Insurance & Banking Subcommittee

Tuesday, February 4, 2020
8:00 am – 11:00 am
Sumner Hall (404 HOB)

Jose Oliva
Speaker

Byron Donalds
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time:	Tuesday, February 04, 2020 08:00 am
End Date and Time:	Tuesday, February 04, 2020 11:00 am
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 1391 -- Technology Innovation

Consideration of the following bill(s):

HB 771 Motor Vehicle Insurance by Grall
HB 811 Transfers in Divorce by Geller
CS/HB 1039 Transportation Network Companies by Transportation & Infrastructure Subcommittee, Rommel
HB 1205 Price Transparency in Health Care Services by Rodriguez, A.
HB 1357 Property Insurance by Trumbull
HB 1393 Pub. Rec./Financial Technology Sandbox by Grant, J.
HB 1395 Fees/Financial Technology Sandbox Applications by Sirois

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, February 3, 2020.

By Request of Chair Donalds, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, February 3, 2020.

NOTICE FINALIZED on 01/31/2020 4:16PM by Harrell.Lindsey

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Jose R. Oliva
Speaker

Byron Donalds
Chair

AGENDA

February 4, 2020
404 House Office Building
8:00 AM – 11:00 AM

I. Call to Order & Roll Call

II. Consideration of the following bills:

A. PCS for HB 1391 Technology Innovation by Grant, J.

B. HB 771 Motor Vehicle Insurance by Grall

C. HB 811 Transfers in Divorce by Geller

D. CS/HB 1039 Transportation Network Companies by Rommel

E. HB 1205 Price Transparency in Health Care Services by Rodriquez, A.

F. HB 1357 Property Insurance by Trumbull

G. HB 1393 Pub. Rec./Financial Technology Sandbox by Grant, J.

H. HB 1395 Fees/Financial Technology Sandbox Applications by Sirois

III. Adjournment

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

PCS for HB 1391

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1391 Technology Innovation
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Department of Management Services (DMS) oversees information technology governance and security for the executive branch of state government. The Division of State Technology (DST), a subdivision of DMS subject to its control and supervision, implements DMS's duties and policies in this area. The bill:

- Abolishes DST and establishes the Florida Digital Service (FDS) in its place.
- Places new duties and responsibilities under the newly-created FDS and expands the duties and responsibilities currently assigned to DMS and DST.
- Tasks FDS with procuring a credential service provider for the purpose of creating digital driver licenses or identification cards.
- Creates the Enterprise Architecture Advisory Council as a 13-member advisory council within DMS.
- Creates the Division of Telecommunications within DMS, removes DST as the head of the E911 system in Florida, and places the Division of Telecommunications as its new head.

The Office of Financial Regulation (OFR) regulates money services businesses, which include money transmitters and payment instrument sellers. The bill creates the Financial Technology Sandbox within the OFR to allow a person to make an innovative financial product or service available to consumers as a money transmitter or payment instrument seller during a sandbox period that is initially not longer than 24 months but which can be extended one time for up to 12 months. The sandbox provides regulatory flexibility by permitting the OFR to waive specified statutes and corresponding rule requirements. The OFR may initially authorize a sandbox participant to provide the product or service to a maximum of 15,000 consumers but may authorize up to 25,000 consumers if the sandbox participant demonstrates adequate financial capitalization, risk management process, and management oversight. In addition to other statutes that the OFR may waive, the OFR may modify the net worth, corporate surety bond, and collateral deposit amounts required for money transmitters and payment instrument sellers. The modified amounts must be in such lower amounts that the OFR determines to be commensurate with specified considerations regarding the sandbox application and commensurate with the maximum number of consumers authorized to receive the product or service under the sandbox.

The bill has no fiscal impact on local governments and an indeterminate fiscal impact on state government and the private sector.

The bill provides an effective date of January 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Department of Management Services (DMS)

Information Technology (IT) Management

DMS[1] oversees IT[2] governance and security for the executive branch of state government. The Division of State Technology (DST), a subdivision of DMS subject to its control and supervision, implements DMS's duties and policies in this area.[3] The head of DST is appointed by the Secretary of Management Services[4] and serves as the state chief information officer (CIO).[5] The CIO must be a proven effective administrator with at least 10 years of executive level experience in the public or private sector.[6] DST "provides the State with guidance and strategic direction on a variety of transformational technologies, such as cybersecurity and data analytics, while also providing the following critical services: voice, data, software, and much more."[7] The duties and responsibilities of DMS and DST include:

- Developing IT policy for the management of the state's IT resources;
- Establishing IT architecture standards and assisting state agencies[8] in complying with those standards;
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects. The standards must include:
  - Performance measurements and metrics that reflect the status of an IT project based on a defined and documented project scope, cost, and schedule;
  - Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an IT project; and
  - Reporting requirements
- Performing project oversight of all state agency IT projects that have a total cost of $10 million or more, as well as cabinet agency IT projects that have a total cost of $25 million or more, and are funded in the General Appropriations Act or any other law;
- Recommending potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data;
- Recommending open data[9] technical standards and terminologies for use by state agencies;
- Establishing best practices for the procurement of IT products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services; and

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[1] *See* s. 20.22, F.S.

[2] The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(14), F.S.

[3] S. 20.22(2)(a), F.S.

[4] The Secretary of Management Services serves as the head of DMS and is appointed by the Governor, subject to confirmation by the Senate. S. 20.22(1), F.S.

[5] S. 20.22(2)(b), F.S.

[6] *Id.*

[7] *State Technology*, FLORIDA DEPARTMENT OF MANAGEMENT SERVICES , https://www.dms.myflorida.com/business_operations/state_technology (last visited Jan. 27, 2020).

[8] *See* s. 282.0041(27), F.S.

[9] The term "open data" means data collected or created by a state agency and structured in a way that enables the data to be fully discoverable and usable by the public. The term does not include data that are restricted from public distribution based on federal or state privacy, confidentiality, and security laws and regulations or data for which a state agency is statutorily authorized to assess a fee for its distribution. S. 282.0041(18), F.S.

- Establishing a policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services.[10]

State Data Center and the Cloud-First Policy

In 2008, the Legislature created the State Data Center (SDC) system, established two primary data centers,[11] and required that agency data centers be consolidated into the primary data centers by 2019.[12] Data center consolidation was completed in FY 2013-14. In 2014, the two primary data centers were merged in law to create the SDC within then-existing AST.[13] The SDC is established within DMS and DMS is required to provide operational management and oversight of the SDC.[14]

The SDC relies heavily on the use of state-owned equipment installed at the SDC facility located in the state's Capital Circle Office Center in Tallahassee for the provision of data center services. The SDC is led by the director of the SDC.[15] The SDC is required to do the following:

- Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities;[16]
- Maintain performance of the state data center by ensuring proper data backup, data backup recovery, disaster recovery, and appropriate security, power, cooling, fire suppression, and capacity;
- Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan;
- Enter into a service-level agreement with each customer entity to provide the required type and level of service or services;
- Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the SDC;
- Show preference, in its procurement process, for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of SDC infrastructure, and that meet the needs of customer agencies, reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for IT security; and
- Assist customer entities in transitioning from state data center services to third-party cloud-computing services procured by a customer entity.

A state agency is prohibited, unless exempted[17] elsewhere in law, from:

- Creating a new agency computing facility or data center;
- Expanding the capability to support additional computer equipment in an existing agency computing facility or data center; or
- Terminating services with the SDC without giving written notice of intent to terminate 180 days before termination.[18]

Cloud computing is "a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service

[10] S. 282.0051, F.S.
[11] The Northwood Shared Resource Center and the Southwood Shared Resource Center. Ss. 282.204-282.205, F.S. (2008).
[12] Ch. 2008-116, L.O.F.
[13] Ch. 2014-221, L.O.F.
[14] *See* s. 282.201, F.S.
[15] S. 282.201, F.S.
[16] A "customer entity" means an entity that obtains services from DMS. S. 282.0041(7), F.S.
[17] The following entities are exempt from the use of the SDC: the Department of Law Enforcement, the Department of the Lottery's Gaming Systems Design and Development in the Office of Policy and Budget, regional traffic management centers, the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation. S. 282.201(2), F.S.
[18] S. 282.201(3), F.S.

provider interaction."[19] In 2019, the Legislature mandated that each agency adopt a cloud-first policy that first considers cloud computing solutions in its technology sourcing strategy for technology initiatives or upgrades whenever possible or feasible.[20] Each agency must, just like the SDC, show a preference for cloud-computing solutions in its procurement process and adopt formal procedures for the evaluation of cloud-computing options for existing applications, technology initiatives, or upgrades.[21]

IT Security

The IT Security Act[22] establishes requirements for the security of state data and IT resources.[23] DMS must designate a state chief information security officer (CISO) to oversee state IT security.[24] The CISO must have expertise in security and risk management for communications and IT resources.[25] DMS is tasked with the following duties regarding IT security:

- Establishing standards and processes consistent with generally accepted best practices for IT security, including cybersecurity.
- Adopting rules that safeguard an agency's data, information, and IT resources to ensure availability, confidentiality, and integrity and to mitigate risks.
- Developing, and annually updating, a statewide IT security strategic plan that includes security goals and objectives for the strategic issues of IT security policy, risk management, training, incident management, and disaster recovery planning including:
    - Identifying protection procedures to manage the protection of an agency's information, data, and IT resources;
    - Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes; and
    - Recovering information and data in response to an IT security incident.
- Developing and publishing for use by state agencies an IT security framework.
- Reviewing the strategic and operational IT security plans of executive branch agencies annually.[26]

The IT Security Act requires the heads of state agencies to designate an information security manager to administer the IT security program of the state agency.[27] In part, the heads of state agencies are also required to annually submit to DMS the state agency's strategic and operational IT security plans; conduct, and update every three years, a comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency; develop, and periodically update, written internal policies and procedures; and ensure that periodic internal audits and evaluations of the agency's IT security program for the data, information, and IT resources of the state agency are conducted.[28]

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[19] *Special Publication 800-145*, National Institute of Standards and Technology, https://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf (last visited Jan. 27, 2020). The term "cloud computing" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology (NIST). S. 282.0041(5), F.S.
[20] S. 282.206(1), F.S.
[21] S. 282.206(2) & (3), F.S.
[22] S. 282.318, F.S., is cited as the "Information Technology Security Act."
[23] S. 282.318, F.S.
[24] S. 282.318(3), F.S.
[25] *Id.*
[26] S. 282.318(3), F.S.
[27] S. 282.318(4)(a), F.S.
[28] S. 282.318(4), F.S.

Enhanced 911 (E911) System

DST oversees the E911 system in Florida.[29] DST is required by law to develop, maintain, and implement the statewide emergency communications E911 system plan.[30] The plan must provide for:

- The public agency emergency communications requirements for each entity of local government[31] in the state.
- A system to meet specific local government requirements, which must include law enforcement, firefighting, and emergency medical services, and may include other emergency services such as poison control, suicide prevention, and emergency management services.
- Identification of the mutual aid agreements necessary to obtain an effective E911 system.
- A funding provision that identifies the cost to implement the E911 system.[32]

DST is responsible for implementing and coordinating the plan, and must adopt any necessary rules and schedules related to public agencies[33] implementing and coordinating the plan.[34]

The Secretary of Management Services, or his or her designee, is the director of the E911 system and also serves as chair of the E911 Board.[35] The director of the E911 system is authorized to coordinate the activities of the system with state, county, local, and private agencies.[36] The director must consult, cooperate, and coordinate with local law enforcement agencies.[37] An "E911 Board," composed of eleven members, is established in law to administer funds derived from fees imposed on each user of voice communications service with a Florida billing address (place of primary use).[38] The Governor appoints five members who are county 911 coordinators and five members from the telecommunications industry.[39] The E911 Board makes disbursements from the Emergency Communications Number E911 System Trust Fund to county governments and wireless providers.[40]

Agency Procurements

Agency[41] procurements of commodities or contractual services exceeding $35,000 are governed by statute and rule and require use of one of the following three types of competitive solicitations,[42] unless otherwise authorized by law:[43]

- Invitation to bid (ITB): An agency must use an ITB when the agency is capable of specifically defining the scope of work for which a contractual service is required or when the agency is capable of establishing precise specifications defining the actual commodity or group of commodities required.[44]

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[29] S. 365.171, F.S. Prior to 2019, the Division of Telecommunications, established in statute as the Technology Program within DMS, was the entity with oversight over E911. *See* ch. 2019-118, L.O.F.
[30] S. 365.171(4), F.S.
[31] "Local government" means any city, county, or political subdivision of the state and its agencies. S. 365.171(3)(b), F.S.
[32] *Id.*
[33] "Public agency" means the state and any city, county, city and county, municipal corporation, chartered organization, public district, or public authority located in whole or in part within this state which provides, or has authority to provide, firefighting, law enforcement, ambulance, medical, or other emergency services. S. 365.171(3)(c), F.S.
[34] S. 365.171(4), F.S.
[35] S. 365.172(5)(a), F.S.
[36] S. 365.171(5), F.S.
[37] *Id.*
[38] S. 365.172(5), F.S.
[39] S. 365.172(5)(b), F.S.
[40] S. 365.172(5) & (6), F.S.
[41] Section 287.012(1), F.S., defines "agency" as any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.
[42] Section 287.012(6), F.S., defines "competitive solicitation" as the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.
[43] *See* s. 287.057, F.S.
[44] S. 287.057(1)(a), F.S.

- Request for proposals (RFP): An agency must use an RFP when the purposes and uses for which the commodity, group of commodities, or contractual service being sought can be specifically defined and the agency is capable of identifying necessary deliverables.[45]
- Invitation to negotiate (ITN): An ITN is a solicitation used by an agency that is intended to determine the best method for achieving a specific goal or solving a particular problem and identifies one or more responsive vendors with which the agency may negotiate in order to receive the best value.[46]

DMS is responsible for procuring state term contracts for commodities and contractual services from which state agencies must make purchases.[47]

Digital Driver License

Current law provides for the establishment of a digital proof of driver license. Specifically, the Department of Highway Safety and Motor Vehicles (DHSMV) is required to begin to review and prepare for the development of a secure and uniform system for issuing an optional digital proof of driver license.[48] The statute authorizes DHSMV to contract with one or more private entities to develop a digital proof of driver license system.[49]

The digital proof of driver license developed by DHSMV or by an entity contracted by DHSMV must be in such a format as to allow law enforcement to verify the authenticity of the digital proof of driver license.[50] DHSMV may adopt rules to ensure valid authentication of digital driver licenses by law enforcement.[51] A person may not be issued a digital proof of driver license until he or she has satisfied all of the statutory requirements relating to the issuance of a physical driver license.[52]

Current law also establishes certain penalties for a person who manufacturers or possesses a false digital proof of driver license.[53] Specifically, a person who:
- Manufactures a false digital proof of driver license commits a felony of the third degree, punishable by up to five years in prison[54] and a fine not to exceed $5,000,[55] or punishable under the habitual felony offender statute.[56]
- Possesses a false digital proof of driver license commits a misdemeanor of the second degree, punishable by up to 60 days in prison[57] and a fine not to exceed $500.[58]

Regulation of Money Transmitters and Payment Instrument Sellers

State Regulation

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[59] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money

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[45] S. 287.057(1)(b), F.S.
[46] S. 287.057(1)(c), F.S.
[47] Ss. 287.042(2)(a) and 287.056(1), F.S.
[48] S. 322.032(1), F.S.
[49] S. 322.032(2), F.S.
[50] *Id.*
[51] *Id.*
[52] S. 322.032(3), F.S.
[53] S. 322.032(4), F.S.
[54] S. 775.082, F.S.
[55] S. 775.083(1)(c), F.S.
[56] S.775.084, F.S.
[57] S. 775.082, F.S.
[58] S. 775.083(1)(e), F.S.
[59] S. 20.121(3)(a)2., F.S.

services businesses (MSBs) regulated under ch. 560, F.S. Money transmitters and payment instrument sellers are two types of MSBs, and both are regulated under part II of ch. 560, F.S.

A money transmitter "receives currency,[60] monetary value,[61] or payment instruments[62] for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country."[63] A payment instrument seller sells, issues, provides, or delivers a payment instrument.[64] State and federally chartered financial depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[65]

An applicant for licensure under ch. 560, F.S., must file an application together with an application fee of $375.[66] The license must be renewed every two years by paying a renewal fee of $750.[67] Money transmitters and payment instrument sellers may operate through authorized vendors by providing the OFR specified information about the authorized vendor any by paying a fee of $38 per authorized vendor location at the time of application and renewal.[68] A money transmitter or payment instrument seller may also engage in the activities authorized for check cashers[69] and foreign currency exchangers[70] without paying additional licensing fees.[71]

A money transmitter or payment instrument seller must at all times:

- Have a net worth of at least $100,000 and an additional net worth of $10,000 per location in this state, up to a maximum of $2 million.[72]
- Have a corporate surety bond in an amount between $50,000 and $2 million depending on the financial condition, number of locations, and anticipated volume of the licensee.[73] In lieu of a corporate surety bond, the licensee may deposit collateral such as cash or interest-bearing stocks and bonds with a federally insured financial institution.[74]
- Possess permissible investments, such as cash and certificates of deposit, with an aggregate market value of at least the aggregate face amount of all outstanding money transmissions and payment instruments issued or sold by the licensee or an authorized vendor in the United States.[75] The OFR may waive the permissible investments requirement if the dollar value of a licensee's outstanding payment instruments and money transmitted do not exceed the bond or collateral deposit.[76]

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[60] "Currency" means the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes United States silver certificates, United States notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. S. 560.103(11), F.S.
[61] "Monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[62] "Payment instrument" means a check, draft, warrant, money order, travelers check, electronic instrument, or other instrument, payment of money, or monetary value whether or not negotiable. The term does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. S. 560.103(29), F.S.
[63] S. 560.103(23), F.S.
[64] S. 560.103(30) & (34); *supra* note 62.
[65] S. 560.104, F.S.
[66] Ss. 560.141 & 560.143, F.S.
[67] *Id.*; s. 560.142, F.S.
[68] *Id.*; ss. 560.203, 560.205, & 560.208, F.S.
[69] "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks. S. 560.103(6), F.S.
[70] "Foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government. S. 560.103(17), F.S.
[71] S. 560.204(2), F.S.
[72] S. 560.209, F.S.
[73] *Id.*
[74] *Id.*
[75] S. 560.210, F.S.
[76] *Id.*

While MSBs are generally subject to federal anti-money laundering laws,[77] Florida law contains many of the same anti-money laundering reporting requirements and recordkeeping requirements with the added benefit of state enforcement. An MSB applicant must have an anti-money laundering program which meets the requirements of federal law.[78] Pursuant to the Florida Control of Money Laundering in Money Services Business Act, an MSB must maintain certain records of each transaction involving currency or payments instruments in order to deter the use of a money services business to conceal proceeds from criminal activity and to ensure the availability of such records for criminal, tax, or regulatory investigations or proceedings.[79] An MSB must keep records of each transaction occurring in this state which it knows to involve currency or other payment instruments having a greater value than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of ch. 896, F.S., or the Florida Control of Money Laundering in Money Services Business Act.[80] The OFR may take administrative action against an MSB for failure to maintain or produce documents required by ch. 560, F.S., or federal anti-money laundering laws.[81] The OFR may also take administrative action against an MSB for other violations of federal anti-money laundering laws such as failure to file suspicious activity reports.[82]

A money transmitter or payment instrument seller must maintain specified records for at least five years, including the following:[83]

- A daily record of payment instruments sold and money transmitted.
- A general ledger containing all asset, liability, capital, income, and expense accounts, which shall be posted at least monthly.
- Daily settlement records received from authorized vendors.
- Monthly financial institution statements and reconciliation records.
- Records of outstanding payment instruments and money transmitted.
- Records of each payment instrument paid and money transmission delivered.
- A list of the names and addresses of all of the licensee's authorized vendors.
- Records that document the establishment, monitoring, and termination of relationships with authorized vendors and foreign affiliates.
- Any additional records, as prescribed by rule, designed to detect and prevent money laundering.

Federal Regulation

The Financial Crimes Enforcement Network of the U.S. Department of Treasury (FinCEN) serves as the nation's financial intelligence unit and is charged with safeguarding the U.S. financial system from the abuses of money laundering, terrorist financing, and other financial crimes.[84] The basic concept underlying FinCEN's core activities is "follow the money" because criminals leave financial trails as they try to launder the proceeds of crimes or attempt to spend their ill-gotten profits.[85] To that end, the FinCEN administers the Bank Secrecy Act (BSA).[86] The BSA regulations require banks and other financial institutions, including MSBs, to take a number of precautions against financial crime.[87] The BSA regulations require financial institutions to establish an anti-money laundering program (such as verifying customer identity), maintain certain records (such as transaction related data), and file reports (such as suspicious activity reports and currency transaction reports) that have been determined to

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[77] 31 C.F.R. pt. 1022
[78] s. 560.1401, F.S.
[79] s. 560.123, F.S.
[80] *Id.*
[81] s. 560.114, F.S.
[82] *Id.*
[83] Ss. 560.1105 & 560.211, F.S.
[84] FinCEN, *What We Do*, https://www.fincen.gov/what-we-do (last visited Jan. 31, 2020).
[85] *Id.*
[86] Many of the federal provisions of the BSA have been codified in ch. 560, F.S., which has provided the OFR with additional compliance and enforcement tools.
[87] *Id.*

have a high degree of usefulness in criminal, tax, and regulatory investigations, as well as in certain intelligence and counter-terrorism matters.[88]

Generally, an MSB is required to register with FinCEN, regardless of whether the MSB is licensed with the state, if it conducts more than $1,000 in business with one person in one or more transactions on the same day, in one or more of the following services: money orders, traveler's checks, check cashing, currency dealing or exchange.[89] However, if a business provides money transfer services in any amount, it is required to be registered.[90]

FinCEN's BSA regulations define "money transmission services" as "the acceptance of currency, funds, or *other value that substitutes for currency* from one person and the transmission of currency, funds, or *other value that substitutes for currency* to another location or person by any means."[91] Depending on the facts and circumstances surrounding a transaction, a person transmitting virtual currency may fall under FinCEN's BSA regulations.[92]

Federal law also criminalizes money transmission if the money transmitting business:[93]

- Is operated without a license in a state where such unlicensed activity is subject to criminal sanctions;
- Fails to register with FinCEN; or
- Otherwise involves the transportation or transmission of funds that are known to have been derived from a criminal offense or are intended to be used to promote or support unlawful activity.

Financial Technology

Financial technology, often referred to as "FinTech", encompasses a wide array of innovation in the financial services space. FinTech is technology-enabled innovation in financial services that could result in new business models, applications, processes or products with an associated material effect on the provision of financial services.[94] Technological innovation holds great promise for the provision of financial services, with the potential to increase market access, the range of product offerings, and convenience while also lowering costs to clients.[95] Greater competition and diversity in lending, payments, insurance, trading, and other areas of financial services can create a more efficient and resilient financial system.[96] Drivers of FinTech innovations include technology, regulation, and evolving consumer preferences, including customization.[97]

FinTech innovation is often thought to be synonymous with disruption of the traditional financial services market structure and its providers, such as banks. However, to date, the relationship between incumbent financial institutions and FinTech firms appears to be largely complementary and cooperative in nature.[98] FinTech firms have generally not had sufficient access to the low-cost funding or the customer base necessary to pose a serious competitive threat to established financial institutions in mature financial market segments.[99] Partnering allows FinTech firms to viably operate while still

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[88] *Id.*
[89] 31 C.F.R. § 1010.100 & 1022.380.
[90] *Id.*
[91] 31 C.F.R. § 1010.100.
[92] FinCEN Guidance, *Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001* (May 9, 2019), https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (last visited Jan. 31, 2020).
[93] 31 U.S.C. § 1960.
[94] Financial Stability Board, *FinTech and market structure in financial services: Market developments and potential financial stability implications* (Feb. 14, 2019), https://www.fsb.org/2019/02/fintech-and-market-structure-in-financial-services-market-developments-and-potential-financial-stability-implications/ (last visited Jan. 31, 2020).
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *Id.*

being relatively small and, depending on the jurisdiction and the business model, unburdened by some financial regulation while still benefitting from access to incumbents' client base.[100] At the same time, incumbents benefit from access to innovative technologies that provide a competitive edge.[101] Yet there are exceptions to this trend, as some FinTech firms have established inroads in credit provision and payments.[102]

EFFECT OF THE BILL

State Information Technology

The bill abolishes DST and establishes the Florida Digital Service (FDS) in its place. The FDS is a subdivision of DMS the mission of which is to "create innovative solutions that securely modernize state government and achieve value through digital transformation and interoperability." The bill places new duties and responsibilities under the newly-created FDS as well as expanding the duties and responsibilities currently assigned to DMS and DST. The bill provides that FDS is tasked with the following *new* duties and responsibilities:

- Create and maintain a comprehensive indexed data catalog;
- Develop and publish a data dictionary for each agency;
- Develop solutions for authorized, mandated, or encouraged use cases in collaboration with the enterprise;[103]
- Review, confirm, and document use cases across the enterprise architecture (EA);[104]
- Develop, publish, and manage an application programming interface to facilitate integration throughout the enterprise;
- Facilitate collaborative analysis of enterprise architecture data to improve service delivery;
- Provide a testing environment in which any newly developed solution can be tested for compliance with the enterprise architecture and for functionality assurance before deployment;
- Create the functionality necessary for a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access the stored data; and
- Develop a process to receive written notice from the state agencies within the enterprise of any planned or existing procurement of an IT project which is subject to governance by the EA; and
- Develop a process to intervene in any planned procurement so that it complies with the EA.
- Requires the state CIO appoint a chief data officer (CDO). The CDO reports to the CIO and must be a proven and experienced executive and is included in the Senior Management Service class of the Florida Retirement System;
- Requires the FDS to develop an enforceable and comprehensive enterprise architecture for the enterprise which:
    - Recognizes the unique needs of those within the enterprise and results in the publication of standards and terminologies, procurement guidelines, and the facilitation of digital interoperability;
    - Establishes a comprehensive framework in support of the state's cloud-first policy that accounts for the needs and responsibilities of agencies while defining how technology benefits services the overall mission of the enterprise;
    - Addresses how IT infrastructure may be modernized to achieve current and future cloud-first objectives;
    - Allows enterprise architecture to be enforced to ensure stewardship of tax dollars; and
    - Makes available data and information relating to the enterprise architecture.

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[100] *Id.*
[101] *Id.*
[102] *Id.*
[103] The bill defines "enterprise" to mean the collection of state agencies as defined in s. 282.0041, F.S., except that the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch of government.
[104] The bill defines "enterprise architecture" to mean a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

- Requires the FDS to architect and deploy applications or solutions to existing enterprise obligations in a controlled and phased approach including:
    - Digital licenses, including full identification management;
    - Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service;
    - Motor vehicle insurance cancellation integration between insurers and DHSMV;
    - Interoperability solutions between agencies including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

The bill makes the following changes to the duties and responsibilities of FDS currently in law:

- Expands the types of agency projects over which FDS has oversight from state agency IT projects that have a total cost of $10 million or more and cabinet agency IT projects that have a total cost of $25 million or more, to projects meeting those thresholds with *any* IT component. However, the bill requires DMS to establish rules allowing state agencies and cabinet agencies to apply for exemptions, which may only be granted by the Secretary of Management Services;
- Requires FDS to Identify opportunities for standardization and consolidation of IT services that support interoperability and the state's cloud-first policy;
- Requires FDS to develop and implement other payment mechanisms to recover the cost of SDC services through charges to the applicable customer entities;
- Eliminates the requirement that FDS conduct an annual market analysis to determine whether the state's approach to SDC services is the most effective and cost-efficient manner by which customer entities can acquire such services;
- Requires the Secretary of Management Services appoint a state CIO who will administer the FDS but removes the requirement that the CIO have at least 10 years of executive-level experience in the public or private sector;

In addition to the duties described above, FDS is also tasked with procuring a credential service provider (CSP) for the purpose of creating digital driver licenses or identification cards. The CSP is a provider that supplies secure identity management and verification services based on open standards to qualified entities. DMS is required to enter into agreements with electronic credential providers (ECP) that would have the technological capabilities necessary to integrate with the CSP as well as:

- Ensure secure validation and authentication of data;
- Meet usage criteria;
- Agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of an digital driver license or identification; and
- Include clear, enforceable, and significant penalties for violating the agreements.

The bill provides that the agreements between DMS and the CSP, ESP, and other qualified entities[105] must be based on the per-data-call[106] or subscription charges to validate and authenticate a digital license or identification card. The revenue generated must be collected by DMS and deposited in the working capital trust fund for distribution pursuant to legislative appropriation. However, the revenue may not derived from sources other than the per-data-call or subscription charges. Once a qualified entity or an ECP signs the EA terms of service and privacy policy, the FDS must provide appropriate access to the stored data to facilitation authorized integrations to collaboratively, less expensively, or at no cost to the taxpayer, solve enterprise use cases.

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[105] The bill defines "qualified entity" to mean a public or private entity or individual that enters into a binding agreement with DMS, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

[106] The bill defines "data-call" to mean an electronic transaction with the CSP that verifies the authenticity of a digital identity by querying enterprise data.

The bill creates the Enterprise Architecture Advisory Council (Council) as an advisory council[107] within DMS. The Council is composed 13 members appointed to staggered terms of four years. The Council consists of:

- The Governor or his or her designee;
- Three persons appointed by the Governor;
- The Director of the Office of Policy and Budget in the EOG or his or her designee;
- The Secretary of Management Services or his or her designee;
- The State CIO or his or her designee;
- The Chief Justice of the Florida Supreme Court or his or her designee;
- The President of the Senate or his or her designee;
- The Speaker of the House of Representatives or his or her designee;
- The CIO of the Department of Financial Services;
- The CIO of the Department of Legal Affairs;
- The CIO of the Department of Agriculture and Consumer Affairs

The Council is required to meet semiannually beginning October 1, 2020, to discuss implementation, management, and coordination of the EA; identify potential issues and threats with specific use cases; and develop proactive solutions.

The bill creates the Division of Telecommunications within DMS, removes DST as the head of the E911 system in Florida, and places the division as its new head.

Financial Technology Sandbox

The bill creates the Financial Technology Sandbox within the OFR to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

The Financial Technology Sandbox allows a person to make an innovative financial product or service available to consumers as a money transmitter or payment instrument seller during a sandbox period that is initially not longer than 24 months but which can be extended one time for up to 12 months. A "financial product or service" is a product or service related to money transmitters and payment instrument sellers, including mediums of exchange that are in electronic or digital form, which is subject to general law or corresponding rule requirements in the enumerated statutes that may be waived by the OFR. "Innovative" means new or emerging technology, or new uses of existing technology which provides a product, service, business model, or delivery mechanism to the public.

The OFR is permitted to waive the following statutes and corresponding rule requirements for purposes of the Financial Technology Sandbox:

- Section 560.1105, F.S., relating to records retention.
- Section 560.118, F.S., relating to reports.
- Section 560.125, F.S., relating to unlicensed activity; penalties. However, the OFR may not waive the portion of the statute that permits only a money services business licensed as a money transmitter or payment instrument seller to appoint an authorized vendor.
- Section 560.128, F.S., relating to customer contacts; license display.
- Section 560.1401, F.S., relating to licensing standards. However, the OFR may not waive the portions of the statute that require an applicant to be legally authorized to do business in this state, to be licensed with FinCEN (if applicable), and to have an anti-money laundering program in place.

[107] The term " council" or "advisory council" means an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives. S. 20.03(7), F.S.

- Section 560.141, F.S., relating to license application. However, the OFR may not waive the portions of the statute that impose a licensing fee, require fingerprints and background checks, and require the applicant to provide a copy of the applicant's anti-money laundering program.
- Section 560.142, F.S., relating to license renewal. However, the OFR may prorate, but may not entirely waive, the license renewal fees for an extension granted under the sandbox.
- Section 560.143(2), F.S., relating to license renewal fees, to the extent necessary for proration of the renewal fee.
- Section 560.205, F.S., relating to additional license application requirements. However, the OFR may not waive portions of the statute requiring an applicant to provide a sample authorized vendor contract (if applicable) and documents demonstrating that the net worth and bond requirements have been fulfilled.
- Section 560.208, F.S., relating to conduct of business. However, the OFR may not waive portions of the statute making a licensee responsible for the acts of its authorized vendors, requiring a licensee to place customer assets in a segregated account in a federally insured financial institution, and requiring a licensee to ensure that money transmitted is available to the designated recipient within ten business days after receipt.
- Section 560.209, F.S., relating to net worth; corporate surety bond; collateral deposit in lieu of bond. However, the OFR may modify, but may not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts. The modified amounts must be in such lower amounts that the OFR determines to be commensurate with specified considerations regarding the sandbox application and commensurate with the maximum number of consumers authorized to receive the product or service under the sandbox.

The OFR may grant a waiver if the general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers. No provision relating to the liability of an incorporator, director, or officer of the applicant is eligible for a waiver. The waiver must not be broader than necessary to accomplish the purposes and standards of the sandbox, as determined by the OFR.

Before filing an application under this section, a substantially affected person may seek a declaratory statement pursuant to s. 120.565, F.S., regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity. A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

In the sandbox application, the applicant must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers. The application must also contain the following information, which the OFR must consider in deciding whether to approve or deny an application:

- The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.
- The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.
- The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.
- Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.
- Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal

securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing. A plea of no contest, a conviction, or finding of guilt must be reported under this subparagraph regardless of adjudication.
- A copy of specified disclosures that will be provided to consumers.
- The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.
- Any other factor that the office determines to be relevant.

The OFR may not approve an application if:
- The applicant had a prior Financial Technology Sandbox application which was approved and which related to a substantially similar financial product or service; or
- Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved in such with another Financial Technology Sandbox applicant whose application was approved and whose application related to a substantially similar financial product or service.

The OFR must approve or deny in writing an application within 60 days after receiving the completed application, though the OFR and the applicant may jointly agree to extend the time beyond 60 days. The OFR may impose conditions on any approval, consistent with the sandbox. Upon approval of an application, the OFR must specify the general law or rule requirements, or portions thereof, for which a waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months.

A person whose Financial Technology Sandbox application is approved shall be deemed licensed under part II of ch. 560, F.S., unless the person's authorization to make the product or service available to consumers under the sandbox has been revoked or suspended.

The OFR must post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

The OFR may, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the person who makes the financial product or service available to consumers. The OFR may not authorize more than 15,000 consumers to receive the product or service until the sandbox participant has filed the first report required under the sandbox. Thereafter, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the OFR may authorize up to 25,000 consumers to receive the product or service.

The person making the financial product or service available must provide a written statement to the consumer, which must contain an acknowledgement from the consumer, of all of the following information:
- The name and contact information of the person making the financial product or service available to consumers.
- That the financial product or service has been authorized to be made available to consumers for a temporary period by the OFR, under the laws of Florida.
- That the state does not endorse the financial product or service.
- That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.
- That the person making the product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.
- The expected end date of the sandbox period.

- The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.
- Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

The OFR may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions.

A sandbox participant must maintain comprehensive records relating to the innovative financial product or service and must keep these records for at least five years after the conclusion of the sandbox period. The Financial Services Commission may specify by rule additional records requirements. The OFR may examine these records at any time, with or without notice.

A sandbox participant may apply for an extension of the initial sandbox period for up to 12 additional months. An application for an extension must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:
- Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.
- An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the OFR, and approval is pending.

A complete application for an extension must be filed at least 90 days before the conclusion of the initial sandbox period. The OFR must approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the OFR must, at a minimum, consider the current status of the factors previously considered at the time of application for the initial sandbox period.

At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, the sandbox participant must provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person may:
- Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.
- Take necessary legal action.
- Take other actions authorized by rule of the commission which are not inconsistent with the sandbox.

A sandbox participant must submit a report to the OFR twice a year as prescribed by rule. The report must, at a minimum, include financial reports and the number of consumers who have received the product or service.

A sandbox participant is not immune from civil damages and is subject to all criminal and consumer protection laws.

The OFR may, by order, revoke or suspend authorization granted to a sandbox participant if:
- The sandbox participant has violated or refused to comply with the sandbox statute, a rule of the Financial Services Commission, an order of the OFR, or a condition placed by the OFR on the approval of the person's Financial Technology Sandbox application;

- A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;
- A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or
- After consultation with the person, continued testing of the innovative financial product or service would:
    - Be likely to harm consumers; or
    - No longer serve the purposes of the sandbox because of the financial or operational failure of the financial product or service.

Written notice of a revocation or suspension order must be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the OFR lifts the suspension. The OFR may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions. If service of process on a sandbox participant is not feasible, service on the OFR is deemed service on such person.

The Financial Services Commission must adopt rules to administer the sandbox. The OFR may issue all necessary orders to enforce the sandbox statute and may enforce these orders in accordance with ch. 120, F.S., or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

The bill will take effect on January 1, 2021.

B. SECTION DIRECTORY:

Section 1. Amends s. 20.22, F.S., relating to Department of Management Services.

Section 2. Amends s. 282.0051, F.S., relating to Florida Digital Service; powers, duties, and functions.

Section 3. Amends s. 282.00515, F.S., relating to Enterprise Architecture Advisory Council.

Section 4. Amends s. 282.318, F.S., relating to security of data and information technology.

Section 5. Amends s. 287.0591, F.S., relating to information technology.

Section 6. Amends s. 365.171, F.S., relating to emergency communications number E911 state plan.

Section 7. Amends s. 365.172, F.S., relating to emergency communications number "E911."

Section 8. Amends s. 365.173, F.S., relating to Communications Number E911 System Fund.

Section 9. Amends s. 943.0415, F.S., relating to Cybercrime Office.

Section 10. Creates s. 560.214, F.S., relating to Financial Technology Sandbox.

Section 11. Provides an effective date of January 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill could result in a positive fiscal impact on state government revenues as it requires certain entities which use the newly-created digital license functionality to pay a per-use fee or purchase a subscription in order to verify the authenticity of a digital identity. The bill specifies that the revenue generated must be collected by DMS and deposited in the working capital trust fund for distribution pursuant to legislative appropriation. See also "Fiscal Comments" section below.

2. Expenditures:

The bill will have an indeterminate fiscal impact on state government expenditures as it expands the current duties of DMS, and it subdivisions, relating to state IT management, places new responsibilities on that department, and creates three new governmental entities: the Florida Digital Service, the Enterprise Architecture Advisory Council, and the Division of Telecommunications. It is unclear if the bill's requirements could be absorbed within DMS's current resources. See also "Fiscal Comments" section below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact of the Financial Technology Sandbox on the private sector is indeterminate, as it is unknown how many businesses may participate, what types of products or services such businesses would offer, and how many consumers in total would be offered the products or services.

D. FISCAL COMMENTS:

The fiscal impact to the OFR is indeterminate. Under the Financial Technology Sandbox, the fees will be the same as under the existing license in part II of ch. 560, F.S., except that the renewal fee can be prorated because the Financial Technology Sandbox can only be extended for up to one year, whereas the renewed license under part II of ch. 560, F.S., is for a two-year period. Depending on the number of participants and the complexity of oversight, it is possible that the OFR may need additional staff. Additionally, the OFR may need to make changes to their information technology infrastructure in order to administer the program.

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:

The bill would give FDS rulemaking authority over s. 282.0051, F.S., allowing FDS to further implement the provisions of the bill through rulemaking.

The bill requires the Financial Services Commission[108] to adopt rules to administer the Financial Technology Sandbox.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[108] The Financial Services Commission (commission) is composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture. S. 20.121(3), F.S. The commission members are OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

A bill to be entitled

An act relating to technology innovation; amending s. 20.22, F.S.; renaming the Division of State Technology within the Department of Management Services; adding the Florida Digital Service to the department; amending s. 282.0051, F.S.; establishing the Florida Digital Service within the department; providing definitions; transferring specified powers, duties, and functions of the department to the Florida Digital Service and revising such powers, duties, and functions; providing appointments and requirements of the state chief information officer and chief data officer of the Florida Digital Service; requiring the Florida Digital Service to develop a comprehensive enterprise architecture; providing requirements for such enterprise architecture; providing duties and authorities of the Florida Digital Service; providing duties of the department; amending s. 282.00515, F.S.; establishing the Enterprise Architecture Advisory Council; requiring the council to comply with specified requirements; providing membership and meeting requirements and duties of the council; amending ss. 282.318, 287.0591, 365.171, 365.172, 365.173, and 943.0415, F.S.; conforming provisions to changes made by the act; creating s. 560.214, F.S.;

providing a short title; creating the Financial Technology Sandbox; providing definitions; providing certain waivers of requirements to specified persons under certain circumstances; requiring an application for the program for persons who want to make innovative financial products or services available to consumers; providing application requirements; providing standards for application approval or refusal; requiring the Office of Financial Regulation to perform certain actions upon approval of an application; providing operation of the sandbox; providing limitations on the number of consumers of innovative financial products or services; authorizing the office to enter into agreement with certain regulatory agencies for specified purposes; providing extension and conclusion of the sandbox period; requiring persons who make innovative financial products or services available to consumers to submit a report; providing construction; providing that such persons are not immune from civil damages and are subject to criminal and consumer protection laws; providing penalties; providing service of process; requiring the Financial Services Commission to adopt rules; authorizing the office to issue certain orders and to enforce them under ch. 120, F.S., or in court;

authorizing the office to issue and enforce orders for payment of restitution for a specified purpose; providing an effective date.

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

Section 1. Subsection (2) of section 20.22, Florida Statutes, is amended to read:

20.22 Department of Management Services.—There is created a Department of Management Services.

(2) The ~~following divisions and programs within the~~ Department of Management Services shall consist of the following ~~are established~~:

(a) The Facilities Program.

(b) The Division of Telecommunications ~~State Technology, the director of which is appointed by the secretary of the department and shall serve as the state chief information officer. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards~~.

(c) The Workforce Program.

(d)1. The Support Program.

2. The Federal Property Assistance Program.

(e) The Administration Program.

(f) The Division of Administrative Hearings.

(g) The Division of Retirement.

(h) The Division of State Group Insurance.

(i) The Florida Digital Service.

Section 2. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Florida Digital Service ~~Department of Management Services~~; powers, duties, and functions.—There is established the Florida Digital Service within the department to create innovative solutions that securely modernize state government and achieve value through digital transformation and interoperability.

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

(a) "Credential service provider" means a provider competitively procured by the department to supply secure identity management and verification services based on open standards to qualified entities.

(b) "Data-call" means an electronic transaction with the credential service provider that verifies the authenticity of a digital identity by querying enterprise data.

(c) "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or

similar capabilities.

(d) "Electronic credential" means an electronic representation of a physical driver license or identification card that is viewable in an electronic format and is capable of being verified and authenticated.

(e) "Electronic credential provider" means a qualified entity contracted with the department to provide electronic credentials to eligible driver license or identification card holders.

(f) "Enterprise" means the collection of state agencies as defined in s. 282.0041, except the term includes the Department of Legal Affairs, the Department of Agriculture and Consumer Services, the Department of Financial Services, and the judicial branch.

(g) "Enterprise architecture" means a comprehensive operational framework that contemplates the needs and assets of the enterprise to support interoperability across state government.

(h) "Interoperability" means the technical ability to share and use data across and throughout the enterprise.

(i) "Qualified entity" means a public or private entity or individual that enters into a binding agreement with the department, meets usage criteria, agrees to terms and conditions, and is subsequently and prescriptively authorized by the department to access data under the terms of that agreement.

(2) The Florida Digital Service ~~department~~ shall have the following powers, duties, and functions in full support of the cloud-first policy as defined in s. 282.206:

(a) ~~(1)~~ Develop and publish information technology policy for the management of the state's information technology resources.

(b) ~~(2)~~ Establish and publish information technology architecture standards to provide for the most efficient use of ~~the state's~~ information technology resources and to ensure compatibility and alignment with the needs of state agencies. The Florida Digital Service ~~department~~ shall assist state agencies in complying with the standards.

(c) ~~(3)~~ Establish project management and oversight standards with which state agencies must comply when implementing projects that have an information technology component ~~projects~~. The Florida Digital Service ~~department~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. ~~(a)~~ Performance measurements and metrics that objectively reflect the status of a project with an information technology component ~~project~~ based on a defined and documented project scope, cost, and schedule.

2. ~~(b)~~ Methodologies for calculating acceptable variances

in the projected versus actual scope, schedule, or cost of a project with an information technology component ~~project~~.

3.~~(c)~~ Reporting requirements, including requirements designed to alert all defined stakeholders that a project with an information technology component ~~project~~ has exceeded acceptable variances defined and documented in a project plan.

4.~~(d)~~ Content, format, and frequency of project updates.

(d)~~(4)~~ Perform project oversight on all state agency ~~information technology~~ projects that have an information technology component with a total project cost ~~costs~~ of $10 million or more and that are funded in the General Appropriations Act or any other law. The Florida Digital Service ~~department~~ shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project.

(e)~~(5)~~ Identify opportunities for standardization and consolidation of information technology services that support

interoperability and the cloud-first policy as defined in s. 282.206, business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The Florida Digital Service ~~department~~ shall biennially on April 1 provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) ~~(6)~~ Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) ~~(7)~~ Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) ~~(8)~~ Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) ~~(9)~~ Conduct annual assessments of state agencies to determine compliance with all information technology standards and guidelines developed and published by the Florida Digital Service ~~department~~ and provide results of the assessments to the Executive Office of the Governor, the President of the Senate,

and the Speaker of the House of Representatives.

(j) ~~(10)~~ Provide operational management and oversight of the state data center established pursuant to s. 282.201, which includes:

1. ~~(a)~~ Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

2. ~~(b)~~ Developing and implementing cost-recovery or other payment mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery or other payment mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity.

3. ~~(c)~~ Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to s. 282.201. The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

a. ~~1.~~ Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property,

human resources, and operational support.

b.~~2.~~ Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

c.~~3.~~ Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

d.~~4.~~ Requiring customer entities to validate that sufficient funds exist in the appropriate data processing appropriation category or will be transferred into the appropriate data processing appropriation category before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

e.~~5.~~ By November 15 of each year, providing to the Office of Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

f.~~6.~~ Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to sub-subparagraph d. ~~subparagraph 4.~~ Such a plan is required only if the service cost increase results in a net increase to a

customer entity for that fiscal year.

g.~~7.~~ Standardizing and consolidating procurement and contracting practices.

4.~~(d)~~ In collaboration with the Department of Law Enforcement, developing and implementing a process for detecting, reporting, and responding to information technology security incidents, breaches, and threats.

5.~~(e)~~ Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery or other payment methodologies, and operating procedures.

~~(f) Conducting an annual market analysis to determine whether the state's approach to the provision of data center services is the most effective and cost-efficient manner by which its customer entities can acquire such services, based on federal, state, and local government trends; best practices in service provision; and the acquisition of new and emerging technologies. The results of the market analysis shall assist the state data center in making adjustments to its data center service offerings.~~

(k)~~(11)~~ Recommend other information technology services that should be designed, delivered, and managed as enterprise information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be

transferred as a result of being delivered and managed as enterprise information technology services.

(l) ~~(12)~~ In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. ~~(13)(a)~~ Notwithstanding any other law, provide project oversight on any project with an information technology component ~~project~~ of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of $25 million or more and which impacts one or more other agencies. Such projects with an information technology ~~projects~~ component must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the Florida Digital Service ~~department~~.

2. ~~(b)~~ When performing the project oversight function specified in subparagraph 1. ~~paragraph (a)~~, report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any project with an information technology component ~~project~~ that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated

with proceeding to the next stage of the project and a recommendation for corrective actions required, including suspension or termination of the project.

(n) ~~(14)~~ If a project with an information technology component ~~project~~ implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o) ~~(15)~~ If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on a state agency and results in adverse action against the state agency or federal funding, work with the state agency to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The Florida Digital Service ~~department~~ shall annually report such alternative standards to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1. ~~(16)(a)~~ Establish an information technology policy

for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a.~~1.~~ Identification of the information technology product and service categories to be included in state term contracts.

b.~~2.~~ Requirements to be included in solicitations for state term contracts.

c.~~3.~~ Evaluation criteria for the award of information technology-related state term contracts.

d.~~4.~~ The term of each information technology-related state term contract.

e.~~5.~~ The maximum number of vendors authorized on each state term contract.

2.~~(b)~~ Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3.~~(c)~~ Answer vendor questions on information technology-related state term contract solicitations.

4.~~(d)~~ Ensure that the information technology policy established pursuant to subparagraph 1. ~~paragraph (a)~~ is included in all solicitations and contracts that are administratively executed by the department.

(q)~~(17)~~ Recommend potential methods for standardizing data across state agencies which will promote interoperability and

reduce the collection of duplicative data.

(r) ~~(18)~~ Recommend open data technical standards and terminologies for use by state agencies.

(3)(a) The Secretary of Management Services shall appoint a state chief information officer who will administer the Florida Digital Service, and is included in the Senior Management Service. The state chief information officer must be a proven, effective administrator who must have at least 10 years of executive-level experience in the public or private sector, preferably with experience in the development of information technology strategic planning and the development and implementation of fiscal and substantive information technology policy and standards.

(b) The state chief information officer shall appoint a chief data officer, who shall report to the state chief information officer and is included in the Senior Management Service. The chief data officer must be a proven executive who must have at least 10 years of executive-level experience, preferably with experience in data management, interoperability, and information technology security.

(4) The Florida Digital Service shall develop a comprehensive enterprise architecture which:

(a) Recognizes the unique needs of those included within the enterprise and results in the publication of standards, terminologies, and procurement guidelines to facilitate digital

interoperability.

(b) Supports the cloud-first policy as defined in s. 282.206.

(c) Addresses how information technology infrastructure may be modernized to achieve current and future cloud-first objectives.

(5) The Florida Digital Service shall:

(a) Create and maintain a comprehensive indexed data catalog that lists what data elements are housed within the enterprise and in which legacy system or application these data elements are located.

(b) Develop and publish, in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog.

(c) Review and document use cases across the enterprise architecture.

(d) Develop solutions for authorized or mandated use cases in collaboration with the enterprise.

(e) Develop, publish, and manage an application programming interface to facilitate integration throughout the enterprise.

(f) Facilitate collaborative analysis of enterprise architecture data to improve service delivery.

(g) Provide a testing environment in which any newly developed solution can be tested for compliance within the

enterprise architecture and for functionality assurance before deployment.

(h) Create the functionality necessary for a secure ecosystem of data interoperability that is compliant with the enterprise architecture and allows for a qualified entity to access the stored data under the terms of the agreement with the department.

(i)1. Procure a credential service provider through a competitive process pursuant to s. 287.057. The terms of the contract developed from such procurement shall pay for the value on a per-data-call or subscription basis and there shall be no cost to the department or law enforcement for using the services provided by the credential service provider.

a. The department shall enter into agreements with electronic credential providers that have the technological capabilities necessary to integrate with the credential service provider; ensure secure validation and authentication of data; meet usage criteria; agree to terms and conditions, privacy policies, and uniform remittance terms relating to the consumption of an electronic credential; and include clear, enforceable, and significant penalties for violations of the agreements.

b. Revenue generated shall be collected by the department and deposited into the working capital trust fund for distribution pursuant to a legislative appropriation and

department agreements with the credential service provider, the electronic credential providers, and the qualified entities. The terms of the agreements between the department and the credential service provider, the electronic credential providers, and the qualified entities, shall be based on the per-data-call or subscription charges to validate and authenticate an electronic credential and allow the department to recover any state costs for implementing and administering an electronic credential solution. Provider revenues may not be derived from any other transactions that generate revenue for the department outside of the per-data-call or subscription charges. Nothing herein shall be construed as a restriction on a provider's ability to generate additional revenues from third parties outside of the terms of the agreement.

2. Upon the signing of the enterprise architecture terms of service and privacy policies, provide to qualified entities and electronic credential providers appropriate access to the stored data to facilitate authorized integrations to collaboratively and less expensively or at no taxpayer cost, solve enterprise use cases.

(j) Architect and deploy applications or solutions to existing enterprise obligations in a controlled and phased approach, including, but not limited to:

1. Digital licenses, including full identification management.

2. Interoperability that enables supervisors of elections to authenticate voter eligibility in real time at the point of service.

3. The criminal justice database.

4. Motor vehicle insurance cancellation integration between insurers and the Department of Highway Safety and Motor Vehicles.

5. Interoperability solutions between agencies, including, but not limited to, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

(6) The Florida Digital Service may develop a process to:

(a) Receive written notice from the state agencies within the enterprise of any planned or existing procurement of an information technology project which is subject to governance by the enterprise architecture.

(b) Intervene in any planned procurement so that it complies with the enterprise architecture.

(7)~~(19)~~ The Florida Digital Service may adopt rules to administer this section.

Section 3. Section 282.00515 is amended to read:

282.00515 Enterprise Architecture Advisory Council ~~Duties of Cabinet Agencies. The Department of Legal Affairs, the Department of Financial Services, and the Department of~~

~~Agriculture and Consumer Services shall adopt the standards established in s. 282.0051(2), (3), and (7) or adopt alternative standards based on best practices and industry standards, and may contract with the department to provide or perform any of the services and functions described in s. 282.0051 for the Department of Legal Affairs, the Department of Financial Services, or the Department of Agriculture and Consumer Services.~~

(1)(a) The Enterprise Architecture Advisory Council, an advisory council as defined in s. 20.03, is established within the Department of Management Services. The council shall comply with the requirements of s. 20.052, except as otherwise provided in this section.

(b) The council shall consist of:

1. The Governor or his or her designee.

2. Three additional designees of the Governor.

3. The Director of the Office of Policy and Budget in the Executive Office of the Governor or his or her designee.

4. The Secretary of Management Services or his or her designee.

5. The State Chief Information Officer or his or her designee.

6. The Chief Justice or his or her designee.

7. The Senate President or his or her designee.

8. The Speaker of the House or his or her designee.

9. The Chief Information Officer of the Department of Financial Services or his or her designee.

10. The Chief Information Officer of the Department of Legal Affairs or his or her designee.

11. The Chief Information Officer of the Department of Agriculture and Consumer Services or his or her designee.

(2)(a) The members appointed herein shall be appointed to terms of 4 years. However, for the purpose of providing staggered terms:

(b) The appointments made by the Governor and the Director of the Governor's Office of Policy and Budget are appointed to initial two-year terms.

(c) The Secretary of Management Services, and the State Chief Information Officer are appointed to initial four-year terms.

(d) The appointment of the Chief Justice is to an initial three-year term.

(e) The appointments of the Senate President and the Speaker of the House are appointed to initial two-year terms.

(f) The appointments of the Chief Information Officers of the Department of Agriculture and Consumer Services, the Department of Financial Services, and the Department of Legal Affairs are appointed to initial two-year terms.

(g) A vacancy on the council shall be filled in the same manner as the original appointment for the unexpired term.

(h) The council shall meet semiannually beginning October 1,2020, to discuss implementation, management, and coordination of the enterprise architecture; identify potential issues and threats with specific use cases; and develop proactive solutions.

Section 4. Paragraph (a) of subsection (3) of section 282.318, Florida Statutes, is amended to read:

282.318 Security of data and information technology.—

(3) The department is responsible for establishing standards and processes consistent with generally accepted best practices for information technology security, to include cybersecurity, and adopting rules that safeguard an agency's data, information, and information technology resources to ensure availability, confidentiality, and integrity and to mitigate risks. The department shall also:

(a) Designate a state chief information security officer who shall be appointed by and report to the state chief information officer of the Florida Digital Service and is in the Senior Management Service. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources.

Section 5. Subsection (4) of section 287.0591, Florida Statutes, is amended to read:

287.0591 Information technology.—

(4) If the department issues a competitive solicitation for information technology commodities, consultant services, or staff augmentation contractual services, the Florida Digital Service ~~Division of State Technology~~ within the department shall participate in such solicitations.

Section 6. Paragraph (a) of subsection (3) of section 365.171, Florida Statutes, is amended to read:

365.171 Emergency communications number E911 state plan.—

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

(a) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 7. Paragraph (s) of subsection (3) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(3) DEFINITIONS.—Only as used in this section and ss. 365.171, 365.173, 365.174, and 365.177, the term:

(s) "Office" means the Division of Telecommunications ~~State Technology~~ within the Department of Management Services, as designated by the secretary of the department.

Section 8. Paragraph (a) of subsection (1) of section 365.173, Florida Statutes, is amended to read:

365.173 Communications Number E911 System Fund.—

(1) REVENUES.—

(a) Revenues derived from the fee levied on subscribers

under s. 365.172(8) must be paid by the board into the State Treasury on or before the 15th day of each month. Such moneys must be accounted for in a special fund to be designated as the Emergency Communications Number E911 System Fund, a fund created in the Division of Telecommunications ~~State Technology~~, or other office as designated by the Secretary of Management Services.

Section 9. Subsection (5) of section 943.0415, Florida Statutes, is amended to read:

943.0415 Cybercrime Office.—There is created within the Department of Law Enforcement the Cybercrime Office. The office may:

(5) Consult with the Florida Digital Service ~~Division of State Technology~~ within the Department of Management Services in the adoption of rules relating to the information technology security provisions in s. 282.318.

Section 10. Section 560.214, Florida Statutes, is created to read:

560.214 Financial Technology Sandbox.—

(1) SHORT TITLE.—This section may be cited as the "Financial Technology Sandbox."

(2) CREATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—There is created the Financial Technology Sandbox within the Office of Financial Regulation to allow financial technology innovators to test new products and services in a supervised, flexible regulatory sandbox, using waivers of specified general law and

corresponding rule requirements under defined conditions. The creation of a supervised, flexible regulatory sandbox provides a welcoming business environment for technology innovators and may lead to significant business growth.

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

(a) "Consumer" means a person in this state, whether a natural person or a business entity, who purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service made available through the Financial Technology Sandbox.

(b) "Financial product or service" means a product or service related to money transmitters and payment instrument sellers, including mediums of exchange that are in electronic or digital form, which is subject to general law or corresponding rule requirements in the sections enumerated in paragraph (4)(a) and which is under the jurisdiction of the office.

(c) "Financial Technology Sandbox" means the program created in this section which allows a person to make an innovative financial product or service available to consumers as a money transmitter or payment instrument seller, as defined in s. 560.103(23), during a sandbox period through a waiver of general laws or rule requirements, or portions thereof, as specified in this section.

(d) "Innovative" means new or emerging technology, or new uses of existing technology which provides a product, service,

business model, or delivery mechanism to the public.

(e) "Office" means, unless the context clearly indicates otherwise, the Office of Financial Regulation.

(f) "Sandbox period" means the period, initially not longer than 24 months, in which the office has:

1. Authorized an innovative financial product or service to be made available to consumers.

2. Granted the person who makes the innovative financial product or service available a waiver of general law or corresponding rule requirements, as determined by the office, so that the authorization under subparagraph 1. is possible.

(4) WAIVERS OF GENERAL LAW AND RULE REQUIREMENTS.—

(a) Upon approval of a Financial Technology Sandbox application, the office may grant an applicant a waiver of a requirement, or a portion thereof, which is imposed by a general law or corresponding rule in any of the following sections, if all of the conditions in this section are met:

1. Section 560.1105.

2. Section 560.118.

3. Section 560.125, except for s. 560.125(2).

4. Section 560.128.

5. Section 560.1401, except for s. 560.1401(2)-(4).

6. Section 560.141, except for s. 560.141(1)(b)-(d).

7. Section 560.142, except that the office may prorate, but may not entirely waive, the license renewal fees provided in

s. 560.142 and s. 560.143 for an extension granted under subsection (7).

8. Section 560.143(2) to the extent necessary for proration of the renewal fee under subparagraph 7.

9. Section 560.205, except for s. 560.205(1) and s. 560.205(3).

10. Section 560.208, except for s. 560.208(3)-(6).

11. Section 560.209, except that the office may modify, but may not entirely waive, the net worth, corporate surety bond, and collateral deposit amounts required under s. 560.209. The modified amounts must be in such lower amounts that the office determines to be commensurate with the considerations under paragraph (5)(e) and the maximum number of consumers authorized to receive the product or service under this section.

(b) The office may grant, during a sandbox period, a waiver of a requirement, or a portion thereof, imposed by a general law or corresponding rule in any section enumerated in paragraph (a), if all of the following conditions are met:

1. The general law or corresponding rule currently prevents the innovative financial product or service to be made available to consumers.

2. The waiver is not broader than necessary to accomplish the purposes and standards specified in this section, as determined by the office.

3. No provision relating to the liability of an

incorporator, director, or officer of the applicant is eligible for a waiver.

4. The other requirements of this section are met.

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(a) Before filing an application under this section, a substantially affected person may seek a declaratory statement pursuant to s. 120.565 regarding the applicability of a statute, rule, or agency order to the petitioner's particular set of circumstances.

(b) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the office. The commission shall, by rule, prescribe the form and manner of the application.

1. In the application, the person must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prevent the innovative financial product or service from being made available to consumers.

2. The application must also contain the information specified in paragraph (e).

(c) A business entity filing an application under this section must be a domestic corporation or other organized domestic entity with a physical presence, other than that of a registered office or agent or virtual mailbox, in this state.

(d) Before a person applies on behalf of a business entity intending to make an innovative financial product or service available to consumers, the person must obtain the consent of the business entity.

(e) The office shall approve or deny in writing a Financial Technology Sandbox application within 60 days after receiving the completed application. The office and the applicant may jointly agree to extend the time beyond 60 days. The office may impose conditions on any approval, consistent with this section. In deciding to approve or deny an application, the office must consider each of the following:

1. The nature of the innovative financial product or service proposed to be made available to consumers in the Financial Technology Sandbox, including all relevant technical details.

2. The potential risk to consumers and the methods that will be used to protect consumers and resolve complaints during the sandbox period.

3. The business plan proposed by the applicant, including a statement regarding the applicant's current and proposed capitalization.

4. Whether the applicant has the necessary personnel, adequate financial and technical expertise, and a sufficient plan to test, monitor, and assess the innovative financial product or service.

5. Whether any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service has pled no contest to, has been convicted or found guilty of, or is currently under investigation for, fraud, a state or federal securities violation, any property-based offense, or any crime involving moral turpitude or dishonest dealing. A plea of no contest, a conviction, or finding of guilt must be reported under this subparagraph regardless of adjudication.

6. A copy of the disclosures that will be provided to consumers under paragraph (6)(c).

7. The financial responsibility of any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service.

8. Any other factor that the office determines to be relevant.

(g) The office may not approve an application if:

1. The applicant had a prior Financial Technology Sandbox application which was approved and which related to a substantially similar financial product or service; or

2. Any person substantially involved in the development, operation, or management of the applicant's innovative financial product or service was substantially involved in such with another Financial Technology Sandbox applicant whose application

was approved and whose application related to a substantially similar financial product or service.

(h) Upon approval of an application, the office shall specify the general law or rule requirements, or portions thereof, for which a waiver is granted during the sandbox period and the length of the initial sandbox period, not to exceed 24 months. The office shall post on its website notice of the approval of the application, a summary of the innovative financial product or service, and the contact information of the person making the financial product or service available.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(a) A person whose Financial Technology Sandbox application is approved may make an innovative financial product or service available to consumers during the sandbox period.

(b) The office may, on a case-by-case basis, specify the maximum number of consumers authorized to receive an innovative financial product or service, after consultation with the person who makes the financial product or service available to consumers. The office may not authorize more than 15,000 consumers to receive the product or service until the person who makes the financial product or service available to consumers has filed the first report required under subsection (8). Thereafter, if the person demonstrates adequate financial capitalization, risk management process, and management oversight, the office may authorize up to 25,000 consumers to

receive the product or service.

(c)1. Before a consumer purchases, uses, receives, or enters into an agreement to purchase, use, or receive an innovative financial product or service through the Financial Technology Sandbox, the person making the financial product or service available must provide a written statement of all of the following to the consumer:

a. The name and contact information of the person making the financial product or service available to consumers.

b. That the financial product or service has been authorized to be made available to consumers for a temporary period by the office, under the laws of this state.

c. That the state does not endorse the financial product or service.

d. That the financial product or service is undergoing testing, may not function as intended, and may entail financial risk.

e. That the person making the product or service available to consumers is not immune from civil liability for any losses or damages caused by the financial product or service.

f. The expected end date of the sandbox period.

g. The contact information for the office, and notification that suspected legal violations, complaints, or other comments related to the financial product or service may be submitted to the office.

h. Any other statements or disclosures required by rule of the commission which are necessary to further the purposes of this section.

2. The written statement must contain an acknowledgement from the consumer, which must be retained for the duration of the sandbox period by the person making the financial product or service available.

(d) The office may enter into an agreement with a state, federal, or foreign regulatory agency to allow persons who make an innovative financial product or service available in this state through the Financial Technology Sandbox to make their products or services available in other jurisdictions.

(e)1. A person whose Financial Technology Sandbox application is approved by the office shall maintain comprehensive records relating to the innovative financial product or service. The person shall keep these records for at least 5 years after the conclusion of the sandbox period. The commission may specify by rule additional records requirements.

2. The office may examine the records maintained under subparagraph 1. at any time, with or without notice.

(7) EXTENSIONS AND CONCLUSION OF SANDBOX PERIOD.—

(a) A person who is authorized to make an innovative financial product or service available to consumers may apply for an extension of the initial sandbox period for up to 12 additional months for either purpose specified in paragraph (b).

A complete application for an extension must be filed with the office at least 90 days before the conclusion of the initial sandbox period. The office shall approve or deny the application for extension in writing at least 35 days before the conclusion of the initial sandbox period. In deciding to approve or deny an application for extension of the sandbox period, the office must, at a minimum, consider the current status of the factors previously considered under paragraph (5)(e).

(b) An application for an extension under paragraph (a) must cite one of the following reasons as the basis for the application and must provide all relevant supporting information that:

1. Amendments to general law or rules are necessary to offer the innovative financial product or service in this state permanently.

2. An application for a license that is required in order to offer the innovative financial product or service in this state permanently has been filed with the office, and approval is pending.

(c) At least 30 days before the conclusion of the initial sandbox period or the extension, whichever is later, a person who makes an innovative financial product or service available shall provide written notification to consumers regarding the conclusion of the initial sandbox period or the extension and may not make the financial product or service available to any

new consumers after the conclusion of the initial sandbox period or the extension, whichever is later, until legal authority outside of the Financial Technology Sandbox exists to make the financial product or service available to consumers. After the conclusion of the sandbox period or the extension, whichever is later, the person may:

1. Collect and receive money owed to the person or pay money owed by the person, based on agreements with consumers made before the conclusion of the sandbox period or the extension.

2. Take necessary legal action.

3. Take other actions authorized by rule of the commission which are not inconsistent with this subsection.

(8) REPORT.—A person authorized to make an innovative financial product or service available to consumers under this section shall submit a report to the office twice a year as prescribed by commission rule. The report must, at a minimum, include financial reports and the number of consumers who have received the product or service.

(9) CONSTRUCTION.—A person whose Financial Technology Sandbox application is approved shall be deemed licensed under part II of this chapter unless the person's authorization to make the product or service available to consumers under this section has been revoked or suspended.

(10) VIOLATIONS AND PENALTIES.—

(a) A person who makes an innovative financial product or service available to consumers in the Financial Technology Sandbox is:

1. Not immune from civil damages for acts and omissions relating to this section.

2. Subject to all criminal and consumer protection laws.

(b)1. The office may, by order, revoke or suspend authorization granted to a person to make an innovative financial product or service available to consumers if:

a. The person has violated or refused to comply with this section, a rule of the commission, an order of the office, or a condition placed by the office on the approval of the person's Financial Technology Sandbox application;

b. A fact or condition exists that, if it had existed or become known at the time that the Financial Technology Sandbox application was pending, would have warranted denial of the application or the imposition of material conditions;

c. A material error, false statement, misrepresentation, or material omission was made in the Financial Technology Sandbox application; or

d. After consultation with the person, continued testing of the innovative financial product or service would:

(I) Be likely to harm consumers; or

(II) No longer serve the purposes of this section because of the financial or operational failure of the financial product

or service.

2. Written notice of a revocation or suspension order made under subparagraph 1. shall be served using any means authorized by law. If the notice relates to a suspension, the notice must include any condition or remedial action that the person must complete before the office lifts the suspension.

(c) The office may refer any suspected violation of law to an appropriate state or federal agency for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(d) If service of process on a person making an innovative financial product or service available to consumers in the Financial Technology Sandbox is not feasible, service on the office shall be deemed service on such person.

(11) RULES AND ORDERS.—

(a) The commission shall adopt rules to administer this section.

(b) The office may issue all necessary orders to enforce this section and may enforce these orders in accordance with chapter 120 or in any court of competent jurisdiction. These orders include, but are not limited to, orders for payment of restitution for harm suffered by consumers as a result of an innovative financial product or service.

Section 11. This act shall take effect January 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 771 Motor Vehicle Insurance
SPONSOR(S): Grall
TIED BILLS: **IDEN./SIM. BILLS:** SB 378

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd	Cooper
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Motor Vehicle No-Fault Law (also known as personal injury protection or PIP) requires owners and operators to obtain and maintain PIP, which provides $10,000 in medical, disability, and funeral expenses, without regard to fault, subject to a limit of $2,500 for non-emergency medical care. In exchange for providing PIP coverage, vehicle owners and operators are immune from tort claims within the limits of the PIP law.

The owner is also required to obtain and maintain coverage of at least $10,000 for property damage (PD). In response to an accident, they must also provide proof of bodily injury (BI) coverage. BI coverage requires the ability to respond for at least $10,000 in damages due to the bodily injury or death of any one person and $20,000 for bodily injury or death to two or more persons. An insurance policy or allowable form of self-insurance is acceptable proof of BI coverage.

The bill repeals PIP. By repealing PIP, the bill removes the limitation on tort liability provided under PIP. When drivers are at fault in an accident, they are fully liable for any damages they cause. Due to this change, the bill expands the scope of legal liabilities covered under an uninsured/underinsured motorist policy.

In place of PIP, BI coverage is required at the time of registration of a motor vehicle. It increases the minimum BI coverage limits to $25,000 in damages due to the bodily injury or death of any one person and $50,000 for bodily injury or death to two or more persons. The minimum PD coverage limit is not changed. The minimum security limits for self-insurance of BI and PD requirements are increased. The bill also increases minimum coverage limits applicable to garage liability policies and commercial motor vehicle coverage.

The bill requires insurers to offer medical payments coverage prior to issuing the policy, which the prospective insured may reject in writing. Coverage may be selected at $5,000, $10,000 or in amounts exceeding $5,000. The insurer may offer deductibles from zero to $500.

Motor vehicle policies issued on or after January 1, 2021, may not include PIP coverage. The bill provides for continued enforcement of suspensions, revocations, and anti-fraud measures for actions occurring under the PIP law.

The bill provides for the transition of motor vehicle insurance policies issued prior to January 1, 2021, from PIP requirements to BI requirements. In addition, insurers are required to provide their policyholders a notice describing the effect of the elimination of PIP and change to BI, by September 1, 2020. The notice is subject to approval by the Office of Insurance Regulation (OIR).

The bill provides that resident relatives must be included in coverage provided by motor vehicle liability policies. It also allows insurers to exclude named individuals from coverage. It also allows exclusion of coverage of motor vehicles that are not identified on the policy, if an individual insured by the policy has owned the vehicle, or the temporary vehicle was furnished for regular use, for more than 30 consecutive days.

The bill has an indeterminate fiscal impact on state revenues and expenditures and no fiscal impact on local government. The bill has indeterminate positive and negative impacts on the private sector. An appropriation of $83,651 is provided to OIR to implement changes made by the bill.

The bill is effective January 1, 2020, except as otherwise expressly provided by the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Financial Responsibility Law

Florida's Financial Responsibility Law requires proof of ability to pay monetary damages for bodily injury (BI) and property damage (PD) liability arising out of a motor vehicle accident or serious traffic violation.[1] The owner or operator of a motor vehicle is not required to provide proof of BI coverage at the time of vehicle registration. Motorcycle owners also are not required to provide proof of BI coverage at the time of registration. Proof of such coverage is only required after an accident.[2] At that time, a driver proves financial responsibility by furnishing an active motor vehicle liability policy, a certificate showing a qualifying security deposit with the Department of Highway Safety and Motor Vehicles (DHSMV), or proof of qualifying self-insurance.[3]

The required minimum amounts of BI insurance coverages are $10,000, in the event of bodily injury to, or death of, one person, and $20,000, in the event of bodily injury to, or death of, two or more persons. The required minimum amount of PD insurance coverage is $10,000, in the event of damage to property of others, or $30,000 combined for both BI and PD coverage.[4] Some refer to these coverage amounts in a summary manner, i.e., $10,000/$20,000/$10,000 or 10/20/10.

A driver's license and vehicle registration are subject to suspension for failure to comply with the PD coverage requirement.[5] One may obtain driver's license and registration reinstatement by obtaining a liability policy and by paying a fee to DHSMV.[6]

Financial responsibility requirements are common. All states have financial responsibility laws that require persons involved in auto accidents (or serious traffic infractions) to furnish proof of BI and PD liability insurance. The minimum coverage amounts vary among the states.

Florida Motor Vehicle No-Fault Law

Florida's Motor Vehicle No-Fault Law (No-Fault Law)[7] requires motorists to carry no-fault insurance known as personal injury protection (PIP) coverage. The purpose of PIP coverage 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 $10,000 of PIP coverage.[8] However, motorcycles are excluded from this requirement.

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[1] Ch. 324, F.S.

[2] Ss. 320.02 and 324.011, F.S.

[3] Ss. 324.031, 324.061, 324.161, and 324.171, F.S. Businesses that choose to self-insure the financial responsibility requirements must deposit $30,000 per vehicle, up to a maximum of $120,000, with the DHSMV and maintain excess insurance with limits of $125,000/$250,000/$300,000. Individuals that choose to self-insure must deposit $30,000 with the DHSMV. Individuals and businesses can also obtain a certificate of self-insurance to satisfy the financial responsibility requirements. Individuals must have an unencumbered net worth of $40,000 and businesses must have either an unencumbered net worth of $40,000 for the first vehicle and $20,000 for each additional vehicle or a sufficient net worth determined by the DHSMV by rule. Currently, the applicable rule provides that $40,000 for the first vehicle and an amount less than $20,000 for each additional vehicle is sufficient if the applicant carries excess insurance in the amounts of $25,000/$50,000/$100,000. The amount applicable to each additional vehicle is determined annually under a "Manual of Financial Responsibility Rates" (Revised 05-89) adopted by rule by the Office of Insurance Regulation. Rule 15A-3.011, F.A.C.

[4] S. 324.022, F.S.

[5] S. 324.0221(2), F.S. Failure to maintain PIP coverage results in suspension of the driver's license and vehicle registration.

[6] S. 324.0221(3), F.S.

[7] Ss. 627.730-627.7405, F.S.

[8] 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.

PIP General Provisions

Required Coverage	All owners or registrants of motor vehicles with four or more wheels, except school buses, limos, and taxicabs, are required to carry PIP.[9]
Individuals Covered	The named insured, relatives living in the same household, persons operating the vehicle, passengers in the vehicle, and persons struck and injured while not occupying the vehicle.
Tort Limitation	Limited exemption from tort liability; injured persons may pursue certain tort claims as specified by the PIP law.
Benefits	$10,000 in emergency medical and disability benefits (limited to $2,500 in medical benefits for non-emergency medical conditions) and $5,000 in death benefits. Coverage of 60 percent of lost income due to disability, not to exceed the $10,000 overall benefit limitation.
Timely Treatment	Medical benefits are paid only if initial treatment is received within 14 days of the accident.
Timely Payment	Payments are overdue if not paid within 30 days of insurer receipt of written notice.
Medical Reimbursement	80 percent of reasonable medical expenses paid to eligible medical providers.[10]
Excluded Treatment	Massage and acupuncture are not PIP medical benefits. Services, supplies, or care that is not reimbursable under Medicare or workers' compensation is not required to be reimbursed by the insurer.
Attorney Fees	Prevailing insureds and beneficiaries may receive a reasonable attorney fees award.

PIP in Other States

Over the last couple of decades, 24 jurisdictions have repealed their No-Fault laws or made them non-compulsory.[11] Only 17 jurisdictions have compulsory PIP laws. Of those with compulsory PIP laws, only nine have No-Fault laws. Five jurisdictions, including some that do not have compulsory PIP laws, give the insured the option to choose No-Fault protections.

Jurisdiction	Compulsory PIP	No-Fault
Arizona	Yes	No
Delaware	Yes	No
District of Columbia	No	Optional
Florida	Yes	Yes
Hawaii	Yes	Yes
Kansas	Yes	Yes
Kentucky	No	Optional
Maryland	Yes	No
Massachusetts	Yes	Yes
Michigan	Yes	Yes
Minnesota	Yes	Yes

[9] This includes non-resident owners who keep a vehicle in Florida for more than 90 days during the previous 365 day. S. 627.733(2), F.S.
[10] Insurers may limit reimbursements to a fee schedule tied to the Medicare allowed amount. S. 627.736(5)(a)1., F.S. For many services, 80 percent of 200 percent of the Medicare allowed amount is the standard reimbursement under this fee schedule.
[11] National Association of Insurance Commissioners, *Final Auto Study Group Report* (Nov. 18, 2014) and Insurance Information Institute, *Compulsory Auto/Uninsured Motorists* (Sept. 2017) http://www.iii.org/issue-update/compulsory-auto-uninsured-motorists (last visited Feb. 1, 2020).

New Jersey	Yes	Optional
New York	Yes	Yes
North Dakota	Yes	Yes
Oregon	Yes	No
Pennsylvania	No	Optional
Texas	Yes	Optional
Utah	Yes	Yes
Virgin Islands	Yes	No
Washington	Yes	No

Recent Legislative History

The Legislature revised the PIP law multiple times following a Statewide Grand Jury in 2000 that found rampant fraud in the PIP system. The Legislature enacted PIP reform legislation in 2001 and 2003. The 2003 legislation included a sunset of the PIP law on October 1, 2007. A Governor's veto of a bill extending the sunset of the law resulted in the law expiring in 2007. Following a 2007 Special Session, the PIP law was revived effective January 1, 2008. The Legislature again revised the PIP law in 2012.

PIP Reform

The reforms enacted between 2001 and 2012 included:

- Establishing requirements for and limiting access to motor vehicle crash reports;
- Providing limitations on medical services, reimbursement, and eligible providers;
- Requiring provider licensing;
- Requiring pre-suit demand letters;
- Increasing criminal penalties;
- Defining certain activities by claims handlers as unfair and deceptive trade practices;
- Establishing limitations on benefits for emergency and non-emergency medical conditions; and
- Creating limitations on attorney's fees.

The 2012 reform required insurers to make rate filings by October 1, 2012, and January 1, 2014, that provided a minimum 10 percent and 25 percent decrease in PIP premiums, respectively. However, this reform permitted insurers to file and the Office of Insurance Regulation (OIR) to approve smaller decreases or increases, if appropriately justified. This resulted in an estimated average statewide rate decrease in PIP premiums of 13.2 percent, as of January 22, 2014. This legislation also required OIR to issue a PIP data call and report the results. OIR reported the data call results on January 1, 2015 (see Recent Reports by OIR, below).

PIP Repeal Proposals

The PIP law has been the subject of multiple repeal proposals over the last several years. The House considered bills in 2013, 2014, 2015, and 2017 that would have repealed PIP and required increased BI coverage under the Financial Responsibility Law.[12] A 2016 bill would have repealed PIP, effective January 1, 2019, but would have maintained current BI and PD requirements. Except for 2017, the House bills died in the Insurance & Banking Subcommittee. CS/HB 1063 (2017) passed the House on April 19, 2017, and died in the Senate Appropriations Subcommittee on Health and Human Services.

Recent Changes

As part of a pair of broader insurance related bills, the Legislature amended the PIP law in 2015 and 2016. HB 165 (2015) clarified the application of the PIP medical reimbursement fee schedule. HB 165 (2015) and HB 659 (2016) each created an additional exemption from a licensure requirement under the PIP law that permits reimbursement of certain health care clinics for PIP related medical services.

[12] Ch. 324, F.S.

Recent Reports by OIR

PIP Data Call

The 2012 reform, HB 119, required OIR to perform a comprehensive data call regarding PIP. Thirty-five insurers representing 83.5 percent of the market participated in the data call. This included the top 25 insurers, by market share. The report did not rely on information from several insurers due to data quality issues. OIR published their analysis of the data call on January 1, 2015. The report provided detailed information on seven of the eight required elements mentioned in the bill. The bill required the report to address, at a minimum, the following points:

1. Quantity of personal injury protection claims.
2. Type or nature of claimants.
3. Amount and type of personal injury protection benefits paid and expenses incurred.
4. Type and quantity of, and charges for, medical benefits.
5. Attorney fees related to bringing and defending actions for benefits.
6. Direct earned premiums for personal injury protection coverage, pure loss ratios, pure premiums, and other information related to premiums and losses.
7. Licensed drivers and accidents.
8. Fraud and enforcement.

The published report did not include detail or analysis regarding item 5. However, the report included limited information about insurer costs related to defense of claims, which includes attorney fees. OIR documented and analyzed all other items in detail.

While OIR did not provide a summary of their findings in the body of the report, they summarized their findings in a press release dated January 5, 2015,[13] as follows:

> The findings showed a general decrease in the per claim costs and the overall number of claims (frequency and severity) for PIP since the implementation of HB 119 on January 1, 2013. The regional analysis concludes that South Florida and the Tampa/St. Petersburg regions experienced the most significant decreases in Florida. However, the data also exposed that other coverages, such as Bodily Injury (BI) and Uninsured Motorists (UM), experienced increases in both frequency and severity when some benefits covered under PIP moved to these coverages. These trends are expected to continue over the next year.
>
> Prior to 2012 and the passage of this law, the pervasive nature of PIP fraud and staged auto accidents created an unsustainable cost trajectory of PIP claims. The Division of Insurance Fraud (DIF), within the Department of Financial Services (DFS), is responsible for investigating this type of fraud. According to the DIF, there has been a substantial decline in PIP fraud since the implementation of HB 119 with a projected 16% decrease during Fiscal Year 2013 – 2014 from Fiscal Year 2011 – 2012.
>
> The Office also compiled a summary of the rate filings effective on or after January 1, 2011 for the top 25 insurers representing 80.9% of the total personal auto market in Florida. These filings were segregated into two sets of data: Pre-HB 119 and Post-HB 119 (to include all filings submitted since, and including, the first required HB 119 filing due on October 1, 2012). The average statewide approved rate changes were:

[13] FLORIDA OFFICE OF INSURANCE REGULATION, *News Releases, Office Releases Personal Injury Protection (PIP) Insurance Data Call Report*, http://www.floir.com/PressReleases/viewmediarelease.aspx?id=2094 (last visited Feb. 1, 2020).

	Pre-HB 119	HB 119
PIP	+46.3%	-13.6%
Liability (incl. PIP)	+20.9%	-0.5%
Overall (incl. Comp. & Coll.)	+12.9%	-0.1%

The report noted many insurers had residual rate need due to deteriorating PIP experience prior to the implementation of the bill that were used to offset some of the expected savings from HB 119. For an individual policyholder, the rate changes may vary considerably from the statewide averages listed above, taking into account other factors, such as differences by insurer, by territory, etc.

Overall, there was limited data available to determine the true impact of HB 119; however, the data call analysis reveals the law has had a major impact on the personal auto market and changed the trajectory of trends being seen prior to its enactment.

The report also documented an increase in the frequency of automobile crashes in Florida during 2013 and 2014. Data from the DHSMV shows that this trend continued through 2015. OIR reported that crash frequency per 100 licensed drivers in Florida had dropped by 13.7 percent from 2004 to 2011. In 2011, there were 1.48 crashes per 100 licensed drivers. For 2015, crash frequency increased over 61 percent to 2.40 crashes per 100 licensed drivers.

OIR Cost Projection on Certain PIP Reform Proposals

In June 2016, OIR contracted with Pinnacle Actuarial Resources (Pinnacle) for actuarial services to produce a "Review of PIP Legislation."[14] The objective of the review was to "provide a draft and final report documenting [a] comprehensive study on the effect of HB 119 and the potential impact to Floridians if the personal injury protection coverage requirements were repealed and replaced with varying levels of Bodily Injury coverage, or if the current requirements to purchase auto insurance were completely repealed." Pinnacle is the same vendor that produced the 2012 rate impact analysis that was required by HB 119 (2012).[15]

Pinnacle issued their report on September 13, 2016.[16] They found that:

- The study of HB 119 evaluated sixteen provisions of the bill and concluded that the HB 119 reforms produced an estimated aggregate savings since enactment in PIP claim costs of 17.5 percent and an estimated statewide average savings in PIP premiums of 15.1 percent.
- If no-fault insurance were repealed in Florida, there could be an estimated overall reduction in premiums of 9.6 percent on the *liability coverage package* or $81 per car annually for the average driver. For *all coverages combined*, the estimated premium decrease is 6.7 percent.
- Finally, an analysis of premium impacts if the requirement to purchase auto insurance was repealed in addition to the repeal of no-fault insurance found there could be an estimated additional reduction in the PIP repeal savings of 0.2 percent to 0.4 percent.

Pinnacle also provided estimates that considered the outcome if the consumer purchased Medical Payments (Med Pay) coverage, at either $2,500 or $5,000 coverage limits, and if the BI limit was increased by law to $25K/$50K. The following table illustrates the estimated savings in each scenario.

[14] DFS OIR RFP 15/16-15, *Actuarial Consulting Services for Review of PIP Legislation*.
[15] In 2012, Pinnacle Actuarial Resources, Inc., was retained by OIR to conduct an independent actuarial study to calculate the savings to be expected because of HB 119 (2012). S. 15, HB 119 (2012). OIR published the report on August 21, 2012. FLORIDA OFFICE OF INSURANCE REGULATION, *Press Release*, http://www.floir.com/PressReleases/viewmediarelease.aspx?id=1956 (last visited Feb. 1, 2020).
[16] Pinnacle Actuarial Resources, Inc., *Florida Office of Insurance Regulation: Review of Personal Injury Protection Legislation*, Sept. 13, 2016, *available at* https://www.floir.com/siteDocuments/FLOIRReviewPIP20160913.pdf (last visited Feb. 1, 2020).

Estimated Savings on Auto Insurance Premiums, by Scenario			
Situation	Coverage Type	Require BI at $10K/$20K	Require BI at $25K/$50K
PIP repeal	Liabilities, only[17]	9.6%	8.1%
	Overall	6.7%	5.6%
PIP repeal and $2,500 Med Pay	Liabilities, only	4.9%	3.4%
	Overall	3.4%	2.4%
PIP repeal and $5,000 Med Pay	Liabilities, only	1.0%	-0.5%
	Overall	0.7%	-0.3%

Overview of Colorado PIP Insurance Reform

Colorado had a no-fault auto insurance law from 1974 to 2003. In reaction to increasing costs of auto insurance, including a 38 percent increase in auto premiums from 1992 to 2002, Colorado repealed their no-fault law, effective July 2003. Colorado now handles crash liabilities through the tort system. Under the tort system, the person at fault in an auto crash is responsible for paying the losses of the victim and the victim enforces their rights in civil court.

Prior to the change, Colorado had the ninth highest premium per insured auto in the nation. For 2014 (the most current year available), Colorado had the 21st highest auto premium in the nation. According to the Colorado Legislative Council Staff, auto premiums in the state as of January 2007 had decreased ten to 14 percent following the elimination of the no-fault system.[18]

In comparison, according to data from the National Association of Insurance Commissioners and reported by the Insurance Information Institute, from 2006 through 2014, Florida has consistently ranked fifth in the nation for highest average auto insurance cost per vehicle. Florida ranked as low as sixth in 2009 and 2014 and as high as fourth in 2008 and 2012, with the remaining years being ranked fifth.[19]

	Colorado			Florida		
	Average Auto Premium Cost	National Rank	Percent Change over 2002 Cost	Average Auto Premium Cost	National Rank	Percent Change over 2003 Cost
2002	$921.00	9		n/a	n/a	
2003	$923.00	12		$1,018.00	5	
2004	$850.00	18	-7.7%	$1,062.00	5	4.3%
2005	$829.00	21	-10.0%	$1,064.00	6	4.5%
2006	$785.00	23	-14.8%	$1,069.00	5	5.0%
2007	$738.00	24	-19.9%	$1,043.00	5	2.5%
2008	$728.67	26	-20.9%	$1,054.89	5	3.6%
2009	$741.28	22	-19.5%	$1,006.20	6	-1.2%
2010	$730.42	25	-20.7%	$1,037.36	5	1.9%
2011	$723.61	27	-21.4%	$1,090.58	5	7.1%
2012	$737.95	25	-19.9%	$1,128.53	4	10.9%
2013	$777.95	23	-15.5%	$1,143.73	5	12.4%
2014	$821.19	21	-10.8%	$1,140.84	6	12.1%

[17] "Liabilities, only" includes Bodily Injury, Personal Injury Protection, Uninsured Motorist, and Property Damage coverages.
[18] Colorado Legislative Council, *Issue Brief Number 07-01, Automobile Insurance in Colorado*, Jan. 2007.
[19] INSURANCE INFORMATION INSTITUTE, *Auto Insurance, Costs and Expenditures*, http://www.iii.org/table-archive/21247 (last visited Feb. 1, 2020).

Private Passenger Auto Insurance Requirement Comparison

	Colorado	Florida
No-fault/PIP	None	$10,000 medical, disability and funeral Non-emergency medical limited to $2,500 Mandatory for vehicle registration
Bodily Injury or Death	$25,000 per person, $50,000 per accident Mandatory for vehicle registration	$10,000 per person, $20,000 per accident, or $30,000 single limit Mandatory, may be secured post-registration
Property Damage	$15,000 Mandatory for vehicle registration	$10,000 Mandatory for vehicle registration
Uninsured/Under-insured Motorist	Mandatory offer at BI/PD limits, written rejection required	Mandatory coverage at BI limits, if BI purchased; written rejection required
Medical Payment	$5,000 mandatory offer, written rejection required	Optional

Impacts of the Colorado Reform

In February 2008, the Office of the Governor of Colorado published a report that studied the impacts of the repeal of the no-fault system on auto insurance, health insurance, the trauma system, Medicaid and Colorado Indigent Care Program, and consumers.[20] The report's findings include the following:

AUTO INSURANCE

- For the eight largest auto insurers in Colorado by market share, average auto insurance premiums declined 35 percent from July 2003 to December 2007.
- The average premium decrease attributable to the elimination of PIP was 22 percent immediately following the repeal of no-fault.[21]
- Colorado's national rank for average annual auto insurance premium per vehicle fell following the repeal.
- Premiums for each of the non-PIP auto coverage types increased, except comprehensive coverage (no baseline data was available for medical payment coverage, so the effect was unknown).
- Ninety-nine percent of Colorado auto insurers were offering medical payment coverage post-reform and 31 percent of consumers were purchasing this coverage.

HEALTH INSURANCE

- Based on the responses of health insurers (totaling 1.57 million policyholders) to a 2003 survey by the Colorado Division of Insurance, health insurance premiums increased by an estimated 1.6 percent.

TRAUMA SYSTEM

Hospitals

- The report could not quantify the impact on acute care hospital reimbursements for emergency and outpatient services.
- Comparing payments for 2002 to those for 2006 for inpatient care of auto accident patients at acute care hospitals, the percentage of payments from private insurance, which includes both auto and health insurance, decreased by about one third (75.4 percent for 2002 and 49.3 percent for 2006).

[20] BBC Research & Consulting, *Auto Insurance/Trauma System Study*, 5, Feb. 2008.
[21] Information in *Issue Brief Number 07-01* and the *Auto Insurance/Trauma System Study* are seemingly at odds regarding the change in auto premiums post-reform. The reason for the difference may be that *Issue Brief Number 07-01* is referencing the change in average premiums for Colorado overall at January 2007 and the *Auto Insurance/Trauma System Study* is only focused on the eight largest auto insurers in Colorado at December 2007.

The proportion of payment by all other payer types increased. The greatest increase was in self-payment (13.4 percent in 2002 and 27.2 percent in 2006). Self-payment may also include self-filing of insurance. Medicare showed the next highest increase (2.9 percent in 2002 and 7.7 percent in 2006).
    - A similar pattern was seen in all inpatient cases; however, the amount of the decrease in the proportion of private insurance payments was much less (51.1 percent for 2002 and 46.6 percent for 2006).
- The reimbursement rate (percent of charge reimbursed) for acute care hospital inpatient auto crash patients fell from 60 percent to 36 percent for hospitals that responded to a survey. The report asserted the cause of the reduction to be more patients without insurance and, for patients with insurance, more payments based on negotiated rates (non-PIP insurers allegedly rely more on negotiated rates).

Emergency Medical First Responders

- Based on a small sample of first responders, i.e., those that could provide detailed billing and reimbursement information, non-reimbursed charges increased 37 percent for 2006 over 2002. Governmental first responders indicated that they made up deficits related to lower patient care/transfer reimbursements from non-user sources such as taxes and general fund transfers.
- The average number of days to collect first responder payment on auto crash related cases increased from 74 days in 2002 to 144 days in 2006.

MEDICAID AND COLORADO INDIGENT CARE PROGRAM

- Medicaid – the Medicaid program's exposure to auto crash claims increased, but the report could not quantify the cost.
- Colorado Indigent Care Program – while exposure was increased, caps on the federal and state portions of the program's funding limited increases in expenditures. This increased unreimbursed provider charges.

Effect of the Bill

Effective January 1, 2021, the bill repeals portions of the Florida Motor Vehicle No-Fault Law (PIP). However, it provides for continued enforcement of suspensions,[22] revocations, and anti-fraud measures for actions occurring under the No-Fault Law.

Changes to Financial Responsibility

Beginning January 1, 2021, proof of compliance with the Financial Responsibility Law (BI coverage) is required at the time of registration of a motor vehicle,[23] instead of post-registration or at the time of an accident as is currently required. It increases the minimum BI coverage limits from $10,000 per person and $20,000 per incident to $25,000 per person and $50,000 per incident. The minimum PD coverage limit is not changed.[24] This results in required 25/50/10 coverage in most instances.

The bill increases minimum security limits for self-insurance of financial responsibility requirements in the following ways:

- Certificate of deposit for individuals and businesses:[25]
    - increased from $30,000 per vehicle (max. $120,000) to $60,000 per vehicle (max. $240,000). In addition, such person must maintain motor vehicle liability policy in excess of the certificate of

[22] The bill also expands DHSMV's authority to suspend the registrations and licenses of drivers who fail to maintain BI when required under ss. 324.023 (DUI conviction), 324.032 (for-hire transportation), 627.7415 (commercial motor vehicles), and 627.742, F.S. (non-public sector buses), and who fail to carry proof of BI when operating a motor vehicle.
[23] Proof of compliance with the Financial Responsibility Law does not change for motorcycles.
[24] The allowed combined coverage limit of $30,000 for property damage and bodily injury is increased to $60,000.
[25] Proof of the certificate of deposit maintained in a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration must be submitted annually to DHSMV.

deposit providing bodily injury coverage of $125,000, per person, $250,000, per accident, and $50,000 for property damage, or $300,000, combined property damage and bodily injury.

- Certificate of self-insurance – minimum unencumbered net worth increases from:
  - For individuals – $40,000 to $100,000, and
  - For businesses – $40,000 for the first vehicle and $20,000 for each additional vehicle to $100,000 and $50,000, respectively.[26]

Garage Liability Insurance – The bill increases minimum security limits for garage liability insurance from $25,000 combined single limit for bodily injury and property damage to $60,000 combined.

For-Hire Passenger Transportation Vehicle – no change; current 125/250/50.

Commercial Motor Vehicles – minimum combined bodily injury and property damage coverage:
- For vehicles between 26,000 pounds and 35,000 pounds – increases from $50,000 per occurrence to $60,000 per occurrence,
- For vehicles 35,000 pounds or more but less than 44,000 pounds – no change ($120,000 per occurrence), and
- For vehicles between 44,000 pounds or more – no change ($300,000 per occurrence).

Non-public Sector Buses – no change; current 100/300/50 or combined 300.

Transportation Network Companies – no change; current 50/100/25 when logged on, but no rider, and $1 million when connected to a rider.

Transition of Coverages

The bill provides for the transition of motor vehicle insurance policies into compliance with the changes made by the bill if the policies were issued prior to January 1, 2021, but are in force on that date. Those issued on or after January 1, 2021, are prohibited from including PIP coverage. In force policies that were issued in compliance with law at the time of issuance are deemed to meet the new requirements until renewed, nonrenewed, or canceled. Insurers are required to allow policyholders with PIP coverage to obtain BI coverage that complies with the changes made by the bill without charge other than changes in premium due. Payment of the change in premium and refunds, if either result from the change in coverage, depending upon the actual coverages on the policy, are required.

Notice Requirements

Insurers are required to provide a notice, by September 1, 2020, informing motor vehicle policyholders that effective January 1, 2021:

- The Florida Motor Vehicle No-Fault Law (PIP) is repealed January 1, 2021,
- The policyholder is no longer required to carry PIP coverage,
- PIP is no longer available for purchase,
- New or renewal coverage will not include PIP,
- New BI requirements begin on January 1, 2021, which are 25/50/10,
- That insurers must offer medical payments coverage with selectable limits of $5,000 and $10,000, or at limits greater than $5,000; optional deductible of $500; death benefit of $5,000; and describe the nature of medical payments coverage,
- A policyholder may obtain uninsured/underinsured motorist coverage to protect themselves and their insureds from damages caused by an uninsured/underinsured driver,
- Policies that comply with the requirements of law at the time of issue are deemed to meet the new requirements, until the policy is renewed, nonrenewed, or canceled,

[26] In the alternative, businesses may qualify for self-insurance by maintaining a sufficient net worth determined annually by DHSMV by rule. S. 324.171, F.S.

- They may change their policy to comply with the new requirements, and
- They may contact the name and telephone number provided in the notice with questions.

The notice is also required to state that PIP provides medical payments coverage for the policyholder, passengers, and resident relatives,[27] while BI protects the insured against loss if they are at fault in an accident and are legally responsible for bodily injuries or deaths of others. The notice is subject to approval by OIR.

Optional Medical Payments Coverage

The bill requires motor vehicle insurers to offer medical payments coverage before issuing an initial policy. Unless the insured rejects medical payments coverage in writing, medical payments coverage is deemed included with $10,000 in coverage.

The insurer is required to offer:

- A $5,000 coverage limit,
- A $10,000 coverage limit, or
- Coverage limits exceeding $5,000.

The insurer is allowed to offer medical payments coverage deductibles from zero to $500. The insurer must notify the policyholder annually of the availability of medical payments coverage.

The bill establishes insurer reserve requirements tied to medical payments coverage claims. Medical payments coverage benefits are not a lien on personal recoveries associated with the claim event, nor does the insurer have a right to sue a recipient of medical coverage payments unless the payments were the result of fraud. The insurer may claim subrogation rights against persons that are not insured on the policy, but the right is subordinate to the insured's own right against such person. The insurer may recover from an insured who receives full payment for damages that impairs the insurer's subrogation rights in specified circumstances. Death benefits may not be subrogated.

Named Driver Exclusion

The bill provides that resident relatives must be included in coverage provided by motor vehicle liability policies, but authorizes insurers and policyholders to exclude named drivers, including a resident relative, from a private passenger motor vehicle insurance policy. An individual is not covered for damages that occur while operating a motor vehicle that is insured under a policy that excludes the individual by name. The bill prohibits exclusion for periods when the excluded named driver is not operating a motor vehicle covered under the policy (e.g., when they are a passenger in the vehicle), if the exclusion is unfairly discriminatory by law, as determined by the OIR, or if the exclusion is inconsistent with the underwriting guidelines filed by the insurer with OIR. The exclusion of a named driver is contingent upon the written consent of a policyholder. The bill requires insurers to list excluded named drivers on the policy's declarations page or on a policy endorsement. Individuals who are named as excluded drivers on a particular policy may secure their insurance obligations under another policy.

Newly Acquired and Temporary Substitute Motor Vehicles

The bill allows insurers to exclude coverage of motor vehicles not named on a policy if the vehicle does not qualify as a "newly acquired vehicle"[28] or "temporary substitute"[29] vehicle and was owned by the insured or given to them for their use for more than 30 days prior to the claim event.

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[27] A "resident relative" is defined as "a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes her or his home in the same family unit as the named insured, whether or not he or she is temporarily living elsewhere."

[28] "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

Rate Filings

Initial insurer rate filings for motor vehicle liability submitted to OIR on or after January 1, 2021, are required to be based on the new requirements and may only be approved through the file and use approval process.

Tort Liability

By repealing PIP, the bill removes the limitation on tort liability provided under PIP. When drivers are at fault in an accident, they are fully liable for any damages they cause. Due to this change, the bill removes the conditional exclusion[30] of tort damages for pain, suffering, mental anguish, and inconvenience. Beginning January 1, 2021, the bill makes uninsured motorist insurers subject to tort damages for pain, suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future.

Appropriation

The bill appropriates $83,651 from the Insurance Regulatory Trust Fund to OIR to implement changes made by the bill.

B. SECTION DIRECTORY:

Section 1: Repeals ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., relating to Florida Motor Vehicle No-Fault Law.
Section 2: Repeals s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law.
Section 3: Amends s. 316.646, F.S., relating to security required; proof of security and display thereof.
Section 4: Amends s. 318.18, F.S., relating to amount of penalties.
Section 5: Amends s. 320.02, F.S., relating to registration required; application for registration; forms.
Section 6: Amends s. 320.0609, F.S., relating to transfer and exchange of registration license plates; transfer fee.
Section 7: Amends s. 320.27, F.S., relating to motor vehicle dealers.
Section 8: Amends s. 320.771, F.S., relating to license required of recreational vehicle dealers.
Section 9: Amends s. 322.251, F.S., relating to notice of cancellation, suspension, revocation, or disqualification of license.
Section 10: Amends s. 322.34, F.S., relating to driving while license suspended, revoked, canceled, or disqualified.
Section 11: Amends s. 324.011, F.S., relating to purpose of chapter.
Section 12: Amends s. 324.021, F.S., relating to definitions; minimum insurance required.
Section 13: Amends s. 324.022, F.S., relating to financial responsibility for property damage.
Section 14: Amends s. 324.0221, F.S., relating to reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.
Section 15: Creates s. 324.0222, F.S., relating to application of suspensions for failure to maintain security; reinstatement.

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[29] "Temporary substitute vehicle" means any motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

[30] An uninsured motorist coverage insurer is liable for tort damages for pain, suffering, mental anguish, and inconvenience if the damages exceed the "verbal threshold" provided in s. 627.737(2)(a)-(d), F.S. The verbal threshold allows a plaintiff to recover such damages if the injury or disease consists in whole or in part of:

- Significant and permanent loss of an important bodily function.
- Permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.
- Significant and permanent scarring or disfigurement.
- Death.

Section 16: Amends s. 324.023, F.S., relating to financial responsibility for bodily injury or death.
Section 17: Amends s. 324.031, F.S., relating to manner of proving financial responsibility.
Section 18: Amends s. 324.032, F.S., relating to manner of proving financial responsibility; for-hire passenger transportation vehicles.
Section 19: Amends s. 324.051, F.S., relating to reports of crashes; suspensions of licenses and registrations.
Section 20: Amends s. 324.071, F.S., relating to reinstatement; renewal of license; reinstatement fee.
Section 21: Amends s. 324.091, F.S., relating to notice to department; notice to insurer.
Section 22: Amends s. 324.151, F.S., relating to motor vehicle liability policies; required provisions.
Section 23: Amends s. 324.161, F.S., relating to proof of financial responsibility; deposit.
Section 24: Amends s. 324.171, F.S., relating to self-insurer.
Section 25: Amends s. 324.251, F.S., relating to short title.
Section 26: Amends s. 400.9905, F.S., relating to definitions.
Section 27: Amends s. 400.991, F.S., relating to license requirements; background screenings; prohibitions.
Section 28: Amends s. 400.9935, F.S., relating to clinic responsibilities.
Section 29: Amends s. 409.901, F.S., relating to definitions.
Section 30: Amends s. 409.910, F.S., relating to responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.
Section 31: Amends s. 456.057, F.S., relating to ownership and control of patient records; report or copies of records to be furnished; disclosure of information.
Section 32: Amends s. 456.072, F.S., grounds for discipline; penalties; enforcement.
Section 33: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.
Section 34: Amends s. 626.989, F.S., relating to investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.
Section 35: Amends s. 627.06501, F.S., relating to insurance discounts for certain persons completing driver improvement course.
Section 36: Amends s. 627.0651, F.S., relating to making and use of rates for motor vehicle insurance.
Section 37: Amends s. 627.0652, F.S., relating to insurance discounts for certain persons completing safety course.
Section 38: Amends s. 627.0653, F.S., relating to insurance discounts for specified motor vehicle equipment.
Section 39: Amends s. 627.4132, F.S., relating to stacking of coverages prohibited.
Section 40: Amends s. 627.7263, F.S., relating to rental and leasing driver's insurance to be primary; exception.
Section 41: Creates s. 627.7265, F.S., relating to motor vehicle insurance; medical payments coverage.
Section 42: Amends s. 627.727, F.S., relating to motor vehicle insurance; uninsured and underinsured vehicle coverage; insolvent insurer protection.
Section 43: Amends s. 627.7275, F.S., relating to motor vehicle liability.
Section 44: Creates s. 627.7278, F.S., relating to applicability and construction; notice to policyholders.
Section 45: Amends s. 627.728, F.S., relating to cancellations; nonrenewals.
Section 46: Amends s. 627.7295, F.S., relating to motor vehicle insurance contracts.
Section 47: Amends s. 627.7415, F.S., relating to commercial motor vehicles; additional liability insurance coverage.
Section 48: Creates s. 627.747, F.S., relating to named driver exclusion.
Section 49: Effective upon becoming law, amends s. 627.748, F.S., relating to transportation network companies.
Section 50: Amends s. 627.749, F.S., relating to autonomous vehicles; insurance requirements.
Section 51: Amends s. 627.8405, F.S., relating to prohibited acts; financing companies.
Section 52: Amends s. 627.915, F.S., relating to insurer experience reporting.
Section 53: Amends s. 628.909, F.S., relating to applicability of other laws.
Section 54: Amends s. 705.184, F.S., relating to derelict or abandoned motor vehicles on the premises of public-use airports.

Section 55: Amends s. 713.78, F.S., relating to liens for recovering, towing, or storing vehicles and vessels.
Section 56: Amends s. 817.234, F.S., relating to false and fraudulent insurance claims.
Section 57: Makes an appropriation.
Section 58: Provides an effective date of January 1, 2021, except as otherwise expressly provided by the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Premium tax revenues may be affected to the extent that lost revenues associated with PIP premiums are offset by changes in revenues associated with expected increases in BI premiums.

2. Expenditures:

   Indeterminate. Hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage. OIR is required to approve new forms and rates related to medical payments coverage and will receive filings to implement the coverage changes made by the bill. The bill appropriates $83.651 to OIR for this purpose.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. Local governments are likely to achieve savings on motor vehicle insurance, depending upon the amount of coverage secured. Local governments operating hospitals may experience increased costs to the extent that medical reimbursements previously funded through PIP are shifted to secondary coverages or are lost through lack of secondary coverage.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Motor vehicle insurers are required to file new forms and rates and adjust their practices consistent with the changes made by the bill. Individuals and businesses must secure coverage that complies with these changes, as well.

In a September 2016 report from OIR, Pinnacle Actuarial Resources estimated the premium impacts of PIP repeal on consumers that carry a complete set of automobile insurance coverages.[31] Pinnacle also provided estimates that considered the outcome if the BI limit increased by law to 25/50. They estimated that consumers might save 8.1 percent in liabilities only[32] premiums and 5.6 percent in overall motor vehicle premiums or $68.12 per car annually. Pinnacle also projected some negative impact on health care providers and health care insurance premiums due to the elimination of PIP.

D. FISCAL COMMENTS:

None.

[31] *Supra* note 16 at app. 3, p. 1 (p. 272).
[32] "Liabilities, only" includes Bodily Injury, Personal Injury Protection, Uninsured Motorist, and Property Damage coverages.

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:

The bill neither authorizes nor requires administrative rulemaking, but any rules that reference personal injury protection or restate bodily injury coverage requirements that are changed by the bill may require revision.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to motor vehicle insurance; repealing ss. 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, F.S., which comprise the Florida Motor Vehicle No-Fault Law; repealing s. 627.7407, F.S., relating to application of the Florida Motor Vehicle No-Fault Law; amending s. 316.646, F.S.; revising a requirement for proof of security on a motor vehicle and the applicability of the requirement; amending s. 318.18, F.S.; conforming a provision to changes made by the act; amending s. 320.02, F.S.; revising the motor vehicle insurance coverages that an applicant must show to register certain vehicles with the Department of Highway Safety and Motor Vehicles; conforming a provision to changes made by the act; revising construction; amending s. 320.0609, F.S.; conforming a provision to changes made by the act; amending s. 320.27, F.S.; defining the term "garage liability insurance"; revising garage liability insurance requirements for motor vehicle dealer applicants; conforming a provision to changes made by the act; amending s. 320.771, F.S.; revising garage liability insurance requirements for recreational vehicle dealer license applicants;

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amending ss. 322.251 and 322.34, F.S.; conforming provisions to changes made by the act; amending s. 324.011, F.S.; revising legislative intent; amending s. 324.021, F.S.; revising definitions of the terms "motor vehicle" and "proof of financial responsibility"; revising minimum coverage requirements for proof of financial responsibility for specified motor vehicles; defining the term "for-hire passenger transportation vehicle"; conforming provisions to changes made by the act; amending s. 324.022, F.S.; revising minimum liability coverage requirements for motor vehicle owners or operators; revising authorized methods for meeting such requirements; deleting a provision relating to an insurer's duty to defend certain claims; revising the vehicles that are excluded from the definition of the term "motor vehicle"; providing security requirements for certain excluded vehicles; conforming provisions to changes made by the act; conforming cross-references; amending s. 324.0221, F.S.; revising coverages that subject a policy to certain insurer reporting and notice requirements; conforming provisions to changes made by the act; creating s. 324.0222, F.S.; providing that driver license or registration suspensions for failure to maintain

required security which were in effect before a specified date remain in full force and effect; providing that such suspended licenses or registrations may be reinstated as provided in a specified section; amending s. 324.023, F.S.; conforming cross-references; amending s. 324.031, F.S.; specifying a method of proving financial responsibility; revising the amount of a certificate of deposit required to elect a certain method of proof of financial responsibility; revising excess liability coverage requirements for a person electing to use such method; amending s. 324.032, F.S.; revising financial responsibility requirements for owners or lessees of for-hire passenger transportation vehicles; amending ss. 324.051, 324.071, and 324.091, F.S.; making technical changes; amending s. 324.151, F.S.; revising requirements for motor vehicle liability insurance policies relating to coverage, and exclusion from coverage, for certain drivers and vehicles; defining terms; conforming provisions to changes made by the act; making technical changes; amending s. 324.161, F.S.; revising requirements for a certificate of deposit that is required if a person elects a certain method of proving financial responsibility; amending s. 324.171, F.S.; revising the minimum net

worth requirements to qualify certain persons as self-insurers; conforming provisions to changes made by the act; amending s. 324.251, F.S.; revising the short title and an effective date; amending s. 400.9905, F.S.; revising the definition of the term "clinic"; amending ss. 400.991 and 400.9935, F.S.; conforming provisions to changes made by the act; amending s. 409.901, F.S.; revising the definition of the term "third-party benefit"; amending s. 409.910, F.S.; revising the definition of the term "medical coverage"; amending s. 456.057, F.S.; conforming a cross-reference; amending s. 456.072, F.S.; revising specified grounds for discipline for certain health professions; amending s. 626.9541, F.S.; conforming a provision to changes made by the act; revising the type of insurance coverage applicable to a certain prohibited act; amending s. 626.989, F.S.; revising the definition of the term "fraudulent insurance act"; amending s. 627.06501, F.S.; revising coverages that may provide for a reduction in motor vehicle insurance policy premium charges under certain circumstances; amending s. 627.0651, F.S.; specifying requirements for initial rate filings for motor vehicle liability policies submitted to the Office of Insurance Regulation beginning on a specified date; amending s.

627.0652, F.S.; revising coverages that must provide a premium charge reduction under certain circumstances; amending s. 627.0653, F.S.; revising coverages subject to premium discounts for specified motor vehicle equipment; amending s. 627.4132, F.S.; revising the coverages of a motor vehicle policy which are subject to a stacking prohibition; amending s. 627.7263, F.S.; revising coverages that are deemed primary, except under certain circumstances, for the lessor of a motor vehicle for lease or rent; revising a notice that is required if the lessee's coverage is to be primary; creating s. 627.7265, F.S.; specifying persons whom medical payments coverage must protect; specifying the minimum medical expense and death benefit limits; specifying coverage options an insurer must and may offer; providing that motor vehicle liability insurance policies are deemed to have medical payments coverage at a certain limit and with no deductible unless rejected or modified by the policyholder by certain means; specifying requirements for certain forms approved by the office; requiring insurers to provide policyholders with a certain annual notice; providing construction relating to limits on certain other coverages; requiring insurers, upon receiving certain notice of an accident, to hold a specified

reserve for certain purposes for a certain timeframe; providing that the reserve requirement does not require insurers to establish a claim reserve for accounting purposes; specifying that an insurer providing medical payments coverage benefits may not have a lien on a certain recovery and may not have a certain cause of action; authorizing insurers to include policy provisions allowing for subrogation, under certain circumstances, for medical payments benefits paid; providing construction; specifying a requirement for an insured for repayment of medical payments benefits under certain circumstances; prohibiting insurers from including policy provisions allowing for subrogation for death benefits paid; amending s. 627.727, F.S.; revising the legal liability of an uninsured motorist coverage insurer; conforming provisions to changes made by the act; amending s. 627.7275, F.S.; revising required coverages for a motor vehicle insurance policy; conforming provisions to changes made by the act; creating s. 627.7278, F.S.; defining the term "minimum security requirements"; providing a prohibition, requirements, applicability, and construction relating to motor vehicle insurance policies as of a certain date; requiring insurers to allow certain insureds to

make certain coverage changes, subject to certain conditions; requiring an insurer to provide, by a specified date, a specified notice to policyholders relating to requirements under the act; amending s. 627.728, F.S.; conforming a provision to changes made by the act; amending s. 627.7295, F.S.; revising the definitions of the terms "policy" and "binder"; revising the coverages of a motor vehicle insurance policy for which a licensed general lines agent may charge a specified fee; conforming a provision to changes made by the act; amending s. 627.7415, F.S.; revising additional liability insurance requirements for commercial motor vehicles; creating s. 627.747, F.S.; providing that private passenger motor vehicle policies may exclude certain identified individuals from specified coverages under certain circumstances; providing that such policies may not exclude coverage under certain circumstances; amending s. 627.748, F.S.; revising insurance requirements for transportation network company drivers; conforming provisions to changes made by the act; amending s. 627.749, F.S.; conforming a provision to changes made by the act; amending s. 627.8405, F.S.; revising coverages in a policy sold in combination with an accidental death and dismemberment policy which a

premium finance company may not finance; revising rulemaking authority of the Financial Services Commission; amending ss. 627.915, 628.909, 705.184, and 713.78, F.S.; conforming provisions to changes made by the act; amending s. 817.234, F.S.; revising coverages that are the basis of specified prohibited false and fraudulent insurance claims; conforming provisions to changes made by the act; providing an appropriation; providing effective dates.

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

Section 1. Sections 627.730, 627.731, 627.7311, 627.732, 627.733, 627.734, 627.736, 627.737, 627.739, 627.7401, 627.7403, and 627.7405, Florida Statutes, are repealed.

Section 2. Section 627.7407, Florida Statutes, is repealed.

Section 3. Subsection (1) of section 316.646, Florida Statutes, is amended to read:

316.646 Security required; proof of security and display thereof.—

(1) Any person required by s. 324.022 to maintain liability security for property damage, ~~liability security, required by s. 324.023 to maintain liability security for~~ bodily injury, or death~~, or required by s. 627.733 to maintain personal~~

~~injury protection security on a motor vehicle~~ shall have in his or her immediate possession at all times while operating such motor vehicle proper proof of maintenance of the ~~required~~ security required under s. 324.021(7).

(a) Such proof must ~~shall~~ be in a uniform paper or electronic format, as prescribed by the department, a valid insurance policy, an insurance policy binder, a certificate of insurance, or such other proof as may be prescribed by the department.

(b)1. The act of presenting to a law enforcement officer an electronic device displaying proof of insurance in an electronic format does not constitute consent for the officer to access any information on the device other than the displayed proof of insurance.

2. The person who presents the device to the officer assumes the liability for any resulting damage to the device.

Section 4. Paragraph (b) of subsection (2) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(2) Thirty dollars for all nonmoving traffic violations and:

(b) For all violations of ss. 320.0605, 320.07(1), 322.065, and 322.15(1). A ~~Any~~ person who is cited for a

violation of s. 320.07(1) shall be charged a delinquent fee pursuant to s. 320.07(4).

1. If a person who is cited for a violation of s. 320.0605 or s. 320.07 can show proof of having a valid registration at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain a valid registration certificate must submit an affidavit detailing the reasons for the impossibility or impracticality. The reasons may include, but are not limited to, the fact that the vehicle was sold, stolen, or destroyed; that the state in which the vehicle is registered does not issue a certificate of registration; or that the vehicle is owned by another person.

2. If a person who is cited for a violation of s. 322.03, s. 322.065, or s. 322.15 can show a driver license issued to him or her and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund.

3. If a person who is cited for a violation of s. 316.646 can show proof of security as required by s. 324.021(7) ~~s. 627.733~~, issued to the person and valid at the time of arrest, the clerk of the court may dismiss the case and may assess a

dismissal fee of up to $10, from which the clerk shall remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. A person who finds it impossible or impractical to obtain proof of security must submit an affidavit detailing the reasons for the impracticality. The reasons may include, but are not limited to, the fact that the vehicle has since been sold, stolen, or destroyed~~; that the owner or registrant of the vehicle is not required by s. 627.733 to maintain personal injury protection insurance;~~ or that the vehicle is owned by another person.

Section 5. Paragraphs (a) and (d) of subsection (5) of section 320.02, Florida Statutes, are amended to read:

320.02 Registration required; application for registration; forms.—

(5)(a) Proof that bodily injury liability coverage and property damage liability coverage ~~personal injury protection benefits~~ have been purchased if required under s. 324.022, s. 324.032, or s. 627.742 ~~s. 627.733, that property damage liability coverage has been purchased as required under s. 324.022~~, that bodily injury liability ~~or death~~ coverage has been purchased if required under s. 324.023, and that combined bodily liability insurance and property damage liability insurance have been purchased if required under s. 627.7415 must ~~shall~~ be provided in the manner prescribed by law by the applicant at the time of application for registration of any motor vehicle that

is subject to such requirements. The issuing agent may not ~~shall refuse to~~ issue registration if such proof of purchase is not provided. Insurers shall furnish uniform proof-of-purchase cards in a paper or electronic format in a form prescribed by the department and include the name of the insured's insurance company, the coverage identification number, and the make, year, and vehicle identification number of the vehicle insured. The card must contain a statement notifying the applicant of the penalty specified under s. 316.646(4). The card or insurance policy, insurance policy binder, or certificate of insurance or a photocopy of any of these; an affidavit containing the name of the insured's insurance company, the insured's policy number, and the make and year of the vehicle insured; or such other proof as may be prescribed by the department constitutes ~~shall constitute~~ sufficient proof of purchase. If an affidavit is provided as proof, it must be in substantially the following form:

Under penalty of perjury, I ...(Name of insured)... do hereby certify that I have ...(bodily injury liability and ~~Personal Injury Protection,~~ property damage liability~~, and, if required, Bodily Injury Liability~~)... insurance currently in effect with ...(Name of insurance company)... under ...(policy number)... covering ...(make, year, and vehicle identification number of vehicle).... ...(Signature of Insured)...

Such affidavit must include the following warning:

WARNING: GIVING FALSE INFORMATION IN ORDER TO OBTAIN A VEHICLE REGISTRATION CERTIFICATE IS A CRIMINAL OFFENSE UNDER FLORIDA LAW. ANYONE GIVING FALSE INFORMATION ON THIS AFFIDAVIT IS SUBJECT TO PROSECUTION.

If an application is made through a licensed motor vehicle dealer as required under s. 319.23, the original or a photocopy ~~photostatic copy~~ of such card, insurance policy, insurance policy binder, or certificate of insurance or the original affidavit from the insured must ~~shall~~ be forwarded by the dealer to the tax collector of the county or the Department of Highway Safety and Motor Vehicles for processing. By executing the ~~aforesaid~~ affidavit, a ~~no~~ licensed motor vehicle dealer is not ~~will be~~ liable in damages for any inadequacy, insufficiency, or falsification of any statement contained therein. ~~A card must also indicate the existence of any bodily injury liability insurance voluntarily purchased.~~

(d) The verifying of ~~proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or~~ proof of financial responsibility ~~insurance~~ and the issuance or failure to issue the motor vehicle

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registration under ~~the provisions of~~ this chapter may not be construed in any court as a warranty of the reliability or accuracy of the evidence of such proof, or as meaning that the provisions of any insurance policy furnished as proof of financial responsibility comply with state law. Neither the department nor any tax collector is liable in damages for any inadequacy, insufficiency, falsification, or unauthorized modification of any item of ~~the proof of personal injury protection insurance, proof of property damage liability insurance, proof of combined bodily liability insurance and property damage liability insurance, or~~ proof of financial responsibility before ~~insurance prior to~~, during, or subsequent to the verification of the proof. The issuance of a motor vehicle registration does not constitute prima facie evidence or a presumption of insurance coverage.

Section 6. Paragraph (b) of subsection (1) of section 320.0609, Florida Statutes, is amended to read:

320.0609 Transfer and exchange of registration license plates; transfer fee.—

(1)

(b) The transfer of a license plate from a vehicle disposed of to a newly acquired vehicle does not constitute a new registration. The application for transfer must ~~shall~~ be accepted without requiring proof of ~~personal injury protection or~~ liability insurance.

Section 7. Paragraph (g) is added to subsection (1) of section 320.27, Florida Statutes, and subsection (3) of that section is amended, to read:

320.27 Motor vehicle dealers.—

(1) DEFINITIONS.—The following words, terms, and phrases when used in this section have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(g) "Garage liability insurance" means, beginning January 1, 2021, combined single-limit liability coverage, including property damage and bodily injury liability coverage, in the amount of at least $60,000.

(3) APPLICATION AND FEE.—The ~~application for the~~ license application must ~~shall~~ be in such form as may be prescribed by the department and is ~~shall be~~ subject to such rules ~~with respect thereto~~ as may be so prescribed by the department ~~it~~. Such application must ~~shall~~ be verified by oath or affirmation and must ~~shall~~ contain a full statement of the name and birth date of the person or persons applying for the license ~~therefor~~; the name of the firm or copartnership, with the names and places of residence of all members ~~thereof~~, if such applicant is a firm or copartnership; the names and places of residence of the principal officers, if the applicant is a body corporate or other artificial body; the name of the state under whose laws the corporation is organized; the present and former place or

places of residence of the applicant; and the prior business in which the applicant has been engaged and its ~~the~~ location ~~thereof~~. The ~~Such~~ application must ~~shall~~ describe the exact location of the place of business and must ~~shall~~ state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease must ~~shall~~ be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which must ~~shall~~ be available at all reasonable hours to inspection by the department or any of its inspectors or other employees. The applicant shall certify that the business of a motor vehicle dealer is the principal business that will ~~which shall~~ be conducted at that location. The application must ~~shall~~ contain a statement that the applicant is either franchised by a manufacturer of motor vehicles, in which case the name of each motor vehicle that the applicant is franchised to sell must ~~shall~~ be included, or an independent (nonfranchised) motor vehicle dealer. The application must ~~shall~~ contain other relevant information as may be required by the department. The

applicant shall furnish~~, including~~ evidence, in a form approved by the department, that the applicant is insured under a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy having the coverages and limits of the garage liability insurance coverage in accordance with paragraph (1)(g)~~, which shall include, at a minimum, $25,000 combined single-limit liability coverage including bodily injury and property damage protection and $10,000 personal injury protection~~. However, a salvage motor vehicle dealer as defined in subparagraph (1)(c)5. is exempt from the requirements for garage liability insurance ~~and personal injury protection insurance~~ on those vehicles that cannot be legally operated on roads, highways, or streets in this state. Franchise dealers must submit a garage liability insurance policy, and all other dealers must submit a garage liability insurance policy or a general liability insurance policy coupled with a business automobile policy. Such policy must ~~shall~~ be for the license period, and evidence of a new or continued policy must ~~shall~~ be delivered to the department at the beginning of each license period. Upon making an initial application, the applicant shall pay to the department a fee of $300 in addition to any other fees required by law. Applicants may choose to extend the licensure period for 1 additional year for a total of 2 years. An initial applicant shall pay to the department a fee of $300 for the first year and $75 for the

second year, in addition to any other fees required by law. An applicant for renewal shall pay to the department $75 for a 1-year renewal or $150 for a 2-year renewal, in addition to any other fees required by law. Upon making an application for a change of location, the applicant ~~person~~ shall pay a fee of $50 in addition to any other fees now required by law. The department shall, in the case of every application for initial licensure, verify whether certain facts set forth in the application are true. Each applicant, general partner in the case of a partnership, or corporate officer and director in the case of a corporate applicant shall~~, must~~ file a set of fingerprints with the department for the purpose of determining any prior criminal record or any outstanding warrants. The department shall submit the fingerprints to the Department of Law Enforcement for state processing and forwarding to the Federal Bureau of Investigation for federal processing. The actual cost of state and federal processing must ~~shall~~ be borne by the applicant and is in addition to the fee for licensure. The department may issue a license to an applicant pending the results of the fingerprint investigation, which license is fully revocable if the department subsequently determines that any facts set forth in the application are not true or correctly represented.

Section 8. Paragraph (j) of subsection (3) of section 320.771, Florida Statutes, is amended to read:

320.771 License required of recreational vehicle dealers.—

(3) APPLICATION.—The application for such license shall be in the form prescribed by the department and subject to such rules as may be prescribed by it. The application shall be verified by oath or affirmation and shall contain:

(j) A statement that the applicant is insured under a garage liability insurance policy in accordance with s. 320.27(1)(g)~~, which shall include, at a minimum, $25,000 combined single-limit liability coverage, including bodily injury and property damage protection, and $10,000 personal injury protection,~~ if the applicant is to be licensed as a dealer in, or intends to sell, recreational vehicles.

The department shall, if it deems necessary, cause an investigation to be made to ascertain if the facts set forth in the application are true and shall not issue a license to the applicant until it is satisfied that the facts set forth in the application are true.

Section 9. Subsections (1) and (2) of section 322.251, Florida Statutes, are amended to read:

322.251 Notice of cancellation, suspension, revocation, or disqualification of license.—

(1) All orders of cancellation, suspension, revocation, or disqualification issued under ~~the provisions of~~ this chapter, chapter 318, or chapter 324 must~~, or ss. 627.732-627.734 shall~~

be given either by personal delivery thereof to the licensee whose license is being canceled, suspended, revoked, or disqualified or by deposit in the United States mail in an envelope, first class, postage prepaid, addressed to the licensee at his or her last known mailing address furnished to the department. Such mailing by the department constitutes notification, and any failure by the person to receive the mailed order will not affect or stay the effective date or term of the cancellation, suspension, revocation, or disqualification of the licensee's driving privilege.

(2) The giving of notice and an order of cancellation, suspension, revocation, or disqualification by mail is complete upon expiration of 20 days after deposit in the United States mail for all notices except those issued under chapter 324 ~~or ss. 627.732-627.734~~, which are complete 15 days after deposit in the United States mail. Proof of the giving of notice and an order of cancellation, suspension, revocation, or disqualification in either manner must ~~shall~~ be made by entry in the records of the department that such notice was given. The entry is admissible in the courts of this state and constitutes sufficient proof that such notice was given.

Section 10. Paragraph (a) of subsection (8) of section 322.34, Florida Statutes, is amended to read:

322.34 Driving while license suspended, revoked, canceled, or disqualified.—

(8)(a) Upon the arrest of a person for the offense of driving while the person's driver license or driving privilege is suspended or revoked, the arresting officer shall determine:

1. Whether the person's driver license is suspended or revoked, or the person is under suspension or revocation equivalent status.

2. Whether the person's driver license has remained suspended or revoked, or the person has been under suspension or revocation equivalent status, since a conviction for the offense of driving with a suspended or revoked license.

3. Whether the suspension, revocation, or suspension or revocation equivalent status was made under s. 316.646 ~~or s. 627.733~~, relating to failure to maintain required security, or under s. 322.264, relating to habitual traffic offenders.

4. Whether the driver is the registered owner or co-owner of the vehicle.

Section 11. Section 324.011, Florida Statutes, is amended to read:

324.011 Legislative intent and purpose of chapter.—It is the Legislature's intent of this chapter to ensure that the privilege of owning or operating a motor vehicle in this state is exercised ~~recognize the existing privilege to own or operate a motor vehicle on the public streets and highways of this state when such vehicles are used~~ with due consideration for others' safety ~~others~~ and their property, ~~and~~ to promote safety, and to

provide financial security requirements for ~~such~~ owners and ~~or~~ operators whose responsibility it is to recompense others for injury to person or property caused by the operation of a motor vehicle. Therefore, this chapter requires that every owner or operator of a motor vehicle required to be registered in this state establish, maintain, and ~~it is required herein that the operator of a motor vehicle involved in a crash or convicted of certain traffic offenses meeting the operative provisions of s. 324.051(2) shall respond for such damages and~~ show proof of financial ability to respond for damages arising out of the ownership, maintenance, or use of a motor vehicle ~~in future accidents~~ as a requisite to owning or operating a motor vehicle in this state ~~his or her future exercise of such privileges~~.

Section 12. Subsections (1) and (7) and paragraph (c) of subsection (9) of section 324.021, Florida Statutes, are amended, and subsection (12) is added to that section, to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors,

power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device or mobile carrier as defined in s. 316.003, bicycle, or moped. ~~However, the term "motor vehicle" does not include a motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.~~

(7) PROOF OF FINANCIAL RESPONSIBILITY. ~~That~~ Proof of ability to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle:

(a) Beginning January 1, 2021, with respect to a motor vehicle that is not a commercial motor vehicle, nonpublic sector bus, or for-hire passenger transportation vehicle, in the amount of:

1. Twenty-five thousand dollars for ~~$10,000 because of~~ bodily injury to, or the death of, one person in any one crash and, ~~;~~

~~(b)~~ subject to such limits for one person, in the amount of $50,000 for ~~$20,000 because of~~ bodily injury to, or the death of, two or more persons in any one crash; and

2. ~~(c)~~ Ten thousand dollars for damage ~~In the amount of~~

~~$10,000 because of injury~~ to, or destruction of, property of others in any one crash.~~; and~~

(b)~~(d)~~ With respect to commercial motor vehicles ~~and nonpublic sector buses~~, in the amounts specified in s. 627.7415 ~~ss. 627.7415 and 627.742, respectively~~.

(c) With respect to nonpublic sector buses, in the amounts specified in s. 627.742.

(d) With respect to for-hire passenger transportation vehicles, in the amounts specified in s. 324.032.

(9) OWNER; OWNER/LESSOR.—

(c) *Application.*—

1. The limits on liability in subparagraphs (b)2. and 3. do not apply to an owner of motor vehicles that are used for commercial activity in the owner's ordinary course of business, other than a rental company that rents or leases motor vehicles. For purposes of this paragraph, the term "rental company" includes only an entity that is engaged in the business of renting or leasing motor vehicles to the general public and that rents or leases a majority of its motor vehicles to persons with no direct or indirect affiliation with the rental company. The term also includes a motor vehicle dealer that provides temporary replacement vehicles to its customers for up to 10 days. The term "rental company" also includes:

a. A related rental or leasing company that is a subsidiary of the same parent company as that of the renting or

leasing company that rented or leased the vehicle.

b. The holder of a motor vehicle title or an equity interest in a motor vehicle title if the title or equity interest is held pursuant to or to facilitate an asset-backed securitization of a fleet of motor vehicles used solely in the business of renting or leasing motor vehicles to the general public and under the dominion and control of a rental company, as described in this subparagraph, in the operation of such rental company's business.

2. Furthermore, with respect to commercial motor vehicles as defined in s. 207.002 or s. 320.01 ~~s. 627.732~~, the limits on liability in subparagraphs (b)2. and 3. do not apply if, at the time of the incident, the commercial motor vehicle is being used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq., and that is required pursuant to such act to carry placards warning others of the hazardous cargo, unless at the time of lease or rental either:

a. The lessee indicates in writing that the vehicle will not be used to transport materials found to be hazardous for the purposes of the Hazardous Materials Transportation Authorization Act of 1994, as amended, 49 U.S.C. ss. 5101 et seq.; or

b. The lessee or other operator of the commercial motor vehicle has in effect insurance with limits of at least $5

million ~~$5,000,000~~ combined property damage and bodily injury liability.

(12) FOR-HIRE PASSENGER TRANSPORTATION VEHICLE.—Every for-hire vehicle as defined in s. 320.01(15) which is offered or used to provide transportation for persons, including taxicabs, limousines, and jitneys.

Section 13. Section 324.022, Florida Statutes, is amended to read:

324.022 Financial responsibility requirements ~~for property damage~~.—

(1)(a) Beginning January 1, 2021, every owner or operator of a motor vehicle required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the use of the motor vehicle in the amount of:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for ~~$10,000 because of~~ damage to, or destruction of, property of others in any one crash.

(b) The requirements of paragraph (a) ~~this section~~ may be met by one of the methods established in s. 324.031; by self-insuring as authorized by s. 768.28(16); or by maintaining a

motor vehicle liability insurance policy that ~~an insurance policy providing coverage for property damage liability in the amount of at least $10,000 because of damage to, or destruction of, property of others in any one accident arising out of the use of the motor vehicle. The requirements of this section may also be met by having a policy which~~ provides combined property damage liability and bodily injury liability coverage for any one crash arising out of the ownership, maintenance, or use of a motor vehicle and that conforms to the requirements of s. 324.151 in the amount of at least $60,000 for every owner or operator subject to the financial responsibility required in paragraph (a) ~~$30,000 for combined property damage liability and bodily injury liability for any one crash arising out of the use of the motor vehicle. The policy, with respect to coverage for property damage liability, must meet the applicable requirements of s. 324.151, subject to the usual policy exclusions that have been approved in policy forms by the Office of Insurance Regulation. No insurer shall have any duty to defend uncovered claims irrespective of their joinder with covered claims~~.

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

(a) "Motor vehicle" means any self-propelled vehicle that has four or more wheels and that is of a type designed and required to be licensed for use on the highways of this state, and any trailer or semitrailer designed for use with such vehicle. The term does not include the following:

1. A mobile home as defined in s. 320.01.

2. A motor vehicle that is used in mass transit and designed to transport more than five passengers, exclusive of the operator of the motor vehicle, and that is owned by a municipality, transit authority, or political subdivision of the state.

3. A school bus as defined in s. 1006.25, which must maintain security as required under s. 316.615.

4. A commercial motor vehicle as defined in s. 207.002 or s. 320.01, which must maintain security as required under ss. 324.031 and 627.7415.

5. A nonpublic sector bus, which must maintain security as required under ss. 324.031 and 627.742.

6.~~4.~~ A ~~vehicle providing~~ for-hire passenger transportation vehicle, which must ~~that is subject to the provisions of s. 324.031. A taxicab shall~~ maintain security as required under s. 324.032 ~~s. 324.032(1)~~.

7.~~5.~~ A personal delivery device as defined in s. 316.003.

(b) "Owner" means the person who holds legal title to a motor vehicle or the debtor or lessee who has the right to possession of a motor vehicle that is the subject of a security agreement or lease with an option to purchase.

(3) Each nonresident owner or registrant of a motor vehicle that, whether operated or not, has been physically present within this state for more than 90 days during the

preceding 365 days shall maintain security as required by subsection (1). The security must be ~~that is~~ in effect continuously throughout the period the motor vehicle remains within this state.

(4) An ~~The~~ owner or registrant of a motor vehicle who is ~~exempt from the requirements of this section if she or he is~~ a member of the United States Armed Forces and is called to or on active duty outside the United States in an emergency situation is exempt from this section while he or she~~. The exemption provided by this subsection applies only as long as the member of the Armed Forces~~ is on such active duty. This exemption ~~outside the United States and~~ applies only while the vehicle covered by the security is not operated by any person. Upon receipt of a written request by the insured to whom the exemption provided in this subsection applies, the insurer shall cancel the coverages and return any unearned premium or suspend the security required by this section. Notwithstanding s. 324.0221(2) ~~s. 324.0221(3)~~, the department may not suspend the registration or operator's license of an ~~any~~ owner or registrant of a motor vehicle during the time she or he qualifies for the ~~an~~ exemption under this subsection. An ~~Any~~ owner or registrant of a motor vehicle who qualifies for the ~~an~~ exemption under this subsection shall immediately notify the department before ~~prior to~~ and at the end of the expiration of the exemption.

Section 14. Subsections (1) and (2) of section 324.0221,

Florida Statutes, are amended to read:

324.0221 Reports by insurers to the department; suspension of driver license and vehicle registrations; reinstatement.—

(1)(a) Each insurer that has issued a policy providing ~~personal injury protection coverage or property damage~~ liability coverage shall report the cancellation or nonrenewal thereof to the department within 10 days after the processing date or effective date of each cancellation or nonrenewal. Upon the issuance of a policy providing ~~personal injury protection coverage or property damage~~ liability coverage to a named insured not previously insured by the insurer during that calendar year, the insurer shall report the issuance of the new policy to the department within 10 days. The report must ~~shall~~ be in the form ~~and format~~ and contain any information required by the department and must be provided in a format that is compatible with the data processing capabilities of the department. Failure by an insurer to file proper reports with the department as required by this subsection constitutes a violation of the Florida Insurance Code. These records may ~~shall~~ be used by the department only for enforcement and regulatory purposes, including the generation by the department of data regarding compliance by owners of motor vehicles with the requirements for financial responsibility coverage.

(b) With respect to an insurance policy providing ~~personal injury protection coverage or property damage~~ liability

coverage, each insurer shall notify the named insured, or the first-named insured in the case of a commercial fleet policy, in writing that any cancellation or nonrenewal of the policy will be reported by the insurer to the department. The notice must also inform the named insured that failure to maintain bodily injury liability ~~personal injury protection~~ coverage and property damage liability coverage on a motor vehicle when required by law may result in the loss of registration and driving privileges in this state and inform the named insured of the amount of the reinstatement fees required by this section. This notice is for informational purposes only, and an insurer is not civilly liable for failing to provide this notice.

(2) The department shall suspend, after due notice and an opportunity to be heard, the registration and driver license of any owner or registrant of a motor vehicle for ~~with respect to~~ which security is required under s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 ~~ss. 324.022 and 627.733~~ upon:

(a) The department's records showing that the owner or registrant of such motor vehicle did not have the ~~in full force and effect when~~ required security in full force and effect ~~that complies with the requirements of ss. 324.022 and 627.733~~; or

(b) Notification by the insurer to the department, in a form approved by the department, of cancellation or termination of the required security.

Section 15. Section 324.0222, Florida Statutes, is created

to read:

324.0222 Application of suspensions for failure to maintain security; reinstatement.—All suspensions for failure to maintain required security as required by law in effect before January 1, 2021, remain in full force and effect on or after January 1, 2021. A driver may reinstate a suspended driver license or registration as provided under s. 324.0221.

Section 16. Section 324.023, Florida Statutes, is amended to read:

324.023 Financial responsibility for bodily injury or death.—In addition to any other financial responsibility required by law, every owner or operator of a motor vehicle that is required to be registered in this state, or that is located within this state, and who, regardless of adjudication of guilt, has been found guilty of or entered a plea of guilty or nolo contendere to a charge of driving under the influence under s. 316.193 after October 1, 2007, shall, by one of the methods established in s. 324.031(1)(a) or (b) ~~s. 324.031(1) or (2)~~, establish and maintain the ability to respond in damages for liability on account of accidents arising out of the use of a motor vehicle in the amount of $100,000 because of bodily injury to, or death of, one person in any one crash and, subject to such limits for one person, in the amount of $300,000 because of bodily injury to, or death of, two or more persons in any one crash and in the amount of $50,000 because of property damage in

any one crash. If the owner or operator chooses to establish and maintain such ability by furnishing a certificate of deposit pursuant to s. 324.031(1)(b) ~~s. 324.031(2)~~, such certificate of deposit must be at least $350,000. Such higher limits must be carried for a minimum period of 3 years. If the owner or operator has not been convicted of driving under the influence or a felony traffic offense for a period of 3 years from the date of reinstatement of driving privileges for a violation of s. 316.193, the owner or operator is ~~shall be~~ exempt from this section.

Section 17. Section 324.031, Florida Statutes, is amended to read:

324.031 Manner of proving financial responsibility.—

(1) ~~The owner or operator of a taxicab, limousine, jitney, or any other for-hire passenger transportation vehicle may prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.021(8) or s. 324.151, which policy is issued by an insurance carrier which is a member of the Florida Insurance Guaranty Association.~~ The operator or owner of a motor vehicle other than a for-hire passenger transportation vehicle ~~any other vehicle~~ may prove his or her financial responsibility by:

(a) ~~(1)~~ Furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in ss. 324.021(8) and 324.151 which provides liability coverage for the motor vehicle

being operated;

(b) ~~(2)~~ Furnishing a certificate of self-insurance showing a deposit of cash in accordance with s. 324.161; or

(c) ~~(3)~~ Furnishing a certificate of self-insurance issued by the department in accordance with s. 324.171.

(2)(a) Beginning January 1, 2021, any person~~, including any firm, partnership, association, corporation, or other person, other than a natural person,~~ electing to use the method of proof specified in paragraph (1)(b) ~~subsection (2)~~ shall furnish a certificate of deposit equal to the number of vehicles owned times $60,000 ~~$30,000~~, to a maximum of $240,000. ~~$120,000.~~

(b) In addition, any such person~~, other than a natural person,~~ shall maintain insurance providing coverage conforming to the requirements of s. 324.151 in excess of the amount of the certificate of deposit, with limits of at least:

1. One hundred twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $250,000 for bodily injury to, or the death of, two or more persons in any one crash, and $50,000 for damage to, or destruction of, property of others in any one crash; or

2. Three hundred thousand dollars for combined bodily injury liability and property damage liability for any one crash ~~$10,000/20,000/10,000 or $30,000 combined single limits, and such excess insurance shall provide minimum limits of~~

~~$125,000/250,000/50,000 or $300,000 combined single limits. These increased limits shall not affect the requirements for proving financial responsibility under s. 324.032(1).~~

Section 18. Section 324.032, Florida Statutes, is amended to read:

324.032 ~~Manner of proving~~ Financial responsibility for~~;~~ for-hire passenger transportation vehicles. ~~Notwithstanding the provisions of s. 324.031:~~

(1) An owner or lessee of a for-hire passenger transportation vehicle that is required to be registered in this state shall establish and continuously maintain the ability to respond in damages for liability on account of accidents arising out of the ownership, maintenance, or use of the for-hire passenger transportation vehicle, in the amount of:

(a) One hundred twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $250,000 for bodily injury to, or the death of, two or more persons in any one crash; and ~~A person who is either the owner or a lessee required to maintain insurance under s. 627.733(1)(b) and who operates one or more taxicabs, limousines, jitneys, or any other for-hire passenger transportation vehicles may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy, but with minimum limits of $125,000/250,000/50,000.~~

(b) Fifty thousand dollars for damage to, or destruction of, property of others in any one crash ~~A person who is either the owner or a lessee required to maintain insurance under s. 324.021(9)(b) and who operates limousines, jitneys, or any other for-hire passenger vehicles, other than taxicabs, may prove financial responsibility by furnishing satisfactory evidence of holding a motor vehicle liability policy as defined in s. 324.031~~.

(2) Except as provided in subsection (3), the requirements of this section must be met by the owner or lessee providing satisfactory evidence of holding a motor vehicle liability policy conforming to the requirements of s. 324.151 which is issued by an insurance carrier that is a member of the Florida Insurance Guaranty Association.

(3) ~~(2)~~ An owner or a lessee who ~~is required to maintain insurance under s. 324.021(9)(b) and who~~ operates at least 300 ~~taxicabs, limousines, jitneys, or any other~~ for-hire passenger transportation vehicles may provide financial responsibility by complying with ~~the provisions of~~ s. 324.171, which must ~~such compliance to~~ be demonstrated by maintaining at its principal place of business an audited financial statement, prepared in accordance with generally accepted accounting principles, and providing to the department a certification issued by a certified public accountant that the applicant's net worth is at least equal to the requirements of s. 324.171 as determined by

the Office of Insurance Regulation of the Financial Services Commission, including claims liabilities in an amount certified as adequate by a Fellow of the Casualty Actuarial Society.

Upon request by the department, the applicant shall ~~must~~ provide the department at the applicant's principal place of business in this state access to the applicant's underlying financial information and financial statements that provide the basis of the certified public accountant's certification. The applicant shall reimburse the requesting department for all reasonable costs incurred by it in reviewing the supporting information. The maximum amount of self-insurance permissible under this subsection is $300,000 and must be stated on a per-occurrence basis, and the applicant shall maintain adequate excess insurance issued by an authorized or eligible insurer licensed or approved by the Office of Insurance Regulation. All risks self-insured shall remain with the owner or lessee providing it, and the risks are not transferable to any other person, unless a policy complying with subsections (1) and (2) ~~subsection (1)~~ is obtained.

Section 19. Paragraph (b) of subsection (2) of section 324.051, Florida Statutes, is amended to read:

324.051 Reports of crashes; suspensions of licenses and registrations.—

(2)

(b) This subsection does ~~shall~~ not apply:

1. To such operator or owner if such operator or owner had in effect at the time of such crash or traffic conviction a motor vehicle ~~an automobile~~ liability policy with respect to all of the registered motor vehicles owned by such operator or owner.

2. To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such crash or traffic conviction a motor vehicle ~~an automobile~~ liability policy or bond with respect to his or her operation of motor vehicles not owned by him or her.

3. To such operator or owner if the liability of such operator or owner for damages resulting from such crash is, in the judgment of the department, covered by any other form of liability insurance or bond.

4. To any person who has obtained from the department a certificate of self-insurance, in accordance with s. 324.171, or to any person operating a motor vehicle for such self-insurer.

No such policy or bond shall be effective under this subsection unless it contains limits of not less than those specified in s. 324.021(7).

Section 20. Section 324.071, Florida Statutes, is amended to read:

324.071 Reinstatement; renewal of license; reinstatement

fee.—An ~~Any~~ operator or owner whose license or registration has been suspended pursuant to s. 324.051(2), s. 324.072, s. 324.081, or s. 324.121 may effect its reinstatement upon compliance with ~~the provisions of~~ s. 324.051(2)(a)3. or 4., or s. 324.081(2) and (3), as the case may be, and with one of the provisions of s. 324.031 and upon payment to the department of a nonrefundable reinstatement fee of $15. Only one such fee may ~~shall~~ be paid by any one person regardless ~~irrespective~~ of the number of licenses and registrations to be then reinstated or issued to such person. ~~All~~ Such fees must ~~shall~~ be deposited to a department trust fund. If ~~When~~ the reinstatement of any license or registration is effected by compliance with s. 324.051(2)(a)3. or 4., the department may ~~shall~~ not renew the license or registration within ~~a period of~~ 3 years after ~~from~~ such reinstatement, nor may ~~shall~~ any other license or registration be issued in the name of such person, unless the operator continues ~~is continuing~~ to comply with ~~one of the provisions of~~ s. 324.031.

Section 21. Subsection (1) of section 324.091, Florida Statutes, is amended to read:

324.091 Notice to department; notice to insurer.—

(1) Each owner and operator involved in a crash or conviction case within the purview of this chapter shall furnish evidence of ~~automobile liability insurance or~~ motor vehicle liability insurance within 14 days after the date of the mailing

of notice of crash by the department in the form and manner as it may designate. Upon receipt of evidence that a ~~an automobile liability policy or~~ motor vehicle liability policy was in effect at the time of the crash or conviction case, the department shall forward to the insurer such information for verification in a method as determined by the department. The insurer shall respond to the department within 20 days after the notice as to whether ~~or not~~ such information is valid. If the department determines that a ~~an automobile liability policy or~~ motor vehicle liability policy was not in effect and did not provide coverage for both the owner and the operator, it must ~~shall~~ take action as it is authorized to do under this chapter.

Section 22. Section 324.151, Florida Statutes, is amended to read:

324.151 Motor vehicle liability policies; required provisions.—

(1) A motor vehicle liability policy that serves as ~~to be~~ proof of financial responsibility under s. 324.031(1)(a) must ~~s. 324.031(1), shall~~ be issued to owners or operators of motor vehicles under the following provisions:

(a) A motor vehicle ~~An owner's~~ liability insurance policy issued to an owner of a motor vehicle required to be registered in this state must ~~shall~~ designate by explicit description or by appropriate reference all motor vehicles for ~~with respect to~~ which coverage is thereby granted. The policy must ~~and shall~~

insure the person or persons ~~owner~~ named therein and, except for a named driver excluded pursuant to s. 627.747, must insure any resident relative of a named insured ~~other person as operator using such motor vehicle or motor vehicles with the express or implied permission of such owner against loss~~ from the liability imposed by law for damage arising out of the ownership, maintenance, or use of any ~~such~~ motor vehicle ~~or motor vehicles within the United States or the Dominion of Canada, subject to limits, exclusive of interest and costs with respect to each such motor vehicle as is provided for under s. 324.021(7)~~. Except for a named driver excluded pursuant to s. 627.747, the policy must also insure any person operating an insured motor vehicle with the express or implied permission of a named insured against loss from the liability imposed by law for damage arising out of the use of the insured vehicle. However, the insurer may include provisions in its policy excluding liability coverage for a motor vehicle not designated as an insured vehicle on the policy if such motor vehicle does not qualify as a newly acquired vehicle, does not qualify as a temporary substitute vehicle, and was owned by the insured or was furnished for an insured's regular use for more than 30 consecutive days before the event giving rise to the claim. Insurers may make available, with respect to property damage liability coverage, a deductible amount not to exceed $500. In the event of a property damage loss covered by a policy

containing a property damage deductible provision, the insurer shall pay to the third-party claimant the amount of any property damage liability settlement or judgment, subject to policy limits, as if no deductible existed.

(b) A motor vehicle liability insurance policy issued to a person who does not own a motor vehicle must ~~An operator's motor vehicle liability policy of insurance shall~~ insure the person or persons named therein against loss from the liability imposed ~~upon him or her~~ by law for damages arising out of the use ~~by the person~~ of any motor vehicle not owned by him or her~~, with the same territorial limits and subject to the same limits of liability as referred to above with respect to an owner's policy of liability insurance~~.

(c) All such motor vehicle liability policies must provide liability coverage with limits, exclusive of interest and costs, as specified under s. 324.021(7) for accidents occurring within the United States or Canada. The policies must ~~shall~~ state the name and address of the named insured, the coverage afforded by the policy, the premium charged therefor, the policy period, and the limits of liability, and must ~~shall~~ contain an agreement or be endorsed that insurance is provided in accordance with the coverage defined in this chapter ~~as respects bodily injury and death or property damage or both~~ and is subject to ~~all provisions of~~ this chapter. The ~~Said~~ policies must ~~shall~~ also contain a provision that the satisfaction by an insured of a

judgment for such injury or damage may ~~shall~~ not be a condition precedent to the right or duty of the insurance carrier to make payment on account of such injury or damage, and must ~~shall~~ also contain a provision that bankruptcy or insolvency of the insured or of the insured's estate may ~~shall~~ not relieve the insurance carrier of any of its obligations under the ~~said~~ policy.

(2) ~~The provisions of~~ This section is ~~shall~~ not ~~be~~ applicable to any motor vehicle ~~automobile~~ liability policy unless and until it is furnished as proof of financial responsibility for the future pursuant to s. 324.031, and then applies only from ~~and after~~ the date the ~~said~~ policy is ~~so~~ furnished.

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

(a) "Newly acquired vehicle" means a vehicle owned by a named insured or resident relative of the named insured which was acquired within 30 days before an accident.

(b) "Resident relative" means a person related to a named insured by any degree by blood, marriage, or adoption, including a ward or foster child, who usually makes his or her home in the same family unit or residence as the named insured, whether or not he or she temporarily lives elsewhere.

(c) "Temporary substitute vehicle" means any motor vehicle as defined in s. 320.01(1) which is not owned by the named insured and which is temporarily used with the permission of the owner as a substitute for the owned motor vehicle designated on

the policy when the owned vehicle is withdrawn from normal use because of breakdown, repair, servicing, loss, or destruction.

Section 23. Section 324.161, Florida Statutes, is amended to read:

324.161 Proof of financial responsibility; deposit.—If a person elects to prove his or her financial responsibility under the method of proof specified in s. 324.031(1)(b), he or she annually must obtain and submit to the department proof of a certificate of deposit in the amount required under s. 324.031(2) from a financial institution insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration ~~Annually, before any certificate of insurance may be issued to a person, including any firm, partnership, association, corporation, or other person, other than a natural person, proof of a certificate of deposit of $30,000 issued and held by a financial institution must be submitted to the department~~. A power of attorney will be issued to and held by the department and may be executed upon a judgment issued against such person making the deposit, for damages for ~~because of~~ bodily injury to or death of any person or for damages for ~~because of~~ injury to or destruction of property resulting from the use or operation of any motor vehicle occurring after such deposit was made. Money so deposited is ~~shall~~ not ~~be~~ subject to attachment or execution unless such attachment or execution arises ~~shall arise~~ out of a lawsuit ~~suit~~ for such damages ~~as~~

~~aforesaid~~.

Section 24. Subsections (1) and (2) of section 324.171, Florida Statutes, are amended to read:

324.171 Self-insurer.—

(1) A ~~Any~~ person may qualify as a self-insurer by obtaining a certificate of self-insurance from the department. ~~which may, in its discretion and~~ Upon application of such a person, the department may issue a ~~said~~ certificate of self-insurance to an applicant who satisfies ~~when such person has satisfied~~ the requirements of this section. Effective January 1, 2021 ~~to qualify as a self-insurer under this section~~:

(a) A private individual with private passenger vehicles shall possess a net unencumbered worth of at least $100,000 ~~$40,000~~.

(b) A person, including any firm, partnership, association, corporation, or other person, other than a natural person, shall:

1. Possess a net unencumbered worth of at least $100,000 ~~$40,000~~ for the first motor vehicle and $50,000 ~~$20,000~~ for each additional motor vehicle; or

2. Maintain sufficient net worth, in an amount determined by the department, to be financially responsible for potential losses. The department annually shall determine the minimum net worth sufficient to satisfy this subparagraph ~~as determined annually by the department,~~ pursuant to rules adopted

~~promulgated~~ by the department~~,~~ with the assistance of the Office of Insurance Regulation of the Financial Services Commission~~, to be financially responsible for potential losses~~. The rules must consider any ~~shall take into consideration~~ excess insurance carried by the applicant. The department's determination must ~~shall~~ be based upon reasonable actuarial principles considering the frequency, severity, and loss development of claims incurred by casualty insurers writing coverage on the type of motor vehicles for which a certificate of self-insurance is desired.

(c) The owner of a commercial motor vehicle, as defined in s. 207.002 or s. 320.01, may qualify as a self-insurer subject to the standards provided ~~for~~ in subparagraph (b)2.

(2) The self-insurance certificate must ~~shall~~ provide limits of liability insurance in the amounts specified under s. 324.021(7) ~~or s. 627.7415 and shall provide personal injury protection coverage under s. 627.733(3)(b)~~.

Section 25. Section 324.251, Florida Statutes, is amended to read:

324.251 Short title.—This chapter may be cited as the "Financial Responsibility Law of 2020 ~~1955~~" and is ~~shall become~~ effective at 12:01 a.m., January 1, 2021 ~~October 1, 1955~~.

Section 26. Subsection (4) of section 400.9905, Florida Statutes, is amended to read:

400.9905 Definitions.—

(4)(a) "Clinic" means an entity where health care services

are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider. As used in this part, the term does not include and the licensure requirements of this part do not apply to:

1.~~(a)~~ Entities licensed or registered by the state under chapter 395; entities licensed or registered by the state and providing only health care services within the scope of services authorized under their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services or other health care services by licensed practitioners solely within a hospital licensed under chapter 395.

2.~~(b)~~ Entities that own, directly or indirectly, entities licensed or registered by the state pursuant to chapter 395; entities that own, directly or indirectly, entities licensed or registered by the state and providing only health care services

within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

3.~~(c)~~ Entities that are owned, directly or indirectly, by an entity licensed or registered by the state pursuant to chapter 395; entities that are owned, directly or indirectly, by an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and

Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital under chapter 395.

4.~~(d)~~ Entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state pursuant to chapter 395; entities that are under common ownership, directly or indirectly, with an entity licensed or registered by the state and providing only health care services within the scope of services authorized pursuant to their respective licenses under ss. 383.30-383.332, chapter 390, chapter 394, chapter 397, this chapter except part X, chapter 429, chapter 463, chapter 465, chapter 466, chapter 478, chapter 484, or chapter 651; end-stage renal disease providers authorized under 42 C.F.R. part 405, subpart U; providers certified under 42 C.F.R. part 485, subpart B or subpart H; providers certified by the Centers for Medicare and Medicaid Services under the federal Clinical Laboratory Improvement Amendments and the federal rules adopted thereunder; or any entity that provides neonatal or pediatric hospital-based health care services by licensed practitioners solely within a hospital licensed under chapter 395.

5.~~(e)~~ An entity that is exempt from federal taxation under 26 U.S.C. s. 501(c)(3) or (4), an employee stock ownership plan

under 26 U.S.C. s. 409 that has a board of trustees at least two-thirds of which are Florida-licensed health care practitioners and provides only physical therapy services under physician orders, any community college or university clinic, and any entity owned or operated by the federal or state government, including agencies, subdivisions, or municipalities thereof.

6.~~(f)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by physicians covered by s. 627.419, that is directly supervised by one or more of such physicians, and that is wholly owned by one or more of those physicians or by a physician and the spouse, parent, child, or sibling of that physician.

7.~~(g)~~ A sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under chapter 457, chapter 458, chapter 459, chapter 460, chapter 461, chapter 462, chapter 463, chapter 466, chapter 467, chapter 480, chapter 484, chapter 486, chapter 490, chapter 491, or part I, part III, part X, part XIII, or part XIV of chapter 468, or s. 464.012, and that is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in this subparagraph ~~paragraph~~ and the spouse, parent, child, or sibling of a licensed health care practitioner if one of the owners who is a licensed health care practitioner is supervising the

business activities and is legally responsible for the entity's compliance with all federal and state laws. However, a health care practitioner may not supervise services beyond the scope of the practitioner's license, except that, for the purposes of this part, a clinic owned by a licensee in s. 456.053(3)(b) which provides only services authorized pursuant to s. 456.053(3)(b) may be supervised by a licensee specified in s. 456.053(3)(b).

8.~~(h)~~ Clinical facilities affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows.

9.~~(i)~~ Entities that provide only oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 or entities that provide oncology or radiation therapy services by physicians licensed under chapter 458 or chapter 459 which are owned by a corporation whose shares are publicly traded on a recognized stock exchange.

10.~~(j)~~ Clinical facilities affiliated with a college of chiropractic accredited by the Council on Chiropractic Education at which training is provided for chiropractic students.

11.~~(k)~~ Entities that provide licensed practitioners to staff emergency departments or to deliver anesthesia services in facilities licensed under chapter 395 and that derive at least 90 percent of their gross annual revenues from the provision of such services. Entities claiming an exemption from licensure

under this subparagraph ~~paragraph~~ must provide documentation demonstrating compliance.

12.~~(l)~~ Orthotic, prosthetic, pediatric cardiology, or perinatology clinical facilities or anesthesia clinical facilities that are not otherwise exempt under subparagraph 1. or subparagraph 11. ~~paragraph (a) or paragraph (k)~~ and that are a publicly traded corporation or are wholly owned, directly or indirectly, by a publicly traded corporation. As used in this subparagraph ~~paragraph~~, a publicly traded corporation is a corporation that issues securities traded on an exchange registered with the United States Securities and Exchange Commission as a national securities exchange.

13.~~(m)~~ Entities that are owned by a corporation that has $250 million or more in total annual sales of health care services provided by licensed health care practitioners where one or more of the persons responsible for the operations of the entity is a health care practitioner who is licensed in this state and who is responsible for supervising the business activities of the entity and is responsible for the entity's compliance with state law for purposes of this part.

14.~~(n)~~ Entities that employ 50 or more licensed health care practitioners licensed under chapter 458 or chapter 459 where the billing for medical services is under a single tax identification number. The application for exemption under this subsection must include ~~shall contain information that includes:~~

the name, residence, and business address and telephone ~~phone~~ number of the entity that owns the practice; a complete list of the names and contact information of all the officers and directors of the corporation; the name, residence address, business address, and medical license number of each licensed Florida health care practitioner employed by the entity; the corporate tax identification number of the entity seeking an exemption; a listing of health care services to be provided by the entity at the health care clinics owned or operated by the entity; and a certified statement prepared by an independent certified public accountant which states that the entity and the health care clinics owned or operated by the entity have not received payment for health care services under medical payments ~~personal injury protection~~ insurance coverage for the preceding year. If the agency determines that an entity that ~~which~~ is exempt under this subsection has received payments for medical services under medical payments ~~personal injury protection~~ insurance coverage, the agency may deny or revoke the exemption from licensure under this subsection.

(b) Notwithstanding paragraph (a) ~~this subsection~~, an entity is ~~shall be~~ deemed a clinic and must be licensed under this part in order to receive medical payments coverage reimbursement under s. 627.7265 unless the entity is: ~~the Florida Motor Vehicle No-Fault Law, ss. 627.730-627.7405, unless exempted under s. 627.736(5)(h).~~

1. 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. Wholly owned by a dentist licensed under chapter 466, or by the dentist and the spouse, parent, child, or sibling of the dentist;

3. 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. A clinical facility affiliated with an accredited medical school at which training is provided for medical students, residents, or fellows;

7. Certified under 42 C.F.R. part 485, subpart H; or

8. Owned by a publicly traded corporation, either directly or indirectly through its subsidiaries, which 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 are responsible for supervising the business activities of the

entity and the entity's compliance with state law for purposes of this subsection.

Section 27. Subsection (5) of section 400.991, Florida Statutes, is amended to read:

400.991 License requirements; background screenings; prohibitions.—

(5) All agency forms for licensure application or exemption from licensure under this part must contain the following statement:

INSURANCE FRAUD NOTICE.—A person commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes, if the person ~~who~~ knowingly submits a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400, Florida Statutes, with the intent to use the license, exemption from licensure, or demonstration of compliance to provide services or seek reimbursement under a motor vehicle liability insurance policy's medical payments coverage ~~the Florida Motor Vehicle No-Fault Law, commits a fraudulent insurance act, as defined in s. 626.989, Florida Statutes~~. A person who presents a claim for

benefits under medical payments coverage, ~~personal injury protection benefits~~ knowing that the payee knowingly submitted such health care clinic application or document, commits insurance fraud, as defined in s. 817.234, Florida Statutes.

Section 28. Paragraph (g) of subsection (1) of section 400.9935, Florida Statutes, is amended to read:

400.9935 Clinic responsibilities.—

(1) Each clinic shall appoint a medical director or clinic director who shall agree in writing to accept legal responsibility for the following activities on behalf of the clinic. The medical director or the clinic director shall:

(g) Conduct systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful. Upon discovery of an unlawful charge, the medical director or clinic director shall take immediate corrective action. If the clinic performs only the technical component of magnetic resonance imaging, static radiographs, computed tomography, or positron emission tomography, and provides the professional interpretation of such services, in a fixed facility that is accredited by a national accrediting organization that is approved by the Centers for Medicare and Medicaid Services for magnetic resonance imaging and advanced diagnostic imaging services and if, in the preceding quarter, the percentage of scans performed by that clinic which was billed to motor vehicle

~~all personal injury protection~~ insurance carriers under medical payments coverage was less than 15 percent, the chief financial officer of the clinic may, in a written acknowledgment provided to the agency, assume the responsibility for the conduct of the systematic reviews of clinic billings to ensure that the billings are not fraudulent or unlawful.

Section 29. Subsection (28) of section 409.901, Florida Statutes, is amended to read:

409.901 Definitions; ss. 409.901-409.920.—As used in ss. 409.901-409.920, except as otherwise specifically provided, the term:

(28) "Third-party benefit" means any benefit that is or may be available at any time through contract, court award, judgment, settlement, agreement, or any arrangement between a third party and any person or entity, including, without limitation, a Medicaid recipient, a provider, another third party, an insurer, or the agency, for any Medicaid-covered injury, illness, goods, or services, including costs of medical services related thereto, for bodily ~~personal~~ injury or for death of the recipient, but specifically excluding ~~policies of~~ life insurance policies on the recipient, unless available under terms of the policy to pay medical expenses before ~~prior to~~ death. The term includes, without limitation, collateral, as defined in this section; ~~,~~ health insurance; ~~,~~ any benefit under a health maintenance organization, a preferred provider

arrangement, a prepaid health clinic, liability insurance, uninsured motorist insurance, or medical payments coverage; or ~~personal injury protection coverage,~~ medical benefits under workers' compensation, and any obligation under law or equity to provide medical support.

Section 30. Paragraph (f) of subsection (11) of section 409.910, Florida Statutes, is amended to read:

409.910 Responsibility for payments on behalf of Medicaid-eligible persons when other parties are liable.—

(11) The agency may, as a matter of right, in order to enforce its rights under this section, institute, intervene in, or join any legal or administrative proceeding in its own name in one or more of the following capacities: individually, as subrogee of the recipient, as assignee of the recipient, or as lienholder of the collateral.

(f) Notwithstanding any provision in this section to the contrary, in the event of an action in tort against a third party in which the recipient or his or her legal representative is a party which results in a judgment, award, or settlement from a third party, the amount recovered shall be distributed as follows:

1. After attorney ~~attorney's~~ fees and taxable costs as defined by the Florida Rules of Civil Procedure, one-half of the remaining recovery shall be paid to the agency up to the total amount of medical assistance provided by Medicaid.

2. The remaining amount of the recovery shall be paid to the recipient.

3. For purposes of calculating the agency's recovery of medical assistance benefits paid, the fee for services of an attorney retained by the recipient or his or her legal representative shall be calculated at 25 percent of the judgment, award, or settlement.

4. Notwithstanding any other provision of this section to the contrary, the agency shall be entitled to all medical coverage benefits up to the total amount of medical assistance provided by Medicaid. For purposes of this paragraph, the term "medical coverage" means any benefits under health insurance, a health maintenance organization, a preferred provider arrangement, or a prepaid health clinic, and the portion of benefits designated for medical payments under ~~coverage for~~ workers' compensation coverage, motor vehicle insurance coverage, ~~personal injury protection,~~ and casualty coverage.

Section 31. Paragraph (k) of subsection (2) of section 456.057, Florida Statutes, is amended to read:

456.057 Ownership and control of patient records; report or copies of records to be furnished; disclosure of information.—

(2) As used in this section, the terms "records owner," "health care practitioner," and "health care practitioner's employer" do not include any of the following persons or

entities; furthermore, the following persons or entities are not authorized to acquire or own medical records, but are authorized under the confidentiality and disclosure requirements of this section to maintain those documents required by the part or chapter under which they are licensed or regulated:

(k) Persons or entities practicing under s. 627.7265 ~~s. 627.736(7)~~.

Section 32. Paragraphs (ee) and (ff) of subsection (1) of section 456.072, Florida Statutes, are amended 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:

(ee) With respect to making a medical payments coverage ~~personal injury protection~~ claim under s. 627.7265 ~~as required by s. 627.736~~, intentionally submitting a claim, statement, or bill that has been upcoded. As used in this paragraph, the term "upcoded" means an action that submits a billing code that would result in a greater payment amount than would be paid using a billing code that accurately describes the services performed. The term does not include an otherwise lawful bill by a magnetic resonance imaging facility, which globally combines both technical and professional components, if the amount of the global bill is not more than the components if billed separately; however, payment of such a bill constitutes payment

in full for all components of such service ~~"upcoded" as defined in s. 627.732~~.

(ff) With respect to making a medical payments coverage ~~personal injury protection~~ claim as required under s. 627.7265 ~~by s. 627.736~~, intentionally submitting a claim, statement, or bill for payment of services that were not rendered.

Section 33. Paragraphs (i) and (o) of subsection (1) of section 626.9541, Florida Statutes, are amended to read:

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

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

(i) *Unfair claim settlement practices.*—

1. Attempting to settle claims on the basis of an application, when serving as a binder or intended to become a part of the policy, or any other material document which was altered without notice to, or knowledge or consent of, the insured;

2. A material misrepresentation made to an insured or any other person having an interest in the proceeds payable under such contract or policy, for the purpose and with the intent of effecting settlement of such claims, loss, or damage under such contract or policy on less favorable terms than those provided in, and contemplated by, such contract or policy; ~~or~~

3. Committing or performing with such frequency as to indicate a general business practice any of the following:

a. Failing to adopt and implement standards for the proper investigation of claims;

b. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

c. Failing to acknowledge and act promptly upon communications with respect to claims;

d. Denying claims without conducting reasonable investigations based upon available information;

e. Failing to affirm or deny full or partial coverage of claims, and, as to partial coverage, the dollar amount or extent of coverage, or failing to provide a written statement that the claim is being investigated, upon the written request of the insured within 30 days after proof-of-loss statements have been completed;

f. Failing to promptly provide a reasonable explanation in writing to the insured of the basis in the insurance policy, in relation to the facts or applicable law, for denial of a claim or for the offer of a compromise settlement;

g. Failing to promptly notify the insured of any additional information necessary for the processing of a claim; or

h. Failing to clearly explain the nature of the requested information and the reasons why such information is necessary.

~~i. Failing to pay personal injury protection insurance claims within the time periods required by s. 627.736(4)(b). The office may order the insurer to pay restitution to a policyholder, medical provider, or other claimant, including interest at a rate consistent with the amount set forth in s. 55.03(1), for the time period within which an insurer fails to pay claims as required by law. Restitution is in addition to any other penalties allowed by law, including, but not limited to, the suspension of the insurer's certificate of authority.~~

4. Failing to pay undisputed amounts of partial or full benefits owed under first-party property insurance policies within 90 days after an insurer receives notice of a residential property insurance claim, determines the amounts of partial or full benefits, and agrees to coverage, unless payment of the undisputed benefits is prevented by an act of God, prevented by the impossibility of performance, or due to actions by the insured or claimant that constitute fraud, lack of cooperation, or intentional misrepresentation regarding the claim for which benefits are owed.

(o) *Illegal dealings in premiums; excess or reduced charges for insurance.*—

1. Knowingly collecting any sum as a premium or charge for insurance, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by the insurer, by an insurance policy issued by an insurer as

permitted by this code.

2. Knowingly collecting as a premium or charge for insurance any sum in excess of or less than the premium or charge applicable to such insurance, in accordance with the applicable classifications and rates as filed with and approved by the office, and as specified in the policy; or, in cases when classifications, premiums, or rates are not required by this code to be so filed and approved, premiums and charges collected from a Florida resident in excess of or less than those specified in the policy and as fixed by the insurer. Notwithstanding any other provision of law, this provision shall not be deemed to prohibit the charging and collection, by surplus lines agents licensed under part VIII of this chapter, of the amount of applicable state and federal taxes, or fees as authorized by s. 626.916(4), in addition to the premium required by the insurer or the charging and collection, by licensed agents, of the exact amount of any discount or other such fee charged by a credit card facility in connection with the use of a credit card, as authorized by subparagraph (q)3., in addition to the premium required by the insurer. This subparagraph shall not be construed to prohibit collection of a premium for a universal life or a variable or indeterminate value insurance policy made in accordance with the terms of the contract.

3.a. Imposing or requesting an additional premium for bodily injury liability coverage, property damage liability

coverage ~~a policy of motor vehicle liability, personal injury protection~~, medical payments coverage ~~payment~~, or collision coverage in a motor vehicle liability insurance policy ~~insurance or any combination thereof~~ or refusing to renew the policy solely because the insured was involved in a motor vehicle accident unless the insurer's file contains information from which the insurer in good faith determines that the insured was substantially at fault in the accident.

b. An insurer which imposes and collects such a surcharge or which refuses to renew such policy shall, in conjunction with the notice of premium due or notice of nonrenewal, notify the named insured that he or she is entitled to reimbursement of such amount or renewal of the policy under the conditions listed below and will subsequently reimburse him or her or renew the policy, if the named insured demonstrates that the operator involved in the accident was:

(I) Lawfully parked;

(II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;

(III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;

(IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;

(V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;

(VI) Finally adjudicated not to be liable by a court of competent jurisdiction;

(VII) In receipt of a traffic citation which was dismissed or nolle prossed; or

(VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

c. In addition to the other provisions of this subparagraph, an insurer may not fail to renew a policy if the insured has had only one accident in which he or she was at fault within the current 3-year period. However, an insurer may nonrenew a policy for reasons other than accidents in accordance with s. 627.728. This subparagraph does not prohibit nonrenewal of a policy under which the insured has had three or more accidents, regardless of fault, during the most recent 3-year period.

4. Imposing or requesting an additional premium for, or refusing to renew, a policy for motor vehicle insurance solely because the insured committed a noncriminal traffic infraction

as described in s. 318.14 unless the infraction is:

a. A second infraction committed within an 18-month period, or a third or subsequent infraction committed within a 36-month period.

b. A violation of s. 316.183, when such violation is a result of exceeding the lawful speed limit by more than 15 miles per hour.

5. Upon the request of the insured, the insurer and licensed agent shall supply to the insured the complete proof of fault or other criteria which justifies the additional charge or cancellation.

6. No insurer shall impose or request an additional premium for motor vehicle insurance, cancel or refuse to issue a policy, or refuse to renew a policy because the insured or the applicant is a handicapped or physically disabled person, so long as such handicap or physical disability does not substantially impair such person's mechanically assisted driving ability.

7. No insurer may cancel or otherwise terminate any insurance contract or coverage, or require execution of a consent to rate endorsement, during the stated policy term for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured with the same exposure at a higher premium rate or continuing an existing contract or coverage with the same exposure at an increased

premium.

8. No insurer may issue a nonrenewal notice on any insurance contract or coverage, or require execution of a consent to rate endorsement, for the purpose of offering to issue, or issuing, a similar or identical contract or coverage to the same insured at a higher premium rate or continuing an existing contract or coverage at an increased premium without meeting any applicable notice requirements.

9. No insurer shall, with respect to premiums charged for motor vehicle insurance, unfairly discriminate solely on the basis of age, sex, marital status, or scholastic achievement.

10. Imposing or requesting an additional premium for motor vehicle comprehensive or uninsured motorist coverage solely because the insured was involved in a motor vehicle accident or was convicted of a moving traffic violation.

11. No insurer shall cancel or issue a nonrenewal notice on any insurance policy or contract without complying with any applicable cancellation or nonrenewal provision required under the Florida Insurance Code.

12. No insurer shall impose or request an additional premium, cancel a policy, or issue a nonrenewal notice on any insurance policy or contract because of any traffic infraction when adjudication has been withheld and no points have been assessed pursuant to s. 318.14(9) and (10). However, this subparagraph does not apply to traffic infractions involving

accidents in which the insurer has incurred a loss due to the fault of the insured.

Section 34. Paragraph (a) of subsection (1) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Investigative and Forensic Services; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(1) For the purposes of this section:

(a) A person commits a "fraudulent insurance act" if the person:

1. Knowingly and with intent to defraud presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, self-insurer, self-insurance fund, servicing corporation, purported insurer, broker, or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a claim for payment or other benefit pursuant to any insurance policy, which the person knows to contain materially false information concerning any fact material thereto or if the person conceals, for the purpose of misleading another, information concerning any fact material thereto.

2. Knowingly submits:

a. A false, misleading, or fraudulent application or other

document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400 with an intent to use the license, exemption from licensure, or demonstration of compliance to provide services or seek reimbursement under a motor vehicle liability insurance policy's medical payments coverage ~~the Florida Motor Vehicle No-Fault Law~~.

b. A claim for payment or other benefit under medical payments coverage ~~pursuant to a personal injury protection insurance policy under the Florida Motor Vehicle No-Fault Law~~ if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of chapter 400.

Section 35. Subsection (1) of section 627.06501, Florida Statutes, is amended to read:

627.06501 Insurance discounts for certain persons completing driver improvement course.—

(1) Any rate, rating schedule, or rating manual for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office may provide for an appropriate reduction in premium charges as to such coverages if ~~when~~ the principal

operator on the covered vehicle has successfully completed a driver improvement course approved and certified by the Department of Highway Safety and Motor Vehicles which is effective in reducing crash or violation rates, or both, as determined pursuant to s. 318.1451(5). Any discount, not to exceed 10 percent, used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 36. Subsection (15) is added to section 627.0651, Florida Statutes, to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(15) Initial rate filings for motor vehicle liability policies which are submitted to the office on or after January 1, 2021, must reflect the financial responsibility requirements in s. 324.022, as amended, and may be approved only through the file and use process under s. 627.0651(1)(a).

Section 37. Subsection (1) of section 627.0652, Florida Statutes, is amended to read:

627.0652 Insurance discounts for certain persons completing safety course.—

(1) Any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide for an appropriate reduction in premium charges as to such coverages if ~~when~~ the principal

operator on the covered vehicle is an insured 55 years of age or older who has successfully completed a motor vehicle accident prevention course approved by the Department of Highway Safety and Motor Vehicles. Any discount used by an insurer is presumed to be appropriate unless credible data demonstrates otherwise.

Section 38. Subsections (1), (3), and (6) of section 627.0653, Florida Statutes, are amended to read:

627.0653 Insurance discounts for specified motor vehicle equipment.—

(1) Any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with factory-installed, four-wheel antilock brakes.

(3) Any rates, rating schedules, or rating manuals for ~~personal injury protection coverage and~~ medical payments coverage~~, if offered,~~ of a motor vehicle insurance policy filed with the office must ~~shall~~ provide a premium discount if the insured vehicle is equipped with one or more air bags that ~~which~~ are factory installed.

(6) The Office of Insurance Regulation may approve a premium discount to any rates, rating schedules, or rating manuals for the liability, medical payments ~~personal injury protection~~, and collision coverages of a motor vehicle insurance

policy filed with the office if the insured vehicle is equipped with an automated driving system or electronic vehicle collision avoidance technology that is factory installed or a retrofitted system and that complies with National Highway Traffic Safety Administration standards.

Section 39. Section 627.4132, Florida Statutes, is amended to read:

627.4132 Stacking of coverages prohibited.—If an insured or named insured is protected by any type of motor vehicle insurance policy for bodily injury and property damage liability~~, personal injury protection, or other coverage~~, the policy must ~~shall~~ provide that the insured or named insured is protected only to the extent of the coverage she or he has on the vehicle involved in the accident. However, if none of the insured's or named insured's vehicles are ~~is~~ involved in the accident, coverage is available only to the extent of coverage on any one of the vehicles with applicable coverage. Coverage on any other vehicles may ~~shall~~ not be added to or stacked upon that coverage. This section does not apply:

(1) To uninsured motorist coverage that ~~which~~ is separately governed by s. 627.727.

(2) To reduce the coverage available by reason of insurance policies insuring different named insureds.

Section 40. Section 627.7263, Florida Statutes, is amended to read:

627.7263 Rental and leasing driver's insurance to be primary; exception.—

(1) The valid and collectible liability insurance and medical payments coverage ~~or personal injury protection insurance providing coverage~~ for the lessor of a motor vehicle for rent or lease is primary unless otherwise stated in at least 10-point type on the face of the rental or lease agreement. Such insurance is primary for the limits of liability ~~and personal injury protection~~ coverage as required by s. 324.021(7) and the medical payments coverage limit specified under s. 627.7265 ~~ss. 324.021(7) and 627.736~~.

(2) If the lessee's coverage is to be primary, the rental or lease agreement must contain the following language, in at least 10-point type:

"The valid and collectible liability insurance and medical payments coverage ~~personal injury protection insurance~~ of an ~~any~~ authorized rental or leasing driver is primary for the limits of liability ~~and personal injury protection~~ coverage required under section 324.021(7), Florida Statutes, and the medical payments coverage limit specified under section 627.7265 ~~by ss. 324.021(7) and 627.736~~, Florida Statutes."

Section 41. Section 627.7265, Florida Statutes, is created

to read:

627.7265 Motor vehicle insurance; medical payments coverage.—

(1) Medical payments coverage must protect the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle at a limit of at least $5,000 for medical expense incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of a motor vehicle. The coverage must provide an additional death benefit of at least $5,000.

(a) Before issuing a motor vehicle liability insurance policy that is furnished as proof of financial responsibility under s. 324.031, the insurer must offer medical payments coverage at limits of $5,000 and $10,000. The insurer may also offer medical payments coverage at any limit greater than $5,000.

(b) The medical payments coverage must be offered with an option with no deductible. The insurer may also offer medical payments coverage with a deductible not to exceed $500.

(c) Each motor vehicle liability insurance policy that is furnished as proof of financial responsibility under s. 324.031 is deemed to have:

1. Medical payments coverage to a limit of $10,000, unless

the insurer obtains the policyholder's written refusal of medical payments coverage or written selection of medical payments coverage at a limit other than $10,000. The rejection or selection of coverage at a limit other than $10,000 must be made on a form approved by the office.

2. No medical payments coverage deductible, unless the insurer obtains the policyholder's written selection of a deductible of up to $500. The selection of a deductible must be made on a form approved by the office.

(d)1. The forms in subparagraphs (c)1. and 2. must fully advise the applicant of the nature of the coverage being rejected or the policy limit or deductible being selected. If the form is signed by a named insured, it is conclusively presumed that there was an informed, knowing rejection of the coverage or election of the policy limit or deductible selected.

2. Unless the policyholder requests in writing the coverage specified in this section, it need not be provided in or supplemental to any other policy that renews, insures, extends, changes, supersedes, or replaces an existing policy if the policyholder has rejected the coverage specified in this section or has selected an alternative coverage limit or deductible. At least annually, the insurer shall provide the policyholder with a notice of the availability of such coverage in a form approved by the office. The notice must be part of, and attached to, the notice of premium and must provide for a

means to allow the insured to request medical payments coverage at the limits and deductibles required to be offered under this section. The notice must be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to medical payments coverage if the insured has not signed a selection or rejection form.

(e) This section may not be construed to limit any other coverage made available by an insurer.

(2) Upon receiving notice of an accident that is potentially covered by medical payments coverage benefits, the insurer must reserve $5,000 of medical payments coverage benefits for payment to physicians licensed under chapter 458 or chapter 459 or dentists licensed under chapter 466 who provide emergency services and care, as defined in s. 395.002, or who provide hospital inpatient care. The amount required to be held in reserve may be used only to pay claims from such physicians or dentists until 30 days after the date the insurer receives notice of the accident. After the 30-day period, any amount of the reserve for which the insurer has not received notice of such claims may be used by the insurer to pay other claims. This subsection does not require an insurer to establish a claim reserve for insurance accounting purposes.

(3) An insurer providing medical payments coverage benefits may not have a:

(a) Lien on any recovery in tort by judgment, settlement, or otherwise for medical payments coverage benefits, whether suit has been filed or settlement has been reached without suit; or

(b) Cause of action against a person to whom or for whom medical payments coverage benefits were paid, except when medical payments coverage benefits are paid by reason of fraud the person commits.

(4) An insurer providing medical payments coverage may include provisions in its policy allowing for subrogation for medical payments benefits paid if the expenses giving rise to the payments were caused by the wrongful act or omission of another who is not also an insured under the policy paying the medical payments benefits. However, this subrogation right is inferior to the rights of the injured insured and is available only after all the insured's damages are recovered and the insured is made whole. An insured who obtains a recovery from a third party of the full amount of the damages sustained and delivers a release or satisfaction that impairs a medical payments insurer's subrogation right is liable to the insurer for repayment of medical payments benefits less any expenses of acquiring the recovery, including a prorated share of attorney fees and costs, and shall hold that net recovery in trust to be delivered to the medical payments insurer. The insurer may not include any provision in its policy allowing for subrogation for

any death benefit paid.

Section 42. Subsections (1) and (7) of section 627.727, Florida Statutes, are amended to read:

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

(1) A ~~No~~ motor vehicle liability insurance policy that ~~which~~ provides bodily injury liability coverage may not ~~shall~~ be delivered or issued for delivery in this state with respect to any specifically insured or identified motor vehicle registered or principally garaged in this state, unless uninsured motor vehicle coverage is provided therein or supplemental thereto for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease, including death, resulting therefrom. However, the coverage required under this section is not applicable if ~~when~~, or to the extent that, an insured named in the policy makes a written rejection of the coverage on behalf of all insureds under the policy. If ~~When~~ a motor vehicle is leased for ~~a period of~~ 1 year or longer and the lessor of such vehicle, by the terms of the lease contract, provides liability coverage on the leased vehicle, the lessee of such vehicle has ~~shall have~~ the sole privilege to reject uninsured motorist coverage or to select lower limits than the bodily injury liability limits, regardless of whether the lessor is qualified as a self-insurer pursuant to

s. 324.171. Unless an insured, or a lessee having the privilege of rejecting uninsured motorist coverage, requests such coverage or requests higher uninsured motorist limits in writing, the coverage or such higher uninsured motorist limits need not be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits when an insured or lessee had rejected the coverage. When an insured or lessee has initially selected limits of uninsured motorist coverage lower than her or his bodily injury liability limits, higher limits of uninsured motorist coverage need not be provided in or supplemental to any other policy that ~~which~~ renews, extends, changes, supersedes, or replaces an existing policy with the same bodily injury liability limits unless an insured requests higher uninsured motorist coverage in writing. The rejection or selection of lower limits must ~~shall~~ be made on a form approved by the office. The form must ~~shall~~ fully advise the applicant of the nature of the coverage and must ~~shall~~ state that the coverage is equal to bodily injury liability limits unless lower limits are requested or the coverage is rejected. The heading of the form must ~~shall~~ be in 12-point bold type and must ~~shall~~ state: "You are electing not to purchase certain valuable coverage that ~~which~~ protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read

carefully." If this form is signed by a named insured, it will be conclusively presumed that there was an informed, knowing rejection of coverage or election of lower limits on behalf of all insureds. The insurer shall notify the named insured at least annually of her or his options as to the coverage required by this section. Such notice must ~~shall~~ be part of, and attached to, the notice of premium, must ~~shall~~ provide for a means to allow the insured to request such coverage, and must ~~shall~~ be given in a manner approved by the office. Receipt of this notice does not constitute an affirmative waiver of the insured's right to uninsured motorist coverage if ~~where~~ the insured has not signed a selection or rejection form. The coverage described under this section must ~~shall~~ be over and above, but may ~~shall~~ not duplicate, the benefits available to an insured under any workers' compensation law, ~~personal injury protection benefits,~~ disability benefits law, or similar law; under any automobile medical payments ~~expense~~ coverage; under any motor vehicle liability insurance coverage; or from the owner or operator of the uninsured motor vehicle or any other person or organization jointly or severally liable together with such owner or operator for the accident, ~~;~~ and such coverage must ~~shall~~ cover the difference, if any, between the sum of such benefits and the damages sustained, up to the maximum amount of such coverage provided under this section. The amount of coverage available under this section may ~~shall~~ not be reduced by a setoff against

any coverage, including liability insurance. Such coverage does ~~shall~~ not inure directly or indirectly to the benefit of any workers' compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or similar law.

(7) The legal liability of an uninsured motorist coverage insurer includes ~~does not include~~ damages in tort for pain, suffering, disability or physical impairment, disfigurement, mental anguish, ~~and~~ inconvenience, and the loss of capacity for the enjoyment of life experienced in the past and to be experienced in the future ~~unless the injury or disease is described in one or more of paragraphs (a)-(d) of s. 627.737(2)~~.

Section 43. Subsection (1) and paragraphs (a) and (b) of subsection (2) of section 627.7275, Florida Statutes, are amended to read:

627.7275 Motor vehicle liability.—

(1) A motor vehicle insurance policy ~~providing personal injury protection as set forth in s. 627.736 may not be~~ delivered or issued for delivery in this state for a ~~with respect to any~~ specifically insured or identified motor vehicle registered or principally garaged in this state must provide bodily injury liability coverage and ~~unless the policy also provides coverage for~~ property damage liability coverage as required under ~~by~~ s. 324.022.

(2)(a) Insurers writing motor vehicle insurance in this

state shall make available, subject to the insurers' usual underwriting restrictions:

1. Coverage under policies as described in subsection (1) to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state if the driving privileges were revoked or suspended pursuant to s. 316.646 or s. 324.0221 due to the failure of the applicant to maintain required security.

2. Coverage under policies as described in subsection (1), which includes bodily injury ~~also provides~~ liability coverage and property damage liability coverage, ~~for bodily injury, death, and property damage arising out of the ownership, maintenance, or use of the motor vehicle~~ in an amount not less than the minimum limits required under ~~described in~~ s. 324.021(7) or s. 324.023 and which conforms to the requirements of s. 324.151, to an applicant for private passenger motor vehicle insurance coverage who is seeking the coverage in order to reinstate the applicant's driving privileges in this state after such privileges were revoked or suspended under s. 316.193 or s. 322.26(2) for driving under the influence.

(b) The policies described in paragraph (a) must ~~shall~~ be issued for at least 6 months and, as to the minimum coverages required under this section, may not be canceled by the insured for any reason or by the insurer after 60 days, during which

period the insurer is completing the underwriting of the policy. After the insurer has completed underwriting the policy, the insurer shall notify the Department of Highway Safety and Motor Vehicles that the policy is in full force and effect and is not cancelable for the remainder of the policy period. A premium must ~~shall~~ be collected and the coverage is in effect for the 60-day period during which the insurer is completing the underwriting of the policy, whether or not the person's driver license, motor vehicle tag, and motor vehicle registration are in effect. Once the noncancelable provisions of the policy become effective, the bodily injury liability and property damage liability coverages ~~for bodily injury, property damage, and personal injury protection~~ may not be reduced below the minimum limits required under s. 324.021 or s. 324.023 during the policy period.

Section 44. Effective upon this act becoming a law, section 627.7278, Florida Statutes, is created to read:

627.7278 Applicability and construction; notice to policyholders.—

(1) As used in this section, the term "minimum security requirements" means security that enables a person to respond in damages for liability on account of crashes arising out of the ownership, maintenance, or use of a motor vehicle, in the amounts required by s. 324.021(7).

(2) Effective January 1, 2021:

(a) Motor vehicle insurance policies issued or renewed on or after that date may not include personal injury protection.

(b) All persons subject to s. 324.022, s. 324.032, s. 627.7415, or s. 627.742 must maintain at least minimum security requirements.

(c) Any new or renewal motor vehicle insurance policy delivered or issued for delivery in this state must provide coverage that complies with minimum security requirements.

(d) An existing motor vehicle insurance policy issued before January 1, 2021, that provides personal injury protection and property damage liability coverage which meets the requirements of s. 324.022 on December 31, 2020, but which does not meet minimum security requirements on or after January 1, 2021, is deemed to meet the security requirements of s. 324.022 until such policy is renewed, nonrenewed, or canceled on or after January 1, 2021. Sections 400.9905, 400.991, 456.057, 456.072, 626.9541(1)(i), 627.7263, 627.727, 627.730-627.7405, 627.748, and 817.234, Florida Statutes 2019, remain in full force and effect for motor vehicle accidents covered under a policy issued under the Florida Motor Vehicle No-Fault Law before January 1, 2021, until the policy is renewed, nonrenewed, or canceled on or after January 1, 2021.

(3) Each insurer shall allow each insured who has a new or renewal policy providing personal injury protection which becomes effective before January 1, 2021, and whose policy does

not meet minimum security requirements on or after January 1, 2021, to change coverages so as to eliminate personal injury protection and obtain coverage providing minimum security requirements, which shall be effective on or after January 1, 2021. The insurer is not required to provide coverage complying with minimum security requirements in such policies if the insured does not pay the required premium, if any, by January 1, 2021, or such later date as the insurer may allow. The insurer must also offer each insured medical payments coverage pursuant to s. 627.7265. Any reduction in the premium must be refunded by the insurer. The insurer may not impose on the insured an additional fee or charge that applies solely to a change in coverage; however, the insurer may charge an additional required premium that is actuarially indicated.

(4) By September 1, 2020, each motor vehicle insurer shall provide notice of this section to each motor vehicle policyholder who is subject to this section. The notice is subject to approval by the office and must clearly inform the policyholder that:

(a) The Florida Motor Vehicle No-Fault Law is repealed effective January 1, 2021, and that on or after that date, the insured is no longer required to maintain personal injury protection insurance coverage, that personal injury protection coverage is no longer available for purchase in this state, and that all new or renewal policies issued on or after that date

will not contain that coverage.

(b) Effective January 1, 2021, a person subject to the financial responsibility requirements of s. 324.022 must maintain minimum security requirements that enable the person to respond to damages for liability on account of accidents arising out of the use of a motor vehicle in the following amounts:

1. Twenty-five thousand dollars for bodily injury to, or the death of, one person in any one crash and, subject to such limits for one person, in the amount of $50,000 for bodily injury to, or the death of, two or more persons in any one crash; and

2. Ten thousand dollars for damage to, or destruction of, the property of others in any one crash.

(c) Bodily injury liability coverage protects the insured, up to the coverage limits, against loss if the insured is legally responsible for the death of or bodily injury to others in a motor vehicle accident.

(d) Effective January 1, 2021, each policyholder of motor vehicle liability insurance purchased as proof of financial responsibility must be offered medical payments coverage benefits that comply with s. 627.7265. The insurer must offer medical payments coverage at limits of $5,000 and $10,000 without a deductible. The insurer may also offer medical payments coverage at other limits greater than $5,000, and may offer coverage with a deductible of up to $500. Medical payments

coverage pays covered medical expenses incurred due to bodily injury, sickness, or disease arising out of the ownership, maintenance, or use of the motor vehicle, up to the limits of such coverage, for injuries sustained in a motor vehicle crash by the named insured, resident relatives, persons operating the insured motor vehicle, passengers in the insured motor vehicle, and persons who are struck by the insured motor vehicle and suffer bodily injury while not an occupant of a self-propelled motor vehicle as provided in s. 627.7265. Medical payments coverage also provides a death benefit of at least $5,000.

(e) The policyholder may obtain uninsured and underinsured motorist coverage, which provides benefits, up to the limits of such coverage, to a policyholder or other insured entitled to recover damages for bodily injury, sickness, disease, or death resulting from a motor vehicle accident with an uninsured or underinsured owner or operator of a motor vehicle.

(f) If the policyholder's new or renewal motor vehicle insurance policy is effective before January 1, 2021, and contains personal injury protection and property damage liability coverage as required by state law before January 1, 2021, but does not meet minimum security requirements on or after January 1, 2021, the policy is deemed to meet minimum security requirements until it is renewed, nonrenewed, or canceled on or after January 1, 2021.

(g) A policyholder whose new or renewal policy becomes

effective before January 1, 2021, but does not meet minimum security requirements on or after January 1, 2021, may change coverages under the policy so as to eliminate personal injury protection and to obtain coverage providing minimum security requirements, including bodily injury liability coverage, which are effective on or after January 1, 2021.

(h) If the policyholder has any questions, he or she should contact the person named at the telephone number provided in the notice.

Section 45. Paragraph (a) of subsection (1) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

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

(a) "Policy" means the bodily injury and property damage liability, ~~personal injury protection,~~ medical payments, comprehensive, collision, and uninsured motorist coverage portions of a policy of motor vehicle insurance delivered or issued for delivery in this state:

1. Insuring a natural person as named insured or one or more related individuals who are residents ~~resident~~ of the same household; and

2. Insuring only a motor vehicle of the private passenger type or station wagon type which is not used as a public or livery conveyance for passengers or rented to others; or insuring any other four-wheel motor vehicle having a load

capacity of 1,500 pounds or less which is not used in the occupation, profession, or business of the insured other than farming; other than any policy issued under an automobile insurance assigned risk plan or covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards.

The term "policy" does not include a binder as defined in s. 627.420 unless the duration of the binder period exceeds 60 days.

Section 46. Subsection (1), paragraph (a) of subsection (5), and subsections (6) and (7) of section 627.7295, Florida Statutes, are amended to read:

627.7295 Motor vehicle insurance contracts.—

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

(a) "Policy" means a motor vehicle insurance policy that provides bodily injury liability ~~personal injury protection~~ coverage and~~,~~ property damage liability coverage~~, or both~~.

(b) "Binder" means a binder that provides motor vehicle bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage.

(5)(a) A licensed general lines agent may charge a per-policy fee of up to ~~not to exceed~~ $10 to cover the administrative costs of the agent associated with selling the motor vehicle insurance policy if the policy covers only bodily

injury liability coverage ~~personal injury protection coverage as provided by s. 627.736~~ and property damage liability coverage as provided by s. 627.7275 and if no other insurance is sold or issued in conjunction with or collateral to the policy. The fee is not ~~considered~~ part of the premium.

(6) If a motor vehicle owner's driver license, license plate, and registration have previously been suspended pursuant to s. 316.646 ~~or s. 627.733~~, an insurer may cancel a new policy only as provided in s. 627.7275.

(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 at least 1 month's premium. An insurer, agent, or premium finance company may not, directly or indirectly, take any action that results ~~resulting~~ in the insured paying ~~having paid~~ from the insured's own funds an amount less than the 1 month's 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.

(a) This subsection does not apply:

1. 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~~

2. 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~~

3. If all policy payments are paid pursuant to a payroll deduction plan, an automatic electronic funds transfer payment plan from the policyholder, or a recurring credit card or debit card agreement with the insurer.

(b) This subsection and subsection (4) do not apply if:

1. 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, bodily injury liability coverage and ~~personal injury protection pursuant to ss. 627.730-627.7405; motor vehicle~~ property damage liability coverage pursuant to s. 627.7275; or ~~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~~

2. 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 47. Section 627.7415, Florida Statutes, is amended to read:

627.7415 Commercial motor vehicles; additional liability insurance coverage.—Beginning January 1, 2021, commercial motor vehicles, as defined in s. 207.002 or s. 320.01, operated upon the roads and highways of this state must ~~shall~~ be insured with the following minimum levels of combined bodily liability insurance and property damage liability insurance in addition to any other insurance requirements:

(1) Sixty ~~Fifty~~ thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds.

(2) One hundred twenty thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds.

(3) Three hundred thousand dollars per occurrence for a commercial motor vehicle with a gross vehicle weight of 44,000 pounds or more.

(4) All commercial motor vehicles subject to regulations of the United States Department of Transportation, 49 C.F.R. part 387, subpart A, and as may be hereinafter amended, shall be insured in an amount equivalent to the minimum levels of financial responsibility as set forth in such regulations.

A violation of this section is a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

Section 48. Section 627.747, Florida Statutes, is created to read:

627.747 Named driver exclusion.—

(1) A private passenger motor vehicle policy may exclude an identified individual from the following coverages while the identified individual is operating a motor vehicle, provided that the identified individual is specifically excluded by name on the declarations page or by endorsement, and the policyholder consents in writing to the exclusion:

(a) Property damage liability coverage.

(b) Bodily injury liability coverage.

(c) Uninsured motorist coverage for any damages sustained by the identified excluded individual, if the policyholder has purchased such coverage.

(d) Any coverage the policyholder is not required by law to purchase.

(2) A private passenger motor vehicle policy may not exclude coverage when:

(a) The identified excluded individual is injured while not operating a motor vehicle;

(b) The exclusion is unfairly discriminatory under the Florida Insurance Code, as determined by the office; or

(c) The exclusion is inconsistent with the underwriting

rules filed by the insurer pursuant to s. 627.0651(13)(a).

Section 49. Paragraphs (b), (c), and (g) of subsection (7) and paragraphs (a) and (b) of subsection (8) of section 627.748, Florida Statutes, are amended to read:

627.748 Transportation network companies.—

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and

b. ~~Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and~~

~~c.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage; and

b. ~~Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and~~

~~c.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(g) Insurance satisfying the requirements under this subsection is deemed to satisfy the financial responsibility requirement for a motor vehicle under chapter 324 ~~and the security required under s. 627.733~~ for any period when the TNC driver is logged onto the digital network or engaged in a prearranged ride.

(8) TRANSPORTATION NETWORK COMPANY AND INSURER; DISCLOSURE; EXCLUSIONS.—

(a) Before a TNC driver is allowed to accept a request for a prearranged ride on the digital network, the TNC must disclose

in writing to the TNC driver:

1. The insurance coverage, including the types of coverage and the limits for each coverage, which the TNC provides while the TNC driver uses a TNC vehicle in connection with the TNC's digital network.

2. That the TNC driver's own automobile insurance policy might not provide any coverage while the TNC driver is logged on to the digital network or is engaged in a prearranged ride, depending on the terms of the TNC driver's own automobile insurance policy.

3. That the provision of rides for compensation which are not prearranged rides subjects the driver to the coverage requirements imposed under s. 324.032(1) and (2) and that failure to meet such coverage requirements subjects the TNC driver to penalties provided in s. 324.221, up to and including a misdemeanor of the second degree.

(b)1. An insurer that provides an automobile liability insurance policy under this part may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle while driving that vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. Exclusions imposed under this subsection are limited to coverage while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride. This right to

exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

a. Liability coverage for bodily injury and property damage;

b. Uninsured and underinsured motorist coverage;

c. Medical payments coverage;

d. Comprehensive physical damage coverage; and

e. Collision physical damage coverage~~; and~~

~~f. Personal injury protection~~.

2. The exclusions described in subparagraph 1. apply notwithstanding any requirement under chapter 324. These exclusions do not affect or diminish coverage otherwise available for permissive drivers or resident relatives under the personal automobile insurance policy of the TNC driver or owner of the TNC vehicle who are not occupying the TNC vehicle at the time of loss. This section does not require that a personal automobile insurance policy provide coverage while the TNC driver is logged on to a digital network, while the TNC driver is engaged in a prearranged ride, or while the TNC driver otherwise uses a vehicle to transport riders for compensation.

3. This section must not be construed to require an insurer to use any particular policy language or reference to this section in order to exclude any and all coverage for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged

ride.

4. This section does not preclude an insurer from providing primary or excess coverage for the TNC driver's vehicle by contract or endorsement.

Section 50. Paragraph (a) of subsection (2) of section 627.749, Florida Statutes, is amended to read:

627.749 Autonomous vehicles; insurance requirements.—

(2) INSURANCE REQUIREMENTS.—

(a) A fully autonomous vehicle with the automated driving system engaged while logged on to an on-demand autonomous vehicle network or engaged in a prearranged ride must be covered by a policy of automobile insurance which provides:

1. Primary liability coverage of at least $1 million for death, bodily injury, and property damage.

2. ~~Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405.~~

~~3.~~ Uninsured and underinsured vehicle coverage as required by s. 627.727.

Section 51. Section 627.8405, Florida Statutes, is amended to read:

627.8405 Prohibited acts; financing companies.—A ~~No~~ premium finance company ~~shall~~, in a premium finance agreement or other agreement, may not finance the cost of or otherwise provide for the collection or remittance of dues, assessments, fees, or other periodic payments of money for the cost of:

(1) A membership in an automobile club. The term "automobile club" means a legal entity that ~~which~~, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, the term ~~this definition of "automobile club"~~ does not include persons, associations, or corporations ~~which are~~ organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The term ~~words~~ "motor vehicle" used herein has ~~have~~ the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a policy providing only bodily injury liability coverage ~~personal injury protection~~ and property damage liability coverage ~~only policy~~.

(3) Any product not regulated under ~~the provisions of~~ this insurance code.

This section also applies to premium financing by any insurance agent or insurance company under part XVI. The commission shall adopt rules to assure disclosure, at the time of sale, of coverages financed ~~with personal injury protection~~ and shall

prescribe the form of such disclosure.

Section 52. Subsection (1) of section 627.915, Florida Statutes, is amended to read:

627.915 Insurer experience reporting.—

(1) Each insurer transacting private passenger automobile insurance in this state shall report certain information annually to the office. The information will be due on or before July 1 of each year. The information must ~~shall~~ be divided into the following categories: bodily injury liability; property damage liability; uninsured motorist; ~~personal injury protection benefits;~~ medical payments; and comprehensive and collision. The information given must ~~shall~~ be on direct insurance writings in the state alone and ~~shall~~ represent total limits data. The information set forth in paragraphs (a)-(f) is applicable to voluntary private passenger and Joint Underwriting Association private passenger writings and must ~~shall~~ be reported for each of the latest 3 calendar-accident years, with an evaluation date of March 31 of the current year. The information set forth in paragraphs (g)-(j) is applicable to voluntary private passenger writings and must ~~shall~~ be reported on a calendar-accident year basis ultimately seven times at seven different stages of development.

(a) Premiums earned for the latest 3 calendar-accident years.

(b) Loss development factors and the historic development

of those factors.

(c) Policyholder dividends incurred.

(d) Expenses for other acquisition and general expense.

(e) Expenses for agents' commissions and taxes, licenses, and fees.

(f) Profit and contingency factors as utilized in the insurer's automobile rate filings for the applicable years.

(g) Losses paid.

(h) Losses unpaid.

(i) Loss adjustment expenses paid.

(j) Loss adjustment expenses unpaid.

Section 53. Subsections (2) and (3) of section 628.909, Florida Statutes, are amended to read:

628.909 Applicability of other laws.—

(2) The following provisions of the Florida Insurance Code apply to captive insurance companies <u>that</u> ~~who~~ are not industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, and 624.426.

(b) Chapter 625, part II.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405, when no-fault coverage is provided.~~

~~(e)~~ Chapter 628.

(3) The following provisions of the Florida Insurance Code ~~shall~~ apply to industrial insured captive insurance companies to the extent that such provisions are not inconsistent with this part:

(a) Chapter 624, except for ss. 624.407, 624.408, 624.4085, 624.40851, 624.4095, 624.411, 624.425, 624.426, and 624.609(1).

(b) Chapter 625, part II, if the industrial insured captive insurance company is incorporated in this state.

(c) Chapter 626, part IX.

(d) ~~Sections 627.730-627.7405 when no-fault coverage is provided.~~

~~(e)~~ Chapter 628, except for ss. 628.341, 628.351, and 628.6018.

Section 54. Subsections (2), (6), and (7) of section 705.184, Florida Statutes, are amended to read:

705.184 Derelict or abandoned motor vehicles on the premises of public-use airports.—

(2) The airport director or the director's designee shall contact the Department of Highway Safety and Motor Vehicles to notify that department that the airport has possession of the abandoned or derelict motor vehicle and to determine the name and address of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and any person who has filed a lien on

the motor vehicle. Within 7 business days after receipt of the information, the director or the director's designee shall send notice by certified mail, return receipt requested, to the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. The notice must ~~shall~~ state the fact of possession of the motor vehicle, that charges for reasonable towing, storage, and parking fees, if any, have accrued and the amount thereof, that a lien as provided in subsection (6) will be claimed, that the lien is subject to enforcement pursuant to law, that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (4), and that any motor vehicle which, at the end of 30 calendar days after receipt of the notice, has not been removed from the airport upon payment in full of all accrued charges for reasonable towing, storage, and parking fees, if any, may be disposed of as provided in s. 705.182(2)(a), (b), (d), or (e), including, but not limited to, the motor vehicle being sold free of all prior liens after 35 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are more than 5 years of age or after 50 calendar days after the time the motor vehicle is stored if any prior liens on the motor vehicle are 5 years of age or less.

(6) The airport pursuant to this section or, if used, a licensed independent wrecker company pursuant to s. 713.78 shall

have a lien on an abandoned or derelict motor vehicle for all reasonable towing, storage, and accrued parking fees, if any, except that no storage fee may ~~shall~~ be charged if the motor vehicle is stored less than 6 hours. As a prerequisite to perfecting a lien under this section, the airport director or the director's designee must serve a notice in accordance with subsection (2) on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ or lienholders are not successful, the requirement of notice by mail shall be considered met. Serving of the notice does not dispense with recording the claim of lien.

(7)(a) For the purpose of perfecting its lien under this section, the airport shall record a claim of lien which states ~~shall state~~:

1. The name and address of the airport.

2. The name of the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle.

3. The costs incurred from reasonable towing, storage, and parking fees, if any.

4. A description of the motor vehicle sufficient for identification.

(b) The claim of lien must ~~shall~~ be signed and sworn to or affirmed by the airport director or the director's designee.

(c) The claim of lien is ~~shall be~~ sufficient if it is in substantially the following form:

CLAIM OF LIEN

State of .....

County of .....

Before me, the undersigned notary public, personally appeared ....., who was duly sworn and says that he/she is the ..... of ....., whose address is.....; and that the following described motor vehicle:

...(Description of motor vehicle)...

owned by ....., whose address is ....., has accrued $..... in fees for a reasonable tow, for storage, and for parking, if applicable; that the lienor served its notice to the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736, Florida Statutes~~, and all persons of record claiming a lien against the motor vehicle on ...., ...(year)..., by.....

...(Signature)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public).....(Print, Type, or Stamp Commissioned name of Notary Public)...
Personally Known....OR Produced....as identification.

However, the negligent inclusion or omission of any information in this claim of lien which does not prejudice the owner does not constitute a default that operates to defeat an otherwise valid lien.

(d) The claim of lien must ~~shall~~ be served on the owner of the motor vehicle, the insurance company insuring the motor vehicle, ~~notwithstanding the provisions of s. 627.736,~~ and all persons of record claiming a lien against the motor vehicle. If attempts to notify the owner, the insurance company insuring the motor vehicle ~~notwithstanding the provisions of s. 627.736~~, or lienholders are not successful, the requirement of notice by mail shall be considered met. The claim of lien must ~~shall~~ be so served before recordation.

(e) The claim of lien must ~~shall~~ be recorded with the clerk of court in the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien attaches ~~shall attach~~ at the time of recordation and takes ~~shall take~~ priority as of that time.

Section 55. Subsection (4) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(4)(a) A person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice, by certified mail, to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all persons claiming a lien thereon, as disclosed by the records in the Department of Highway Safety and Motor Vehicles or as disclosed by the records of any corresponding agency in any other state in which the vehicle is identified through a records check of the National Motor Vehicle Title Information System or an equivalent commercially available system as being titled or registered.

(b) Whenever a law enforcement agency authorizes the removal of a vehicle or vessel or whenever a towing service, garage, repair shop, or automotive service, storage, or parking place notifies the law enforcement agency of possession of a vehicle or vessel pursuant to s. 715.07(2)(a)2., the law enforcement agency of the jurisdiction where the vehicle or vessel is stored shall contact the Department of Highway Safety and Motor Vehicles, or the appropriate agency of the state of registration, if known, within 24 hours through the medium of electronic communications, giving the full description of the

vehicle or vessel. Upon receipt of the full description of the vehicle or vessel, the department shall search its files to determine the owner's name, the insurance company insuring the vehicle or vessel, and whether any person has filed a lien upon the vehicle or vessel as provided in s. 319.27(2) and (3) and notify the applicable law enforcement agency within 72 hours. The person in charge of the towing service, garage, repair shop, or automotive service, storage, or parking place shall obtain such information from the applicable law enforcement agency within 5 days after the date of storage and shall give notice pursuant to paragraph (a). The department may release the insurance company information to the requestor ~~notwithstanding s. 627.736~~.

(c) The notice of lien must be sent by certified mail to the registered owner, the insurance company insuring the vehicle ~~notwithstanding s. 627.736~~, and all other persons claiming a lien thereon within 7 business days, excluding Saturday and Sunday, after the date of storage of the vehicle or vessel. However, in no event shall the notice of lien be sent less than 30 days before the sale of the vehicle or vessel. The notice must state:

1. If the claim of lien is for a vehicle, the last 8 digits of the vehicle identification number of the vehicle subject to the lien, or, if the claim of lien is for a vessel, the hull identification number of the vessel subject to the

lien, clearly printed in the delivery address box and on the outside of the envelope sent to the registered owner and all other persons claiming an interest therein or lien thereon.

2. The name, physical address, and telephone number of the lienor, and the entity name, as registered with the Division of Corporations, of the business where the towing and storage occurred, which must also appear on the outside of the envelope sent to the registered owner and all other persons claiming an interest in or lien on the vehicle or vessel.

3. The fact of possession of the vehicle or vessel.

4. The name of the person or entity that authorized the lienor to take possession of the vehicle or vessel.

5. That a lien as provided in subsection (2) is claimed.

6. That charges have accrued and include an itemized statement of the amount thereof.

7. That the lien is subject to enforcement under law and that the owner or lienholder, if any, has the right to a hearing as set forth in subsection (5).

8. That any vehicle or vessel that remains unclaimed, or for which the charges for recovery, towing, or storage services remain unpaid, may be sold free of all prior liens 35 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is more than 3 years of age or 50 days after the vehicle or vessel is stored by the lienor if the vehicle or vessel is 3 years of age or less.

9. The address at which the vehicle or vessel is physically located.

(d) The notice of lien may not be sent to the registered owner, the insurance company insuring the vehicle or vessel, and all other persons claiming a lien thereon less than 30 days before the sale of the vehicle or vessel.

(e) If attempts to locate the name and address of the owner or lienholder prove unsuccessful, the towing-storage operator shall, after 7 business days, excluding Saturday and Sunday, after the initial tow or storage, notify the public agency of jurisdiction where the vehicle or vessel is stored in writing by certified mail or acknowledged hand delivery that the towing-storage company has been unable to locate the name and address of the owner or lienholder and a physical search of the vehicle or vessel has disclosed no ownership information and a good faith effort has been made, including records checks of the Department of Highway Safety and Motor Vehicles database and the National Motor Vehicle Title Information System or an equivalent commercially available system. For purposes of this paragraph and subsection (9), the term "good faith effort" means that the following checks have been performed by the company to establish the prior state of registration and for title:

1. A check of the department's database for the owner and any lienholder.

2. A check of the electronic National Motor Vehicle Title

Information System or an equivalent commercially available system to determine the state of registration when there is not a current registration record for the vehicle or vessel on file with the department.

3. A check of the vehicle or vessel for any type of tag, tag record, temporary tag, or regular tag.

4. A check of the law enforcement report for a tag number or other information identifying the vehicle or vessel, if the vehicle or vessel was towed at the request of a law enforcement officer.

5. A check of the trip sheet or tow ticket of the tow truck operator to determine whether a tag was on the vehicle or vessel at the beginning of the tow, if a private tow.

6. If there is no address of the owner on the impound report, a check of the law enforcement report to determine whether an out-of-state address is indicated from driver license information.

7. A check of the vehicle or vessel for an inspection sticker or other stickers and decals that may indicate a state of possible registration.

8. A check of the interior of the vehicle or vessel for any papers that may be in the glove box, trunk, or other areas for a state of registration.

9. A check of the vehicle for a vehicle identification number.

10. A check of the vessel for a vessel registration number.

11. A check of the vessel hull for a hull identification number which should be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outmost seaboard side at the end of the hull that bears the rudder or other steering mechanism.

Section 56. Paragraph (a) of subsection (1), paragraph (c) of subsection (7), paragraphs (a), (b), and (c) of subsection (8), and subsections (9) and (10) of section 817.234, Florida Statutes, are amended to read:

817.234 False and fraudulent insurance claims.—

(1)(a) A person commits insurance fraud punishable as provided in subsection (11) if that person, with the intent to injure, defraud, or deceive any insurer:

1. Presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

2. Prepares or makes any written or oral statement that is intended to be presented to <u>an</u> ~~any~~ insurer in connection with,

or in support of, any claim for payment or other benefit pursuant to an insurance policy or a health maintenance organization subscriber or provider contract, knowing that such statement contains ~~any~~ false, incomplete, or misleading information concerning any fact or thing material to such claim;

3.a. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to an ~~any~~ insurer, purported insurer, servicing corporation, insurance broker, or insurance agent, or any employee or agent thereof, ~~any~~ false, incomplete, or misleading information or a written or oral statement as part of, or in support of, an application for the issuance of, or the rating of, any insurance policy, or a health maintenance organization subscriber or provider contract; or

b. Knowingly conceals information concerning any fact material to such application; or

4. Knowingly presents, causes to be presented, or prepares or makes with knowledge or belief that it will be presented to any insurer a claim for payment or other benefit under medical payments coverage in a motor vehicle ~~a personal injury protection~~ insurance policy if the person knows that the payee knowingly submitted a false, misleading, or fraudulent application or other document when applying for licensure as a health care clinic, seeking an exemption from licensure as a health care clinic, or demonstrating compliance with part X of

chapter 400.

(7)

~~(c) An insurer, or any person acting at the direction of or on behalf of an insurer, may not change an opinion in a mental or physical report prepared under s. 627.736(7) or direct the physician preparing the report to change such opinion; however, this provision does not preclude the insurer from calling to the attention of the physician errors of fact in the report based upon information in the claim file. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.~~

(8)(a) It is unlawful for any person intending to defraud any other person to solicit or cause to be solicited any business from a person involved in a motor vehicle accident for the purpose of making, adjusting, or settling motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~. Any person who violates ~~the provisions of~~ this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(b) A person may not solicit or cause to be solicited any business from a person involved in a motor vehicle accident by

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

any means of communication other than advertising directed to the public for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736,~~ within 60 days after the occurrence of the motor vehicle accident. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A lawyer, health care practitioner as defined in s. 456.001, or owner or medical director of a clinic required to be licensed pursuant to s. 400.9905 may not, at any time after 60 days have elapsed from the occurrence of a motor vehicle accident, solicit or cause to be solicited any business from a person involved in a motor vehicle accident by means of in person or telephone contact at the person's residence, for the purpose of making motor vehicle tort claims or claims for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits required by s. 627.736~~. Any person who violates this paragraph commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) A person may not organize, plan, or knowingly participate in an intentional motor vehicle crash or a scheme to create documentation of a motor vehicle crash that did not occur for the purpose of making motor vehicle tort claims or claims

for benefits under medical payments coverage in a motor vehicle insurance policy ~~personal injury protection benefits as required by s. 627.736~~. Any person who violates this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who is convicted of a violation of this subsection shall be sentenced to a minimum term of imprisonment of 2 years.

(10) A licensed health care practitioner who is found guilty of insurance fraud under this section for an act relating to a motor vehicle ~~personal injury protection~~ insurance policy loses his or her license to practice for 5 years and may not receive reimbursement under medical payments coverage in a motor vehicle insurance policy ~~for personal injury protection benefits~~ for 10 years.

Section 57. For the 2020-2021 fiscal year, the sum of $83,651 in nonrecurring funds is appropriated from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation for the purpose of implementing this act.

Section 58. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect January 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 811 Transfers in Divorce
SPONSOR(S): Geller
TIED BILLS: **IDEN./SIM. BILLS:** SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	14 Y, 0 N	Frost	Luczynski
2) Insurance & Banking Subcommittee		Hinshelwood	Cooper
3) Judiciary Committee			

SUMMARY ANALYSIS

An Individual Retirement Account (IRA) is a retirement savings account that provides the account owner with certain tax benefits which are not available for a traditional savings account. An IRA may be a traditional IRA or a Roth IRA. While a traditional IRA allows an account owner to make tax deductible contributions into the account and defer being taxed on the income until making withdrawals after retirement, a Roth IRA allows an account owner to make non-tax-deductible contributions into the account and make tax free withdrawals after retirement.

An IRA is intended to be the property of its owner and may only be transferred to another person upon the owner's death or in a dissolution of marriage (divorce). When an IRA account owner dies, the account may be transferred to a named beneficiary, and if the beneficiary is not the account owner's spouse, the IRA is considered an inherited IRA. If an IRA is transferred to a spouse or ex-spouse incident to a divorce, the spouse receiving the IRA becomes the new owner of the assets in the other spouse's IRA on the effective date of the transfer. The assets in an IRA may be transferred in a divorce by:

- Name change: The transfer is executed by changing the name of the IRA owner from that of one spouse or former spouse to that of the other; or
- Direct transfer: The assets in one spouse's IRA are directly transferred to a new or existing IRA of the other spouse.

Under the U.S. Bankruptcy Code (Code), a state may specify assets which are exempt from creditors' claims in a bankruptcy proceeding, and Florida has done so. Florida law provides a number of exemptions for various retirement related assets, such as IRAs. Florida provides a bankruptcy exemption for IRA accounts that are exempt from taxation under s. 408 of the Internal Revenue Code (IRC), and the IRC tax exemption for an IRA account awarded incident to a divorce provides tax-exempt status for a former spouse's interest in such an account at the time the transfer is made, and thereafter. Although there is no current controversy in Florida regarding the exemption for an IRA account awarded incident to a divorce, recent bankruptcy court decisions from other jurisdictions may indicate the need to clarify Florida's exemption.

HB 811 clarifies that any interest in an IRA received during a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. Because the bill does not change existing law or practice, the bill intends to clarify existing law, is remedial in nature, and applies retroactively to all transfers made incident to divorce.

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

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Individual Retirement Accounts

An Individual Retirement Account (IRA) is "...a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries."[1] An IRA is created by a written document which must show that the account meets all of the following criteria: [2]

- The account's trustee or custodian must be a bank, federally insured credit union, savings and loan association, or other entity approved by the internal revenue service (IRS) to act as such.
- The trustee or custodian generally may not accept contributions in an amount more than the account's deductible amount for the year, but rollover contributions and employer contributions to a simplified employee pension (SEP)[3] can be more than this amount.
- Contributions, except for rollover contributions, must be in cash.
- The account owner must have a non-forfeitable right to the amount in the account at all times.
- Money in the account cannot be used to buy a life insurance policy.
- Assets in the account cannot be combined with other property, except in a common trust fund or common investment fund.
- The account owner must begin receiving distributions from the account in April of the year after he or she reaches age 70 1/2.

An IRA may be a traditional IRA or a Roth IRA. While a traditional IRA allows an account owner to make tax deductible contributions into the account and defer being taxed on the income until making withdrawals after retirement,[4] a Roth IRA allows an account owner to make non-tax-deductible contributions into the account and make tax free withdrawals after retirement.[5]

IRA Transfer

An IRA is intended to be the property of its owner and may only be transferred to another person upon the owner's death or in a dissolution of marriage (divorce). When an IRA account owner dies, the account may be transferred to a named beneficiary.

If the beneficiary is not the account owner's spouse, the IRA is considered an inherited IRA.[6] The beneficiary of an inherited IRA:

- May not make contributions to the account;
- Must make withdrawals regardless of his or her age; and
- Is not subject to a penalty for early withdrawals from the account.

If the beneficiary is the account owner's spouse, the beneficiary may do one of the following:[7]

- Treat the IRA as his or her own IRA by designating himself or herself as the account owner;

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[1] 26 U.S.C. § 408(a).
[2] IRS Publication 590-A, *Contributions to Individual Retirement Arrangements (IRAs)*, (Dec. 21, 2018), https://www.irs.gov/pub/irs-pdf/p590a.pdf (last visited Jan. 23, 2020).
[3] An SEP is a written arrangement that allows your employer to make deductible contributions to a traditional IRA (an SEP IRA) set up for the account owner to receive such contributions. *Id.*
[4] *Id.* at 5.
[5] *Id.* at 39.
[6] 26 U.S.C. §401(a)(9).
[7] IRS, *supra* note 2, at 20.

- Treat the IRA as his or her own by rolling it over into his or her own IRA, or to the extent it is taxable, into a:
    - Qualified employer plan;
    - Qualified employee annuity plan (section 403(a) plan);
    - Tax-sheltered annuity plan (section 403(b) plan); or
    - State or local government Deferred compensation plan (section 457 plan).
- Treat himself or herself as the beneficiary of the IRA.

When an IRA is transferred to a spouse or ex-spouse incident to a divorce, the spouse receiving the IRA becomes the new owner of the assets in the other spouse's IRA on the effective date of the transfer. There is no legal authority for an IRA to be split or transferred until the divorce is finalized, and a court order is entered directing how the account must be split. The parties must give the IRA custodian a copy of the court's order, and the custodian may then split the account or transfer the account accordingly, in a tax-free transfer. The assets in an IRA may be transferred by:

- Changing the name of the IRA owner from that of one spouse or former spouse to that of the other; or
- Making a direct transfer of the IRA assets or a portion of the assets from one spouse's IRA directly into the other spouse's new or existing IRA.

IRA Asset Protection

Although established under the federal tax code, a state's laws may affect an IRA in a case involving a trust, real estate, or most commonly a bankruptcy exemption that protects the IRA from the claims of creditors. A person may file bankruptcy to assist in discharging debt or making a plan to repay debts. All bankruptcy cases are handled in federal courts under rules outlined in the U.S. Bankruptcy Code (Code).[8] In general, filing bankruptcy serves two purposes: to convert the estate of the debtor into cash and distribute it among creditors; and to give the debtor a fresh start by providing certain exemptions and rights to assets that bankruptcy does not reach.[9] A person may file one of two primary forms of bankruptcy.[10] In a proceeding under Chapter 7 of the Code, a debtor must surrender his or her assets to a trustee who then liquidates the assets and distributes all proceeds to the debtor's creditors.[11] A Chapter 13 bankruptcy petition allows a debtor to stay creditor actions and propose a plan to pay all creditors, thus rehabilitating the debtor financially.[12]

In either a Chapter 7 or Chapter 13 bankruptcy, a debtor may claim certain property as exempt from creditors in the bankruptcy proceedings.[13] The Code provides many exemptions to protect certain assets from creditors' claims, but under the Code, a state may choose to opt-out of these exemptions.[14] If a state chooses to opt-out, the federal Code exemptions are not available to debtors within that state, unless the state specifically opts-in to a Code exemption within state law. A state may also provide greater asset protections than what the Code provides.

Florida is an-opt out state, meaning that when a Florida resident files for bankruptcy or is otherwise subject to a creditor's judgment, Florida law, rather than the federal Code, provides the exemptions available to the debtor.[15] Florida law provides a number of exemptions for various retirement related assets, such as IRAs and other pension, profit sharing, and retirement benefits.[16] Florida also exempts all inherited IRA accounts from creditors' claims, while the Code does not.[17]

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[8] 11 U.S.C. § 101, et seq.
[9] 9 Am. Jur. 2d Bankruptcy s. 5.
[10] An individual may also file a petition under Chapter 11, but such petitions are rare.
[11] 11 U.S.C. §§ 704 & 726.
[12] 9 Am Jur 2d Bankruptcy s. 72.
[13] 11.U.S.C. § 522.
[14] 11.U.S.C. §§ 522(b)(3)(A) & (d).
[15] S. 222.20, F.S.
[16] S. 222.21(2), F.S.
[17] S. 222.21(c), F.S.

Transfers Incident to Divorce

Florida provides a bankruptcy exemption for IRA accounts that are exempt from taxation under s. 408 of the Internal Revenue Code (IRC),[18] and the IRC tax exemption for an IRA account awarded incident to a divorce provides tax-exempt status for a former spouse's interest in such an account at the time the transfer is made, and thereafter.[19] Although there is no current controversy in Florida regarding the exemption for an IRA account awarded incident to a divorce, recent bankruptcy court decisions from other jurisdictions may indicate the need to clarify Florida's exemption.

In a 2018 opinion, the U.S. Bankruptcy Appellate Court for the Eighth Circuit held that a debtor's funds must satisfy two requirements in order to be considered exempt retirement funds under the bankruptcy exemption in 11 U.S.C. § 522(d)(12):

- The amount must be retirement funds; and
- The retirement funds must be in an account that is exempt from taxation under one of the provisions of the IRC.[20]

The Court found that the funds in an IRA account awarded to Mr. Lerbakken incident to his divorce years before he filed for chapter 7 bankruptcy, but which he never transferred from his former wife's IRA account or designated himself as the owner of, were not retirement funds for purposes of a bankruptcy exemption.[21] As such, these funds were subject to creditors' claims.

Effect of Proposed Changes

HB 811 clarifies that any interest in an IRA received during a transfer incident to divorce remains exempt from creditor claims after the transfer is complete. Because the bill does not change existing law or practice, the bill applies retroactively to all transfers made incident to divorce.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 222.21, F.S., relating to exemption of pension money and certain tax-exempt funds or accounts from legal processes.
Section 2: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[18] S. 222.21(2), F.S.
[19] 28 U.S.C. § 408(d)(6).
[20] *In re Lerbakken*, 590 B.R. 895 (2018). *See also Clark v. Rameker*, 573 U.S. 122 (2014).
[21] *Lerbakken* at 897, 898.

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 or municipal governments.

2. Other:

The bill amends s. 222.21(2)(c), F.S., leaving intact an existing provision stating that the paragraph "is intended to clarify existing law, is remedial in nature, and shall have retroactive application." Retroactive application of legislation may implicate the due process provisions of the U.S. Constitution.[22] However, as a general matter, statutes that do not alter vested rights but relate only to remedies or procedure may be applied retroactively.[23]

Although there is no apparent controversy over the meaning of s. 222.21, F.S., the Florida Supreme Court has ruled that statutes enacted soon after a controversy over the meaning of legislation may be considered a legislative interpretation of the original law and not substantive change:

> When, as occurred here, an amendment to a statute is enacted soon after controversies as to the interpretation of the original act arise, a court may consider that amendment as a legislative interpretation of the original law and not as a substantive change thereof. This Court has recognized the propriety of considering subsequent legislation in arriving at the proper interpretation of the prior statute.[24]

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 24-27: The bill's language should be amended to clarify its intended effect.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[22] *See State Department of Transportation v. Knowles*, 402 So. 2d 1155 (Fla. 1981).
[23] *See Metropolitan Dade County v. Chase Federal Housing Corporation*, 737 So. 2d. 494 (Fla. 1999). *See also City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986).
[24] *Lowry v. Parole and Probation Commission*, 473 So. 2d 1248, 1250 (Fla. 1985).

A bill to be entitled

An act relating to transfers in divorce; amending s. 222.21, F.S.; specifying that certain interests received by a transferee after a divorce remain exempt from claims of creditors; provides retroactive application; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and certain tax-exempt funds or accounts from legal processes.—

(2)

(c) Any money or other assets or any interest in any fund or account that is exempt from claims of creditors of the owner, beneficiary, or participant under paragraph (a) does not cease to be exempt after the owner's death by reason of a direct transfer or eligible rollover that is excluded from gross income under the Internal Revenue Code of 1986, including, but not limited to, a direct transfer or eligible rollover to an inherited individual retirement account as defined in s. 408(d)(3) of the Internal Revenue Code of 1986, as amended. An interest in any fund or account received in a transfer incident to divorce described in s. 408(d)(6) of the Internal Revenue

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

Code of 1986, as amended, continues to be exempt after the transfer. This paragraph is intended to clarify existing law, is remedial in nature, and shall have retroactive application to all inherited individual retirement accounts and to each transfer incident to divorce without regard to the date an account was created or the transfer was made.

Section 2. This act shall take effect upon becoming a law.

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

INSURANCE & BANKING SUBCOMMITTEE

HB 811 by Geller
Transfers in Divorce

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. Geller (line 24): The amendment clarifies that an individual retirement account awarded or received in a divorce proceeding is exempt from creditors' claims *upon being awarded or received* and continues to be exempt thereafter.

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 Geller offered the following:

Amendment (with title amendment)

Remove lines 24-27 and insert:

interest in any fund or account awarded or received in a transfer incident to divorce described in s. 408(d)(6) of the Internal Revenue Code of 1986, as amended, is exempt upon being awarded or received and continues to be exempt thereafter. This paragraph is intended to clarify existing law, is

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

Remove lines 4-5 and insert:

received by a transferee after a divorce are exempt from claims of creditors upon being awarded or received and remain exempt; provides retroactive

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Transportation Network Companies
SPONSOR(S): Transportation & Infrastructure Subcommittee; Rommel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Insurance & Banking Subcommittee		Lloyd	Cooper
3) State Affairs Committee			

SUMMARY ANALYSIS

A transportation network company (TNC) is an entity that uses a digital network to connect a rider to a TNC driver, who provides prearranged rides. With certain exceptions, a "for-hire vehicle" means any motor vehicle used for transporting persons or goods for compensation, or let or rented to another for consideration. There are different regulatory and insurance requirements in place for TNCs and for-hire vehicles.

The bill defines "luxury ground transportation network company" to mean a company that uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans. The bill requires luxury ground TNCs to comply with all of the requirements applicable to a TNC, and requires maintenance of specific insurance coverage at all times.

The bill defines "transportation network company digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on. The bill provides additional requirements for the use and display of a TNC digital advertising device.

The bill provides that a luxury ground TNC is not considered a for-hire vehicle and that the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles is preempted to the state.

The bill may have a fiscal impact on the Department of Financial Services. To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. *See* Fiscal Analysis section for details.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Transportation Network Companies

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs).[1] The law defines a "TNC" as an entity operating in this state that uses a digital network to connect a rider[2] to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

A "TNC vehicle" is defined as a vehicle that is used by a TNC driver to offer or provide a prearranged ride and that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

A "prearranged ride" is defined as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network[3] controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail[4] service and does not include ridesharing,[5] carpool,[6] or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride. TNC drivers are prohibited from soliciting or accepting street hails.

A "TNC driver" is defined as an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. It requires the TNC's digital network to display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the law requires the TNC to disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the

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[1] Section 627.748, F.S.

[2] "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.

[3] The term "digital network" means any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

[4] The term "street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

[5] Section 341.031(9)(a), F.S., defines "ridesharing" as an "arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location."

[6] Section 450.28(3), F.S., defines "carpool" as "an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool."

prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an electronic receipt within a reasonable period of time after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

A TNC is required to designate and maintain an agent for service of process in this state.[7]

A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. As a result, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.[8]

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:[9]

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.[10]

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:[11]

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.[12]

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.[13]

However, an airport or seaport is not prohibited from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or from designating locations for staging, pickup, and other similar operations at the airport or seaport.[14]

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or

[7] Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.
[8] Section 627.748(2), F.S.
[9] Section 627.748(7)(b), F.S.
[10] Sections 627.730-627.7405, F.S. The amount of insurance required is $10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death.
[11] Section 627.748(7)(c), F.S.
[12] Section 627.748(7)(b) & (c), F.S.
[13] Section 627.748(15)(a), F.S.
[14] Section 627.748(15)(b), F.S.

goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire". The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire".[15]

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[16] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[17]

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[18]

Digital Advertising Device

Certain companies allow taxi and TNC drivers to generate revenue through digital advertising via a digital smart screen on top of the taxi or TNC vehicle. The digital screen allows advertisers to run targeted, geofenced campaigns.[19] There are currently digital advertising screens in use on vehicles in New York, Los Angeles, San Francisco, Chicago, and Dallas.[20]

Digital advertising screens are installed on the roofs of motor vehicles owned or operated by individuals who commit to drive a minimum number of hours per week in certain urban markets. Drivers with digital advertising screens report earning an average of $300 a month, depending on how many hours are driven.[21]

Prohibition Against Certain Lights

A person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment.[22] The law expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- Flashing lamps authorized for bicycle riders and deceleration lighting systems on buses.

[15] Section 320.01(15)(a), F.S.
[16] Section 324.032(1), F.S.
[17] Section 324.031, F.S.
[18] Section 125.01(1)(n), F.S.
[19] Anthony Ha, *Rideshare Advertising Startup Firefly Launches with $21.5M in Funding*, Techcrunch.com (December 6, 2018), available at https://techcrunch.com/2018/12/06/firefly-launch/ (last visited January 22, 2020).
[20] See Firefly.com, available at https://fireflyon.com/ (last visited January 22, 2020).
[21] Sarah Holder, *Car-Mounted Ads Take a New Direction: Data Collection*, Citylab.com (November 20, 2019), available at https://www.citylab.com/transportation/2019/11/firefly-digital-advertising-driver-pay-uber-lyft-cars-data/602077/ (last visited January 22, 2020).
[22] Section 316.2397, F.S.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[23] The purpose[24] of FDUTPA is to:

1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[25] The term "trade or commerce" is defined as "advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated", and the term includes "the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity."[26]

Effect of Proposed Changes

LUXURY GROUND TRANSPORTATION NETWORK COMPANIES

The bill defines a "luxury ground transportation network company" or "luxury ground TNC", to mean a company that uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), F.S., including limousines and luxury sedans and excluding taxicabs. The entity may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a luxury ground TNC. A luxury ground TNC must comply with all of the requirements of s. 627.748, F.S., that are applicable to a TNC, including the preemption requirements, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles.

At all times, a luxury ground TNC must maintain insurance coverage at the levels at least equal to the greater of those required in s. 627.748, F.S., and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver or luxury ground TNC driver. The bill changes the minimum insurance requirements applicable to a vehicle that is sometimes operated as a limousine or for-hire vehicle compared to periods when the vehicle is operated as a luxury ground TNC. The insurance differences are:

Insurance Coverage	Limousine or For-hire Vehicle	Luxury Ground TNC		Result
		Logged on/No rider	Connected to Rider	
Personal Injury Protection	Not required	Not required	Not required	No change
Bodily Injury or Death	$125,000 per person $250,000 per incident	$50,000 per person $100,000 per incident	$1,000,000 combined for bodily injury, death, or property damage	Decrease when logged on/no rider
Property Damage	$50,000	$25,000		Increase when connected to rider

A prospective luxury ground TNC that satisfies minimum financial responsibility requirements at the time of written notification to DFS by using self-insurance may continue to use self-insurance to satisfy the insurance requirements for a luxury ground TNC.

[23] Chapter 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.
[24] Section 501.202, F.S.
[25] Section 501.204(1), F.S.
[26] Section 501.203(8), F.S.

The bill adds TNC owners to the list of insureds whose coverage can be used to satisfy the insurance requirements of s. 627.748(7), F.S. The required coverage may be provided by the TNC, TNC driver, TNC owner, or any combination of the three. This allows the insurance maintained by the owner of a luxury ground TNC, who is not necessarily the driver, to satisfy the insurance requirements.

A luxury ground TNC is not considered a for-hire vehicle for purposes of ch. 627, F.S. In order for the bill's definition of "luxury ground transportation network company" to be compatible with current law, the bill makes conforming changes to the definitions of "prearranged ride", "transportation network company', and "transportation network company vehicle", by removing references to "for-hire vehicle", "for-hire vehicle owner", and "limousine". Additionally, the reference to "for-hire vehicle" is removed from the provision of law that states that a TNC or TNC driver is not considered a common carrier and does not have to register a TNC vehicle as a commercial motor vehicle or vehicle for-hire.

The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles to the state.

DIGITAL ADVERTISING DEVICES

The bill defines a "transportation network company digital advertising device" or "TNC digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill provides the following requirements for a TNC digital advertising device:

- A TNC driver may contract with an individual or company to install a TNC digital advertising device on a TNC vehicle.
- A TNC digital advertising device may be enabled with wireless Internet access and equipped with GPS.
- A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.
- A TNC digital advertising device must follow the lighting requirements of s. 316.2397, F.S.
- No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.
- A TNC digital advertising device must display advertisements only on the sides of the device and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising.
- A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard,[27] or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.
- A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the FDUTPA.
- A TNC driver is immune from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA unless the TNC driver is the advertiser.
- The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of s. 627.748, F.S., or the FDUTPA is immune from liability under s. 627.748, F.S., and the FDUTPA for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.
- For the purposes of chapter 627, F.S., a TNC advertising device shall be deemed part of a TNC vehicle.

[27] MIL-STD-810G is a U.S. military specification that guarantees a level of durability for a piece of technology. Specifically, it means the equipment has gone through a series of 29 tests, including shock tests, vibration tests, and more.

As a result of the inclusion of a TNC digital advertising device as part of a TNC vehicle, the regulation of a TNC digital advertising device is preempted to the state.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.748, F.S., relating to transportation network companies.

Section 2: Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

   The bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices to the state. To the extent municipalities, counties, and other governmental entities are imposing fees on luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices, they will experience an indeterminate negative fiscal impact.

2. Expenditures:

   The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes:

- The use of TNC digital advertising devices, thus enabling TNC drivers to install the devices and earn additional monthly revenue.
- Certain limousine and for-hire vehicle owners and drivers to begin operating as or with luxury ground TNCs, thus increasing competition within the TNC market and allowing them access to TNC customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the ability of a county or municipality to raise revenue; however, an exception may apply since the bill is expected to have an insignificant fiscal impact.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill permits a TNC driver, or a designee, to contract for the installation of a TNC digital advertising device on the TNC vehicle. The TNC driver may not own the TNC vehicle. If the intent of the bill is to authorize TNC owners to control the placement of the devices on the vehicle, then an amendment could clarify whether the TNC driver is limited by the rights of the TNC owner, in this respect.

The bill defines TNC digital advertising device as a certain object fixed to the roof of the TNC vehicle that cannot extend beyond the front or rear glass or display advertising to the front or rear of the vehicle, along with other conditions and limitations applicable to the device and its advertising. However, it does not address the use of advertising or advertising devices on the sides of the vehicle below the roof. If it is the intent of the bill to limit digital advertising on TNC vehicles to only a TNC digital advertising device or only such devices that are placed on the roof of the vehicle, then an amendment may be needed to further limit the devices and advertising placed on TNC vehicles.

The bill provides that a TNC digital advertising device may only display advertising while the vehicle is "turned on." It does not define "turned on." It is unclear if this term is apply to any or all of the following conditions:

- The engine of a conventional vehicle is:
  - Running.
  - Not running, but the vehicle electronics are active in accessories mode.
- A plug-in electric vehicle is:
  - In motion.
  - In stand-by mode with electronic environment monitoring operating.
  - Plugged in for charging with its electronic control unit active.
- An autonomous vehicle's:
  - Automated driving system is:
    - Active, but not executing a programmed drive.
    - Executing a programmed drive.

If the intent of the bill is to only allow the display of advertising while the TNC driver is in the vehicle and engaged in TNC activity, then an amendment may be needed to change to focus of the limitation from the status of the vehicle to the status of its use and presence of the TNC driver.

The bill provides that "Identification of the provider does not constitute advertising under this paragraph." It is unclear to whom the term "provider" refers; the term is not used in the remainder of the bill. Context indicates that it is either the TNC or an entity connected to the TNC digital advertising device, or both. If the term "provider" is intended to mean a specific entity, then an amendment could resolve this ambiguity.

The bill provides that a TNC driver and the owner or operator of a TNC digital advertising device is immune from liability for violations of s. 627.748, F.S., and the FDUTPA for certain advertisement related violations. In those circumstances where the TNC vehicle owner is not also the owner or operator of the device, the TNC vehicle owner is not provided the same immunity given to the others. If the intent of the bill is to grant the TNC vehicle owner the same immunity as the others, then an amendment may be needed to establish the immunity.

On lines 162-163, the bill makes the TNC digital advertising device a part of the TNC vehicle for the purposes of ch. 627, F.S. This chapter regulates insurance rates and contracts; however, s. 627.748, F.S., regulates TNCs providing general requirements, insurance requirements, and providing preemption of local governmental regulation. If the intent of the bill is to only apply the various aspects of s. 627.748, F.S., to the TNC digital advertising device as part of the TNC vehicle, i.e., preempt local regulation of TNC digital advertising devices, then an amendment could provide greater specificity regarding the purpose of this statement governing construction of the bill.

The bill adds luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles to the list of preemptions limiting local governmental regulation of TNC activity. Luxury ground TNC vehicle owners are not among those benefiting from a preemption. If the intent of the bill is to relieve luxury ground TNC vehicle owners from the possibility of local taxes or business licensing for TNC activity, then an amendment may be needed to grant such a preemption.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs.
- Specified that a TNC digital advertising device may be enabled with cellular or Wi-Fi-enabled data transmission and equipped with GPS.
- Required that a TNC digital advertising device may only display advertisements when the vehicle is turned on.
- Removed the requirement that a TNC digital advertising device must allocate 10 percent of all advertisement inventory for government, not-for-profit, or charitable organizations at no cost.
- Provided that TNC digital advertising devices are subject to the FDUTPA.
- Provided the TNC driver protection from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the driver is the advertiser.
- Provided the owner or operator of a TNC digital advertising device immunity from liability when a displayed advertisement is in violation of s. 627.748, F.S., or the FDUTPA , if the advertisement was displayed in good faith and without knowledge, unless the owner or operator is the advertiser.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to transportation network companies; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; revising automobile insurance coverage requirements for TNCs and TNC drivers; authorizing TNC drivers to contract for installment of TNC digital advertising devices; providing requirements for such devices; providing that TNC drivers and owners and operators of TNC digital advertising devices are immune from specified liabilities under certain circumstances; providing construction; authorizing entities to be regulated as luxury ground TNCs; providing requirements for luxury ground TNCs; providing that luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed by state law; providing an effective date.

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

Section 1. Paragraphs (f) and (g) of subsection (1), subsections (11) through (14), and subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and

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

subsection (17), respectively, paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) are amended, a new paragraph (f) is added to subsection (1), and a new subsection (11) and subsection (16) are added to that section, to read:

627.748 Transportation network companies.—

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

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written

contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC

vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver <u>or</u>

the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with

cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the

display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this subsection, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), that do not conflict with subparagraph 2. or that do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county,

municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1205 Price Transparency in Health Care Services
SPONSOR(S): Rodriguez, A.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Market Reform Subcommittee	14 Y, 0 N	Grabowski	Calamas
2) Insurance & Banking Subcommittee		Fortenberry	Cooper
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The United States is experiencing significant changes in health care payment and delivery. Consumers bear a greater share of health care costs, and more participate in high deductible health plans. Clear, accurate information about the cost and quality of health care is necessary for consumers to select value-based health care.

HB 1205 prohibits a health insurer from limiting a health care provider's ability to disclose whether a patient's cost-sharing obligation under his or her health insurance exceeds the cash price for a covered service. In addition, insurers must not prevent providers from communicating the availability of more affordable services to insured patients.

The bill also prohibits an insurer from requiring an insured patient to make a payment for a health care service that exceeds the cash price of that service in the absence of health insurance.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Health Care Price Transparency

The United States is experiencing significant changes in health care payment and delivery. Consumers bear a greater share of health care costs, and more participate in high deductible health plans. Clear, factual information about the cost and quality of health care is necessary for consumers to select value-driven health care options and for consumers and providers to be involved in and accountable for decisions about health and health care services. To promote consumer involvement, health care pricing and other data needs to be free, timely, reliable, and reflect individual health care needs and insurance coverage.

Price transparency can refer to the availability of provider-specific information on the price for a specific health care service or set of services to consumers and other interested parties.[1] Price can be defined as an estimate of a consumer's complete cost on a health care service or services that reflects any negotiated discounts; is inclusive of all costs to the consumer associated with a service or services, including hospital, physician, and lab fees; and identifies a consumer's out-of-pocket cost.[2] Further, price transparency can be considered "readily available information on the price of health care services that, together with other information, helps define the value of those services and enables patients and other care purchasers to identify, compare, and choose providers that offer the desired level of value."[3] Indeed, the definition or the price or cost of health care has different meanings depending on who is incurring the cost.[4]

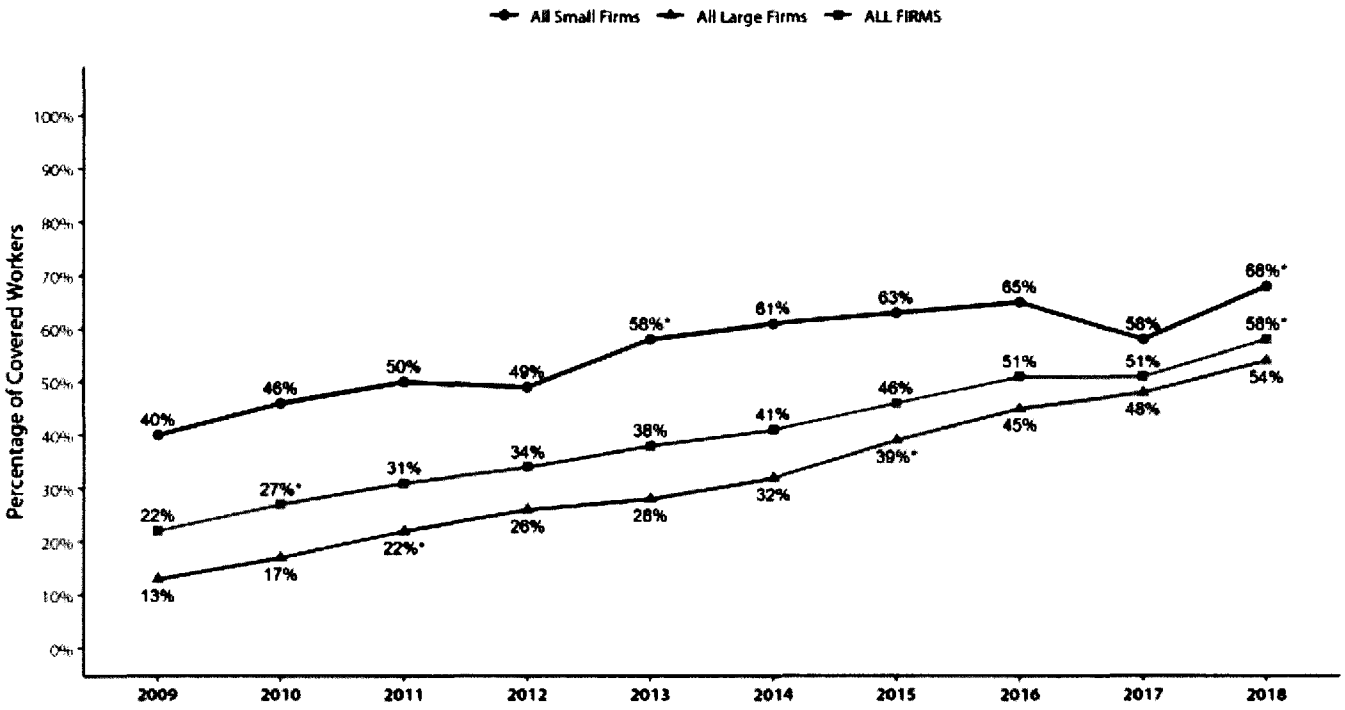
As health care costs continue to rise, most health insurance buyers are asking their consumers to take on a greater share of their costs, increasing both premiums and out-of-pocket expenses. According to the Kaiser Family Foundation, more than one in five Americans with private insurance is enrolled in a high deductible health plan (HDHP). Most covered workers face additional out-of-pocket costs when they use health care services, such as co-payments or coinsurance for physician visits and hospitalizations. Eighty-one percent of covered workers have a general annual deductible for single coverage that must be met before most services are paid for by the plan.[5]

Among covered workers with a general annual deductible, the average deductible amount for single coverage is $1,573.[6] Deductibles differ by firm size; for workers in plans with a deductible, the average deductible for single coverage is $2,132 in small firms, compared to $1,355 for workers in large firms.[7] Sixty-eight percent of covered workers in small firms are in a plan with a deductible of at least $1,000 for single coverage compared to 54% in large firms; a similar pattern exists for those in plans with a deductible of at least $2,000 (42% for small firms vs. 20% for large firms). The chart below shows the percent of workers enrolled in employer-sponsored insurance with an annual deductible of $1,000 or more for single coverage by employer size for 2009 through 2018.[8]

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[1] Government Accounting Office, *Meaningful Price Information is Difficult for Consumers to Obtain Prior to Receiving Care*, September 2011, page 2, available at http://www.gao.gov/products/GAO-11-791 (last accessed December 16, 2019).
[2] Id.
[3] Healthcare Financial Management Association, *Price Transparency in Health Care: Report from the HFMA Price Transparency Task Force*, page 2, 2014, available at https://www.hfma.org/Content.aspx?id=22305 (last accessed December 16, 2019).
[4] Id.
[5] The Henry J. Kaiser Family Foundation, *2018 Employer Health Benefits Survey*, October 3, 2018, available at http://files.kff.org/attachment/Report-Employer-Health-Benefits-Annual-Survey-2018 (last accessed December 16, 2019).
[6] Id.
[7] Id.
[8] Id, figure 7.13.

Percentage of Covered Workers Enrolled in a Plan with a General Annual Deductible of $1,000 or More for Single Coverage, by Firm Size, 2009-2018



* Estimate is statistically different from estimate for the previous year shown ($p < .05$).

NOTE: Small Firms have 3-199 workers and Large Firms have 200 or more workers. These estimates include workers enrolled in HDHP/SOs and other plan types. Average general annual deductibles are for in-network providers.

SOURCE: KFF Employer Health Benefits Survey, 2018; Kaiser/HRET Survey of Employer-Sponsored Health Benefits, 2009-2017

Looking at the increase in deductible amounts over time does not capture the full impact for workers because the share of covered workers in plans with a general annual deductible also has increased significantly, from 59% in 2008 to 78% in 2013 to 85% in 2018. If we look at the change in deductible amounts for all covered workers (assigning a zero value to workers in plans with no deductible), we can look at the impact of both trends together. Using this approach, the average deductible for all covered workers in 2018 is $1,350, up 53% from $883 in 2013 and 212% from $433 in 2008.

From 2013 to 2018, the average premium for covered workers with family coverage increased 20%, while wages have only increased 12%.[9] The dramatic increases in the costs of healthcare in recent years have focused significant attention on the need for greater communication and transparency to inform individual health care choices.

National Price Transparency Studies

To explore how expanding price transparency efforts could produce significant cost savings for the healthcare system, the Gary and Mary West Health Policy Center funded an analysis, "Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending." This report, conducted in collaboration with researchers from the Center for Studying Health System Change and RAND, found that implementation of three policy changes could save $100 billion over ten years.

- Provide personalized out-of-pocket expense information to patients and families before receiving care.
- Provide prices to physicians through electronic health record systems when ordering treatments and tests.

[9] Id.

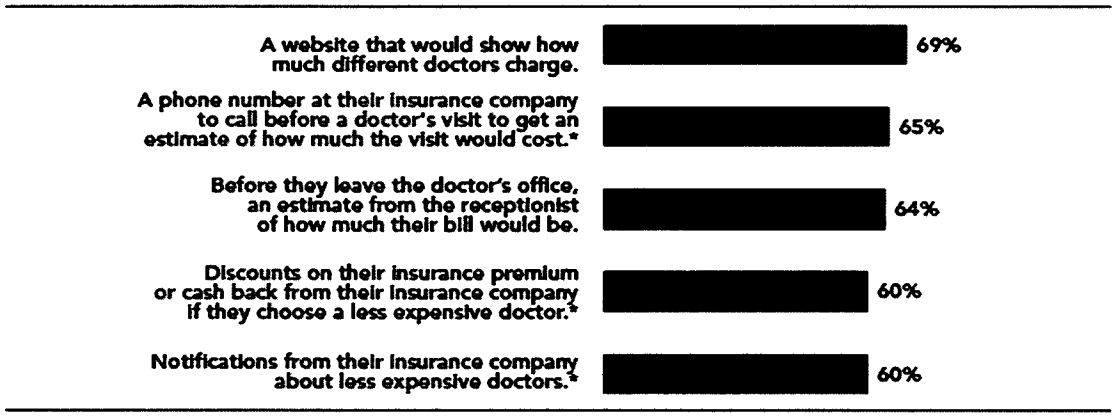
- Expand state-based all-payer health claims databases (APCDs), which could save up to $55 billion by collecting and providing data and analytics tools that supply quality, efficiency and cost information to policy makers, employers, providers, and patients.[10]

The report specifically found that requiring all private health insurance plans to provide personalized out-of-pocket price data to enrollees would reduce total health spending by an estimated $18 billion over the 10-year period from 2014 to 2023.[11]

As Americans take on more of their health care costs, research suggests that they are looking for more and better price information.[12]

Many Americans want help managing their health care spending.

Figure 16: Percent who say the following resources would help them a lot or some with their health care spending:



Base: All respondents, N=2,010.

*Base: Currently have health insurance, n=1,736.

[10] White, C., Ginsburg, P., et al., Gary and Mary West Health Policy Center, *Healthcare Price Transparency: Policy Approaches and Estimated Impacts on Spending*, May 2014, available at http://www.westhealth.org/wp-content/uploads/2015/05/Price-Transparency-Policy-Analysis-FINAL-5-2-14.pdf (last accessed December 16, 2019).

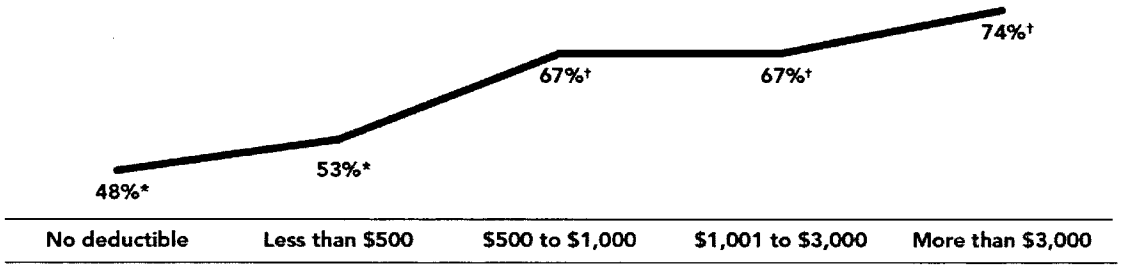
[11] Id., pg. 1.

[12] Public Agenda and Robert Wood Johnson Foundation, *How Much Will It Cost? How Americans Use Prices in Health Care*, March 2015, pg. 34, available at https://www.publicagenda.org/files/HowMuchWillItCost_PublicAgenda_2015.pdf (last accessed December 16, 2019).

One study in 2014, which conducted a nationally representative survey of more than 2,000 adults, found that 56 percent of Americans actively searched for price information before obtaining health care, including 21 percent who compared the price of health care services across multiple providers.[13] The chart below illustrates the finding that, as a consumer's health plan deductible increases, the consumer is more likely to seek out price information.[14]

People with deductibles over $500 are more likely to seek price information.

Figure 2: Percent who say they have tried to find price information before getting care, by deductible amount:



Base: Currently have health insurance, n=1,736.

Estimates for groups indicated by * are not statistically different from each other, and groups indicated by † are not statistically different from each other; groups indicated by * are statistically different from groups indicated by † at the p<.05 level.

The individuals who compared prices stated that such research affected their health care choices and saved them money.[15] In addition, the study found that most Americans do not equate price with quality of care. Seventy one percent do not believe higher prices impart a higher level care quality and 63 percent do not believe that lower price is indicative of lower level care quality.[16] Consumers enrolled in high-deductible and consumer-directed health plans are more price-sensitive than consumers with plans that have much lower cost-sharing obligations. Accordingly, these consumers find an estimate of their individual out-of-pocket costs more useful than any other kind of health care price transparency tool.[17] Another study found that when they have access to well-designed reports on price and quality, 80 percent of health care consumers will select the highest value health care provider.[18]

[13] Id., pg. 3.
[14] Id., pg. 13.
[15] Id., pg. 4.
[16] Supra note 12.
[17] American Institute for Research, *Consumer Beliefs and Use of Information About Health Care Cost, Resource Use, and Value*, Robert Wood Johnson Foundation, October 2012, pg. 4, available at https://www.rwjf.org/content/dam/farm/reports/issue_briefs/2012/rwjf402126 (last accessed December 16, 2019).
[18] Hibbard, JH, et al., An Experiment Shows That a Well-Designed Report on Costs and Quality Can Help Consumers Choose High-Value Health Care, Health Affairs 2012; 31(3): 560-568.

Price Transparency in Florida Law

Patient's Bill of Rights and Responsibilities

In 1991, the Legislature enacted the Florida Patient's Bill of Rights and Responsibilities (Patient's Bill of Rights).[19] The statute established the right of patients to expect medical providers to observe standards of care in providing medical treatment and communicating with their patients.[20]

Under s. 381.026(4)(c), F.S., a patient has the right to request certain financial information from health care providers and facilities.[21] Specifically, upon request, a health care provider or health care facility must provide a person with a reasonable estimate of the cost of medical treatment prior to the provision of treatment.[22] Estimates must be written in language "comprehensible to an ordinary layperson".[23] The reasonable estimate does not preclude the health care provider or health care facility from exceeding the estimate or making additional charges as the patient's needs or medical condition warrant.[24] A patient has the right to receive a copy of an itemized bill upon request and to receive an explanation of charges upon request.[25]

The Patient's Bill of Rights also authorizes, but does not require, primary care providers[26] to publish a schedule of charges for the medical services offered to patients.[27] The schedule must include certain price information for at least the 50 services most frequently provided by the primary care provider.[28] The law also requires the posting of the schedule in a conspicuous place in the reception area of the provider's office and at least 15 square feet in size.[29] A primary care provider who publishes and maintains a schedule of charges is exempt from licensure fees for a single renewal of a professional license and from the continuing education requirements for a single 2-year period.[30] The law also requires urgent care centers to publish a schedule of charges for the medical services offered to patients.[31]

In addition, current licensure law requires all practitioners regulated by the Department of Health or its boards to provide an estimate for nonemergency services provided in a hospital or ambulatory surgical center, if the patient requests it. This provision is an enforceable licensure standard, and failure to provide the estimate is subject to a daily fine of $500 until the estimate is provided.[32]

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[19] S. 1, ch. 91-127, Laws of Fla. (1991); s. 381.026, F.S.; The Florida Patient's Bill of Rights and Responsibilities is intended to promote better communication and eliminate misunderstandings between the patient and health care provider or health care facility. The rights of patients include standards related to individual dignity; information about the provider, facility, diagnosis, treatments, risks, etc.; financial information and disclosure; access to health care; experimental research; and patient's knowledge of rights and responsibilities. Patient responsibilities include giving the provider accurate and complete information regarding the patient's health, comprehending the course of treatment and following the treatment plan, keeping appointments, fulfilling financial obligations, and following the facility's rules and regulations affecting patient care and conduct.
[20] S. 381.026(3), F.S.
[21] S. 381.026(4)(c), F.S.
[22] S. 381.026(4)(c)3., F.S.
[23] Id.
[24] Id.
[25] S. 381.026(4)(c)5., F.S.
[26] S. 381.026(2)(d), F.S., defines primary care providers to include allopathic physicians, osteopathic physicians, and nurses who provide medical services that are commonly provided without referral from another health care provider, including family and general practice, general pediatrics, and general internal medicine.
[27] S. 381.026(4)(c)3., F.S.
[28] Id.
[29] Id.
[30] S. 381.026(4)(c)4., F.S.
[31] S. 395.107(1), F.S.
[32] S. 456.0575(2), F.S.

Health Care Facilities

Under s. 395.301(1)(b)1., F.S., a health care facility[33] must provide, within 7 days of a request, a good faith estimate of reasonably anticipated charges for the facility to treat the patient's or prospective patient's condition. The facility is not required to adjust the estimate for any potential insurance coverage.[34] The facility must inform the patient or prospective patient of the option to contact his or her insurer or HMO to obtain additional information regarding cost-sharing. [35] Upon request, the facility must also notify the patient or prospective patient of any revision to the estimate.[36] Failure to timely provide the estimate as requested will result in a daily fine of $1,000 until the estimate is provided, with a total fine not to exceed $10,000.[37]

Pursuant to s. 395.301(1)(d)1., F.S., upon request and at discharges or release from a facility, the facility must provide a patient or the patient's survivor or legal guardian, an itemized bill or statement detailing the charges or expensed incurred by the patient.

Prescription Drug Prices

In 2018, the Legislature approved statutory changes to ensure that pharmacists can freely communicate pricing information to patients.[38] Those changes were aimed at pharmacy benefit managers (PBMs), which are entities that provide services related to the acquisition and distribution of prescription drugs. PBMs enter into contracts with both health plans and pharmacies. PBMs negotiate with drug manufacturers, on behalf of health plans, in an effort to purchase drugs at reduced prices or with the promise of additional rebates. This negotiation process often involves the development of drug formularies, which are tiered drug lists that incentivize the use of some drugs over others.[39] PBMs simultaneously negotiate with pharmacies to establish reimbursements for dispensing prescription drugs to patients.

Current Florida law requires contracts between pharmacy benefit managers (PBMs) and insurers or HMOs to include a prohibition on PBM practices that may limit the ability of a pharmacy or pharmacist to communicate with patients. Each contract must prohibit a PBM from restricting the ability of a pharmacy or pharmacist to disclose to a patient whether his or her cost sharing obligation under an insurance benefit exceeds the retail price of a drug, and whether a more affordable alternative drug may be available.[40]

Congress also passed two complementary laws in 2018 aimed at improving drug price transparency for insured patients.[41] The laws prohibit all private health insurers and all Medicare plans covering prescription drugs from limiting the ability of pharmacies and pharmacists to provide patients with relevant price information on the drugs they purchase. Under the laws, no PBM or insurer may prevent a pharmacist from informing a patient about any difference in the cost of a drug under that patient's insurance versus the cash price of the drug.

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[33] The term "health care facilities" refers to hospital, ambulatory surgical centers, and mobile surgical centers, all of which are licensed under ch. 395, part I, F.S.
[34] S. 395.301(1)(b)1., F.S.
[35] Id.
[36] Id.
[37] Id.
[38] Ch. 2018-91, Laws of Fla.
[39] Academy of Managed Care Pharmacy (AMCP). *Formulary Management*. Available at https://www.amcp.org/about/managed-care-pharmacy-101/concepts-managed-care-pharmacy/formulary-management (last accessed January 2, 2020). *See also* Pharmaceutical Care Management Association (PCMA). *Pharmacy Contracting & Reimbursement*. Available at https://www.pcmanet.org/policy-issues/pharmacy-contracting-reimbursement/ (last accessed January 2, 2020).
[40] Ss. 627. 64741, 627.6572, and 641.314, F.S.
[41] Public Laws 115-162 and 115-263.

Both the federal laws and Florida law apply only to price information shared in the context of prescription drug coverage. Current law does not otherwise prohibit any limits on price transparency that may exist in contracts between health plans and service providers, such as physicians and clinics.

Effect of Proposed Changes

HB 1205 prohibits a health insurer from limiting a health care provider's ability to disclose whether a patient's cost-sharing obligation under his or her health insurance exceeds the cash price for a covered service.[42] The bill expands existing law protecting the communication rights of pharmacies and pharmacists to include all providers of health care services. In addition, an insurer may not prevent a provider from communicating the availability of more affordable services to an insured patient.

The bill also prohibits an insurer from requiring an insured patient to make a payment for a health care service that exceeds the cash price of that service in the absence of health insurance.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Creates s. 627.4303, F.S.; relating to price transparency in contracts between health insurers and health care providers.
Section 2: Provides an effective date of July 1, 2020.

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:

[42] While cash price is not a defined term, in the healthcare context it generally refers to the price that a health care provider would charge a patient who does not have health insurance.

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:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to price transparency in health care services; creating s. 627.4303, F.S.; defining the term "health insurer"; prohibiting limitations on price transparency with patients in contracts between health insurers and health care providers; prohibiting a health insurer from requiring an insured to make a payment in a certain amount for a covered service; providing an effective date.

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

Section 1. Section 627.4303, Florida Statutes, is created to read:

627.4303 Price transparency in health care services.—

(1) As used in this section, the term "health insurer" means a health insurer issuing major medical coverage through an individual or group policy or a health maintenance organization issuing major medical coverage through an individual or group contract.

(2) In its contract with a health care provider, a health insurer may not limit the health care provider's ability to disclose whether a patient's cost-sharing obligation exceeds the cash price for a covered service in the absence of health insurance coverage or the availability of a more affordable

service.

(3) A health insurer may not require an insured to make a payment for a covered service in an amount that exceeds the cash price of the service in the absence of health insurance coverage.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Property Insurance
SPONSOR(S): Trumbull
TIED BILLS: **IDEN./SIM. BILLS:** SB 1760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Cooper
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Residential and commercial property insurance policies issued in Florida may be issued on either the admitted or surplus lines insurance markets. When insurance is not available to Florida consumers from admitted insurers, it generally becomes necessary and legally permissible to obtain policies on the surplus lines market. However, much of the Florida Insurance Code that places requirements on insurers does not apply to surplus lines insurers. Neither the Florida Insurance Code, which is generally inapplicable to surplus lines insurers, nor the Surplus Lines Law, presently contain requirements or restrictions on the venue or jurisdiction provisions contained within property insurance policies issued in Florida on property located within Florida.

The bill changes the surplus lines law to prohibit a surplus lines agent from delivering or issuing, in Florida, a property insurance policy requiring dispute resolution outside Florida or applying the laws of another state. Additionally, it amends the Insurance Code to address venue and jurisdiction for all property insurers, regardless of whether they write residential or commercial policies on the admitted or surplus lines markets. It provides that any action or dispute resolution involving a property insurance policy issued by a Florida insurer or a claim against an insurer issuing property insurance policies in Florida must be conducted in Florida and governed by Florida law.

The bill amends the statute governing the payment of residential property insurance claims so that its requirements apply to commercial insurance policies written on the admitted market and to residential and commercial property insurance policies issued on the surplus lines market. The bill provides that any property insurer's failure to comply with the prompt payment requirements of the Florida Insurance Code provides a basis for a private cause of action.

The bill further amends Florida's Valued Policy Law, which is a law designed to protect property insurance policyholders whose property has incurred a total loss by ensuring that the policyholders receive the face amount of the policy. The changes include its application to surplus lines insurers, a codified definition of total loss, and a requirement that that an insurer's liability under the applicable property insurance policy includes liability for ordinance, rule, and law coverage.

The bill has no impact on state or local government revenues or expenditures. The bill may have a positive economic benefit to consumers.

The bill provides an effective date of July 1, 2020, except as otherwise provided therein.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background Regarding Admitted and Surplus Lines Property Insurers

Residential and commercial property insurance policies issued in Florida may be issued on either the admitted[1] or surplus lines insurance markets. When insurance is not available to Florida consumers from admitted insurers, it generally becomes necessary and legally permissible to obtain policies on the surplus lines market.[2] The export of insurance policies, including property insurance policies, to the surplus lines market is regulated by the Florida Office of Insurance Regulation (OIR) under the Florida Surplus Lines Law.[3] Section 626.913, F.S., of the Surplus Lines Law establishes that, unless otherwise specifically stated, the provisions of ch. 627, F.S., do not apply to surplus lines policies issued pursuant to the Surplus Lines Law. Because ch. 627, F.S., contains many of the requirements placed upon Florida property insurers, including duties regarding claims handling, many of the requirements currently placed on admitted insurers do not apply to surplus lines insurers.

Because coastal and other properties in Florida often fall into categories of risk that admitted insurers are unable or unwilling to write, property owners in those geographic areas often find themselves obtaining policies issued by surplus lines market.[4] These policyholders may not understand exactly what benefits and rights their policies provide. Following significant hurricanes in Florida, policyholders with policies from admitted and surplus lines insurers have also complained about claims handling by their insurers.

Venue and Jurisdiction for Insurance Disputes

Venue is defined as the proper, or possible, geographic location for the handling of a case because the location has some connection to the events giving rise to the case.[5] Jurisdiction is a court's power to decide a case or issue a decree.[6] Neither the Florida Insurance Code, which is generally inapplicable to surplus lines insurers, nor the Surplus Lines Law, presently contain requirements or restrictions on the venue or jurisdiction provisions contained within property insurance policies issued in Florida on property located within Florida. As such, property insurers can require that Florida policyholders engage in dispute resolution or litigation outside Florida even when the dispute concerns property located in Florida. Additionally, such insurers could restrict, or attempt to restrict, courts from exercising applicable jurisdiction over those insurers by placing restrictive language within property insurance policies issued to Florida policyholders.

Effect of the Bill on Venue and Jurisdiction

Changes Applicable to Surplus Lines Insurers Only

The bill establishes that the Surplus Lines law does not authorize litigation or alternative dispute resolution for any residential or commercial property insurance claim involving real property located in Florida to occur outside Florida or to apply the laws of another state. The bill also creates a new

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[1] Admitted or authorized insurers are those who have received a certificate of authority from the OIR to transact insurance business within the state.

[2] *See* s. 626.913, F.S.

[3] Ss. 626.913–626.937, F.S., constitute the Florida Surplus Lines Law.

[4] Florida Surplus Lines Service Office, *What is Surplus Lines Insurance?*, https://www.fslso.com/AboutGroup/about/surplus-lines-insurance (last visited February 1, 2020).

[5] Black's Law Dictionary 745 (2nd Pocket Edition 2001).

[6] *Id.* at 383.

statutory section in the Surplus Lines Law that prohibits a surplus lines agent from delivering or issuing, in Florida, a property insurance policy containing a provision requiring dispute resolution outside Florida or a provision applying the laws of another state.

Changes Applicable to Admitted Insurers and Surplus Lines Insurers

The bill creates a new statutory section within the Insurance Code to address venue and jurisdiction for all property insurers. This section defines insurer in this section to include both admitted and eligible surplus lines carriers. It states that the section applies only to residential and commercial property insurance policies covering real property located in Florida. The section provides that any action or dispute resolution involving a property insurance policy issued by a Florida insurer or a claim against an insurer issuing property insurance policies in Florida must be conducted in Florida and governed by Florida law. This section mandates that no property insurance policy covering real property located in Florida may contain terms depriving Florida courts of jurisdiction for actions against the insurer issuing the policy. It also specifies that any provision of a property insurance policy, including a surplus lines policy that violates any provision of the created statutory section is void, but that such voiding does not affect the validity of other provisions of the insurance policy.

Insurers' Duty to Acknowledge Communications Regarding Claims, Including Claims Payment Requirements

Section 627.70131, F.S., contains various requirements for insurers' handling of property insurance claims in Florida. As currently written, however, this statute does not apply to commercial property insurance claims[7] written by admitted insurers or to residential or commercial policies written by surplus lines insurers. One of the most significant requirements of this statute is the 90-day payment framework set out in s. 627.70131(5)(a), F.S.,[8] which generally requires a residential property insurer to pay or deny a claim or portion of a claim within 90 days after receiving notice an initial, reopened, or supplemental claim, unless the failure to pay is cause by factors beyond the control of the insurer. However, this subsection specifically states that an insurers' failure to comply with the subsection cannot be the sole reason for a private cause of action.[9]

Effect of the Bill on Insurers' Duty

The bill changes the definition of insurer used in s. 627.70131, F.S., so that it includes all residential and commercial property insurers, regardless of whether they issue policies on the admitted or surplus lines markets. This amendment to the existing law makes all of the provisions of this statutory section applicable to admitted insurers writing commercial property insurance policies and to surplus lines insurers writing residential and commercial property insurance policies, in addition to admitted insurers writing residential property insurance policies. The bill provides that any property insurer's failure to comply with the prompt payment requirements of s. 627.70131(5)(a) provides a basis for a private cause of action.

[7] S. 627.70131(1)(b), F.S., creates exceptions to make certain portions of the statute applicable to claims under commercial lines residential coverage (designed to cover commercial properties used as residences), to claims for structural or contents coverage under commercial insurance policies if the insured structures are 10,000 square feet or less, and to claims for contents coverage under commercial tenant policies if the insured premises are 10,000 square feet or less.

[8] This requirement is sometimes colloquially referred to as the "prompt pay" requirement for residential property insurers.

[9] A private cause of action is a factual situation that entitles a private party to sue another private party. *See* Black's Law Dictionary 89 (2nd pocket edition 2001).

Valued Policy Law; Law and Ordinance Coverage

Valued Policy Law

Approximately 20 states, including Florida, have a Valued Policy Law.[10] The goal of valued policy laws is to protect property insurance policyholders whose property has incurred a total loss by ensuring that the policyholders receive the face amount of the policy.[11] These laws prevent policyholders from having to prove their property's actual cash value or replacement cost at the time of a loss.[12] They also prevent property insurers from collecting premiums to insure buildings at their full value but then paying less than that amount after a loss has taken place.[13]

Florida's Valued Policy Law currently applies to the total loss of buildings, structures, mobile homes, or manufactured buildings located in Florida and insured as to a covered peril.[14] Under this law, if a total loss is caused by a covered peril, an insurer's liability under a property insurance policy equals the total coverage limit for which a premium was paid. While Florida's Valued Policy Law does not differentiate between residential and commercial property, it does not cover policies issued by surplus lines insurers.

Law and Ordinance Coverage

Prior to issuing a homeowner's insurance policy, an insurer must offer a policy or an endorsement providing that any loss repaired or replaced will be adjusted on the basis of replacement costs to the dwelling, and also including costs necessary to meet applicable laws and ordinances regulating the construction, use, or repair of any property, or requiring the tearing down of any property, including the costs of removing debris.[15] Additionally, this statute requires insurers who issue homeowners' insurance policies to provide the following statement with policy documents at initial issuance and at every renewal: "Law and Ordinance: Law and ordinance is an important coverage that you may wish to purchase. Please discuss with your insurance agent."

Effect of the Bill on Valued Policy Law, and Law and Ordinance Coverage

The bill defines insurer in the Valued Policy Law so that it includes both admitted insurers and surplus lines insurers. It also codifies the definition of total loss as a loss in which damaged property is damage to the extent that applicable ordinances, rules or laws prevent repairing the property or for which the cost to repair the property exceeds the applicable coverage limit of the insurance policy covering the property. The bill adds a provision to the Valued Policy Law requiring that an insurer's liability under the applicable property insurance policy includes liability for ordinance, rule, and law coverage.[16]

Effective Date Provisions of the Bill

The bill provides that the amendments it makes relating to the Surplus Lines Law, claims handling, and the Valued Policy Law, and the new statutory sections of law that it creates, apply only to property insurance policies issued or renewed on or after January 1, 2021, and do not apply to any claim, ongoing dispute resolution, or legal action pending as of July 1, 2020.

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[10] The Balance Small Business, *What are Valued Policy Laws?*, https://www.thebalancesmb.com/what-are-valued-policy-laws-4584774 (last visited February 1, 2020).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] S. 627.702, F.S. A covered peril is a risk or cause of loss.
[15] S. 627.7011, F.S. Homeowner's insurance policy is an industry term often used to describe a residential property insurance policy issued to an individual homeowner.
[16] See drafting comments for discussion of possible concerns between the effect of the bill and existing law and ordinance coverage requirements under s. 627.7011, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.913, F.S., relating to surplus lines law; short title; purposes.

Section 2. Creates s. 626.9285, F.S., relating to contracts with alternative dispute resolutions or application of laws of another state prohibited.

Section 3. Amends s. 627.70131, F.S., relating to insurer's duty to acknowledge communications regarding claims; investigation.

Section 4. Amends s. 627.702, F.S., relating to valued policy law.

Section 5. Creates s. 627.7035, F.S., relating to proceeding venues and jurisdiction of courts for real property coverage.

Section 6. Provides an effective date of July 1, 2020.

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 may have positive economic impacts for consumers, particularly those who have residential insurance policies written by surplus lines insurers. This bill provides that no property insurance policyholders whose real property is located within Florida will have to engage in dispute resolutions or legal actions outside Florida or applying law other than Florida law. This will eliminate the inconvenience and cost associated with attending mediation or arbitration or going to court outside Florida. It will also bring more certainty to policyholders about the law that will be applied to their claims and the resolution of those claims. Because it applies existing claims payment deadlines to surplus lines insurers, the bill will also streamline the claims payment process for policyholders who have surplus lines policies. It further assists consumers by strengthening the Valued Policy Law to ensure that policyholders are paid for a total loss where appropriate.

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:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 31–51 and 177–207: Lines 31–51 create a new statutory subsection within the Surplus Lines Law (s. 626.9285, F.S.) and Lines 177–207 create a new statutory section within the Insurance Code (s. 627.7035, F.S.), which provides that it applies to surplus lines insurers. There is subject matter overlap between these two sections that may not be consistent and may result in confusion or conflict. It is recommended that the potentially conflicting part of the statute be removed from s. 626.9285, F.S., and, if necessary, a cross-reference to s. 627.7035, F.S., can be placed in s. 626.9285, F.S., instead.

Lines 33–34, 49–50, 183–187, and 203–213: All of these lines of the bill have some reference to forms of dispute resolution and judicial proceedings. However, the references are inconsistent and some use phrases not commonly used to describe alternative dispute resolution methods (*e.g.* "dispute resolution proceedings"). It is recommends that concise and consistent phrasing be used throughout the bill to describe the methods by which property insurance claim disputes may be resolved.

Lines 36–37 and 45: Because surplus lines policies are often issued by alien insurers, who are located in another country as opposed to another state, the phrase "another state" in these lines may be too narrow to cover all possible laws that might be applied to claims arising in Florida. Therefore, it may be advisable to rewrite these portions of the bill such that they prohibit the applicability of all laws other than the law of Florida.

Lines 47–51 and 203–213: OIR has pointed out that it is unclear why the effective dates in the bill apply the changes to policies issued January 1, 2021, or later, but specifically do not apply to claims pending on July 1, 2020.[17] The bill contains no language addressing claims arising or policies issued in the intervening six months. Additionally, the newly created statutory requirements regarding claims handling could not apply to policies first issued on or after January 1, 2021, because it is impossible for claims to exist on such policies as of July 1, 2020.

Lines 128–175: OIR has also pointed out that the language in these lines appears to require that ordinance or law coverage be included and be considered when determining whether a total loss has occurred.[18] If this is not the intent of the bill, then the language may need to be clarified as to whether Lines 154–160 is intended to require that an insurer provide ordinance, rule, or law coverage as supplemental coverage above policy limits or how it is to be calculated within policy limits.[19] Furthermore, if these lines are meant to be read in conjunction with law and ordinance coverage as set

[17] Florida Office of Insurance Regulation, Agency Analysis of 2020 House Bill 1357, p. 6 (Jan. 10, 2020).
[18] *Id.* at p. 5.
[19] *Id.*

forth in s. 627.7011, F.S., the phrasing "ordinance, rule, or law" should be changed to "law and ordinance" to be consistent with that statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property insurance; amending s. 626.913, F.S.; providing construction of the Surplus Lines Law relating to certain dispute resolution proceedings; creating s. 626.9285, F.S.; prohibiting surplus lines agents from delivering or issuing for delivery property insurance contracts with specified provisions; amending s. 627.70131, F.S.; revising the definition of the term "insurer" to include eligible surplus lines insurers and provision of commercial property insurance; revising the basis for private causes of action; revising the definition of the term "claim" to include any claims under a commercial property insurance; revising applicability; amending s. 627.702, F.S.; defining the terms "insurer" and "total loss"; requiring property insurers' liability to include certain coverages; providing circumstances under which such coverages are payable; creating s. 627.7035, F.S.; defining the term "insurer"; providing requirements for proceeding venues and jurisdiction of courts for specified property insurance policies and contracts; prohibiting such insurance policies and contracts from containing specified conditions, stipulations, and agreements; providing construction; providing applicability; providing an effective date.

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

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

Section 1. Subsection (5) is added to section 626.913, Florida Statutes, to read:

626.913 Surplus Lines Law; short title; purposes.—

(5) The Surplus Lines Law does not authorize litigation, arbitration, or mediation or any other dispute resolution proceeding for residential or commercial property insurance claim involving real property located in this state to be conducted outside this state or to apply the laws of another state.

Section 2. Section 626.9285, Florida Statutes, is created to read:

626.9285 Contracts with alternative dispute resolutions or application of laws of another state prohibited.—

(1) A surplus lines agent may not deliver or issue for delivery in this state any property insurance contract containing a provision on an arbitration, mediation, or other alternative dispute resolution that occurs outside this state or a provision that applies the laws of another state.

(2) This section applies to property insurance contracts issued or renewed on or after January 1, 2021, and does not apply to any claim existing or any action, dispute resolution proceeding, judicial proceeding, or administrative proceeding

pending as of July 1, 2020.

Section 3. Section 627.70131, Florida Statutes, is amended to read:

627.70131 Insurer's duty to acknowledge communications regarding claims; investigation.—

(1) ~~(4)~~ As used in ~~For purposes of~~ this section, the term "insurer" means an insurer authorized to transact insurance in this state or an eligible surplus lines insurer, as defined in s. 626.914, that provides ~~any~~ residential or commercial property insurance in this state ~~insurer~~.

(2)(a) ~~(1)(a)~~ Upon an insurer's receiving a communication with respect to a claim, the insurer shall, within 14 calendar days, review and acknowledge receipt of such communication unless payment is made within that period of time or unless the failure to acknowledge is caused by factors beyond the control of the insurer which reasonably prevent such acknowledgment. If the acknowledgment is not in writing, a notification indicating acknowledgment shall be made in the insurer's claim file and dated. A communication made to or by an agent of an insurer with respect to a claim shall constitute communication to or by the insurer.

(b) As used in this subsection, the term "agent" means any person to whom an insurer has granted authority or responsibility to receive or make such communications with respect to claims on behalf of the insurer.

(c) This subsection does ~~shall~~ not apply to claimants represented by counsel beyond those communications necessary to provide forms and instructions.

(3) ~~(2)~~ Such acknowledgment shall be responsive to the communication. If the communication constitutes a notification of a claim, unless the acknowledgment reasonably advises the claimant that the claim appears not to be covered by the insurer, the acknowledgment shall provide necessary claim forms, and instructions, including an appropriate telephone number.

(4) ~~(3)~~ Unless otherwise provided by the policy of insurance or by law, within 10 working days after an insurer receives proof of loss statements, the insurer shall begin such investigation as is reasonably necessary unless the failure to begin such investigation is caused by factors beyond the control of the insurer which reasonably prevent the commencement of such investigation.

(5)(a) Within 90 days after an insurer receives notice of an initial, reopened, or supplemental property insurance claim from a policyholder, the insurer shall pay or deny such claim or a portion of the claim unless the failure to pay is caused by factors beyond the control of the insurer which reasonably prevent such payment. Any payment of an initial or supplemental claim or portion of such claim made 90 days after the insurer receives notice of the claim, or made more than 15 days after there are no longer factors beyond the control of the insurer

which reasonably prevented such payment, whichever is later, bears interest at the rate set forth in s. 55.03. Interest begins to accrue from the date the insurer receives notice of the claim. The provisions of this subsection may not be waived, voided, or nullified by the terms of the insurance policy. If there is a right to prejudgment interest, the insured shall select whether to receive prejudgment interest or interest under this subsection. Interest is payable when the claim or portion of the claim is paid. Failure to comply with this subsection constitutes a violation of this code and provides a~~. However, failure to comply with this subsection does not form the sole~~ basis for a private cause of action.

(b) ~~Notwithstanding subsection (4),~~ For purposes of this subsection, the term "claim" means any of the following:

1. A claim under an insurance policy providing residential coverage as defined in s. 627.4025(1);

2. A claim ~~for structural or contents coverage~~ under a commercial property insurance policy ~~if the insured structure is 10,000 square feet or less~~; or

3. A claim for contents coverage under a commercial tenant policy if the insured premises is 10,000 square feet or less.

(c) This subsection does ~~shall~~ not apply to claims under an insurance policy covering ~~nonresidential commercial structures or~~ contents in more than one state.

Section 4. Subsection (1) of section 627.702, Florida

Statutes, is amended to read:

627.702 Valued policy law.—

(1)(a) ~~(c)~~ It is the intent of the Legislature that the amendment to this section shall not be applied retroactively and shall apply only to claims filed after the effective date of such amendment.

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

1. "Insurer" means an insurer authorized to transact insurance in this state or an eligible surplus lines insurer, as defined in s. 626.914.

2. "Total loss" means a loss in which the damaged property is damaged to the extent that the applicable ordinances, rules, or laws in effect would prohibit or prevent the repair of the property, or for which the cost and expense to repair the damages would exceed the applicable coverage limit of the property insurance policy.

(c) ~~(1)(a)~~ In the event of the total loss of any building, structure, mobile home as defined in s. 320.01(2), or manufactured building as defined in s. 553.36(13), located in this state and insured by any insurer as to a covered peril, in the absence of any change increasing the risk without the insurer's consent and in the absence of fraudulent or criminal fault on the part of the insured or one acting in her or his behalf, the insurer's liability under the policy for such total loss, if caused by a covered peril, must ~~shall~~ be in the amount

of money for which such property was so insured as specified in the policy and for which a premium has been charged and paid.

(d) The insurer's liability under the policy must include liability for ordinance, rule, and law coverage. The obligation to tender ordinance, rule, or law coverage payments shall be triggered by a showing of the ordinance, rule, or law requirements, and expenses for ordinance, rule, or law requirements need not be incurred to be payable under this paragraph.

(e) ~~(b)~~ The intent of this subsection is not to deprive an insurer of any proper defense under the policy, to create new or additional coverage under the policy, or to require an insurer to pay for a loss caused by a peril other than the covered peril. In furtherance of such legislative intent, when a loss was caused in part by a covered peril and in part by a noncovered peril, paragraph (c) ~~(a)~~ does not apply. In such circumstances, the insurer's liability under this section shall be limited to the amount of the loss caused by the covered peril. However, if the covered perils alone would have caused the total loss, paragraph (c) applies ~~(a) shall apply~~. The insurer is never liable for more than the amount necessary to repair, rebuild, or replace the structure following the total loss, after considering all other benefits actually paid for the total loss.

Section 5. Section 627.7035, Florida Statutes, is created

to read:

627.7035 Proceeding venues and jurisdiction of courts for real property coverage.—

(1) As used in this section, the term "insurer" means an insurer authorized to transact insurance in this state or an eligible surplus lines insurer, as defined in s. 626.914.

(2) Any litigation, arbitration, or mediation or any other dispute resolution proceeding involving a residential or commercial property insurance policy or contract issued by, or a claim against, an insurer covering real property in this state must be conducted in this state and governed by the laws of this state.

(3) A residential or commercial property insurance policy or contract covering real property that is located in this state may not contain any condition, stipulation, or agreement depriving the courts of this state of the jurisdiction of action against the insurer.

(4) Any provision of a residential or commercial property insurance policy or contract, including a policy or contract authorized under the Surplus Lines Law, ss. 626.913-626.937, that violates any provision of this section is void. However, such voiding does not affect the validity of other provisions of the policy or contract.

(5) This section applies:

(a) Only to residential or commercial property insurance

policies or contracts covering real property located in this state.

(b) To residential or commercial property insurance policies and contracts issued or renewed on or after January 1, 2021, and does not apply to any claim existing or any action, dispute resolution proceeding, judicial proceeding, or administrative proceeding pending as of July 1, 2020.

Section 6. The amendments to ss. 626.913, 627.70131, and 627.702, Florida Statutes, by this act apply to property insurance policies or contracts issued or renewed on or after January 1, 2021, and do not apply to any claim existing or any action, dispute resolution proceeding, judicial proceeding, or administrative proceeding pending as of July 1, 2020.

Section 7. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1393 Pub. Rec./Financial Technology Sandbox
SPONSOR(S): Grant, J.
TIED BILLS: HB 1391 **IDEN./SIM. BILLS:** SB 1872

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Cooper
2) Oversight, Transparency & Public Management Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of the legislative, executive, or judicial branches of government. However, the Legislature may provide by general law for the exemption of records from the constitutional requirements.

House Bill 1391 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

The bill creates public record exemptions for certain records related to the Financial Technology Sandbox. Specifically, the bill creates public record exemptions for:

- The general law or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides for repeal of the exemptions on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature. The bill provides a public necessity statement as required by the State Constitution.

The bill has no fiscal impact on local governments or the private sectors and likely has no fiscal impact on state government.

This bill will take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates new public record exemptions; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a).[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no more broad than necessary to accomplish its purpose.[3]

Open Government Sunset Review

The Open Government Sunset Review Act[4] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no more broad than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[5]

The Act requires the automatic repeal of a public record exemption on October 2nd of the fifth year after its creation or substantial amendment, unless the Legislature reenacts the exemption.[6]

Effect of Proposed Changes

House Bill 1391 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation (OFR). The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

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[1] FLA. CONST. art. I, s. 24(c).
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] FLA. CONST. art. I, s. 24(c).
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] S. 119.15(3), F.S.

The bill creates public record exemptions for certain records related to the Financial Technology Sandbox. Specifically, the bill provides the following records are confidential and exempt[7] from public record requirements:

- The general law or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers;
- Specified information that the OFR must consider in deciding whether to approve or deny an application for the Financial Technology Sandbox;
- Comprehensive records that a sandbox participant must keep relating to the innovative financial product or service; and
- Any information related to the consultation between the OFR and a sandbox participant regarding the maximum number of consumers authorized to receive the innovative financial product or service.

The bill provides that this information may be released to appropriate state and federal agencies for the purposes of investigation.

The bill provides a statement of public necessity as required by the Florida Constitution. It includes the following legislative findings:

- The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants.
- Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Commissioner of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the Office of Financial Regulation, and this lack of cooperation would impair the effective and efficient administration of governmental functions.
- Disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers.
- Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment.
- Any proprietary business information in the Financial Technology Regulatory Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and any discussions with the commissioner on their financial products or services must be held confidential and exempt from disclosure.

The public record exemptions are subject to the Open Government Sunset Review Act and will be repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.952, F.S., as created in HB 1391, relating to Financial Technology Sandbox Act.

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[7] There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied* 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. *See* Op. Att'y Gen. Fla. 85-62 (1985).

Section 2. Provides a public necessity statement as required by the Florida Constitution.

Section 3. Provides that the bill will take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill could have a minimal fiscal impact on the OFR in handling records that qualify for the exemptions created by the bill. Staff responsible for complying with public record requirements may require training related to implementation of the exemptions. The costs, however, could likely be absorbed, as they are part of the day-to-day responsibilities of an agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Vote Requirement
   Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a new public record exemption and includes a statement supporting the public necessity for these exemptions.

Breadth of Exemption
Article I, section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for certain records related to the Financial Technology Sandbox. The bill identifies specific entities to whom the exempt information may be disclosed as necessary. The exemption should be narrowed to remove the following types of records covered by the exemption: the general law or rule requirements for which a waiver is sought under the Financial Technology Sandbox.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill needs to be amended to conform to the proposed committee substitute for HB 1391 and to narrow the breadth of the exemption, as noted above.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 559.952, F.S.; providing exemptions from public records requirements for certain information made available to the Commissioner of Financial Regulation in Financial Technology Sandbox applications, certain records maintained by specified providers of innovative financial products or services, and information relating to specified discussions; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (h) is added to subsection (5) of section 559.952, Florida Statutes, as created by HB 1391, 2020 Regular Session, and paragraph (f) is added to subsection (6) of that section, to read:

559.952 Financial Technology Sandbox Act.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL; CONSUMER PROTECTION BOND.—

(h)1. The following information made available to the commissioner in a Financial Technology Sandbox application under this subsection is confidential and exempt from s. 119.07(1) and

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

s. 24(a), Art. I of the State Constitution:

a. The general law or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial product or service from being made available to consumers.

b. The information specified in subparagraphs (e)1.-7.

However, the information in sub-subparagraphs a. and b. may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. The comprehensive records relating to the innovative financial product or service maintained under paragraph (e) and any information relating to the consultation described in paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records and information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal

through reenactment by the Legislature

Section 2. The Legislature finds that it is a public necessity that proprietary business information in innovative financial technology sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants. Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Commissioner of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the Office of Financial Regulation, and this lack of cooperation would impair the effective and efficient administration of governmental functions. Further, disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers. Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more secure business environment. Therefore, the Legislature finds

that any proprietary business information in the Financial Technology Regulatory Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and any discussions with the commissioner on their financial products or services must be held confidential and exempt from disclosure under s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution.

Section 3. This act shall take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1393 by Grant
Public Records/Financial Technology Sandbox

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. Grant (line 16): The amendment removes the following types of records covered by the exemption: the statutes or rules waived under the Financial Technology Sandbox. Such information would, therefore, be subject to disclosure to the public. The amendment also makes other technical changes to conform to the proposed committee substitute for HB 1391.

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 Grant, J. offered the following:

Amendment (with title amendment)

Remove lines 16-80 and insert:

Section 1. Paragraph (i) is added to subsection (5) of section 560.214, Florida Statutes, as created by HB 1391, 2020 Regular Session, and paragraph (f) is added to subsection (6) of that section, to read:

560.214 Financial Technology Sandbox.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL.—

(i)1. The following information made available to the office in a Financial Technology Sandbox application under this

subsection is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

a. The reasons why the general law or rule requirements for which a waiver is sought prevent the innovative financial product or service from being made available to consumers.

b. The information specified in paragraph (e).

However, the information in sub-subparagraphs a. and b. may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

(6) OPERATION OF THE FINANCIAL TECHNOLOGY SANDBOX.—

(f)1. The comprehensive records relating to the innovative financial product or service maintained under paragraph (e) and any information relating to the consultation described in paragraph (b) are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, such records and information may be released to appropriate state and federal agencies for the purposes of investigation.

2. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature

Section 2. The Legislature finds that it is a public necessity that proprietary business information in innovative financial technology sandbox be expressly made confidential and exempt from public records requirements. The disclosure of the proprietary business information relating to the innovative financial technology products and services could adversely affect the business interests of the financial technology sandbox applicants. Those entities and individuals who would otherwise disclose proprietary business information in their applications to the Office of Financial Regulation to start a business in this state or who would maintain records relating to their innovative financial products or services were they already established here would hesitate to cooperate with the Office of Financial Regulation, and this lack of cooperation would impair the effective and efficient administration of governmental functions. Further, disclosure of such information would impair competition in the financial technology industry because competitors could use the information to impede full and fair competition in the financial technology industry to the disadvantage of consumers. Without the exemption from public records requirements that would protect their proprietary business information, financial technology innovators might elect to establish their business in another state with a more

secure business environment. Therefore, the Legislature finds that any proprietary business information in the Financial Technology Regulatory Sandbox applications, any records maintained by financial technology innovators relating to their financial products or services, and specified discussions with the office on their financial products or services must be

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

Remove lines 3-5 and insert:
560.214, F.S.; providing exemptions from public records requirements for certain information made available to the Office of Financial Regulation

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1395 Fees/Financial Technology Sandbox Applications
SPONSOR(S): Sirois
TIED BILLS: HB 1391 **IDEN./SIM. BILLS:** SB 1874

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

SUMMARY ANALYSIS

House Bill 1391 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

The bill requires payment of an application fee as provided in the license provision being waived for purposes of the Financial Technology Sandbox. The bill also requires that specified individuals who are involved with the innovative financial product or service submit live-scan fingerprints in order for the Florida Department of Law Enforcement to conduct a background check. The costs of fingerprint processing, including the cost of retaining the fingerprints, will be borne by the person subject to the background check.

This bill has no fiscal impact on state government or local governments and has an indeterminate negative fiscal impact on the private sector.

This bill will take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

This bill authorizes a new state fee, requiring a two-thirds vote of the membership of the House. *See* Section III.A.2. of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution provides that no state tax or fee may be imposed, authorized, or raised by the Legislature except through legislation approved by two-thirds of the membership of each house of the Legislature.[1] For purposes of this requirement, a "fee" is any charge or payment required by law, including any fee or charge for services and fees or costs for licenses and to "raise" a fee or tax means to:[2]

- Increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
- Increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
- Decrease or eliminate a state tax or fee exemption or credit.

A bill that imposes, authorizes, or raises any state fee or tax may only contain the fee or tax provision(s) and may not contain any other subject.[3]

The constitutional provision does not authorize any state tax or fee to be imposed if it is otherwise prohibited by the constitution and does not apply to any tax or fee authorized or imposed by a county, municipality, school board, or special district.[4]

House Bill 1391 (2020), which this bill is linked to, creates the Financial Technology Sandbox within the Office of Financial Regulation. The Financial Technology Sandbox is intended to allow financial technology innovators to test innovative financial products or services in a supervised, flexible regulatory sandbox, using waivers of specified general law and corresponding rule requirements under defined conditions.

Effect of Proposed Changes

The bill requires payment of an application fee as provided in the license provision being waived for purposes of the Financial Technology Sandbox. The bill also requires that specified individuals who are involved with the innovative financial product or service submit live-scan fingerprints in order for the Florida Department of Law Enforcement to conduct a background check. The costs of fingerprint processing, including the cost of retaining the fingerprints, will be borne by the person subject to the background check.

B. SECTION DIRECTORY:

Section 1: Amends s. 559.952, F.S., as created in HB 1391, relating to Financial Technology Sandbox Act.

Section 2: Provides that the bill will take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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[1] Fla. Const. art. VII, s. 19(a)-(b). The amendment appeared on the 2018 ballot as Amendment 5.
[2] Fla. Const. art. VII, s. 19(d).
[3] Fla. Const. art. VII, s. 19(e).
[4] Fla. Const. art. VII s. 19(c).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will have no impact on application fees received by the state because the bill requires an application fee in the amount that a person would otherwise pay in the course of applying for a license under the provision being waived for purposes of the Financial Technology Sandbox.

2. Expenditures:

   The bill will have no impact on the state for fingerprints and background checks associated with the Financial Technology Sandbox because the costs of fingerprint processing, including the cost of retaining the fingerprints, will be borne by the person subject to the background check.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have no impact on application fees paid by the private sector because the bill requires an application fee in the amount that a person would otherwise pay in the course of applying for a license under the provision being waived for purposes of the Financial Technology Sandbox.

The bill will increase costs on the private sector to the extent that the Financial Technology Sandbox requires fingerprints and background checks for individuals who otherwise would not be subject to such under the provision being waived for purposes of the Financial Technology Sandbox.

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:

   Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, the bill appears to implicate Art. VII, s. 19 of the Florida Constitution because the bill requires that the costs of fingerprinting be borne by the person subject to the background check.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill needs to be amended to conform to the proposed committee substitute for HB 1391.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to fees; amending s. 559.952, F.S.; requiring the Financial Technology Sandbox applications with the Office of Financial Regulation to be accompanied by a fee; requiring the office to deposit such fees into a trust fund; requiring applicants and specified individuals to bear the costs of fingerprint processing for the applications; providing a contingent effective date.

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

Section 1. Paragraphs (a) and (d) of section 559.952, Florida Statutes, as created in HB 1391, are amended to read:

559.952 Financial Technology Sandbox Act.—

(5) FINANCIAL TECHNOLOGY SANDBOX APPLICATION; STANDARDS FOR APPROVAL; CONSUMER PROTECTION BOND.—

(a) Before making an innovative financial product or service available to consumers in the Financial Technology Sandbox, a person must file an application with the commissioner. The commissioner shall, by rule, prescribe the form and manner of the application.

1. In the application, the person must specify the general law or rule requirements for which a waiver is sought, and the reasons why these requirements prohibit the innovative financial

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

product or service from being made available to consumers.

2. The application must also contain the information specified in subparagraphs (e)1.-7. and must be accompanied by a fee that is equivalent to the statutory fee required in the applicable license provision being waived. The fee shall be deposited into the appropriate trust fund of the office.

(d) The applicant must submit fingerprints for each individual filing an application under this section and each individual who is substantially involved in the development, operation, or management of the innovative financial product or service for live-scan processing in accordance with rules adopted by the office.

1. The fingerprints may be submitted through a third-party vendor authorized by the Department of Law Enforcement to provide live-scan fingerprinting.

2. The Department of Law Enforcement must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the Federal Bureau of Investigation.

3. All fingerprints submitted to the Department of Law Enforcement must be submitted electronically and entered into the statewide automated fingerprint identification system established in s. 943.05(2)(b) and available for use in accordance with s. 943.05(2)(g) and (h). The office shall pay an annual fee to the Department of Law Enforcement to participate

in the system and shall inform the Department of Law Enforcement of any person whose fingerprints no longer must be retained.

4. The costs of fingerprint processing, including the cost of retaining the fingerprints, shall be borne by the person subject to the background check.

5.~~4.~~ The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets the office's requirements.

6.~~5.~~ For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted under s. 560.104(1). The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the Securities and Exchange Commission or traded on an exchange in a country other than the United States which is regulated by a regulator equivalent to the Securities and Exchange Commission and the disclosure and reporting requirements of such regulator are substantially similar to those of the Securities and Exchange Commission.

Section 2. This act shall take effect on the same date that HB 1391 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 1395 by Sirois
Fees/Financial Technology Sandbox Applications

AMENDMENT SUMMARY
February 4, 2020

Amendment 1 by Rep. Grant (line 13): The amendment removes the application fee for the Financial Technology Sandbox and the fees associated with fingerprinting. Such fees are already provided for in ch. 560, F.S., related to money services businesses. The companion bill, HB 1391, permits waiving or modifying certain fees in existing statutes. The amendment states that the Office of Financial Regulation may not waive or modify fees provided by ch. 560, F.S., except as permitted under the Financial Technology Sandbox created by HB 1391.

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 Grant, J. offered the following:

Amendment (with title amendment)

Remove lines 13-69 and insert:

Section 1. Subsection (12) of section 560.214, Florida Statutes, as created in HB 1391, is created to read:

560.214 Financial Technology Sandbox.—

(12) FEES.—The office may not waive or modify fees provided by this chapter except as permitted under this section.

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

Remove lines 2-8 and insert:

An act relating to fees; amending s. 560.214, F.S.; prohibiting the Office of Financial Regulation from waiving or modifying fees for the Financial Technology Sandbox except as specified;