the agency nor the courts can determine whether the agency is carrying out the intent of the legislature in its conduct, then, in fact, the agency becomes the lawgiver rather than the administrator of the law." *Id.* at 918-19. *See also Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968) ("[w]hen the statute is couched in vague and uncertain terms or is so broad in scope that no one can say with certainty, from the terms of the law itself, what would be deemed an infringement of the law, it must be held unconstitutional as attempting to grant to the administrative body the power to say what the law shall be".).[4]

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill's creation of two new categories of motor vehicle service agreements raises two drafting issues. First, the definition of road hazard is rather broad in that it is "a danger that is encountered while operating a motor vehicle." Although the application of the term is limited to a road hazard that damages the tires or wheels on a motor vehicle, it may be advisable to narrow the definition to state that a road hazard does not include any damage caused by collision with another vehicle, vandalism, or other causes usually covered under the comprehensive or collision coverages provided by an automobile physical damage policy.

The second drafting issue elaborates on the constitutional issue relating to the OIR commissioner's discretion in approving new categories of motor vehicle service agreements. The office does not receive motor vehicle service agreement filings for review and approval. According to OIR,[5] the language allowing the commissioner to designate other services not specified in statute is therefore problematic since there is no process in the current statute that allows the office to review and approve such services. To OIR, it is unclear:

- How such request for approval would occur;
- What criteria the office should use in order to determine if the service is eligible; and
- What would be grounds for disapproval.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[4] *See generally* James P. Rhea and Patrick L. —Booterl Imhof, *An Overview of the 1996Administrative Procedure Act*, 48 FLA. L. REV. 1 (1996); Dan R. Stengle and James P. Rhea, *Putting the Genie Back in the Bottle: The Legislative Struggle to Contain Rulemaking by Executive Agencies*, 21 FLA. ST. U. L. REV. 415 (1993); Stephen T. Maher, *We're No Angels: Rulemaking and Judicial Review in Florida*, 18 FLA. ST. U. L. REV. 767 (1991).

[5] Office of Insurance Regulation, Agency Analysis of 2016 House Bill 875, p. 4-5 (Jan.12, 2016).

A bill to be entitled

An act relating to motor vehicle service agreement companies; amending s. 634.011, F.S.; revising and providing definitions; providing an effective date.

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

Section 1. Subsections (14) through (17) of section 634.011, Florida Statutes, are renumbered as subsections (15) through (18), respectively, subsections (2) and (8) of that section are amended, and a new subsection (14) is added to that section, to read:

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

(2) "Additive product" means any fuel supplement, oil supplement, or any other supplement product added to a motor vehicle for the purpose of increasing or enhancing the performance or improving the longevity of such motor vehicle. The term "additive product" does not include a product applied to the exterior or interior surface of a motor vehicle to protect the appearance of the motor vehicle.

(8) "Motor vehicle service agreement" or "service agreement" means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or

other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. The term "motor vehicle service agreement" includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. "Vehicle protection expenses" means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. "Vehicle protection product" means a product or system installed or applied to a motor vehicle or designed to prevent

the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall either:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder's motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder's comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle; however, the payment of vehicle protection expenses at a preestablished flat amount of $5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy; ~~or~~

(c)~~1.~~ For repair or replacement of tires or wheels on a motor vehicle damaged as a result of encountering a road hazard;

(d) For removal of dents, dings, or creases on a motor vehicle that may be repaired using the process of paintless dent removal without affecting the existing paint finish and without using replacement body panels, or sanding, bonding, or painting;

(e) For replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen; or

(f) For other services which may be approved by the Commissioner of Insurance Regulation consistent with this part ~~For the payment for paintless dent-removal services provided by a company whose primary business is providing such services~~.

~~2. "Paintless dent-removal" means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.~~

(14) "Road hazard" means a danger that is encountered while operating a motor vehicle. The term includes, but is not limited to, potholes, rocks, wood debris, metal parts, glass, plastic, curbs, and composite scraps.

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

INSURANCE AND BANKING SUBCOMMITTEE

HB 875 by Rep. Stark
Motor Vehicles Service Agreement Companies

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Stark (Lines 93-97): Deletes the authority for the OIR Commissioner to approve additional services that can be part of motor vehicle service agreements.

Amendment 2 by Rep. Stark (Lines 106-107): Revises the definition of road hazard to limit its application and to include the term "debris".

Amendment 3 by Rep. Santiago (Between lines 108-109): Requires new car dealers to provide purchasers with a notification of the provisions of the federal Magnusson-Moss Warranty Act. It deems a failure to issue the notice to be an unfair method of competition and an unfair or deceptive commerce act or practice.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 875 (2016)

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 Stark offered the following:

Amendment

Remove lines 93-97 and insert:

using replacement body panels, or sanding, bonding, or painting; or

(e) For replacement of a motor vehicle key or key fob if the key or key fob is inoperable, lost, or stolen.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 875 (2016)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Stark offered the following:

Amendment

Remove lines 106-107 and insert:

while operating a motor vehicle, but does not include any damage caused by collision with another vehicle, vandalism, or other causes usually covered under the comprehension or collision coverages provided by an automobile physical damage policy. The term includes, but is not limited to, potholes, rocks, debris, metal parts, glass,

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 875 (2016)

Amendment No. 3

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Santiago offered the following:

Amendment (with title amendment)

Between lines 108 and 109, insert:

Section 2. Subsections (23) and (24) is added to section 681.102, Florida Statutes, to read:

(23) "Aftermarket part" means a part that was made by a company other than the vehicle manufacturer or the original equipment manufacturer.

(24) "Recycled part" means a part that was made for and installed in a new vehicle by the manufacturer or the original equipment manufacturer and later removed from the vehicle and made available for resale or reuse.

Section 3. Section 681.105, Florida Statutes, is created to read:

681.105 Required notification.-

(1) Each new car dealer, licensed under Florida Statute, at the time the sale of a new motor vehicle, is executed, shall deliver to the purchaser of such new motor vehicle a written statement, printed in not less than ten-point boldface type, as follows:

"The Magnuson-Moss Warranty Act, 15 USC 2301 et seq., makes it illegal for motor vehicle manufacturers or dealers to void a motor vehicle warranty or deny coverage under the motor vehicle warranty simply because an aftermarket or recycled part was installed or used on the vehicle or simply because someone other than the dealer performed service on the vehicle. It is illegal for a manufacturer or dealer to void your warranty or deny coverage under the warranty simply because you used an aftermarket or recycled part. If it turns out that an aftermarket or recycled part was itself defective or wasn't installed correctly and it causes damage to another part that is covered under the warranty, the manufacturer or dealer has the right to deny coverage for that part and charge you for any repairs. The Federal Trade Commission requires the manufacturer or dealer to show that the aftermarket or recycled part caused the need for repairs before denying warranty coverage."

(2) In addition to any other remedies that may be

available, a violation of this chapter shall be deemed to be an unfair method of competition and an unfair or deceptive act or practice in the conduct of trade or commerce in violation of Florida Statute.

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

Remove line 4 and insert:

providing definitions; amending s. 681.102, F.S.; providing definitions; creating s. 681.105, F.S.; creating a duty for new car dealers to provide a specified notice; deeming a violation of the statute to be an unfair method of competition and an unfair or deceptive act or practice; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 931 Operations of Citizens Property Insurance Corporation
SPONSOR(S): Passidomo
TIED BILLS: **IDEN./SIM. BILLS:** SB 958

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Peterson KP	Luczynski MJ
2) Regulatory Affairs Committee			

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 insured properties and to decrease its financial exposure. 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.

A second program, the Clearinghouse was created by the Legislature in 2013 to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. A new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium.

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality. The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. The law requires the agent to keep the information confidential.

The bill expands the list of who may receive information from the confidential underwriting and claims files to include a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a modeling company. The information may be used by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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.

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:[1]

- Personal Lines Account – personal residential[2] multiperil[3] 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[4] 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[5] and multiperil policies[6] for properties in limited eligible coastal areas.[7]

At the time of its creation, Citizens handled approximately 602,000 policies. The policy count peaked in November 2012 at nearly 1.5 million, but has dropped to just over 500,000.[8]

Depopulation

By law, Citizens is required to adopt programs to reduce the number of insured properties and to decrease its financial exposure.[9] 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.[10] Depopulation has been accomplished almost exclusively by Florida domestic insurers—either those already in existence which have removed policies as part of an overall business plan, or those new domestic insurers created specifically to remove policies from Citizens.[11]

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

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

[3] 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.

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

[5] 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.

[6] 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.

[7] 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.

[8] CITIZENS PROPERTY INSURANCE CORPORATION, *PIF Standard Summary By Product Line* (Dec. 31, 2015) (on file with the House Insurance & Banking Subcommittee).

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

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

[11] 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 Jan. 12, 2016).

A Citizens policy that is assumed by a takeout company (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 the 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.[12]

Citizens Clearinghouse

The Legislature created the Clearinghouse in 2013 to ensure that new applications for insurance through Citizens and policies that are coming up for renewal are assessed to determine if appropriate coverage is available in the private market. By law, a new policy is ineligible for coverage in Citizens if a private company offers comparable coverage with a premium that is up to 15 percent higher than the Citizens premium. A policy is ineligible for renewal coverage through Citizens if a private company offers comparable coverage at or below Citizens' premium. A policy that is taken out of Citizens at renewal through the Clearinghouse is eligible to return through the Clearinghouse if, during the 36 months after takeout, the new insurer increases the policyholder's rate more than 10 percent in any year. Under this provision, a policyholder would then return to Citizens, unless the policyholder receives a new offer in the private market at or below Citizens' rate. The reduction is the result of two initiatives: the depopulation program and, to a lesser degree, the Clearinghouse.

Underwriting Files of Citizens Property Insurance Corporation

Current law allows Citizens to share confidential underwriting and claims files with an insurer that is contemplating underwriting a risk insured by the corporation, provided the insurer executes a notarized agreement to retain their confidentiality. The corporation may also make specified information from the underwriting and claims files available to general lines insurance agents. Such information is limited to the name, address, and telephone number of the property owner or insured; the location of the risk; rating information; loss history; and policy type. The law requires the agent to retain the confidentiality of the information.

Effect of the Bill on Underwriting Files of Citizens Property Insurance Corporation

The bill expands the list of who may receive information from the confidential underwriting and claims files to include a reinsurer, a licensed reinsurance broker, a licensed rating organization, or a modeling company. The information made available to these entities is the same information available to a licensed general lines agent. The information may be used by these entities for the sole purposes of analyzing risks for underwriting or developing rating plans in the private insurance market and must be kept confidential. The bill narrows the authorized uses of the data by agents to use in developing a takeout plan or analyzing risks for underwriting. In addition, the bill expressly prohibits the use of the data by any of the authorized users for direct solicitation of policyholders.

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, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

[12] 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 Jan. 12, 2016).

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:

Broader access to the data may facilitate greater participation in the Clearinghouse and depopulation programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On line 100, "authorized insurer" should be revised to be "an entity that has obtained a permit to become an authorized insurer."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to operations of the Citizens Property Insurance Corporation; amending s. 627.351, F.S.; authorizing the use of specified information by certain entities in analyzing risks or developing rating plans; prohibiting the use of such information for the direct solicitation of policyholders; providing an effective date.

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

Section 1. Paragraph (x) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(x)1. The following records of the corporation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. Underwriting files, except that a policyholder or an applicant shall have access to his or her own underwriting files. Confidential and exempt underwriting file records may also be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

b. Claims files, until termination of all litigation and

settlement of all claims arising out of the same incident, although portions of the claims files may remain exempt, as otherwise provided by law. Confidential and exempt claims file records may be released to other governmental agencies upon written request and demonstration of need; such records held by the receiving agency remain confidential and exempt as provided herein.

c. Records obtained or generated by an internal auditor pursuant to a routine audit, until the audit is completed, or if the audit is conducted as part of an investigation, until the investigation is closed or ceases to be active. An investigation is considered "active" while the investigation is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings.

d. Matters reasonably encompassed in privileged attorney-client communications.

e. Proprietary information licensed to the corporation under contract and the contract provides for the confidentiality of such proprietary information.

f. All information relating to the medical condition or medical status of a corporation employee which is not relevant to the employee's capacity to perform his or her duties, except as otherwise provided in this paragraph. Information that is exempt shall include, but is not limited to, information relating to workers' compensation, insurance benefits, and

retirement or disability benefits.

g. Upon an employee's entrance into the employee assistance program, a program to assist any employee who has a behavioral or medical disorder, substance abuse problem, or emotional difficulty which affects the employee's job performance, all records relative to that participation shall be confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided in s. 112.0455(11).

h. Information relating to negotiations for financing, reinsurance, depopulation, or contractual services, until the conclusion of the negotiations.

i. Minutes of closed meetings regarding underwriting files, and minutes of closed meetings regarding an open claims file until termination of all litigation and settlement of all claims with regard to that claim, except that information otherwise confidential or exempt by law shall be redacted.

2. If an authorized insurer is considering underwriting a risk insured by the corporation, relevant underwriting files and confidential claims files may be released to the insurer provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. If a file is transferred to an insurer, that file is no longer a public record because it is not held by an agency subject to the provisions of the public records law. Underwriting files and confidential claims files may also be released to staff and the

board of governors of the market assistance plan established pursuant to s. 627.3515, who must retain the confidentiality of such files, except such files may be released to authorized insurers that are considering assuming the risks to which the files apply, provided the insurer agrees in writing, notarized and under oath, to maintain the confidentiality of such files. Finally, the corporation or the board or staff of the market assistance plan may make the following information obtained from underwriting files and confidential claims files available to licensed general lines insurance agents: name, address, and telephone number of the residential property owner or insured; location of the risk; rating information; loss history; and policy type. The receiving licensed general lines insurance agent must retain the confidentiality of the information received and may use the information only for the purposes of developing a take-out plan to be submitted to the office for approval or otherwise analyzing the underwriting of a risk or risks insured by the corporation on behalf of the private insurance market. The licensed general lines agent and an insurer receiving information under this subparagraph may not use the information for the direct solicitation of policyholders. An authorized insurer, a reinsurer that may provide reinsurance under s. 624.610, a licensed reinsurance broker, a licensed rating organization, or a modeling company may receive the information available to a licensed general lines agent for the sole purpose of analyzing risks for

underwriting or developing rating plans in the private insurance market and must retain the confidentiality of the information received. Such entities may not use the information for the direct solicitation of policyholders.

3. A policyholder who has filed suit against the corporation has the right to discover the contents of his or her own claims file to the same extent that discovery of such contents would be available from a private insurer in litigation as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law. Pursuant to subpoena, a third party has the right to discover the contents of an insured's or applicant's underwriting or claims file to the same extent that discovery of such contents would be available from a private insurer by subpoena as provided by the Florida Rules of Civil Procedure, the Florida Evidence Code, and other applicable law, and subject to any confidentiality protections requested by the corporation and agreed to by the seeking party or ordered by the court. The corporation may release confidential underwriting and claims file contents and information as it deems necessary and appropriate to underwrite or service insurance policies and claims, subject to any confidentiality protections deemed necessary and appropriate by the corporation.

4. Portions of meetings of the corporation are exempt from the provisions of s. 286.011 and s. 24(b), Art. I of the State Constitution wherein confidential underwriting files or confidential open claims files are discussed. All portions of

corporation meetings which are closed to the public shall be recorded by a court reporter. The court reporter shall record the times of commencement and termination of the meeting, all discussion and proceedings, the names of all persons present at any time, and the names of all persons speaking. No portion of any closed meeting shall be off the record. Subject to the provisions hereof and s. 119.07(1)(d)-(f), the court reporter's notes of any closed meeting shall be retained by the corporation for a minimum of 5 years. A copy of the transcript, less any exempt matters, of any closed meeting wherein claims are discussed shall become public as to individual claims after settlement of the claim.

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

HOUSE INSURANCE AND BANKING SUBCOMMITTEE
HB 931 by Rep. Passidomo
Operations of Citizens Property Insurance Corporation

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Passidomo (Line 100): corrects a drafting error by changing the term "an authorized insurer" to the term "an entity that has obtained a permit to become an authorized insurer."

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 931 (2016)

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 Passidomo offered the following:

Amendment

Remove line 100 and insert:

policyholders. An entity that has obtained a permit to become an authorized insurer, a reinsurer that may

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1041 Unclaimed Property
SPONSOR(S): Hager
TIED BILLS: **IDEN./SIM. BILLS:** SB 966

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

SUMMARY ANALYSIS

Unclaimed property consists of any funds or other property, including insurance proceeds, that has remained unclaimed by the owner for a certain period of time. The Florida Disposition of Unclaimed Property Act ("the Act") requires holders of unclaimed property to exercise due diligence to locate missing owners and pay them the funds. If the owner cannot be located, the holder must report and remit the unclaimed property to the Department of Financial Services (DFS) Bureau of Unclaimed Property.

In 2008-2009, Florida and a number of other state insurance regulators and unclaimed property administrators began investigating large life insurers for their claims settlement practices, and learned that certain insurers selectively used the Social Security Administration's Death Master File (DMF) to verify the death of an insured or an annuitant, which enabled the insurer to stop making annuity payments, but were not using the same information to ascertain the death of a life insurance policyholder for making payment to a beneficiary or remittance of the proceeds to a state unclaimed property office. From 2011 to the present, Florida entered into a number of regulatory settlement agreements (RSAs) with over 20 of the 40 largest life insurers, which generally require life insurers to attempt to connect beneficiaries with policy benefits, report and remit unclaimed property to states, and to compare all the insureds listed in their company records against the DMF.

The bill amends the Act to codify the RSAs to retroactively require life insurers, for all life policies, annuity contracts and retained asset accounts that were in-force during or after 1992, to conduct a match of all such policies against the DMF. For any person who is revealed to have died while covered, unless the presumed death is rebutted by evidence, the insurer must within four months of gaining knowledge of death, pay the unclaimed benefits to the beneficiary or heir – a process known as "due diligence." If not accordingly paid within four months, the unclaimed benefits become unclaimed property. The bill requires insurers, in future years, to conduct a similar match of all in-force policies and contracts on at least an annual basis. The bill establishes the date of death as the five-year dormancy trigger for unclaimed policy benefits. It prohibits insurers from charging fees associated with the "due diligence" process or to recipients in the course of obtaining funds they are owed. The legislation clarifies that life insurance proceeds may become unclaimed property, even if the beneficiary of the policy has not yet filed a claim for the death benefits with the insurer and that the dormancy period for life insurance commences upon the date of death of the insured.

The bill has an indeterminate impact on state government, in that the bill is expected to increase unclaimed property remittances from life insurers, but may require expenditures for anticipated litigation by life insurers. The bill has no fiscal impact on local government. The bill may impose indeterminate costs to insurers to comply with the search requirements, but may increase the likelihood that Florida beneficiaries will obtain intended death benefits.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Florida Disposition of Unclaimed Property Act

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]

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 five 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) of $50 or more are required to use due diligence to locate and notify apparent owners of inactive accounts, at least 60 days but not more than 120 days prior to filing a report with the DFS.[4] If the owners cannot be located, holders must file an annual report with the 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 of apparent owners.[6] The holder must deliver all reportable unclaimed property to the DFS when it submits its annual report.[7]

Upon the payment or delivery of unclaimed property to DFS, the state assumes custody and responsibility for the safekeeping of the property.[8] 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 the DFS may file a claim for the property, subject to certain requirements.[9] The DFS is required to make a determination on a claim within 90 days. If a claim is determined in favor of the claimant, the

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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 (last visited Jan. 14, 2016).

[3] s. 717.102(1), F.S.

[4] s. 717.117(4), F.S.

[5] s. 717.117, F.S.

[6] For unclaimed funds owing under any life or endowment insurance policy or annuity contract, the report must also include the last known address of the insured or annuitant and of the beneficiary according to records of the insurance company holding or owing the funds. s. 717.117(1)(b), F.S.

[7] s. 717.119, F.S.

[8] s. 717.1201, F.S. Like many other states' unclaimed property acts, the Act is based on the common-law doctrine of escheat and is a "custody" statute, rather than a "title" statute, in that the DFS does not take title to abandoned property, but instead obtains its custody and beneficial use pending identification of the property owner.

[9] ss. 717.117 and 717.124, F.S.

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.[10]

If the property remains unclaimed, all proceeds from abandoned property are then deposited by the DFS into the Unclaimed Property Trust Fund.[11] The DFS is allowed to retain up to $15 million to make prompt payment of verified claims and to cover costs incurred by the DFS in administering and enforcing the Act. All remaining funds received must be deposited into the State School Trust Fund to be utilized for public education.[12]

Life or Endowment Insurance Policies or Annuity Contracts

The primary purpose of life insurance (the insurance of human lives) is to provide a financial benefit (death benefit) to dependents (beneficiaries) upon the premature death of an insured person. Life insurance also includes *annuity contracts* and *endowment benefits*:[13]

- An *annuity* is a series of payments that acts similarly to a savings plan to provide primary or supplementary retirement income over a period of time. It is a contract where the consumer (annuitant) makes a lump sum payment or a series of payments to an insurer; in return, the insurer agrees to make periodic payments back to the annuitant at a future date for varying periods and amounts. An annuity may or may not have a death benefit upon the annuitant's death, depending on the annuity's payment plan.
- *Endowment policies* offer insurance protection for a fixed period of time, with emphasis on the rapid accumulation of premiums. The policy "endows" if the insured lives to the end of the policy period (such as the 10th or 20th anniversary, or with a stated age, such as 65), triggering a payment to the owner that is equal to the policy's face amount.[14]

Section 627.461, F.S., requires that every contract of insurance provide that, when a policy becomes a claim upon the death of the insured, settlement of the policy shall be made upon *receipt of due proof of death* and surrender of the policy. Accordingly, life insurance policies and annuities contracts with death benefits issued under Florida law have contractual terms that provide that the policy matures upon the insurer receiving actual proof of death, generally in the form of a certified copy of the death certificate.

Until an insurer receives proof of the insured's death, it uses *retained asset accounts* to hold beneficiaries' proceeds until the beneficiaries withdraw the cash using checks or drafts, payment cards, or other means. Current law does not restrict the use of a retained asset account by an insurer. The beneficiary may move funds from the retained asset account into their own account (whether in a single lump sum payment, in installments, or in interest-only payments until the insured's death).[15]

Proof of Death Through the Social Security Death Master File

The U.S. Social Security System (SSA) collects death information from many sources (including family members, funeral homes, financial institutions, postal authorities, states, and other federal agencies) in order to administer its programs. This death information is compiled into the Death Master File (DMF) is an extract of death information on the SSA's Numerical Identification System (also known as NUMIDENT), the electronic database that contains records of Social Security Numbers (SSN) assigned to individuals since 1936, and includes, if available, the deceased individual's SSN, first name, middle

[10] s. 717.124, F.S.
[11] s. 717.123, F.S.
[12] *Id.*
[13] s. 624.602, F.S.
[14] DEPARTMENT OF FINANCIAL SERVICES, *Life Insurance & Annuities: A Guide to Consumers* (p. 7), at http://www.myfloridacfo.com/Division/Consumers/understandingCoverage/Guides/documents/life_annuities.pdf
[15] DEPARTMENT OF FINANCIAL SERVICES, *Life Insurance: Overview – Common Terms*, at http://www.myfloridacfo.com/Division/Consumers/UnderstandingCoverage/LifeInsuranceOverview.htm (last visited Jan. 14, 2016).

name, surname, date of birth, and date of death. The SSA prepares two versions of the DMF – a *full file* which is shared only with certain state and federal agencies pursuant to federal law, and a *public file* which does not include death data received from the states. The public file is provided to the Department of Commerce's National Technical Information Service, a clearinghouse for government information, which sells it to the public (other agencies and private organizations such as banks and credit companies).[16] Access to the DMF is restricted and requires users to have a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, in addition to compliance with strict user agreements.

A variety of individuals and professions, such as medical researchers, hospitals, oncology programs, investigative firms, individuals searching for loved ones, and genealogists, use the DMF to verify death. Additionally, pension funds, insurance organizations, and government entities of all levels responsible for making benefits and payments to recipients use the DMF to make sure they are not sending checks to deceased persons.[17]

As discussed further below, the Act does not currently require insurers to use the DMF to verify the insured's death for the purposes of its payment obligations to beneficiaries or remittance and reporting obligations to the DFS.

Unclaimed Property Treatment of Life Insurance or Endowment Policies or Annuity Contracts

In some instances, life insurance or endowment policies or annuity contracts reach maturity or are terminated, but are unclaimed by the beneficiary, sometimes due to the beneficiary's lack of knowledge that he or she is a named beneficiary. Historically, many life insurance companies have held policy benefits until contacted by a beneficiary, rather than research whether the policyholder is still living. If never contacted, the company never paid the benefit. For unclaimed property purposes, s. 717.107(1), F.S., provides that funds held or owing under a life or endowment insurance policy or an annuity contract that has matured or terminated are presumed unclaimed if unclaimed for more than 5 years[18] (the dormancy period) after the funds became *due and payable* as established by records of the insurance company owing the funds.[19]

In 2014, a Florida appeals court reviewed a declaratory statement[20] by the DFS that interpreted s. 717.107(1), F.S., to require life insurance funds "due and payable" upon the death of the insured, at which time the 5-year dormancy period for unclaimed property purposes is triggered.[21] The DFS declaratory statement, issued to petitioner Thrivent Financial for Lutherans, also asserted that the statute creates an affirmative duty on insurers to use due diligence in searching databases (such as the Google, LexisNexis, or the SSA's DMF), in order to determine if any of its insureds had died. The First DCA reversed the declaratory statement, finding DFS's interpretation to be clearly erroneous and contrary to the plain language of s. 717.107, F.S. In reading the statute in conjunction with s. 627.461, F.S., which requires insurance contracts to state that the policy will be settled upon "receipt of due proof of death and surrender of the policy," the court concluded that the records of the insurance company do not establish insurance funds as "due and payable" under the Act until the insurer receives

[16] SOCIAL SECURITY ADMINISTRATION, *Requesting the Full Death Master File: Our Death Data*, at https://www.ssa.gov/dataexchange/request_dmf.html (last visited Jan. 14, 2016).
[17] Social Security Death Master File, *SSDMF Database Uses*, at https://www.ssdmf.com/FolderID/1/SessionID/%7B7B22D106-D899-4C11-B93A-1E389C169B9C%7D/PageVars/Library/InfoManage/Guide.htm (last visited Jan. 14, 2016).
[18] If the insured attains the limiting age under an in-force policy or would have done so if alive, the funds are deemed unclaimed, if unclaimed for 2 years. s. 717.107, F.S.
[19] s. 717.107(1), F.S. The statute also sets forth grounds for deeming an (otherwise unmatured) policy matured and the proceeds as due and payable, such as if the company knows that the insured or annuitant has died.
[20] Under the Administrative Procedure Act, a declaratory statement may be requested by "any substantially affected person," and is a binding opinion of a state agency as to the applicability of a statutory provision or any rule or order of the agency, as it applies to a petitioner's particular set of circumstances. A declaratory statement is final agency action appealable to the district courts of appeal. *See* ss. 120.565 and 120.68, F.S.
[21] *Thrivent Financial for Lutherans v. Dep't of Financial Services*, 145 So.3d 178 (Fla. 1st DCA 2014).

proof of death and surrender of the policy. Additionally, the court also refused to impose an affirmative duty on insurers to search death records in order to determine whether any insureds have died, noting that the plain language of s. 717.107, F.S., does not impose such a duty. In declining to rewrite the statute contrary to its plain language, it noted that policy considerations such as these must be addressed by the Legislature.[22]

Regulatory Examinations of Life Insurance Claims Practices

Between 2004 and 2006, Florida received nearly 200,000 unclaimed demutualization accounts (totaling more than $184 million) from life insurers that demutualized between 1998 and 2001.[23] These accounts were not death benefits, but rather ownership interests in the company by policyholders, and were remitted as unclaimed property to the DFS. Due to the large amount of demutualization proceeds, Florida and many other states questioned the whereabouts of the underlying life policies.

Beginning in 2008, Florida and 43 other states began auditing life insurance companies for compliance with state unclaimed property laws. The auditors' strategy involved comparing policy information to data maintained by the DMF. Between 2009 and 2011, during the course of the initial exams, Florida learned that certain life insurance companies selectively utilized the DMF to verify the death of an annuitant, which then enabled the insurance company to stop making annuity payments. However, the insurance companies were not using the DMF to research the death of a policyholder of a life insurance policy, which would have resulted in payment to a beneficiary or remittance of the policy benefits to a state unclaimed property office.[24]

In 2009, the Office of Insurance Regulation (OIR) conducted market conduct investigations which confirmed the industry's asymmetrical use of the DMF. Because insurers were not using information to find beneficiaries, the practice sometimes resulted in continued payment deductions from the accounts of deceased policyholders for the payment of premiums. Often, claims are not made by the beneficiaries of life insurance policies because the beneficiary is unaware of the policy. Additionally, insurers generally did not remit the benefits under life insurance policies and annuities with a death benefit to the Bureau of Unclaimed Property unless the insured attained, or would have attained, the limiting age on an at-force policy, which for most policies is 100 years of age or greater.

In May 2011, insurance regulators from a number of states, including Florida, established a special task force to coordinate regulatory investigations of the claim settlement practices of life insurance companies. In particular, the task force focused on the allegations that many of the insurers were using the DMF to terminate payments under annuity contracts, but failed to use this information to facilitate claims payments on life insurance policies. Kevin McCarty, the OIR Commissioner, has served as the chair of the task force since its inception. Florida, California, Illinois, New Hampshire, North Dakota, and Pennsylvania, are the lead states for these examinations of the 40 largest insurance groups, which comprise more than 92 percent of the market of life and annuity products nationwide. Currently, an examination has been concluded or a settlement has been reached for 22 of the 40 largest insurers.[25]

Regulatory Settlement Agreements (RSAs)

From 2011 to the present, Florida entered into a number of settlement agreements with over 20 large life insurers, often has part of multi-state regulatory settlement agreements (RSAs). Participants in the examination and settlement process have included Chief Financial Officer Jeff Atwater through the

[22] *Id.* at 182.
[23] Demutualization refers to a process whereby a *mutual insurer* (which does not have permanent capital stock and whose policyholders hold certain membership interests) seeks to convert to a *stock insurer* (whose capital is divided into shares and is owned by its stockholders), subject to regulatory approval by the Office of Insurance Regulation pursuant to pt. I, ch. 628, F.S.
[24] DEPARTMENT OF FINANCIAL SERVICES, *Life Insurance/Unclaimed Property/Death Master File Proposed Legislation: Historical Background*, on file with the Insurance & Banking Subcommittee staff.
[25] OFFICE OF INSURANCE REGULATION, *Life Claim Settlement Practices*, at http://www.floir.com/Sections/LandH/life_claims_settlement_practices_hearing05192011.aspx (last visited Jan. 14, 2016).

Bureau of Unclaimed Property at the DFS, Attorney General Pam Bondi through the Office of the Attorney General, and the OIR. According to the OIR, these life claim settlement agreements have resulted in the return of over $5 billion to beneficiaries directly by the companies and over $2.4 billion being delivered to the states, which also attempt to locate and pay beneficiaries.

The RSAs generally require the life insurer to compare all the life insureds listed in company records against the DMF.[26] For all policies the company obtains notice of the death of the insured through the DMF search or company records, it must conduct a thorough search for the beneficiaries. If a life insurance beneficiary contacts the insurer, the company must provide claims forms and instructions for the making of a claim. The insurers retain the right to require a death certificate as proof of death before paying proceeds to a beneficiary. If the company cannot locate the beneficiary, the insurer must remit the proceeds as unclaimed property within 5 years of the date of the death of the life insurance policyholder. The settlement agreements also establish business practices to facilitate payments to owners of assets under annuity contracts and retained asset accounts.

Effect of the Bill

The bill codifies the RSAs to require life insurers, for all life policies, annuity contracts and retained asset accounts that were in-force during or after 1992, to conduct a match of all such policies against the SSA's DMF. For any person who is revealed to have died while covered, unless the presumed death is rebutted by evidence, the insurer must within four months of gaining knowledge of death, pay the unclaimed benefits to the beneficiary or heir – a process known as "due diligence." If not accordingly paid within four months, the unclaimed benefits become unclaimed property. The bill requires companies, in future years, to conduct a similar match of all in-force policies and contracts on at least an annual basis. The bill establishes the date of death as the five-year dormancy trigger for unclaimed policy benefits. It prohibits insurers from charging fees associated with the "due diligence" process or to recipients in the course of obtaining funds they are owed. The legislation clarifies that life insurance proceeds may become unclaimed property even if the beneficiary of the policy has not yet filed a claim for the death benefits with the insurer and that the dormancy period for life insurance commences upon the date of death of the insured.

Section 1 amends s. 717.107, F.S., of the Act to establish that funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder.

The bill requires insurers to at least annually perform a comparison of its insureds against the SSA's DMF. The comparison must be performed for all the insurer's policyholders under life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992. The annual comparison must be made before August 31 of each year. Additionally, if the insurer makes a comparison of its annuity policyholders against the DMF more frequently than once a year, the insurer must perform the DMF comparison required by this bill as frequently. Consequently, the bill will require insurers to perform the searches that the *Thrivent* decision held that the DFS did not have the authority to require under current s. 717.107, F.S.

The bill establishes a rebuttable presumption that an insured, annuitant, or retained asset account holder is deceased if that person's date of death is indicated on the DMF. The insurer is required to account for common variations in data and for partial names, social security numbers, dates of birth, and addresses which would otherwise preclude an exact match.

[26] OFFICE OF INSURANCE REGULATION, *Florida's Regulatory Life Claim Settlement Agreements*, http://www.floir.com/siteDocuments/LifeClaimsSettlements.pdf (follow hyperlinks to RSAs)(last visited Jan.14, 2016).

The bill exempts any annuity contract issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) or an annuity contract issued to fund an employment-based retirement plan, including any deferred compensation plans. An insurer is not required to confirm the possible death of an insured for accidental death plans or when the insurer does not perform recordkeeping functions. The provision related to record keeping functions will exempt a policy issued to a group policy owner for which the insurer does not provide record keeping services. The bill defines record keeping services as maintaining the information necessary to process a claim or having access to such information.

Insurers and their agents or third parties may not charge insureds, annuity owners, retained asset account holders, and beneficiaries any fees or costs associated with any search, verification, claim or delivery of funds pursuant to the requirements of s. 717.107, F.S.

Section 2 of the bill states that the bill is remedial and applies retroactively. The retroactive application of the bill evidences legislative intent to apply the bill to policies, contracts and accounts entered into, prior to the effective date of the bill. Fines, penalties, or additional interest may not be imposed on the insurer for failure to report and remit property under the bill if such proceeds are reported and remitted to the DFS no later than May 1, 2021. The prohibition against fines, penalties and additional interest is designed to provide insurers approximately 5 years to comply with the requirements of the bill before being subject to such sanctions.

Section 3 provides that the act is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends 717.107, F.S., relating to funds owing under life insurance policies.

Section 2. Provides a statement of retroactive applicability.

Section 3. Provides that the bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate but positive. The bill requires life insurance companies to review the DMF at least annually to determine if the death of an insured is indicated so that Florida beneficiaries will receive death benefits as intended. The bill also provides that fines, penalties or additional interest shall not be imposed on insurance companies that run the DMF search and report and remit any unclaimed life insurance proceeds, annuities, and retained asset accounts before May 1, 2021. Accordingly, while there may be no revenues for FY 16-17, FY 17-18 or FY 18-19 based on the DMF search required by the bill, the bill will result in insurance companies conducting DMF searches and reporting and remitting the unclaimed property to the DFS soon after the bill becoming law.

It is anticipated that the first time an insurance company runs the DMF, the amount of unclaimed life insurance proceeds owed to missing beneficiaries that are reported and remitted to the DFS will be greater than the amount of unclaimed life insurance proceeds reported and remitted to the DFS each subsequent year. However, the DFS expects to receive reports and remittances far exceeding $100 million, from unknown and unclaimed life insurance benefits, not returned via "due diligence."[27]

[27] Department of Financial Services, Agency Analysis of 2016 House Bill 1041, p. 2 (Jan. 8, 2016).

2. Expenditures:

Indeterminate. The DFS has noted that they may incur litigation expenses if the bill is challenged by life insurers.[28]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Life insurers may incur a cost to use the DMF to comply with this bill, if they are not currently using it to determine whether a death of an insured has occurred. On the other hand, many beneficiaries of life or endowment insurance policies and annuities contracts, who are unaware of such policies, will benefit by claiming benefits after being contacted by a life insurer. If the life insurer remits the funds held or owing under the policy or contract to the Bureau of Unclaimed Property, beneficiaries will benefit by having a central location with which to search for possible life insurance proceeds.

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:

Section 2 of the bill provides a statement of retroactive application and that the amendments are remedial in nature. The bill applies to life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992.

Section 624.21, F.S., provides that each amendment to the Insurance Code[29] (which includes the Act) shall be construed to operate prospectively, unless a contrary legislative intent is specified. This is consistent with the constitutional principle that unless the Legislature states otherwise, legislation is presumed only to operate prospectively. However, even where the Legislature expressly states an intent for a statute to apply retroactively, courts will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty.[30] The Contract Clause of article I, section 10 of the U.S. Constitution prohibits states from passing laws which substantially impair contract rights. Courts use a balancing test to determine whether a particular regulation violates the contract clause. The courts measure the severity of contractual impairment against the importance of the interest advanced by the regulation. Also, courts look at whether the regulation is a reasonable and

[28] *Id.*
[29] Section 624.01, F.S., provides that chs. 624-632, 634-636, 641-642, 648, and 651, F.S., constitute the Florida Insurance Code.
[30] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

narrowly tailored means of promoting the state's interest.[31] Generally, courts accord considerable deference to legislative determinations relating to the need for laws which impair private obligations.[32]

The DFS asserts that these constitutional concerns are not implicated, because the legislation is remedial in nature (i.e., corrects or remedies a problem or redresses an injury) and does not create new or take away vested rights:[33]

> [E]stimates indicate the amount of unclaimed life insurance proceeds nationwide to be in the billions of dollars. Accordingly, to address this growing problem, the legislation provides that insurance companies utilize the DMF to determine whether any of their insured, annuitants or retained asset account holders may now be deceased. Remedial legislation is appropriate in this instance because the Florida Legislature has the authority to adopt reasonable insurance regulations in the public interest.[34] In addition, there is no vested right to conduct business in Florida without legislatively imposed regulations or even the subsequent abrogation by the legislature of the "right" to engage in the regulated industry.[35] "Where 'rights' have been subject to modification or elimination at any time by the Legislature, courts have found them to be neither fixed nor vested."[36] In such cases, there is no more than an expectation of the continuance of an existing law.[37] Because insurance companies have never been granted a substantive vested right in, or title to, the life insurance proceeds of deceased insured, it is appropriate to redress this injury to Florida consumers.

On the other hand, industry representatives counter that the application of the bill's requirements to life insurance policies creates an unconstitutional impairment of existing insurance contracts, since the *Thrivent* court held that s. 627.461, F.S., controlled regarding contractual terms requiring proof of death.[38] In 2013, an insurer prevailed in a challenge to a Kentucky statute requiring insurers to conduct DMF searches on a retroactive basis. The Kentucky Court of Appeals held that the statute may only be applied prospectively, and that while "the Act's requirements are primarily regulatory and do not directly alter the operations of any conditions precedent for coverage under the insurance contracts...the Act clearly imposes new and substantive requirements which affect the contractual relationship between insurer and insureds."[39]

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR noted that Section 2 should be clarified so that the restriction against fines, penalties, or additional interest imposed for failure to report and remit unclaimed property applies only to the Act,

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[31] *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978).
[32] *East N.Y. Sav. Bank v. Hahn*, 326 U.S. 230 (1945).
[33] Department of Financial Services, Agency Analysis of 2016 House Bill 1041, p. 3 (Jan. 8, 2016), citing *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla. 1961).
[34] *Feller v. Equitable Life Assur. Soc. of the United States*, 57 So.2d 581, 586 (Fla. 1952).
[35] *State v. White*, 194 So.2d 601, 603 (Fla. 1967).
[36] *Florida Hospital Waterman, Inc. v. Buster*, 984 So.2d 478, 491 (Fla. 2008).
[37] *Id.* at 490; see also *Lakeland Regional Medical Center, Inc. v. Agency for Healthcare Admin.*, 917 So.2d 1024, 1032 (Fla. 1st DCA 2006); *Campus Communications, Inc., v. Earnhardt*, 821 So.2d 388, 399 (Fla. 5th DCA 2002).
[38] FLORIDA INSURANCE COUNCIL & AMERICAN COUNCIL OF LIFE INSURERS, *Objections to the DFS Proposed Bill on Unclaimed Property*, on file with the Insurance & Banking Subcommittee.
[39] *United Ins. Co. of Am. v. Commonwealth of Kentucky, Dep't. of Ins.*, 2014 WL 3973160 (Ky. Ct. App. 2014). The insurer in the Kentucky challenge brought similar challenges in Maryland and Indiana, which were dismissed on procedural grounds. *United Ins. Co. of Am. V. Indiana Dep't. of Ins.*, No. 49D10-1408-PL 029135 (Ind. Sup. Ct. 2014) and *United Ins. Co.of Am., et al. v. Maryland Ins. Admin., et al.*, No. C-13-179785 (Md. Cir. Ct. 2014).

and not to the OIR's authority to pursue penalties arising from its authority relating to unfair insurance claims settlement practices.[40]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[40] Office of Insurance Regulation, Agency Analysis of 2016 House Bill 1041, p. 5 (Jan. 15, 2016).

A bill to be entitled

An act relating to unclaimed property; amending s. 717.107, F.S.; revising a presumption of when funds held or owing under a matured or terminated life or endowment insurance policy or annuity contract are unclaimed; revising a condition of when certain insurance policies or annuity contracts are deemed matured and the proceeds are due and payable; requiring an insurer to perform a comparison of certain insurance policies, annuity contracts, and retained asset accounts of its insureds against the United States Social Security Administration Death Master File to determine if a death is indicated; providing when such comparisons must be made; providing for a rebuttable presumption of death of certain individuals; requiring an insurer to account for certain variations in data and partial information; providing applicability; providing an exception; defining a term; prohibiting an insurer and specified entities from charging fees and costs associated with certain activities; conforming provisions to changes made by the act; providing retroactive applicability; providing an effective date.

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

Section 1. Section 717.107, Florida Statutes, is amended to read:

717.107 Funds owing under life insurance policies, annuity contracts, and retained asset accounts; fines, penalties, and interest; United States Social Security Administration Death Master File.—

(1) Funds held or owing under any life or endowment insurance policy or annuity contract which has matured or terminated are presumed unclaimed if unclaimed for more than 5 years after the date of death of the insured, annuitant, or retained asset account holder ~~funds became due and payable as established from the records of the insurance company holding or owing the funds~~, but property described in paragraph (3)(d) ~~(3)(b)~~ is presumed unclaimed if such property is not claimed for more than 2 years. The amount presumed unclaimed shall include any amount due and payable under s. 627.4615.

(2) If a person other than the insured, ~~or~~ annuitant, or retained asset account holder is entitled to the funds and no address of the person is known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured, the ~~or~~ annuitant, or the retained asset account holder according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured, the ~~or~~ annuitant, or the retained asset account holder according to the records of the company is deemed matured and the proceeds due and payable if any of the following applies:

(a) The company knows that the insured, the ~~or~~ annuitant, or the retained asset account holder has died.~~; or~~

(b) A presumption of death made in accordance with paragraph (8)(b) has not been rebutted.

(c) The policy or contract has reached its maturity date.

(d)~~(b)~~1. The insured has attained, or would have attained if he or she were living, the limiting age under the mortality table on which the reserve is based;

2. The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph 1.; and

3. Neither the insured nor any other person appearing to have an interest in the policy within the preceding 2 years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy; subjected the policy to a loan; corresponded in writing with the company concerning the policy; or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an

automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent the policy from being matured or terminated under subsection (1) if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured, the ~~or~~ annuitant, or the retained asset account holder and the beneficiary has not communicated with the insurer within 4 months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing 2 years after July 1, 1987, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the

following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class.

(b) The address of each beneficiary.

(c) The relationship of each beneficiary to the insured.

(8)(a) Notwithstanding any other provision of law, an insurer shall perform a comparison of its insureds' life or endowment insurance policies, annuity contracts that provide a death benefit, and retained asset accounts that were in force at any time on or after January 1, 1992, against the United States Social Security Administration Death Master File to determine if the death of an insured, an annuitant, or a retained asset account holder is indicated. The comparison must be made on at least an annual basis before August 31 of each year. If an insurer performs such a comparison regarding its annuities or other books of business more frequently than once a year, the insurer must also make a comparison regarding its life insurance policies, annuity contracts that provide a death benefit, and retained asset accounts at the same frequency as is made regarding its annuities or other books or lines of business.

(b) There is a rebuttable presumption that an insured, an annuitant, or a retained asset account holder is deceased if the date of the insured's, annuitant's, or retained asset account holder's death is indicated on the United States Social Security Administration Death Master File. The insurer shall account for

common variations in data and for any partial names, social security numbers, dates of birth, and addresses of the insured, the annuity owner, or the retained asset account holder which would otherwise preclude an exact match.

(c) For purposes of this section, a policy, a contract, or a retained asset account is deemed to be in force if it has not lapsed, has not been cancelled, or has not been terminated at the time of death of the insured, the annuity owner, or the retained asset account holder.

(d) This subsection does not apply to an annuity contract that is issued in connection with an employment-based plan subject to the Employee Retirement Income Security Act of 1974 or that is issued to fund an employment-based retirement plan, including any deferred compensation plans.

(9) An insurer is not required to confirm the possible death of an insured with respect to benefits payable under accidental death or when the insurer does not perform recordkeeping functions. For purposes of this subsection, the term "recordkeeping" means maintaining, or being legally or contractually responsible for maintaining, either directly or through a third party, the information necessary to process a claim or having access to information necessary to process a claim.

(10) An insurer, or any agent or third party that it engages or that works on its behalf, may not charge insureds, annuity owners, retained asset account holders, beneficiaries,

or the estates of insureds, annuity owners, retained asset account holders, or the beneficiaries of an estate any fees or costs associated with any search, verification, claim, or delivery of funds conducted pursuant to this section.

Section 2. The amendments made by this act are remedial in nature and apply retroactively. Fines, penalties, or additional interest may not be imposed due to the failure to report and remit an unclaimed life or an endowment insurance policy, a retained asset account, or an annuity contract with a death benefit if any unclaimed life or endowment insurance policy, retained asset account, or annuity contract proceeds are reported and remitted to the Department of Financial Services on or before May 1, 2021.

Section 3. This act shall take effect upon becoming a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1041 by Rep. Hager
Unclaimed Property

AMENDMENT SUMMARY
January 19, 2016

Amendment 1 by Rep. Hager (strike-all): Creates s. 627.4619, F.S., to:

- Provide definitions,
- Require insurers to conduct a comparison of in-force policies, annuities, and retained asset accounts against a death master file under specified timeframes,
- Require insurers to conduct certain good faith due diligence efforts to verify an insured's death, determine whether benefits are due, and locate beneficiaries in Florida within 90 days after learning of the possible death of a person through a death master file search,
- Authorize insurers to disclose the minimum necessary personal information in efforts to locate a beneficiary in Florida,
- Prohibit insurers from charging fees or costs associated with death master file searches or verifications,
- Grant rulemaking authority to the Financial Services Commission and authorize the Office of Insurance Regulation to exempt an insurer or to modify an insurer's obligations under this section,
- Establish requirements for reporting and remitting proceeds to the Department of Financial Services for unclaimed property purposes,
- Provide that a failure to comply with this section is an unfair and deceptive insurance practice under ch. 626, F.S., and
- Provide a statement of retroactive applicability and an effective date of January 1, 2017.

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 Hager offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 627.4619, Florida Statutes, is created to read:

627.4619 Unclaimed life insurance benefits.—

(1) Definitions.—For purposes of this section, the term:

(a) "Account owner" means an owner of a retained asset account.

(b) "Annuity" means an annuity contract. The term does not include an annuity contract used to fund an employment-based retirement plan, the sponsor or administrator of which directs the insurer that issues the annuity contract.

(c) "Death master file" means:

1. The federal Social Security Administration's Death Master File; or

2. Another data source that, for the purpose of determining that a person is reported to have died, is at least as comprehensive as the federal Social Security Administration's Death Master File.

(d) "Death master file match" means the result of a search of a death master file that indicates a match of a person's name with the person's social security number or date of birth.

(e) "Knowledge of death" means one of the following:

1. Receipt of a certified original or copy of a death certificate of a person.

2. A death master file match that an insurer has validated through a good faith effort, which shall be documented by the insurer, to confirm the death of the person against other available records and information.

(f) "Person" means an insured, annuity owner, annuitant, or a retained asset account owner.

(g) "Policy" means a policy or certificate that provides the kind of insurance defined in s. 624.602. The term does not include the following:

1. A policy or certificate that provides a death benefit under an employee benefit plan that is subject to the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001 et seq., or a federal employee benefit program.

2. A policy or certificate that is used to fund a preneed funeral contract or prearrangement.

3. A policy or certificate of credit life or accidental death insurance.

4. A policy issued to a group policy owner for which the insurer does not provide record keeping services.

(h) "Record keeping services" means those circumstances under which the insurer has agreed with a group policyholder to be responsible for obtaining, maintaining, and administering, in its own or its agents' systems, information about each individual insured under an insured's group insurance contract, or a line of coverage thereunder, the following minimum information:

1. The social security number, name, or date of birth;

2. Beneficiary designation information;

3. Coverage eligibility;

4. Benefit amount; and

5. Premium payment status.

(2) Comparison of in-force policies, annuities, and retained asset accounts against death master file; frequency.

(a) An insurer shall, at least every six months, perform a comparison of in-force policies, annuities, and retained asset accounts against a death master file to identify potential death master file matches.

(b) An insurer that performs a comparison under paragraph (2)(a) using a complete death master file one time per year, and

only the update files of the death master file used under paragraph (2)(a) for additional comparisons during the twelve months after the comparison under paragraph (2)(a), is considered to be compliant with paragraph (2)(a).

(c) This section does not prevent an insurer from requesting a certified original or copy of a death certificate as a part of a claim validation process.

(3) An insurer shall, not later than ninety days after learning of the possible death of a person through a comparison performed under subsection (2), do the following:

(a) Complete and document a good faith effort to confirm the death of the person against other available records and information.

(b) Review the insurer's records to determine whether the person had purchased any other products from the insurer.

(c) Determine whether benefits may be due under a policy, annuity, or retained asset account.

(d) If the beneficiary or authorized representative under a policy, annuity, or retained asset account has not communicated with the insurer before the expiration of the ninety day period, complete and document a good faith effort to locate and contact the beneficiary or authorized representative, including sending to the beneficiary or authorized representative information concerning the insurer's claim process the need to provide a certified original or copy of the death certificate, if applicable under the policy, annuity, or retained asset account.

(4) An insurer may, to the extent permitted by law, disclose the minimum necessary personal information about a person or a beneficiary to an individual or entity reasonably believed by the insurer to possess the ability to assist the insurer in locating the beneficiary or another individual or entity that is entitled to payment of the claim proceeds.

(5) An insurer, and an entity providing services to an insurer, shall not charge a beneficiary or authorized representative a fee or cost associated with a death master file search or verification of a death master file match conducted under this chapter.

(6) Pursuant to criteria prescribed by commission rule, the office may do the following:

(a) Limit an insurer's death master file comparisons required by subsection (2) of this section to the insurer's electronic searchable files;

(b) Approve a plan and time period for conversion of an insurer's files to electronic searchable files;

(c) Exempt an insurer from the death master file comparisons required by subsection (2);

(d) Upon demonstration of hardship by the insurer, exempt an insurer from the requirements of this section or to permit an insurer to perform the death master file comparisons less frequently than required by subsection (2);

(e) Allow an insurer to begin compliance with this chapter according to a plan and time period approved by the office.

(7) Report and remittance of proceeds; failure to find beneficiary.

(a) With respect to a policy, an annuity, or a retained asset account for which an insurer has knowledge of death, if:

1. Within one year after the insurer has obtained the knowledge of death, the insurer conducts reasonable search efforts and is unable to locate in this state a beneficiary under the policy, annuity, or retained asset account, or

2. No beneficiary was named and the person had a last known address in this state, and the insurer has, without success, attempted to make the contacts required by this section,

the insurer may, without further notice to or consent by the state, report and remit the proceeds of the policy, annuity, or retained asset account to the state on an early reporting basis in accordance with ch. 717.

(b) After a report and remittance of proceeds described in paragraph (7)(a), the insurer is relieved and indemnified from any additional liability in relation to the proceeds.

(8) An insurer's failure to comply with this section is an unfair or deceptive act or practice in the business of insurance under ch. 626.

(9) The commission may adopt rules to implement this section.

Section 2. The amendments made by this act are remedial in nature and apply retroactively.

Section 3. This act shall take effect on January 1, 2017.

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149 **T I T L E A M E N D M E N T**
150 Remove everything before the enacting clause and insert:
151 An act relating to unclaimed property, creating s. 627.4619,
152 F.S., defining the terms "account owner," "annuity," "death
153 master file," "death master file match," "knowledge of death,"
154 "person," "policy," and "record keeping services"; requiring
155 insurers to perform a comparison of policies, annuities, and
156 retained asset accounts against a death master file and
157 determine whether any benefits are due; authorizing insurers to
158 disclose the minimum necessary personal information; prohibiting
159 an insurer and specified entities from charging fees and costs
160 associated with certain activities; authorizing the Office of
161 Insurance Regulation to exempt or limit an insurer from the
162 requirements of this section, subject to commission rule;
163 providing procedures for reporting and remitting proceeds in
164 accordance with ch. 717, F.S.; providing that a violation of
165 this section is an unfair and deceptive insurance practice under
166 ch. 626, F.S.; authorizing the Financial Services Commission to
167 adopt rules; providing a statement of retroactive applicability;
168 providing an effective date.