

Insurance & Banking Subcommittee

Thursday, January 27, 2022
9:00 AM – 11:00 AM
Morris Hall (17 HOB)

Meeting Packet

Chris Sprowls
Speaker

Nick DiCeglie
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Thursday, January 27, 2022
9:00 AM – 11:00 AM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- CS/HB 265 Value of Motor Vehicles Exempt from Legal Process by Civil Justice & Property Rights Subcommittee, Gottlieb, Benjamin
- HB 689 Workers' Compensation Benefits for First Responders by Giallombardo
- HB 951 Domestic Surplus Lines Insurers by Gregory
- HB 1023 Insolvent Insurers by Fabricio

Consideration of the following proposed committee substitute(s):

- PCS for HB 353 -- Mortgage Payoff Letters
- PCS for HB 389 -- Money Services Businesses

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 265 Value Of Motor Vehicles Exempt From Legal Process
SPONSOR(S): Civil Justice & Property Rights Subcommittee, Gottlieb, Benjamin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	15 Y, 0 N, As CS	Mathews	Jones
2) Insurance & Banking Subcommittee		Herendeen	Luczynski
3) Judiciary Committee			

SUMMARY ANALYSIS

Bankruptcy filings create an estate comprised of all property a debtor has an interest in. Federal law exempts certain types of property, but also permits states to opt out of federal exemptions and instead establish state exemptions. Florida exercised this option by creating Chapter 222, Florida Statutes.

In Florida, a debtor has a constitutional right to exempt his or her homestead from creditors' claims so long as the property is used as a primary residence. If a debtor does not have a homestead, state law permits the debtor to exempt $4,000 of personal property in a bankruptcy proceeding.

Additional state exemptions include wages earned as a head of household, the cash surrender value of life insurance policies and annuity contracts, pension funds and exempt retirement accounts, and up to $1,000 of the debtor's interest in a motor vehicle.

The bill increases the maximum value of a motor vehicle that may be exempted from legal process in a bankruptcy case from $1,000 to $5,000.

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

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Bankruptcy

Filing bankruptcy can help a person obtain a fresh start by discharging debt or adopting a repayment plan. As a matter of public policy, the debtor is allowed to retain sufficient property so the debtor has basic necessities and is not left entirely destitute.[1]

All bankruptcy cases are handled in federal courts under rules outlined in the U.S. Bankruptcy Code.[2] The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including a foreclosure.[3] The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

There are two primary forms of bankruptcy an individual may file.[4] In a proceeding under Chapter 7 of the bankruptcy code, the debtor surrenders his or her assets to a trustee who then liquidates the assets and distributes proceeds to the creditors.[5] A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as when there is no nonexempt property to protect.[6] A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.[7]

Florida Exemptions for Debtors

Cases commenced under the federal Bankruptcy Code create an estate which is comprised of all the property in which the debtor has a legal or equitable interest as of the date of the petition filing.[8]

Federal law includes exemptions for certain assets, but states may opt out of the federal exemptions and limit its residents to those exemptions provided under state law.[9] Florida exercised this option by creating Chapter 222, F.S.

Therefore, citizens of Florida are entitled only to those exemptions enumerated in the Article X, section IV of the Florida Constitution and exemptions created by state law.[10]

Constitutional Exemptions

The Florida Constitution allows a debtor to exempt a homestead property, regardless of value, from the claims of creditors so long as the property is used as a residence. Debtors may also exempt up to $1,000 in personal property.[11]

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[1] 9 Am Jur 2d Bankruptcy s. 5.
[2] 11 U.S.C. s. 101, et seq.
[3] 11 U.S.C. s. 362(a)(4).
[4] An individual can file a petition under Chapter 11, but it is rare.
[5] 11 U.S.C. ss. 704 & 726.
[6] 9 Am Jur 2d Bankruptcy s. 68.
[7] 9 Am Jur 2d Bankruptcy s. 72.
[8] 11 U.S.C. § 541(a).
[9] 11. U.S.C. § 522(b).
[10] *In re Haning*, 252 B.R. 799 (Bankr. M.D. Fla. 2000), citing *In re Barker,* 168 B.R. 773, 775–76 (Bankr. M.D. Fla. 1994) (discussing extent of Florida exemptions).
[11] Art. X, S. 4, Fla. Const.

Other Asset Exemptions

If a debtor does not claim or receive the benefits of a homestead exemption, state law permits the debtor to exempt up to $4,000 in personal property.[12]

State law permits the debtor to exempt up to $1,000 of the value of a single motor vehicle.[13]

Thus, if a debtor did not claim a homestead exemption, such debtor may exempt $4,000 in personal property and $1,000 of the value of the motor vehicle, creating a combined exemption of $5,000.[14]

Chapter 222, F.S., also protects the following assets from legal process:

- Funds held in an individual retirement account and other tax-exempt accounts;[15]
- Proceeds of a life insurance policy;[16]
- The cash surrender value of a life insurance policy or annuity;[17]
- Funds held in qualified tuition programs and medical, Coverdell education, or hurricane savings accounts;[18]
- Disability income benefits;[19]
- Wages, unless the debtor agrees to waive the exemption in writing;[20]
- Any professionally prescribed health aides for the debtor or a dependent;[21]
- A refund or credit under the Internal Revenue Code, unless the debtor owes money for child support or spousal support;[22]
- Social security benefits; unemployment compensation, or public assistance benefits; veterans' benefits; alimony, support, or separate maintenance; and stock or pension plans under specified circumstances;[23]

Liens and other Judgments

Historically, exempt assets have remained out of a creditor's reach unless specifically pledged in a security agreement[24] During the bankruptcy proceeding, the court determines whether property is exempt from process under non-bankruptcy law.[25]

If a creditor has a judgment against the debtor's interest in a motor vehicle, the debtor may not avail himself or herself of the $1,000 exemption.[26] Unsecured debts do not prevent a debtor from claiming the exemption.[27]

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[12] S. 222.25(4), F.S. (this exemption is not applicable to a debt owed for child support or spousal support).
[13] S. 222.25(1), F.S.
[14] *See, e.g.*, *In re Haffner*, 383 B.R. 350 (Bankr. N. D. Fla. 2008); and *In re Rutter*, 247 B.R. 334 (Bankr. M.D. 2000).
[15] S. 222.21, F.S.
[16] S. 222.13, F.S.
[17] S. 222.14, F.S.
[18] S. 222.22, F.S.
[19] S. 222.18, F.S.
[20] Ss. 222.11 and 225.15, F.S.
[21] S. 222.25(2), F.S.
[22] S. 222.25(3), F.S.
[23] S. 222.201, F.S.
[24] Real Property, Probate, and Trust Law Section of the Florida Bar ("RPPTL"), *White Paper* (Jan. 26, 2021); *see, e.g., Havoco of Am. Ltd. v. Hill*, 790 So. 2d 1018 (Fla. 2001); *Connor v. Seaside Nat'l Bank*, 135 So. 3d 508 (Fla. 5th DCA 2014); *Killian v. Lawson*, 387 So. 2d 960 (Fla. 1980).
[25] 11 U.S.C. § 522(b)(2)(B).
[26] *In Re Campbell*, 214 B.R. 411, (Bankr. M.D. Fla. 1997).
[27] *In Re Juergens*, 176 B.R. 275 (Bankr. M.D. Fla. 1995).

Effect of Proposed Changes

The bill amends section 222.25, F.S., to increase the maximum value for a single exempt motor vehicle from $1,000 to $5,000 in bankruptcy actions filed on or after July 1, 2022.

The bill provides an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1: Amends s. 222.25, F.S., relating to other individual property of natural persons exempt from legal process.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 13, 2022, the Civil Justice and Property Rights Subcommittee adopted one strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute limits the increased exemption amount of $5,000 in a single motor vehicle to apply only in bankruptcy cases. For all other matters, a debtor's interest in a single motor vehicle remains exempt up to $1,000 in value.

The staff analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to the value of motor vehicles exempt from legal process; amending s. 222.25, F.S.; revising upward the value of motor vehicles owned by certain natural persons that is exempt from certain legal processes; providing an effective date.

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

Section 1. Section 222.25, Florida Statutes, is amended to read:

222.25 Other individual property of natural persons exempt from legal process.—

(1) The following property is exempt from attachment, garnishment, or other legal process:

(a) ~~(1)~~ A debtor's interest, not to exceed $1,000 in value, in a single motor vehicle as defined in s. 320.01(1) ~~s. 320.01~~.

(b) ~~(2)~~ A debtor's interest in any professionally prescribed health aids for the debtor or a dependent of the debtor.

(c) ~~(3)~~ A debtor's interest in a refund or a credit received or to be received, or the traceable deposits in a financial institution of a debtor's interest in a refund or credit, pursuant to s. 32 of the Internal Revenue Code of 1986, as amended. This exemption does not apply to a debt owed for

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

child support or spousal support.

(d) ~~(4)~~ A debtor's interest in personal property, not to exceed $4,000, if the debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

(2) Notwithstanding paragraph (1)(a), an individual debtor under the federal Bankruptcy Code may exempt a debtor's interest, not to exceed $5,000 in value, in a single motor vehicle as defined in s. 320.01(1). This subsection applies to any bankruptcy action filed on or after July 1, 2022.

Section 2. This act shall take effect July 1, 2022.

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

HB 689

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 689 Workers' Compensation Benefits for First Responders
SPONSOR(S): Giallombardo and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N	Villa	Toliver
2) Insurance & Banking Subcommittee		Herendeen	Luczynski
3) State Administration & Technology Appropriations Subcommittee			
4) State Affairs Committee			

SUMMARY ANALYSIS

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. In addition to on-the-job injuries, employers may be required to provide benefits if an occupational disease causes death or disablement, is due to the nature of the employee's occupation, and the employee contracted the disease while on the job.

Mental or nervous injuries are generally not compensable unless they are triggered by a physical injury. However, the following special rules apply to certain first responders (firefighters, paramedics, emergency medical technicians, and law enforcement officers):

- If the first responder is injured on the job and the injury triggers posttraumatic stress disorder (PTSD), the first responder may be eligible for medical benefits and compensation for lost wages;
- If the first responder is diagnosed with PTSD and demonstrates that the disorder arose out of employment, the first responder may be eligible for medical benefits;
- If the first responder experiences a qualifying event defined in the law and is subsequently diagnosed with PTSD, the first responder may be eligible for medical benefits and compensation for lost wages.

This bill addresses notice provisions for first responders seeking workers compensation benefits for PTSD.

Currently, notice of a PTSD-related injury is due to the employer within 90 days of a qualifying event or the manifestation of the disorder, whichever is later. If the compensability of an injury is disputed, a claim must be filed within 52 weeks of the qualifying event.

The bill makes the notice of injury due within 90 days of a qualifying event or diagnosis of the disorder, whichever is later. Similarly, the bill extends the claim filing deadline to either 52 weeks of the qualifying event or diagnosis of the disorder, whichever is later.

Extending the claim deadline to one year after a PTSD diagnosis allows claims more than one year after a qualifying event. Symptoms of PTSD may begin shortly after a traumatic event, or may not appear until years after the event.

The bill will likely have a significant negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Workers' compensation is a no-fault system that provides medical benefits and compensation for lost wages when an employee is injured or killed in the course of employment. Employers must secure coverage, and may do so by purchasing insurance from an authorized carrier or through an employee-leasing agreement, qualifying as a self-insurer, or purchasing coverage from the Florida Workers' Compensation Joint Underwriting Association, which is the state-sponsored insurer of last resort. In return for providing compensation, the employer is relieved of liability for workplace injuries, and may only be sued for intentional acts that result in injury or death.[1] The workers' compensation system is administered by the Department of Financial Services, Division of Workers' Compensation (DWC).

Benefits for Temporary and Permanent Disability

Workers' compensation is the injured employee's remedy for "compensable" workplace injuries.[2] A work-related accident must be the major contributing cause of any resulting injury or illness, meaning that the cause must be more than 50 percent responsible for the injury as compared to all other causes combined, as demonstrated by medical evidence only.[3] For work-related injuries, employees are entitled to receive all medically necessary remedial treatment, care, and attendance, including medications, medical supplies, durable medical equipment, and prostheses, for as long as the nature of the injury and process of recovery requires.[4]

Payments for lost wages, known as indemnity benefits, may be required if an employee has been disabled for at least eight days;[5] indemnity benefits are generally payable at 66.67 percent of the employee's average weekly wage,[6] up to the maximum weekly benefit established by law.[7]

Indemnity benefits fall into one of four categories: temporary partial disability, temporary total disability, permanent partial disability, or permanent total disability and are payable as follows:

- Temporary partial disability and temporary total disability benefits are payable for up to a combined total of 260 weeks.[8]
- Permanent partial disability benefits are payable as impairment income benefits that are provided for a variable number of weeks depending upon the value of the injured worker's permanent impairment rating pursuant to a statutory formula.[9]
- Permanent total disability benefits are payable until the age of 75, unless the work-related accident occurs after the worker's 70th birthday, in which case the benefit is paid for no more than five years.[10]

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[1] Ss. 440.015, 440.09, 440.10, 440.38, and 627.313, F.S.
[2] S. 440.13(1)(d), F.S., states: " 'Compensable' means a determination by a carrier or judge of compensation claims that a condition suffered by an employee results from an injury arising out of and in the course of employment."
[3] S. 440.09(1), F.S.
[4] S. 440.13(2)(a), F.S.
[5] S. 440.12(1), F.S
[6] An injured worker's average weekly wage is an amount equal to one-thirteenth of the total amount of wages earned during the 13 weeks immediately preceding the compensable accident pursuant to s. 440.14(1), F.S.
[7] S. 440.15(1)-(4), F.S.
[8] The Florida Supreme Court and the First District Court of Appeal in two cases found the general limitation on temporary indemnity benefits unconstitutional in circumstances where the injured worker had reached the 104-week limit on benefits, but was unable to return to work. The courts invalidated the 104-week limitation and replaced it with the previous statutory limit of 260 weeks. *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016); *Jones v. Food Lion, Inc*., 202 So. 3d 964 (Fla. 1st DCA 2016).
[9] S 440.15(3), F.S.
[10] S. 440.15(1)(b), F.S.

Occupational Diseases

In addition to on-the-job injuries, employers may be required to pay compensation or furnish benefits if an occupational disease causes death or disablement, is due to the nature of the employee's occupation, and the employee contracted the disease in the course of his or her employment.[11]

In general, occupational diseases are compensable if:

- A condition peculiar to the occupation causes the disease;
- The employee contracts the disease on the job;
- The job presents a particular hazard of the disease;
- The incidence of the disease is substantially higher in the occupation than in the public;
- The nature of the employment was a major contributing cause of the disease; and
- Epidemiological studies show that exposure to the specific substance involved, at the levels to which the employee was exposed, may cause the precise disease sustained by the employee.[12]

General Rules for Mental or Nervous Injuries

Mental or Nervous injuries may be compensable, but only if the injury is accompanied by a physical injury that requires medical treatment. Thus, if a workplace accident causes both a physical injury and a related mental or nervous injury, both may be compensable so long as the physical injury that requires medical treatment is the major contributing cause (at least 50 percent responsible) of the mental or nervous injury. A mental or nervous injury caused by "stress, fright, or excitement" is not compensable.[13]

However, temporary disability benefits for a mental or nervous injury are limited to six months after a claimant reaches maximum medical improvement for the physical injury that triggered the mental or nervous injury.[14] Additionally, benefits may not exceed a 1 percent limit on permanent psychiatric impairment benefits.[15]

Special Rules for First Responders

The Legislature recognized the unique occupational hazards associated with the work of first responders in 2007, by authorizing:

- Medical and indemnity benefits (lost wages) for first responders who demonstrate that a mental or nervous injury arose out of a physical injury suffered during the course of employment, and
- Medical benefits for first responders who did not suffer a physical injury but demonstrate, by clear and convincing evidence, that a mental or nervous injury arose out of employment.

The law also relaxed the burden of proof for first responders suffering from occupational diseases caused by exposure to specific toxic substances, and exempted first responders from limits that typically apply to temporary disability benefits.[16]

Benefits for Posttraumatic Stress Disorder

In 2018, the Legislature authorized medical benefits and compensation for lost wages for first responders who are diagnosed with PTSD (as described by the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, published by the American Psychiatric Association).[17]

[11] Ss. 440.09, and 440.151, F.S.
[12] S. 440.151(2), F.S.
[13] S. 440.093, F.S.
[14] S. 440.093(3), F.S.
[15] S. 440.14(3), F.S.
[16] Chapter 2007-87, Laws of Florida, created s. 112.1815, F.S.
[17] Chapter 2018-124 amended s. 112.1815, F.S.

As a result, a first responder who experiences one of the following qualifying events need not suffer a physical injury to qualify for medical benefits and be compensated for lost wages:

- Seeing a deceased minor;
- Witnessing the death of a minor;
- Witnessing an injury to a minor who subsequently dies before or upon arrival at a hospital emergency department;
- Participating in the treatment of an injured minor who dies before or on arrival at a hospital emergency department;
- Transporting an injured minor who dies before or on arrival at a hospital emergency department;
- Seeing a decedent whose death was due to grievous bodily harm of a nature that shocks the conscience;
- Witnessing a death (including suicide) that involved grievous bodily harm of a nature that shocks the conscience;
- Witnessing a homicide, whether criminal or excusable, including murder, mass killing, manslaughter, self-defense, misadventure, and negligence;
- Witnessing an injury (including an attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience;
- Participating in the treatment of an injury (including attempted suicide) to a person who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience; or
- Transporting a person who was injured (including by attempted suicide) who dies before or upon arrival at a hospital emergency department if the person was injured by grievous bodily harm of a nature that shocks the conscience.[18]

The following injuries qualify as grievous bodily harm of a nature that shocks the conscience: decapitation; degloving; enucleation; evisceration; impalement; severance; third degree burns on nine percent or more of the body; and exposure of one or more of the following internal organs: brain; heart; intestines; kidneys; liver; or lungs.[19]

Posttraumatic Stress Disorder

According to the American Psychiatric Association, PTSD is a psychiatric disorder that may occur in people who have experienced or witnessed a traumatic event, such as a natural disaster, serious accident, terrorist act, war, or rape; or people who have been threatened with death, sexual violence, or serious injury.[20] Exposure to an upsetting traumatic event may be indirect rather than first hand. PTSD can occur if a person learns of the violent death of a close family member or friend, or is repeatedly exposed to the horrible details of trauma.[21]

Symptoms may include flashbacks, nightmares and severe anxiety, as well as uncontrollable thoughts about the event. This can lead to avoidance of any stimuli that recalls the traumatic events, negative thoughts about oneself or the world, and changes in emotional reactions to events, like being easily startled or having trouble sleeping or concentrating.[22]

Symptoms may begin shortly after the traumatic event, or may not appear until years after the event. Rates of PTSD are higher among veterans, police officers, firefighters, and emergency medical personnel.[23]

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[18] S. 112.1815(5), F.S.
[19] Rule 69L-3.009, F.A.C
[20] American Psychiatric Association, *What is Posttraumatic Stress Disorder*, https://www.psychiatry.org/patients-families/ptsd/what-is-ptsd (last visited Jan. 24, 2022).
[21] *Id*.
[22] Mayo Clinic, *Post-traumatic stress disorder (PTSD)*, https://www.mayoclinic.org/diseases-conditions/post-traumatic-stress-disorder/symptoms-causeds/syc-20355967 (last visited Jan. 24, 2022).
[23] *Id*.

Notice Requirements

A first responder who suffers from PTSD must notify his or her employer within 90 days of a qualifying event identified in the law, or the manifestation of the disorder, whichever is later.[24]

If the compensability of an injury is disputed, the first responder must file a petition for workers' compensation benefits within 52 weeks of the qualifying event.[25]

A first responder who develops symptoms of PTSD after the one-year deadline for filing a claim has elapsed has no cause of action.[26]

Effects of the Bill

The bill amends both the timeframe in which the employee must notify the employer of an injury and the timeframe in which a petition for workers' compensation benefits must be filed.

Notice to the employer would be required within 90 days of a qualifying event listed at s. 112.1815(5)(a)2, F.S., or diagnosis of the disorder, whichever is later.

And a petition for workers' compensation benefits would be timely if filed within 52 weeks of a qualifying event listed at s. 112.1815(5)(a)2, F.S., or diagnosis of the disorder, whichever is later.

B. SECTION DIRECTORY:

Section 1. Amends s. 112.1815, F.S., Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.

Section 2. Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[24] S. 112.1815(5)(d), F.S.
[25] *Id.*
[26] *Palm Beach County Fire Rescue v. Wilkes*, 309 So. 3d 687 (Fla. 1st DCA, 2020).

If the bill generates an increase in compensable workers' compensation claims, physicians who are authorized providers could experience an increase in patients and insurance carriers could experience an increase in claims.

D. FISCAL COMMENTS:

Providing a point of entry that is tied to the date of diagnosis, rather than manifestation of PTSD, likely would expand the time for notice of injury and notice of claim, and thereby lead to an increase of compensable claims. In its analysis for 2022 House Bill 689, DWC states that the impact could be significant, but did not have a more precise estimate related to the proposed changes in notice deadlines. In its analysis for 2022 House Bill 425, DWC states that it has been notified of 84 workers compensation claims brought by first responders suffering from PTSD since the 2018 amendments became effective. There was no accompanying physical injury for 50 of the 84 claims. The average cost per claim is $42,326.

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 would permit compensation claims long after a qualifying event and likely lead to an increase in compensable claims; however, an exemption may apply if the fiscal impact of the bill is insignificant. In addition, an exemption may apply because all similarly situated state and local government employers of first responders are required to provide workers' compensation benefits.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to workers' compensation benefits for first responders; amending s. 112.1815, F.S.; providing that the time for specified notice in certain cases is measured from the time of the qualifying event or the diagnosis of the disorder, rather than the manifestation of the disorder, whichever is later; providing an effective date.

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

Section 1. Paragraph (d) of subsection (5) of section 112.1815, Florida Statutes, is amended to read:

112.1815 Firefighters, paramedics, emergency medical technicians, and law enforcement officers; special provisions for employment-related accidents and injuries.—

(5)

(d) The time for notice of injury or death in cases of compensable posttraumatic stress disorder under this subsection is the same as in s. 440.151(6) and is measured from one of the qualifying events listed in subparagraph (a)2. or the diagnosis ~~manifestation~~ of the disorder, whichever is later. A claim under this subsection must be properly noticed within 52 weeks after the qualifying event or the diagnosis of the disorder, whichever is later.

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

Section 2. This act shall take effect July 1, 2022.

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

HB 951

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 951 Domestic Surplus Lines Insurers
SPONSOR(S): Gregory
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Luczynski
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR). States also realized that there are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, they allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements.

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSLI) in more recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile. Prior to the creation of laws allowing DSLI, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, by establishing certain requirements, which include:

- A nonadmitted insurer possessing a policyholder surplus of at least $15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.

The bill has no impact on state or local government revenues or expenditures, but may have an indeterminate positive economic impact on the private sector.

The bill is effective on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

With certain exceptions, Florida law requires any person transacting insurance to have a certificate of authority issued by the Office of Insurance Regulation (OIR).[1] The term "admitted market" is used to refer to insurers that have a certificate of authority issued by OIR.[2] Such insurers are also referred to as "authorized insurers."

Authorized insurers in Florida are subject to the provisions of the Florida Insurance Code[3] and regulation primarily by OIR.[4] OIR's regulatory authority over authorized insurers includes solvency and financial strength, insurance policy forms and rates, and market conduct of insurers.

Surplus Lines Insurance

States also realized that there are risks for which insurance in the admitted market are not available because insurers are unable or unwilling to write policies for them. Therefore, they allow insurers that are not otherwise authorized to sell policies to sell surplus lines insurance if they meet certain requirements. The three basic categories of risks typically written by surplus lines insurers:

- Specialty risks that admitted insurers do not desire to write;
- Risks for which admitted carriers do not have approved policy forms or rates; and
- Risks where a policyholder needs higher coverage limits than those available on the admitted market.

The Florida Surplus Lines Service Office (FSLSO) administers surplus lines business in this state.[5] A certificate of authority is not required of an insurer with respect to lawfully written surplus lines policies.[6] Surplus lines insurers are still considered "unauthorized" insurers[7], and may right only surplus lines policies if they are made "eligible" by OIR. Except as specifically stated, surplus lines insurers are not subject to regulation by OIR under ch. 627, F.S., which includes statutory provisions regarding rating standards and insurance policy forms.[8] Surplus lines insurers are subject to the Unfair Insurance Trade Practice Act.[9]

Surplus Lines Law

Florida's Surplus Lines Law is designed to provide orderly access to unauthorized insurers who provide surplus lines policies. Four general requirements must be met for insurance to be exported to a surplus lines insurer:[10]

- The insurance must be eligible for export under s. 626.916, F.S. or 626.917, F.S.;
- The insurer must be an eligible surplus lines insurer under s. 626.917, F.S. or 626.918, F.S.;
- The insurance must be placed through a licensed Florida Surplus Lines Agent; and

[1] S. 624.401, F.S. In the Florida Insurance Code (FIC), a person also includes a business entity such as an insurer.
[2] S. 624.404, F.S.
[3] Section 624.404, F.S., provides that an insurer must be in compliance with the FIC to qualify for and hold authority to transact insurance in the state. The FIC is chapters 624-632, 634, 635, 636,641, 642, 648, and 651, F.S. S. 624.01, F.S.
[4] In general, OIR has regulatory authority over insurers and the Department of Financial Services (DFS) has regulatory authority over insurance agents and agencies.
[5] S. 626.921, F.S.
[6] S. 624.402, F.S.
[7] S.624.09(2), F.S.
[8] S. 626.913(4), F.S.
[9] Ss. 626.951– 626.99, F.S. Under s. 626.9521, F.S., no person may engage in this state in any unfair insurance trade practice. "Person" is defined by s. 626.9511(1), F.S., to mean any individual, corporation, association, partnership…or any entity involved in the business of insurance.
[10] S. 626.915, F.S.

- All other applicable provisions of the Surplus Lines Law must be met.

Eligibility for Export to a Surplus Lines Insurer

Insurance coverage is eligible for export to a surplus lines insurer only if:

- The insurance cannot be obtained from an authorized insurer after the agent has made a diligent effort to place the insurance with an authorized insurer.[11] The surplus lines agent must verify that a diligent effort was made by requiring a properly documented statement of diligent effort from the agent.[12] A "diligent effort" means seeking coverage from, and having been rejected by, at least three authorized insurers currently writing the same type of coverage and documenting these rejections.[13] However, if a residential structure has a dwelling replacement cost of $700,000 or more, coverage need only be sought from one authorized insurer.[14]
- The premium rate for the surplus lines coverage may not be lower than the rate in currently used by a majority of authorized insurers for the same coverage on a similar risk.[15]
- The surplus lines coverage may not be more favorable to the insured than under similar contracts currently used by the majority of authorized insurers writing similar coverage on similar risks.[16]
- The surplus lines policy must not provide a deductible that is generally unavailable from authorized insurers, except as applicable to extended coverage for fire or windstorm insurance.[17]

Requirements for Eligibility of Surplus Lines Insurers

An unauthorized insurer may only become an eligible surplus lines insurer if it meets the following requirements:[18]

- The insurer must currently be an authorized insurer in its state or country of domicile as to the kinds of insurance it would transact in Florida. In general, the insurer must have transacted such insurance for three years in its state of domicile.[19] However, OIR may waive this requirement if the insurer has capital and surplus of at least $25 million and either is offering a product not readily available in Florida or has operated successfully for at least the immediately preceding year.[20]
- OIR receives an authenticated copy of its current annual financial statement.[21]
- The insurer must maintain surplus as to policyholders of not less than $15 million[22], with the exception of:
    - Insurance exchanges created by the laws of a state, if they meet the state's capital and surplus requirements or maintain a capital and surplus of at least $50 million;[23] and
    - A surplus lines insurer that is a member of an insurance holding company that includes a member which is a Florida domestic insurer, may instead meet the surplus and capital requirements applicable to authorized insurers under s. 624.408, F.S., and must comply with ch. 625, F.S., regarding accounting, investments, and deposits by insurers.[24]

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[11] S. 626.916(1)(a), F.S.
[12] *Id.*
[13] S. 626.914(4), F.S.
[14] *Id.*
[15] S. 626.916(1)(b), F.S.
[16] S. 626.916(1)(c), F.S.
[17] S. 626.916(1)(d), F.S.
[18] S. 626.918, F.S.
[19] *Id.* Alternatively, the insurer may be a wholly owned subsidiary of such an insurer.
[20] *Id.*
[21] S. 626.918(2)(b), F.S.
[22] S. 626.918(2)(c), F.S. An alien insurer (insurer domiciled in a foreign country) must also have and maintain a trust fund in the United States under terms approved by OIR, in an account of at least $5.4 million.
[23] S. 626.918(2)(c)1.c., F.S.
[24] S. 626.918(2)(c)1.d., F.S.

- The insurer must have a good reputation regarding service to its policyholders and payment of losses and claims.[25]
- The management, officers, and directors of the insurer must meet the requirements of competence and trustworthiness required by s. 624.404(3), F.S.[26]

The Surplus Lines Law specifies that OIR does not have any duty to determine the actual financial condition or claims practices of any unauthorized insurer.[27] OIR, when determining whether a surplus lines insurer is eligible bases that decision on the insurer appearing to be financially sound and having satisfactory claims practices, and not having any credible evidence to the contrary.[28]

Requirement to Place Surplus Lines Insurance Through a Licensed Florida Surplus Lines Agent

A Florida-licensed surplus lines insurance agent must place surplus lines insurance policies.[29] A Florida-licensed general lines agent may obtain licensure as a surplus lines agent if such an agent has at least one year of experience working for a licensed surplus lines agent or successfully completes at least 60 class hours in surplus and excess lines and passes a licensure exam.[30] This licensure is solely for the purpose of placing property, marine, casualty, or surety coverages originated by general lines agents with surplus lines insurers.[31]

Nonresidents licensed in their home state as resident general lines and surplus lines agents may obtain licensure as nonresident surplus lines agents if their home states have similar licensure requirements as Florida and provide reciprocity regarding residents of Florida obtaining licensure as nonresident surplus lines agents in those states.[32]

Mandatory Disclosures

Surplus lines agents must disclose in writing that surplus lines insurance carriers do not have the protection of the Florida Insurance Guaranty Act[33] and that surplus lines rates and policy forms are not subject to regulation by any Florida agency.[34] When a policy is exported to surplus lines, the insured must also sign or provide documented knowledge of the following disclosure:

> You are agreeing to place coverage in the surplus lines market. Coverage may be available in the admitted market. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.[35]

The Florida Surplus Lines Service Office (FSLSO)

The FSLSO is a self-regulating, nonprofit association designed to act as a "self-regulating organization" to permit better access by consumers to approved surplus lines insurers.[36] The FSLSO's responsibilities include monitoring activities and compliance of the licensed surplus lines agents conducting business in Florida and of the eligible surplus lines insurers.[37] All Florida-licensed surplus lines agents are deemed members of the FSLSO and must register with it.[38]

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[25] S. 626.918(2)(d), F.S.
[26] S. 626.918(2)(e), F.S.
[27] S. 626.918(4), F.S.
[28] *Id.*
[29] *See* s. 926.927, F.S.
[30] *Id.*
[31] *Id.*
[32] S. 626.9272, F.S.
[33] Ss. 631.50– 631.70, F.S., are known as the Florida Insurance Guaranty Association Act, and establish the framework for the Florida Insurance Guaranty Association.
[34] S. 626.924, F.S.
[35] S. 626.916(1)(e), F.S.
[36] S. 626.921, F.S.
[37] *See id.*
[38] S. 626.921(2), F.S.

The FSLSO must conduct the following activities:

- Receive, record and review all surplus lines insurance policies;
- Maintain records of the policies reported to the FSLSO and prepare reports as required by the Financial Services Commission;[39]
- Prepare and deliver to each surplus lines agent quarterly reports of each agent's business;
- Collect and remit surplus lines tax to the Department of Financial Services;
- Reconcile the policies provided by non-admitted insurers with the policies reports to the FSLSO by agents; and
- Other activities specified by statute.[40]

Domestic Surplus Lines Insurance

Historically, surplus lines insurers generally are not permitted to write surplus lines insurance in their states of domicile. However, some states have enacted laws authorizing domestic surplus lines insurers (DSLI) in more recent years. These are surplus lines insurers that offer surplus lines policies in their states of domicile.

Prior to the creation of laws allowing DSLI, a surplus lines insurer seeking to transact surplus lines in its state of domicile had to form a second company domiciled in a different state which would then offer surplus lines policies in the original insurer's state of domicile. Over 20 states have authorized domestic surplus lines insurance.[41] A review of the state laws authorizing DSLI show that laws authorizing the formation of domestic surplus lines insurance often have certain requirements in common:

- The DSLI must meet a policyholder surplus requirement, usually $15 million or $20 million;
- The DSLI must be an eligible surplus lines insurer in at least one jurisdiction other than its state of domicile;
- The board of directors of the DSLI must pass a resolution seeking to be a DSLI; and
- The insurance commissioner of the DSLI must make it eligible in its state of domicile.

Certain commonalities are also present regarding how state and federal insurance laws generally applicable to authorized insurers apply to DSLI:

- DSLI are subject to the state's solvency requirements for authorized domestic insurers, unless a DSLI is specifically exempted;
- DLSI are exempt from requirements relating to rates, forms, and policy cancellations;
- Policies written by DSLI must be placed on the surplus lines market in accordance with the requirements of the state's surplus lines law; and
- Policies written by DSLI are not covered by any of the state's guaranty associations.

The number of DSLIs has increased from 15 in 2011, to over 70, with the majority domiciled in Illinois or Delaware.[42]

Federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)

Pursuant to the NRRA, the surplus lines insurance and surplus lines brokers are subject only to the statutory and regulatory requirements of the insured's home state.[43] The NRRA provides that only the home state of an insured may require any premium tax payment for surplus lines insurance.[44] States

[39] The Financial Services Commission consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. S. 20.121, F.S.
[40] *See generally* s. 626.921(3), F.S.
[41] *See e.g.,* Arizona (s. 20-407.01, Az. S.), Texas (s. 981.071-981.074, Tex. Ins. Code), and Vermont (s. 8 V.S.A. s. 5023a).
[42] John N. Emmanuel and Zachary N. Lerner, *Locke Lord Excess and Surplus Lines Laws Manual,* p. 1.6 (2021), https://surplusmanual.lockelord.com/ (last visited Jan. 23, 2022).
[43] 15 U.S.C. § 8202.
[44] 15 U.S.C. § 8201(a).

are authorized to establish procedures to allocate tax revenues properly to other states for multi-state risks and an insured's home state may require surplus lines brokers and insureds to file annual tax allocation reports detailing the portion of the policy premium attributable to the exposure located each in state.

States must participate in the National Association of Insurance Commissioners' (NAIC) database or an equivalent uniform national database for the licensure of surplus lines brokers, and a state that does not participate is prohibited from collecting fees related to licensing surplus lines brokers.[45] Unless a state adopts requirements that comply with the NRRA's requirements regarding allocation of nonadmitted premium taxes that include alternative nationwide uniform eligibility requirements, the eligibility requirements for a state's surplus lines insurers must conform to the NAIC's Non-Admitted Insurance Model Act.[46] The NRRA also prohibits state laws from requiring a due diligence search to determine if the insurance can be obtained from an admitted insurer before placing a risk for an exempt commercial purchaser[47] on the surplus lines market if certain disclosures are made.[48]

Florida Insurance Guaranty Association (FIGA)

FIGA provides a "mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer."[49] It issues guaranty fund payments and provides related services for all lines of property and casualty insurance[50] with certain exceptions.[51] FIGA is only obligated to pay the portions of claims made to insolvent property and casualty insurers, which are less than $300,000.[52] For policies providing homeowners insurance, FIGA provides for up to an additional $200,000 for the portion of a covered claim, which relates to damage to structure and contents.[53]

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

FLAHIGA exists to "protect policyholders, insureds, beneficiaries, annuitants, payees, and assignees of life insurance policies, health insurance policies, annuity contracts, and supplemental contracts, subject to certain limitations, against the future of an insurer issuing such policies or contracts to perform its contractual obligations due to its impairment or insolvency."[54] The maximum obligation of FLAHIGA to provide payment for any covered claim or policy is the following:

- For life insurance, $100,000 in net cash surrender and net cash withdrawal values.
- For deferred annuity contracts, $250,000 in net cash surrender and net cash withdrawal values.
- For basic hospital expense health insurance policies, basic medical-surgical health insurance policies, or major medical expense health insurance policies, but not including long-term care policies, $500,000.
- For all other benefits, including in long-term care policies, $300,000, including cash values.[55]

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

FWCIGA "provides a mechanism for the payment of covered claims" under ch. 440, F.S., to avoid delay

[45] 15 U.S.C. § 8203.
[46] 15 U.S.C. § 8204.
[47] 15 U.S.C. § 8206(5) defines a commercial purchaser as a person purchasing commercial insurance if such person has a qualified risk manager to negotiate insurance coverage, has paid nationwide property and casualty insurance premiums in excess of $100,000 in the preceding 12 months, and meets one of five specified requirements regarding net worth, annual revenues, number of employees, not-for-profit annual budgeted expenditures, or status as a municipality.
[48] 15 U.S.C. § 8205.
[49] S. 631.51, F.S.
[50] S. 631.57(3)(a), F.S. As established in s. 632.52, F.S., FIGA covers "all kinds of direct insurance" with certain exceptions, such as life, annuity, health, disability, workers' compensation, and surplus lines insurance.
[51] *Id.*
[52] S. 631.57(1), F.S.
[53] *Id.*
[54] S. 631.712, F.S.
[55] S. 631.717(12), F.S.

and financial loss to claimants due to the insolvency of a workers' compensation insurer.[56] FWCIGA services workers' compensation claims against insolvent workers' compensation insurers[57] and self-insurance funds.[58] For purposes of FWCIGA, "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy.[59]

Effect of the Bill

The bill defines "domestic surplus lines insurer" as a nonadmitted insurer domiciled in this state that OIR has authorized to write surplus lines insurance. The bill creates a statutory framework to allow a DSLI to issue surplus lines policies in this state, in addition to issuing policies in other jurisdictions, by establishing the following:

- The term "nonadmitted insurer" has the same meaning as provided in the NRRA.
- A nonadmitted insurer possessing a policyholder surplus of at least $15 million may be authorized to transact insurance as a DSLI under a resolution by its board and with approval of OIR.
- Such nonadmitted insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and that this authorization is not contingent upon holding a certificate of authority.
- A DSLI shall be deemed an eligible surplus lines insurer and be included in the list of eligible surplus lines insurers required under current statutes.
- Eligible surplus lines insurers may write any kind of insurance that unauthorized insurers not domiciled in this state are eligible to write.
- A DSLI is an unauthorized insurer for the purposes of writing surplus lines insurance under the Surplus Lines Law.
- A DSLI is a nonadmitted insurer for the purposes of the federal NRRA.
- A DSLI may only write surplus lines insurance in Florida and may only sell policies through a surplus lines agent.
- Unless specifically exempt, a DSLI is subject to all financial and solvency requirements imposed on admitted domestic insurers under state law. However, a DSLI is exempt from the surplus requirements applied to admitted insurers.[60]
- A policy issued by a DSLI is exempt from all statutory requirements relating to insurance rating, policy forms, premiums, cancellations, nonrenewals, and renewals, and from any other statutory requirements that do not apply to surplus lines policies issued by surplus lines insurers domiciled in another state.
- A policy issued by a DSLI is subject to taxes assessed on surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but it not subject to other taxes levied upon domestic or foreign admitted insurers.
- A policy issued by a DSLI is not subject to the protections or requirements of FIGA, FLAHIGA, or FWCIGA.

The bill also contains technical amendments to several statutes to conform cross-references to this new statutory framework.

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[56] S. 631.902, F.S.

[57] "Insurer means an insurance carrier or self-insurance fund authorized to insure under ch. 440, F.S. For the purposes of this act, 'insurer' does not include a qualified local government self-insurance fund, as defined in s. 624.4622 or an individual self-insurer as defined in s. 440.385." S. 631.904(5), F.S.

[58] "'Self-insurance fund' means a group self-insurance fund authorized under s. 624.4621, a commercial self-insurance fund writing workers' compensation insurance authorized under s. 624.462, or an assessable mutual insurer authorized under s. 628.6011. For purposes of this act, the term "self-insurance fund" does not include a qualified local government self-insurance fund, as defined in s. 624.4622, an independent educational institution self-insurance fund as defined in s. 624.4623, an electric cooperative self-insurance fund as described in s. 624.4626, or an individual self-insurer as defined in s. 440.385." S. 631.904(6), F.S.

[59] S. 631.904(2), F.S.

[60] These requirements are set forth in s. 624.408, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.914, F.S., relating to definitions.

Section 2. Creates s. 626.91805, F.S., relating to domestic surplus lines insurers.

Section 3. Amends s. 458.320, F.S., relating to financial responsibility.

Section 4. Amends s. 459.0085, F.S., relating to financial responsibility.

Section 5. Amends s. 464.0123, F.S., relating to autonomous practice by an advanced practice registered nurse.

Section 6. Amends s. 629.401, F.S., relating to insurance exchange.

Section 7. Provides an effective date of July 1, 2022.

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:

To the extent that consumers have additional options for coverage from surplus lines carriers which results in more competitive insurance rates, the bill may have an indeterminate positive impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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 domestic surplus lines insurers; amending s. 626.914, F.S.; revising the definition of the term "eligible surplus lines insurer" to include domestic surplus lines insurers; defining the term "domestic surplus line insurer"; creating s. 626.91805, F.S.; defining the term "nonadmitted insurer"; authorizing specified nonadmitted insurers to transact insurance as domestic surplus lines insurers under certain circumstances; authorizing such insurers to write surplus lines insurance in any jurisdiction; providing that such authorization is not contingent on the existence of a certificate of authority; requiring domestic surplus lines insurers to be deemed eligible surplus lines insurers and to be included in the list of eligible surplus lines insurers; authorizing such insurers to write certain kinds of insurance; requiring domestic surplus lines insurers to be considered unauthorized insurers for specified purposes; requiring domestic surplus lines insurers to be considered nonadmitted insurers for specified purposes; authorizing domestic surplus lines insurers to write only surplus lines insurance; limiting the circumstances under which such insurers may write surplus lines insurance; providing

applicability of specified financial and solvency requirements to domestic surplus lines insurers; providing an exception; providing an exemption from a specified law for domestic surplus lines insurers; providing exemptions from specified requirements for surplus lines insurance policies issued by such insurers; providing that such policies are subject to specified taxes but are not subject to certain other taxes; providing that such policies are not subject to the protections and requirements of specified acts; amending ss. 458.320, 459.0085, and 464.0123, F.S.; conforming cross-references; amending s. 629.401, F.S.; specifying cross-references; providing an effective date.

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

Section 1. Section 626.914, Florida Statutes, is amended to read:

626.914 Definitions.—As used in this Surplus Lines Law, the term:

(1) ~~(4)~~ "Diligent effort" means seeking coverage from and having been rejected by at least three authorized insurers currently writing this type of coverage and documenting these rejections. However, if the residential structure has a dwelling

replacement cost of $700,000 or more, the term means seeking coverage from and having been rejected by at least one authorized insurer currently writing this type of coverage and documenting this rejection.

(2) "Domestic surplus lines insurer" means a nonadmitted insurer domiciled in this state that has been authorized by the office to write surplus lines insurance.

(3) ~~(2)~~ "Eligible surplus lines insurer" means:

(a) An unauthorized insurer that ~~which~~ has been made eligible by the office to issue insurance coverage under this Surplus Lines Law; or

(b) A domestic surplus lines insurer.

(4) ~~(3)~~ "Export" ~~"To export"~~ means to place, in an unauthorized insurer under this Surplus Lines Law, insurance covering a subject of insurance resident, located, or to be performed in this state.

(5) ~~(1)~~ "Surplus lines agent" means an individual licensed as provided in this part to handle the placement of insurance coverages with unauthorized insurers and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent.

Section 2. Section 626.91805, Florida Statutes, is created to read:

626.91805 Domestic surplus lines insurers.—

(1) As used in this section, the term "nonadmitted

insurer" has the same meaning as provided in the federal Nonadmitted and Reinsurance Reform Act of 2010.

(2) Notwithstanding any other law, a nonadmitted insurer possessing a policyholder surplus of at least $15 million may, under a resolution by its board of directors and with the written approval of the office, be authorized to transact insurance as a domestic surplus lines insurer. Such insurers are authorized to write surplus lines insurance in any jurisdiction, including this state, and such authorization is not contingent on the company's holding of an existing certificate of authority.

(3) Notwithstanding s. 626.918(2), a domestic surplus lines insurer shall be deemed an eligible surplus lines insurer and shall be included in the list of eligible surplus lines insurers required by s. 626.918(3). Eligible surplus lines insurers listed in s. 626.918(3) may write any kind of insurance that an unauthorized insurer not domiciled in this state is eligible to write.

(4) For purposes of writing surplus lines insurance pursuant to the Surplus Lines Law, a domestic surplus lines insurer shall be considered an unauthorized insurer.

(5) For purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010, a domestic surplus lines insurer shall be considered a nonadmitted insurer.

(6) A domestic surplus lines insurer may write only

surplus lines insurance in this state and only if procured from a surplus lines agent pursuant to the Surplus Lines Law.

(7) All financial and solvency requirements imposed by this state's laws on admitted domestic insurers apply to domestic surplus lines insurers unless domestic surplus lines insurers are otherwise specifically exempted.

(8) A domestic surplus lines insurer is exempt from s. 624.408.

(9) A surplus lines insurance policy issued by a domestic surplus lines insurer is exempt from all statutory requirements relating to insurance rating and rating plans; policy forms; premiums charged to insureds; policy cancellation, nonrenewal, and renewal; and other statutory requirements in the same manner and to the same extent as surplus lines policies issued by a surplus lines insurer domiciled in another state.

(10) Notwithstanding any other law, a policy issued by a domestic surplus lines insurer is subject to taxes assessed upon surplus lines policies issued by nonadmitted insurers, including surplus lines premium taxes, but is not subject to other taxes levied upon admitted insurers, whether domestic or foreign.

(11) A policy issued by a domestic surplus lines insurer is not subject to the protections or requirements of the Florida Insurance Guaranty Association Act, the Florida Life and Health Insurance Guaranty Association Act, or the Florida Workers' Compensation Insurance Guaranty Association Act.

Section 3. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 458.320, Florida Statutes, are amended to read:

458.320 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active license or reactivation of an inactive license for the practice of medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing

condition of hospital staff privileges, physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance which meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 4. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 459.0085, Florida Statutes, are amended to read:

459.0085 Financial responsibility.—

(1) As a condition of licensing and maintaining an active license, and prior to the issuance or renewal of an active

license or reactivation of an inactive license for the practice of osteopathic medicine, an applicant must by one of the following methods demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, medical care or services:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

(2) Osteopathic physicians who perform surgery in an ambulatory surgical center licensed under chapter 395 and, as a continuing condition of hospital staff privileges, osteopathic physicians who have staff privileges must also establish financial responsibility by one of the following methods:

(b) Obtaining and maintaining professional liability coverage in an amount not less than $250,000 per claim, with a minimum annual aggregate of not less than $750,000 from an

authorized insurer as defined under s. 624.09, from a surplus lines insurer as defined under s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined under s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), through a plan of self-insurance as provided in s. 627.357, or through a plan of self-insurance that meets the conditions specified for satisfying financial responsibility in s. 766.110. The required coverage amount set forth in this paragraph may not be used for litigation costs or attorney's fees for the defense of any medical malpractice claim.

This subsection shall be inclusive of the coverage in subsection (1).

Section 5. Paragraph (a) of subsection (2) of section 464.0123, Florida Statutes, is amended to read:

464.0123 Autonomous practice by an advanced practice registered nurse.—

(2) FINANCIAL RESPONSIBILITY.—

(a) An advanced practice registered nurse registered under this section must, by one of the following methods, demonstrate to the satisfaction of the board and the department financial responsibility to pay claims and costs ancillary thereto arising out of the rendering of, or the failure to render, nursing care, treatment, or services:

1. Obtaining and maintaining professional liability

coverage in an amount not less than $100,000 per claim, with a minimum annual aggregate of not less than $300,000, from an authorized insurer as defined in s. 624.09, from a surplus lines insurer as defined in s. 626.914 ~~s. 626.914(2)~~, from a risk retention group as defined in s. 627.942, from the Joint Underwriting Association established under s. 627.351(4), or through a plan of self-insurance as provided in s. 627.357; or

2. Obtaining and maintaining an unexpired, irrevocable letter of credit, established pursuant to chapter 675, in an amount of not less than $100,000 per claim, with a minimum aggregate availability of credit of not less than $300,000. The letter of credit must be payable to the advanced practice registered nurse as beneficiary upon presentment of a final judgment indicating liability and awarding damages to be paid by the advanced practice registered nurse or upon presentment of a settlement agreement signed by all parties to such agreement when such final judgment or settlement is a result of a claim arising out of the rendering of, or the failure to render, nursing care and services.

Section 6. Paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the office shall regulate the exchange pursuant

to the following powers, rights, and duties:

1. General examination powers.—The office shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office at the offices of the entity or person being examined. The office shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive

agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office shall investigate the new directors or principal officers of the underwriting member. The office's investigation shall include an investigation of the character, financial responsibility, insurance experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial

examination, the office may accept an audited financial statement.

6. Correction and reconstruction of records.—If the office finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the office has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the office for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The

form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office as soon as reasonably possible such information about its transactions or affairs as the office requests in writing. All information furnished pursuant to the office's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914(5) ~~s. 626.914~~, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist, the department shall conduct such examination as it deems necessary of the accounts, records,

documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. Written reports of office.—The office or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the office deems proper.

12. Admissibility of reports.—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office against the person or entity examined, or against his or her or its officers, employees, or agents. The office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.

13. Publication of reports.—After an examination report has been filed, the office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. Consideration of examination reports by entity examined.—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office, not more than 30 days after the report has been filed, on a form furnished by the office and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. Examination costs.—Each person or entity examined by the office shall pay to the office the expenses incurred in such examination.

16. Exchange costs.—An exchange shall reimburse the office for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. Powers of examiners.—Any examiner appointed by the office, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by

subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office or its examiner, on the ground that the testimony or

evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file with the office a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction,

matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office for the approval of the office.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of $3 million and thereafter shall maintain a minimum

policyholder surplus of $2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of $1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of $1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of $2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this

state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office, or by the last report or examination filed by the office, whichever is more recent at

the time of assumption of such risk.

24. Unearned premium reserves.—An underwriting member must at all times maintain an unearned premium reserve equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on those for longer periods, except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated. For the purpose of this subparagraph, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscribers fees on a pro-rata basis for canceled policies. If there is no such provision, the unearned premium reserve shall be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time do not amount to $100,000, there shall be maintained on deposit at the exchange at all times additional funds in cash or eligible securities which, together with the unearned premium reserves, equal $100,000. In calculating the foregoing reserves, the amount of the attorney's bond, as filed with the office and as required by s. 629.121, shall be included in such reserves.

If at any time the unearned premium reserves are less than the foregoing requirements, the subscribers, or the attorney in fact, shall advance funds to make up the deficiency. Such advances shall only be repaid out of the surplus of the exchange and only after receiving written approval from the office.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting

member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the office.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor

be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The office, upon a showing that a member or associate broker of an exchange has met one or more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

a. Fraud.

b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office upon application to become a member or associate broker.

c. Conduct detrimental to the welfare of an exchange.

d. Unethical or improper practices or conduct,

inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.

e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.

f. Misstatements made under oath or upon an application for membership on an exchange.

g. Failure to testify or produce documents when requested by the office.

h. Willful violation of any law of this state.

i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.

j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding $25,000 imposed by the office.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding

$25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office and shall be paid into the Insurance Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office within 30 days of the effective date thereof. The report shall set forth the details

of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a

state, jurisdiction, or foreign country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914(5) ~~626.914~~ who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such

coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting

member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the office therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in

sub-subparagraph a., the office shall forthwith prohibit the underwriting member from transacting business. The office shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office issued pursuant to sub-subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office pursuant to sub-subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major

change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the

acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office that it perform its functions shall be

required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office be deemed a necessary party to any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

i. Any approval by the office under this subparagraph does not constitute a recommendation by the office for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member

or controlling company without complying with the provisions of this subparagraph, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation

of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

1.(I) For the purpose of this sub-sub-subparagraph, the term "affiliated person" of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person's spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term "controlling company" means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The commission may adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or

from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term "underwriting member" is used in this subsection, it shall be construed to mean "underwriting syndicate."

47. Offsets.—Any action, requirement, or constraint imposed by the office shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988,

such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. "Underwriting manager" defined.—"Underwriting manager" as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting

manager is prohibited. "Affiliated person" for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. "Affiliate and controlling company" for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—"Premium" is the consideration for insurance, by whatever name called. Any "assessment" or any "membership," "policy," "survey," "inspection," "service" fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission shall adopt rules necessary for or as an aid to the effectuation of any provision of this section.

Section 7. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1023 Insolvent Insurers
SPONSOR(S): Fabricio
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1430

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Herendeen	Luczynski
2) State Administration & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

As a condition of selling and servicing insurance in Florida, insurers must be members of a guaranty association associated with the lines of coverage the insurer sells.

If an admitted insurer becomes unsound or insolvent, the Office of Insurance Regulation (OIR) may place the insurer in confidential administrative supervision, and, if rehabilitation is impossible, recommend liquidation by the Department of Financial Services, Division of Rehabilitation and Liquidation (Receiver).

Existing insurance policies are cancelled 30 days after a judge issues an order of liquidation and the applicable guaranty fund becomes responsible for managing any outstanding claims.

The bill makes minor changes to procedures of the Florida Insurance Guaranty Association (FIGA) and Florida Workers' Compensation Insurance Guaranty Association (FWCIGA), and requires that claims data from insolvent insurers be used in the ratemaking process for workers' compensation insurance.

If the assets of an insolvent estate are not enough to pay covered claims, the applicable guaranty fund may ask OIR to levy assessments against fund members. The bill makes technical changes to the laws governing assessments that would allow certain property and casualty insurers to: 1) pay assessments in quarterly installments rather than one full payment on a date selected by OIR; and 2) decline to recoup the cost of assessments if the cost of placing a surcharge on policies exceeds the cost of the assessment.

OIR adopts rates for workers' compensation insurance annually, based on recommendations from the National Council on Compensation Insurance (NCCI), which evaluates risks associated with more than 500 occupational classes by tracking covered claims of insurers.

Insurers that are in an unsound financial condition or later become insolvent do not always report claims to NCCI. When data is missing, the adequacy of workers' compensation insurance rates can be affected and the experience rating modification factor of an individual insured may be inaccurate. When an insurer is ordered into liquidation, the responsibility for data reporting falls to DFS, as court appointed receiver, and FWCIGA, as administrator of any open claims.

The bill adds the impact of missing data from insolvent insurers to a list of factors that are used in the determination of workers' compensation rates.

The bill does not have a fiscal impact on state or local government; and has minimal impact on the private sector. The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Insolvent Insurers

The Office of Insurance Regulation (OIR) monitors the financial strength of insurers authorized to do business in Florida by reviewing annual and quarterly financial statements submitted to the National Association of Insurance Commissioners. Florida law establishes required minimum surplus[1] and risk-based capital requirements[2] for different types of insurers, identifies the types of investments that may be designated as an admitted asset on the insurer's financial statements,[3] and places restrictions on the investments an insurer makes in its subsidiaries or affiliated companies.[4]

Insurers Must Belong to a Guaranty Fund

As a condition of selling and servicing insurance in Florida, insurers must be members of the guaranty association associated with the lines of coverage the insurer sells. The Insurance Code authorizes the:

- Florida Insurance Guaranty Association (FIGA), for property and casualty insurances, including homeowners and automobile insurance;[5]
- Florida Life & Health Guaranty Association (FLHGA), for life and health insurance policies, annuity contracts, and related supplemental insurance contracts;[6] and
- Florida Workers' Compensation Insurance Guaranty Association (FWCIGA), for workers' compensation and employer liability coverages.[7]

Similar protections are available to persons who subscribe to Health Maintenance Organizations through the Health Maintenance Organization Consumer Assistance Plan.[8]

Insolvency

If an insurer becomes insolvent,[9] OIR may place the insurer in confidential administrative supervision. If the insurer cannot be rehabilitated, OIR may refer the matter to the Department of Financial Services, Division of Liquidation and Rehabilitation (DFS), for appointment of a receiver to liquidate the insurance company.[10]

When a Circuit Court judge issues an order of liquidation, the order appoints DFS as receiver for the insolvent insurer's estate and requires that the appropriate guaranty fund administer all outstanding claims.[11]

Existing policies are cancelled 30 days after the order of liquidation, unless: the policy expires prior to the 30-day deadline; 2) the insured or the receiver finds a replacement policy with another insurer, or 3) the policyholder terminates the policy.[12]

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[1] Ss. 624.407 and 627.408, F.S.
[2] S. 624.4085, F.S.
[3] Ch. 625, Part II, F.S.
[4] Ss. 625.325 and 625.332, F.S.
[5] Ss. 631.50-631.70, F.S.
[6] Ss. 631.711-631.738, F.S.
[7] Ss. 631.901-631.932, F.S.
[8] Ss. 631.811-631.828, F.S.
[9] S. 631.011(14), F.S. states: "Insolvency" means that all the assets of the insurer, if made immediately available, would not be sufficient to discharge all its liabilities or that the insurer is unable to pay its debts as they become due in the usual course of business. When the context of any provision of this code so indicates, insolvency also includes and is defined as "impairment of surplus," as defined in subsection (13), and "impairment of capital," as defined in subsection (12).
[10] Ss. 624.81 and 631.051, F.S.
[11] S. 631.395, F.S.
[12] S. 631.252(1), F.S.

The applicable guaranty fund becomes responsible for managing any outstanding claims that were pending upon appointment of the receiver or filed during the 30-day cancellation period.

Assessments

When the assets of an insolvent estate are not enough to pay covered claims, the guaranty fund may ask OIR to levy assessments against fund members.[13]

Insurers that belong to FIGA may recoup the cost of assessments by applying a uniform surcharge to all policies of the kind identified in OIR's assessment order.[14]

Insurers that belong to FLHGA may receive a refund of contributions that exceed the amount needed to carry out the obligations of FLHGA, and may offset the cost of assessments against either the insurer's liability for premium taxes or corporate income taxes.[15]

Insurers that belong to FWCIGA pay assessments by collecting surcharges placed on policies and remitting the surcharge to FWCIGA.[16]

Workers' Compensation Rates

All carriers selling workers' compensation insurance in Florida subscribe to the National Council on Compensation Insurance (NCCI), an industry group that develops policy forms, premium rates, and rules for its members in 37 states.[17]

NCCI develops rates annually, based on the risks associated with more than 500 occupational classes. OIR reviews and approves proposed rates in accordance with the standards established by Florida law.[18] The following factors are used in the determination of workers' compensation insurance rates:

- The past loss experience and prospective loss experience within and outside this state;
- The conflagration and catastrophe hazards;
- A reasonable margin for underwriting profit and contingencies;
- Dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;
- Investment income on unearned premium reserves and loss reserves;
- Past expenses and prospective expenses, both those countrywide and those specifically applicable to this state; and
- All other relevant factors, including judgment factors, within and outside this state.[19]

To calculate premium, the insurer applies rates approved for specific jobs, called class codes, to every $100 of an employer's payroll. This results in a manual rate that is adjusted by an experience rating factor calculated by NCCI, based on the employer's loss experience in the prior three years. An employer with better than average loss experience may receive a credit; an employer with above average losses will pay more than the manual rate.[20]

Insurers report claims to NCCI, so NCCI can track loss experience across industries, identify trends associated with different types of risks, and adjust rates associated with specific class codes accordingly.[21]

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[13] Ss. 631.57, 631.718, and 631.914, F.S.
[14] S. 631.57(3), F.S.
[15] Ss. 631.718(5) and 631.72(1), F.S.
[16] S. 631.914(1), F.S.
[17] 627.091(3), F.S.
[18] Ss. 627.062 and 627.072, F.S.
[19] S. 627.072, F.S.
[20] National Council on Compensation Insurance, *ABCs of Experience Rating*, https://www.ncci.com/Articles/Documents/UW_ABC_Exp_Rating.pdf (last visited Jan. 6, 2022).
[21] *Id*.

Workers' Compensation Claims Reporting by Insolvent Insurers

Insurers that are in an unsound financial condition or later become insolvent do not always report claims to NCCI. When data is missing, the adequacy of workers' compensation insurance rates can be affected and the experience rating modification factor of an individual insured may be inaccurate. When an insurer is ordered into liquidation, the responsibility for data reporting falls to DFS, as court appointed receiver, and FWCIGA, as administrator of any open claims.

The impact on missing data from insolvent insurers is discussed in an actuarial analysis conducted for FWCIGA, which focused on the 2017 insolvency of Guarantee Insurance Company.[22] The study concluded that the insolvency of Guarantee Insurance Company (GIC) – which had 8,600 active policies, 10,500 clams and $487 million in claim liabilities when it was placed into liquidation – did not create significant market disruption because policyholders were able to obtain coverage in the voluntary market.[23] However, if accurate claims data had been reported to NCCI, workers' compensation rate decreases approved in 2016 and 2018 could have been slightly smaller.[24] The claim's experience GIC reported to NCCI was slightly worse than average; during liquidation, it was determined that GIC's actual experience was understated by nearly $100 million.[25]

The actuarial analysis warned that missing claims data could impact the overall statewide rate for workers' compensation insurance if Florida were to experience multiple insolvencies at the same time. Similarly, missing data for one insolvent insurer with a book of business concentrated in a single industry group or class code could have a material impact the affected industry group or class code.[26]

The actuary recommended that the claims data of insolvent insurers be collected and reported to NCCI – to the extent that such data can be reported consistently and at a reasonable cost – for inclusion in ratemaking and experience rating.[27]

NCCI reviews the characteristics of an insolvent carrier (prior premium market share, distribution of premium writings across individual job classifications, and whether prior insures will be able to obtain coverage in the voluntary market) to assess the impact the insolvency may have on future worker's compensation rates.[28] Claims data reported during receivership is subject to data validation checks prior to being used in ratemaking.[29]

Effect of the Bill

For FIGA, the bill amends s. 631.57, F.S., to state that property and casualty insurers are not required to recoup the cost of assessments levied by OIR on behalf of FIGA. Additionally, if the FIGA board of directors certifies the need for an assessment, the board may ask OIR to permit payments on a quarterly basis throughout the assessment year, instead of full payment on a date selected by OIR at the commencement of the assessment year.

For FWCIGA, the bill amends s. 631.914, F.S., to permit payment of assessments in a single payment or on a quarterly basis, at the discretion of the FWCIGA board. Currently, workers' compensation insurance

[22] Perr & Knight, *Insolvency Materiality Analysis for the Florida Workers' Compensation Insurance Guaranty Association*, May 29, 2019.
[23] *Id*. at 4.
[24] Memo to the Board of Directors of the Florida Workers' Compensation Insurance Guaranty Association, Inc., by Tom Streukens, Sept. 19, 2019.
[25] *Id*.
[26] *Id*. at 17.
[27] *Id*. at 19-20.
[28] Email from George Fejoo, governmental affairs consultant with Floridian Partners, RE: FWCIGA Post-Liquidation Data Reporting (Jan. 19., 2022).
[29] *Id.*

carriers may pay assessments on a quarterly basis only if the FWCIGA board determines that full payment of the assessment would result in an impairment of an insurer's required minimum amount of capital and surplus.

For workers' compensation rates, the bill amends s. 627.072, F.S., to add the impact of missing data from insolvent insurers to the list of factors that are used in the determination of workers' compensation insurance rates. Due to the difficulty of obtaining and validating claims data of an insolvent insurer, the bill permits the use of "prior reported data" and "all other relevant information" during the ratemaking process.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.072, F.S., making and use of rates.

Section 2. Amends s. 631.57, F.S., powers and duties of the association.

Section 3. Amends s. 631.914, F.S., assessments.

Section 4. Provides an effective date of July 1, 2022.

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 provides flexibility to insurance carriers by providing the option of paying assessments on an annual or quarterly basis. Insurance carriers would not be required to recoup the cost of an assessment if the administrative cost of recoupment outweighs the benefit of recoupment.

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:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to insolvent insurers; amending s. 627.072, F.S.; providing required factors to be used in the determination and fixing of rates for premiums paid to insolvent insurers for specified coverages; amending s. 631.57, F.S.; authorizing insurers to elect not to recoup advance assessments paid to the Florida Insurance Guaranty Association, Incorporated; revising provisions relating to payments of assessments and insurers' reconciliation reports to the association; requiring insurers to treat insureds' failure to pay surcharges, rather than recoupment charges, as failure to pay premiums; revising construction; providing that insurers are liable for surcharges and are not liable for uncollectible surcharges, rather than emergency assessments; deleting a requirement that insurers treat insureds' failure to pay emergency assessments as failure to pay premiums; amending s. 631.914, F.S.; revising provisions relating to insurers' collection of surcharges and payments of assessments to the Florida Workers' Compensation Insurance Guaranty Association, Incorporated; providing an effective date.

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

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

Section 1. Paragraphs (b) through (g) of subsection (1) of section 627.072, Florida Statutes, are redesignated as paragraphs (c) through (h), respectively, and a new paragraph (b) is added to that subsection, to read:

627.072 Making and use of rates.—

(1) As to workers' compensation and employer's liability insurance, the following factors shall be used in the determination and fixing of rates:

(b) The impact resulting from the past loss experience and prospective loss experience for insurers whose data are missing from statewide experience due to insolvency. Prior reported data for such insurers and all other relevant information may be used to assess the impact on rates;

Section 2. Paragraph (c) and paragraphs (f) through (i) of subsection (3) of section 631.57, Florida Statutes, are amended to read:

631.57 Powers and duties of the association.—

(3)

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including assessments levied pursuant to paragraph (a) and emergency assessments levied pursuant to paragraph (e), constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by

applying the uniform assessment percentage levied by the office to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group as set forth in paragraph (f). An insurer remitting an assessment to the association as required by subparagraph (f)1. or subparagraph (f)2. may elect to not recoup advances.

1. Assessments levied under subparagraph (f)1. are paid before policy surcharges are collected and result in a receivable for policy surcharges collected in the future. This amount, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability regardless of whether it is based on a retrospective or prospective premium-based assessment. If an insurer is unable to fully recoup the amount of the assessment because of a reduction in writings or withdrawal from the market, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

2. Assessments levied under subparagraph (f)2. are paid after policy surcharges are collected so that the recognition of assets is based on actual premium written offset by the obligation to the association.

(f)1. The association, office, and insurers remitting assessments pursuant to paragraph (a) or paragraph (e) must comply with the following:

a. In the order levying an assessment, the office shall specify the actual percentage amount to be advanced to the association and thereafter collected uniformly from all the policyholders of insurers subject to the assessment and the date on which the assessment year begins, which may not begin before 90 days after the association board certifies such an assessment.

b. Insurers shall make an initial payment to the association before the beginning of the assessment year on or before the date specified in the order of the office. Each insurer shall have at least 30 days' written notice as to the date on which the initial assessment payment is due and payable. The association may request that the order issued by the office authorize insurers to remit the advance payments in quarterly installments throughout the assessment year.

c. Insurers that have written insurance in the calendar year before the year in which the assessment is certified by the board shall make payments ~~an initial payment~~ based on the direct written premium in this state for the classes protected by the account from the previous calendar year as set forth in the insurer's annual statement, multiplied by the uniform percentage of premium specified in the order issued by the office. Insurers

that have not written insurance in the previous calendar year in any of the lines under the account which are being assessed, but which are writing insurance as of, or after, the date the board certifies the assessment to the office, shall pay an amount based on a good faith estimate of the amount of direct written premium anticipated to be written in the subject lines of business for the assessment year, multiplied by the uniform percentage of premium specified in the order issued by the office.

d. Insurers shall file one or more ~~a~~ reconciliation reports ~~report~~ with the association which indicate ~~indicates~~ the amount of ~~the initial~~ payment to the association ~~before the assessment year~~, whether such amount was based on direct written premium contained in a previous calendar year annual statement or a good faith projection, the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance. If the insurer collected from policyholders more surcharges than the amount initially paid, the insurer shall pay the excess amount to the association. If the insurer collected surcharges from policyholders in an amount that ~~which~~ is less than the amount initially paid to the association, the association shall credit the insurer that amount against future assessments. Such payment reconciliation report, and any payment of excess amounts collected from policyholders, shall be

completed and remitted to the association within 90 days after the end of the assessment year. The association shall send a final reconciliation report on all insurers to the office within 120 days after each assessment year.

e. Insurers remitting reconciliation reports under this paragraph to the association are subject to s. 626.9541(1)(e).

2. For assessments required under paragraph (a) or paragraph (e), the association may use a quarterly installment method instead of the method described in sub-subparagraphs 1.b. and c. or in combination thereof based on the association's projected cash flow. If the association projects that it has cash on hand for the payment of anticipated claims in the applicable account for at least 6 months, the board may make an estimate of the assessment needed and may recommend to the office the assessment percentage that may be collected as a quarterly assessment. The office may, in the order levying the assessment on insurers, specify that the assessment is due and payable quarterly as the funds are collected from insureds throughout the assessment year, in which case the assessment shall be a uniform percentage of premium collected during the assessment year and shall be collected from all policyholders with policies in the classes protected by the account. All insurers shall collect the assessment without regard to whether the insurers reported premium in the year preceding the assessment. Insurers are not required to advance funds if the

association and the office elect to use the quarterly installment option. All funds collected shall be retained by the association for the payment of current or future claims. This subparagraph does not alter the obligation of an insurer to remit assessments levied pursuant to this subsection to the association. Insurers shall file one or more reconciliation reports with the association which indicate the amount actually collected during the assessment year, and such other information contained on a form and schedule adopted by the association and provided to the insurers in advance.

(g) Insurers shall treat the failure of an insured to pay a surcharge ~~recoupment charge~~ as a failure to pay the premium.

(h) Assessments levied under this subsection are levied upon insurers. This subsection does not create a cause of action by a policyholder with respect to the levying of, or a policyholder's duty to pay, such assessments and related surcharges.

(i) Assessments levied under this subsection are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for any surcharges ~~emergency assessments~~ that the insurer collects and ~~shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer~~ is not liable for uncollectible surcharges ~~emergency assessments~~.

Section 3. Paragraphs (c) and (d) of subsection (1) and

paragraph (c) of subsection (4) of section 631.914, Florida Statutes, are amended to read:

631.914 Assessments.—

(1)

(c) The office shall levy the uniform surcharge percentage on all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer. Member insurers shall collect policy surcharges at a uniform percentage rate on new and renewal policies issued and effective during the assessment year ~~period of 12 months~~ beginning on January 1, April 1, July 1, or October 1, whichever is the first day of the following calendar quarter as specified in an order issued by the office. The policy surcharge may not begin until 90 days after the board of directors certifies the assessment.

(d) The association may use a pass-through ~~an installment~~ method to require the insurer to remit the policy surcharge as collected or may require the insurer to remit the assessment to the association before collecting the policy surcharge.

1. If the association elects to use the pass-through ~~installment~~ method, the office may, in the order levying the assessment on insurers, specify that the policy surcharge is due and payable quarterly as collected throughout the assessment year. Insurers shall collect policy surcharges at a uniform percentage rate specified by order as described in paragraph

(c). Insurers are not required to advance funds if the association and the office elect to use the pass-through ~~installment~~ option. Assessments levied under this subparagraph are paid after policy surcharges are collected, and the recognition of assets is based on actual policy surcharges collected offset by the obligation to the association.

2. If the association elects to require insurers to remit the assessment before surcharging the policy, the following shall apply:

a. On or before the date specified in the order of the office, insurers shall make an initial advance payment to the association of the percentage specified in the order multiplied by the insurer's direct written premiums received in this state for the preceding calendar year for the kinds of insurance included within such account before the beginning of the assessment year. The board may authorize an insurer to pay an assessment in a single payment or on a quarterly basis, based on cash-flow needs.

b. The levy order shall provide each insurer so assessed at least 30 days' written notice of the date the initial assessment payment is due and payable by the insurer.

c. Insurers shall collect policy surcharges at a uniform percentage rate specified by the order, as described in paragraph (c).

d. Assessments levied under this subparagraph and paid by

an insurer constitute advances of funds from the insurer to the association and result in a receivable for policy surcharges to be billed in the future. The amount of billed policy surcharges, to the extent it is likely that it will be realized, meets the definition of an admissible asset as specified in the National Association of Insurance Commissioners' Statement of Statutory Accounting Principles No. 4. The asset shall be established and recorded separately from the liability. If an insurer is unable to fully recoup the amount of the assessment, the amount recorded as an asset shall be reduced to the amount reasonably expected to be recouped.

3. Insurers must submit a reconciliation report to the association within 120 days after the end of the 12-month assessment year ~~period~~ and annually thereafter for a period of 2 ~~3~~ years. The report must indicate the amount of the initial payment or installment payments made to the association and the amount of policy surcharges collected for the assessment year. If the insurer's reconciled obligation is more than the amount paid to the association, the insurer shall pay the excess policy surcharges collected to the association. If the insurer's reconciled obligation is less than the initial amount paid to the association, the association shall return the overpayment to the insurer.

(4)

~~(c) The board may allow an insurer to pay an assessment on~~

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

~~a quarterly basis.~~

Section 4. This act shall take effect July 1, 2022.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 353 Mortgage Payoff Letters
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	Luczynski

SUMMARY ANALYSIS

A mortgage payoff letter may be requested, for example, by a mortgagor who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage. When a mortgage loan has been fully paid, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county. Within 60 days after receiving full payment of the mortgage loan, the mortgage lender or servicer must send the borrower the recorded satisfaction.

Bill proponents have explained that some mortgage payoff letters include language reserving the mortgage servicer's or lender's right to change the amounts listed in the payoff letter and disclaiming the reliance of others on the information in the payoff letter. In the event that the mortgage lender or servicer determines after sending the mortgage payoff letter that the borrower owes additional money, bill proponents have said that some mortgage lenders or servicers return the funds received from the closing which were sent in reliance on the amount stated in the mortgage payoff letter. This results in the continued accrual of interest and potential fees during the pendency of resolving the discrepancy in amount owed. Further, prior to resolution of the discrepancy, there is not clear title to the property.

The bill:

- Reduces from 14 days to 10 days the timeframe within which a lender or servicer must send a requested mortgage payoff letter.
- Standardizes the contents of the mortgage payoff letter as to all of the authorized requestors.
- Prohibits the lender or servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter; any attempt to do so is void and unenforceable.
- Allows the lender or servicer to send a corrected mortgage payoff letter that will supersede any prior payoff letter so long as the corrected payoff letter is received by the end of normal business hours at least one business day before payment is made in reliance on the payoff letter.
- Prohibits the lender or servicer from denying the accuracy of the mortgage payoff letter as against any person who relied upon it, but allows recovery of the sum owed from the borrower.
- Requires the lender or servicer to promptly apply payment received in reliance on the payoff letter.
- Specifies the process by which a mortgage payoff letter may be requested and sent.
- Requires the lender or servicer, within 60 days after the mortgage loan has been paid pursuant to the mortgage payoff letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage).

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

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

A mortgage payoff letter[1] may be requested, for example, by a mortgagor[2] who is selling the property that is collateral for the mortgage loan, refinancing the mortgage loan, or paying off the mortgage loan. Florida law requires that a mortgage lender or servicer deliver to the requestor, within 14 days after receipt of a written request, a mortgage payoff letter setting forth the unpaid balance of the loan secured by the mortgage.[3] The request may be made by a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property.[4]

Florida law specifies the information that must be contained in the mortgage payoff letter, depending on who requests the letter:[5]

- If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the mortgage payoff letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.
- If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request, the mortgage payoff letter may include the itemization of information required above, but must at a minimum include the total unpaid balance due under or secured by the mortgage on a per-day basis.

When the amount of money due on any mortgage loan has been fully paid, the mortgage lender or servicer must execute in writing an instrument acknowledging satisfaction of the mortgage and have the instrument acknowledged, or proven, and duly entered in the official records of the proper county.[6] Within 60 days after receiving full payment of the mortgage loan, the person required to acknowledge satisfaction of the mortgage must send or cause to be sent the recorded satisfaction to the person who has made the full payment.[7] In the case of a civil action arising out of this requirement, the prevailing party is entitled to attorney fees and costs.

Bill proponents have explained that some mortgage payoff letters include language reserving the mortgage servicer's or lender's right to change the amounts listed in the payoff letter and disclaiming the reliance of others on the information in the payoff letter. In the event that the mortgage lender or servicer determines after sending the mortgage payoff letter that the borrower owes additional money, bill proponents have said that some mortgage lenders or servicers return the funds received from the closing which were sent in reliance on the amount stated in the mortgage payoff letter. This results in the continued accrual of interest and potential fees during the pendency of resolving the discrepancy in amount owed. Further, prior to resolution of the discrepancy, there is not clear title to the property.

Effect of the Bill

The bill reduces from 14 days to 10 days the timeframe within which a mortgage lender or servicer must send a requested mortgage payoff letter setting forth the unpaid balance of the mortgage loan. If

[1] Referred to as an "estoppel letter" in Florida statutes. *See* ss. 701.04 and 701.041, F.S.
[2] Mortgagor means "[s]omeone who mortgages property; the mortgage-debtor, or borrower." Black's Law Dictionary (11th ed. 2019).
[3] S. 701.04(1), F.S.
[4] *Id.*
[5] *Id.*
[6] S. 701.04(2), F.S.
[7] *Id.*

the request for a mortgage payoff letter is made by a person other than the mortgagor,[8] the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgage lender or servicer must notify the mortgagor of the request.

The bill standardizes the information that must be contained in the mortgage payoff letter, regardless of whether the requestor is the mortgagor, a record title owner, or a person lawfully authorized to act on behalf of the mortgagor or record title owner. The letter must at a minimum include:

- The unpaid balance of the loan secured by the mortgage as of the date specified in the letter, including an itemization of the principal, interest, and any other charges comprising the unpaid balance; and
- Interest accruing on a per-day basis for the unpaid balance, if applicable.

The bill prohibits the mortgage lender or servicer from qualifying, reserving the right to change, or conditioning or disclaiming the reliance of others on the information provided in a mortgage payoff letter, and any attempt to do so is void and unenforceable. However, this prohibition does not apply to mortgages for which a notice of lis pendens[9] in a foreclosure action or a suggestion of bankruptcy[10] has been properly filed and recorded.

If the mortgage lender or servicer determines that any of the information in the mortgage payoff letter was inaccurate, the mortgage lender or servicer may send a corrected mortgage payoff letter. The corrected mortgage payoff letter will supersede any prior mortgage payoff letter so long as the corrected payoff letter is received by the end of normal business hours at least one business day before payment is made in reliance on the mortgage payoff letter.

If any of the information in the mortgage payoff letter was inaccurate and there was not a timely corrected payoff letter, the bill prohibits the mortgage lender or servicer from denying the accuracy of the mortgage payoff letter as against any person who relied upon it. However, this does not affect the mortgage lender's right to recover any sum not included in the mortgage payoff letter, nor does it limit any claim or defense to recovery that the borrower may have.

If a payment is received at the location and in the manner specified by the mortgage lender or servicer, the mortgage lender or servicer must accept and may not return any payment received in reliance on the mortgage payoff letter, and the mortgage lender or servicer must promptly apply such payment to the unpaid balance of the mortgage loan. This will prevent accrual of interest and potential fees while the mortgage lender or servicer and the borrower work through any discrepancy as to the amount owed.

The bill specifies the process for requesting a mortgage payoff letter. A written request for a mortgage payoff letter must be sent to the mortgage lender or servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgage lender or servicer for such purpose, or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter. The request is considered received:

a. Five days after the request sent by first-class mail is deposited with the United States Postal Service;

b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgage lender or servicer for requesting a mortgage payoff letter.

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[8] Definition of "mortgagor", *supra* note 2.

[9] A notice of lis pendens is "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome. Black's Law Dictionary (11th ed. 2019). *See also* s. 48.23, F.S., relating to lis pendens.

[10] "Suggestion of bankruptcy is a document filed with a court to put it on notice that the defendant in a pending lawsuit has filed a bankruptcy case. A party can file a suggestion of bankruptcy whenever a party believes that the bankruptcy or automatic stay provision of bankruptcy code has an effect on a state court case." US Legal, https://definitions.uslegal.com/s/suggestion-of-bankruptcy/ (last visited Jan. 23, 2022).

If any of the foregoing dates is a Saturday, Sunday, or legal holiday, the request for a mortgage payoff letter is considered received on the next business day.

The bill also specifies the process by which a mortgage payoff letter may be sent. The mortgage lender or servicer must send a mortgage payoff letter by first-class mail, by common carrier delivery service, or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgage lender or servicer for this purpose. However, the mortgage lender or servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgage lender or servicer ends on a Saturday, Sunday, or legal holiday, the mortgage payoff letter is considered timely if it is sent by the close of business on the next business day.

The bill requires the mortgage lender or servicer, within 60 days after the mortgage loan has been fully paid or paid pursuant to the mortgage payoff letter, to execute, have duly entered in the official records of the proper county, and send to the mortgagor or record title owner an instrument acknowledging release of the mortgage (i.e., a satisfaction of mortgage or a release of mortgage). The prevailing party in a civil action brought against the mortgage lender or servicer to enforce this requirement is entitled to reasonable attorney fees and costs. The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the mortgage loan. In the event of a discrepancy in the amount owed on the mortgage loan, this provision will ensure clear title to the property while maintaining the mortgage lender's or servicer's ability to recover sums properly owed under the mortgage loan.

The bill conforms the definition of "estoppel letter" in s. 701.041, F.S., to the estoppel letter requirements in s. 701.04, F.S.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 701.04, F.S., relating to cancellation of mortgages, liens, and judgments.

Section 2. Amends s. 701.041, F.S., relating to title insurer; mortgage release certificate.

Section 3. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate impact on the private sector. The bill may lead to smoother real estate closings to the extent that mortgage lenders or servicers provide more accurate information in mortgage payoff letters. In the event of a discrepancy in the amount owed on the mortgage loan, the bill will prevent accrual of interest and potential fees while the mortgage lender or servicer and the borrower work through the issue. Additionally, the bill will ensure clear title to the property while maintaining the mortgage lender's or servicer's ability to recover sums properly owed under the mortgage loan.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to mortgage payoff letters; amending s. 701.04, F.S.; revising the timeframe for a mortgagee or mortgage servicer to send or cause to be sent an estoppel letter with specified information to certain persons ; revising the circumstances under which a copy of the instrument showing title in the property or other lawful authorization must be included; requiring notice to the mortgagor of a request for an estoppel letter under certain circumstances; revising requirements for an estoppel letter; specifying prohibited actions by the mortgagee or mortgage servicer of certain mortgages and deeming such prohibited actions void and unenforceable; authorizing a corrected estoppel letter under certain circumstances; providing that a corrected estoppel letter supersedes any previous estoppel letter under certain circumstances; prohibiting the mortgagee or mortgage servicer from denying the accuracy of an estoppel letter under certain circumstances; providing construction; prohibiting payments received pursuant to an estoppel letter from being returned and requiring such payments to be applied to any unpaid balance of a mortgage; providing methods for sending a written request for an estoppel letter and for sending

the estoppel letter; providing that the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service; requiring the mortgagee or mortgage servicer to take certain actions within a specified time after the unpaid balance of a mortgage has been fully paid or paid pursuant to an estoppel letter; providing for liability under certain circumstances; authorizing attorney fees and costs; providing that certain persons may still be personally liable after recording a release of a mortgage; amending s. 701.041, F.S.; revising a definition; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 701.04, Florida Statutes, is amended to read:

701.04 Cancellation of mortgages, liens, and judgments.—

(1)(a) Within 10 ~~14~~ days after receipt of the written request of a mortgagor, a record title owner of the property, a fiduciary or trustee lawfully acting on behalf of a record title owner, or any other person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, the mortgagee ~~holder of a mortgage shall deliver~~ or ~~cause the~~

mortgage servicer ~~of the mortgage~~ shall send or cause to be sent ~~to deliver to the person making the request at a place designated in the written request~~ an estoppel letter setting forth the unpaid balance of the loan secured by the mortgage. If the written request is made by a person other than the mortgagor, the request must include a copy of the instrument showing such person's title in the property or other lawful authorization, and the mortgagee or mortgage servicer must notify the mortgagor of the request.

~~(a) If the mortgagor, or any person lawfully authorized to act on behalf of the mortgagor, makes the request, the estoppel letter must include an itemization of the principal, interest, and any other charges properly due under or secured by the mortgage and interest on a per-day basis for the unpaid balance.~~

(b) ~~If a record title owner of the property, or any person lawfully authorized to act on behalf of a mortgagor or record title owner of the property, makes the request:~~

~~1. The request must include a copy of the instrument showing title in the property or lawful authorization.~~

~~2.~~ The estoppel letter ~~may include the itemization of information required under paragraph (a), but~~ must at a minimum include:

1. The ~~total~~ unpaid balance of the loan ~~due under or~~ secured by the mortgage as of the date specified in the estoppel letter, including an itemization of the principal, interest, and

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

any other charges comprising the unpaid balance ~~on a per-day basis.~~; and

2. Interest accruing on a per-day basis for the unpaid balance, if applicable.

(c)1. Except for mortgages for which a notice of lis pendens in a foreclosure action or a suggestion of bankruptcy has been properly filed and recorded, the mortgagee or mortgage servicer may not qualify, reserve the right to change, or condition or disclaim the reliance of others on the information provided in an estoppel letter under paragraph (b), and any attempt to do so is void and unenforceable. However, if the mortgagee or mortgage servicer determines that any of the information provided in the estoppel letter under paragraph (b) was inaccurate, the mortgagee or mortgage servicer may send a corrected estoppel letter to the person who requested the estoppel letter.

2. If the person who requested the estoppel letter receives a corrected estoppel letter by the end of normal business hours at least 1 business day before a payment is made in reliance on the previous estoppel letter, the corrected estoppel letter supersedes all prior estoppel letters.

3. If any of the information provided in the estoppel letter under paragraph (b) was inaccurate but the person who requested the estoppel letter did not timely receive a corrected estoppel letter as provided in subparagraph 2., the mortgagee or

mortgage servicer may not deny the accuracy of such information as against any person who relied upon it. This subparagraph does not affect the right of a mortgagee to recover any sum that it did not include in an estoppel letter from any person liable for payment of the loan or other obligations secured by the mortgage, nor does it limit any claim or defense to recovery that such person may have at law or in equity.

(d) ~~3.~~ The mortgagee or mortgage servicer ~~of the mortgagee~~ acting in accordance with a request in substantial compliance with this subsection ~~paragraph~~ is expressly discharged from any obligation or liability to any person on account of the release of the requested information, other than the obligation to comply with the terms of the estoppel letter.

(e) If a payment is received at the location and in the manner specified by the mortgagee or mortgage servicer, the mortgagee or mortgage servicer must accept and may not return any payment received in reliance on an estoppel letter and must promptly apply such payment to the unpaid balance of the loan properly due under or secured by the mortgage.

(f)1. A written request for an estoppel letter under paragraph (a) must be sent to the mortgagee or mortgage servicer by first-class mail, postage prepaid; by common carrier delivery service; or by e-mail, facsimile, or other electronic means at the address made available by the mortgagee or mortgage servicer for such purpose, or through an automated system provided by the

mortgagee or mortgage servicer for requesting an estoppel letter. The written request is considered received by the mortgagee or mortgage servicer:

a. Five days after the request sent by first-class mail is deposited with the United States Postal Service;

b. The day the request is delivered by a common carrier delivery service; or

c. The day the request is sent by e-mail, facsimile, or other electronic means or through an automated system provided by the mortgagee or mortgage servicer for requesting an estoppel letter.

If any of the foregoing dates is a Saturday, Sunday, or legal holiday under the laws of this state or the United States, the request for an estoppel letter is considered received on the next business day.

2. The mortgagee or mortgage servicer must send an estoppel letter by first-class mail, by common carrier delivery service, or by e-mail, facsimile, or other electronic means, as directed in the written request, or through an automated system provided by the mortgagee or mortgage servicer for this purpose. However, the mortgagee or mortgage servicer is not required to pay for a common carrier delivery service. If the 10-day period after a written request is received by the mortgagee or mortgage servicer ends on a Saturday, Sunday, or legal holiday under the

laws of this state or the United States, the estoppel letter is considered timely if it is sent by the close of business on the next business day.

(g) ~~(c)~~ Notwithstanding s. 655.059, a mortgagee or mortgage servicer ~~mortgage holder~~ may provide the financial information required under this subsection to a person authorized under this subsection to request the financial information ~~notwithstanding s. 655.059~~.

(2)(a) Within 60 days after the unpaid balance of a loan secured by a mortgage has been fully paid or paid pursuant to an estoppel letter under subsection (1), whichever is earlier, the mortgagee or mortgage servicer shall execute in writing an instrument acknowledging release of the mortgage; have the instrument acknowledged, or proven, and duly entered in the official records of the proper county; and send or cause to be sent the recorded release to the mortgagor or record title owner of the property. The prevailing party in a civil action brought against the mortgagee or mortgage servicer to enforce the requirements of this paragraph is entitled to reasonable attorney fees and costs.

(b) The recorded release of the mortgage does not relieve the mortgagor, or the mortgagor's successors or assigns, from any personal liability on the loan or other obligations previously secured by the mortgage.

(3) ~~(2)~~ Within 60 days after the unpaid balance ~~Whenever~~

~~the amount of money due~~ on a ~~any mortgage,~~ lien~~,~~ or judgment has been fully paid to the person ~~or party~~ entitled to the payment thereof, the ~~mortgagee,~~ creditor~~,~~ or assignee, or the attorney of record in the case of a judgment, to whom the payment was made~~,~~ shall execute in writing an instrument acknowledging satisfaction of the ~~mortgage,~~ lien~~,~~ or judgment; ~~and~~ have the instrument acknowledged, or proven, and duly entered in the official records of the proper county; and~~. Within 60 days after the date of receipt of the full payment of the mortgage, lien, or judgment, the person required to acknowledge satisfaction of the mortgage, lien, or judgment shall~~ send or cause to be sent the recorded satisfaction to the person who has made the full payment. ~~In the case of a civil action arising out of this section,~~ The prevailing party in a civil action brought against the creditor or assignee, or the attorney of record in the case of a judgment, to enforce the requirements of this subsection is entitled to reasonable attorney fees and costs.

(4)~~(3)~~ When ~~Whenever~~ a writ of execution has been issued, docketed, and indexed with a sheriff and the judgment upon which it was issued has been fully paid, it is the responsibility of the person ~~party~~ receiving payment to request, in writing, addressed to the sheriff, return of the writ of execution as fully satisfied.

Section 2. Paragraph (a) of subsection (1) and subsection (2) of section 701.041, Florida Statutes, are amended to read:

701.041 Title insurer; mortgage release certificate.—

(1) DEFINITIONS.—For purposes of this section:

(a) "Estoppel letter" means a statement containing, at a minimum, the information required in s. 701.04(1)(b) ~~of the amount of:~~

~~1. The unpaid balance of a loan secured by a mortgage, including principal, interest, and any other charges properly due under or secured by the mortgage~~.

~~2. Interest on a per-day basis for the unpaid balance.~~

(2) CERTIFICATE OF RELEASE.—An officer or duly appointed agent of a title insurer may, on behalf of a mortgagor or a person who acquired from the mortgagor title to all or a part of the property described in a mortgage, execute a certificate of release that complies with the requirements of this section and record the certificate of release in the real property records of each county in which the mortgage is recorded if a satisfaction or release of the mortgage has not been executed and recorded after the date payment in full of the loan properly due under or secured by the mortgage was made in accordance with an estoppel letter ~~a payoff statement~~ furnished by the mortgagee or the mortgage servicer.

Section 3. This act shall take effect October 1, 2022.

PCS for HB 389

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 389 Money Services Businesses
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	Luczynski

SUMMARY ANALYSIS

The Office of Financial Regulation's (OFR) Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. MSB applicants must submit fingerprints to the Florida Department of Law Enforcement (FDLE) for a state criminal history background check, and the fingerprints must be submitted to the Federal Bureau of Investigation (FBI) for a federal criminal history background check. The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

Access to the FBI's criminal history record information system (CHRI) was previously authorized for fingerprints pursuant to ch. 560, F.S. However, in order to obtain CHRI for applicants to the recently created Financial Technology Sandbox, FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to access criminal justice information and identifies the specific agency requesting the information. CJILU responded to this request stating that the MSB licensing statute does not qualify for CHRI because the terms "responsible person" and "control of a money services business", as used in that statute to specify persons who are required to submit fingerprints, are overly broad and, thus, do not sufficiently define the categories of people subject to the background check. The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure. However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.

The bill creates the term "control person", repeals the definitions of "officer" and "responsible person", and repeals the statute that defines when a person has a controlling interest in an MSB. Some of the elements from these repealed definitions and statute are made part of the "control person" definition, and the bill inserts "control person" throughout ch. 560, F.S., in place of these repealed definitions and statute. Thus, a person who meets the definition of "control person", as defined in the bill, must submit fingerprints and be vetted by the OFR.

The bill repeals the requirement that a person or group of persons proposing to acquire a controlling interest in an MSB submit an application for licensure prior to the acquisition. The bill deletes portions of current law that relate to the change of control application process, including a provision that caps fees when a change of control application is filed. If a new "control person", as defined in the bill, is added, such person must submit fingerprints and be vetted by the OFR.

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

The bill provides an effective date of October 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The Division of Consumer Finance within the OFR licenses and regulates various aspects of the non-depository financial services industries, including money services businesses (MSBs) regulated under ch. 560, F.S. An MSB is any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as the following:[2]

- *Payment instrument seller*: A payment instrument seller sells, issues, provides, or delivers payment instruments.[3]
- *Foreign currency exchanger*: A foreign currency exchanger exchanges, for compensation, currency[4] of the United States or a foreign government to currency of another government.[5]
- *Check casher*: A check casher sells, issues, provides, or delivers currency[6] in exchange for payment instruments[7] received, except travelers checks.[8]
- *Money transmitter*: A money transmitter receives currency,[9] monetary value,[10] or payment instruments[11] 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.[12]

An MSB may engage in deferred presentment transactions, commonly known as "payday loans", by filing a declaration of intent with the OFR.[13] A money transmitter or payment instrument seller may engage in the activities authorized for check cashers and foreign currency exchangers without paying additional licensing fees.[14] State and federally chartered depository institutions, such as banks and credit unions, are exempt from licensure as an MSB.[15]

An applicant for an MSB license must submit the following to the OFR:

- An application;[16]
- A nonrefundable application fee;[17]

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[1] S. 20.121(3)(a)2., F.S.
[2] S. 560.103(22), F.S.
[3] S. 560.103(30) and (34), F.S. The term "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.
[4] The term "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.
[5] S. 560.103(17), F.S.
[6] Definition of "currency", *supra* note 4.
[7] Definition of "payment instrument", *supra* note 3.
[8] S. 560.103(6) and (34), F.S.
[9] Definition of "currency", *supra* note 4.
[10] The term "monetary value" means a medium of exchange, whether or not redeemable in currency. S. 560.103(21), F.S.
[11] Definition of "payment instrument", *supra* note 3.
[12] S. 560.103(23), F.S.
[13] S. 560.403, F.S.
[14] S. 560.204(2), F.S.
[15] S. 560.104, F.S.
[16] S. 560.141(1)(a), F.S.
[17] Ss. 560.141(1)(b) and 560.143, F.S.

- A copy of the applicant's written anti-money laundering program required by federal law;[18] and
- Fingerprints for the following individuals:[19]
    - An officer, which is defined as an individual, other than a director, who participates in, or has authority to participate in, the major policymaking functions of an MSB, regardless of whether the individual has an official title or receives a salary or other compensation.[20]
    - A director.
    - A responsible person, which is defined as an individual who is employed by or affiliated with an MSB and who has principal active management authority over the business decisions, actions, and activities of the MSB in this state.[21] In turn, "affiliated party" means a director, officer, responsible person, employee, or foreign affiliate of a money services business, or a person who has a controlling interest in a money services business.[22]
    - The compliance officer, which is defined as the individual in charge of overseeing, managing, and ensuring that an MSB is in compliance with all state and federal laws and rules relating to MSBs, as applicable, including all money laundering laws and rules.[23]
    - A controlling shareholder.
    - Any other person who has a controlling interest, meaning a person who:[24]
        - Possesses the power, directly or indirectly, to direct the management or policies of the MSB, whether through ownership, by contract, or otherwise;
        - Directly or indirectly may vote 25 percent or more of a class of a voting security or sell or direct the sale of 25 percent or more of a class of voting securities; or
        - In the case of a partnership, may receive upon dissolution or has contributed 25 percent or more of the capital.

Fingerprints are not required if the applicant is a publicly traded corporation.[25] If fingerprints are required, the fingerprints must be submitted for live-scan processing.[26] Live-scan is a device that electronically takes fingerprints and other information and uploads that information to the Florida Department of Law Enforcement (FDLE) who, in turn, sends the fingerprints to the Federal Bureau of Investigation (FBI) for a fingerprint background check.[27] The fingerprints may be submitted through a third-party vendor authorized by FDLE to provide live-scan fingerprinting.[28] FDLE must conduct the state criminal history background check, and a federal criminal history background check must be conducted through the FBI.[29] The costs of fingerprint processing, including the cost of retaining the fingerprints, must be borne by the person subject to the background check.[30] The OFR must review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.[31]

An MSB license must be renewed every two years.[32]

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[18] S. 560.141(d), F.S.
[19] Ss. 560.141(c) and 560.127, F.S.
[20] S. 560.103(26), F.S.
[21] S. 560.103(33), F.S.
[22] S. 560.103(1), F.S.
[23] S. 560.103(8), F.S.
[24] S. 560.127, F.S.
[25] S. 560.141(1)(c)6., F.S.
[26] S. 560.141(1)(c), F.S.
[27] Florida Live Scan, https://livescanflorida.com/#:~:text=LiveScan%20is%20a%20device%20that,for%20a%20fingerprint%20background%20check. (last visited Jan. 25, 2022).
[28] S. 560.141(1)(c)1., F.S.
[29] S. 560.141(1)(c)2., F.S.
[30] S. 560.141(1)(c)4., F.S.
[31] 560.141(1)(c)5., F.S.
[32] Ss. 560.141(2) and 560.142, F.S.

Once licensed, an MSB is required to report any change in the partners, officers, members, joint venturers, directors, controlling shareholders, or responsible persons.[33] If such person does not have a controlling interest in the MSB, then the person must simply comply with fingerprint requirements and be vetted by the OFR.[34] If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in an MSB, such person or group must submit a new application for licensure at least 30 days before such purchase or acquisition.[35] Such a change of control application is not required where the person or group of persons has previously complied with applicable licensing provisions, provided that they are currently affiliated with the MSB, or where the person or group of persons is currently licensed with the OFR as an MSB.[36] A change of control application must be accompanied by the payment of an initial licensing fee and a fee per branch or authorized vendor, up to a maximum of $20,000.[37]

As previously mentioned, when fingerprinting is required, the fingerprints must be submitted to FDLE for a state and federal criminal history background check. The federal background check is conducted through the FBI's criminal history record information (CHRI) system. Federal law Pub. L. 92-544 authorizes the exchange of CHRI with officials of state and local governmental agencies for licensing and employment purposes.[38] One of the primary purposes for enacting Pub. L. 92-544 was to establish a national policy with adequate sanctions and administrative safeguards regarding the dissemination of FBI's CHRI to state and local governments for non-criminal justice licensing and employment purposes.[39] The FBI, with the assistance of the United States Department of Justice, has determined the parameters of Pub. L. 92-544.[40] The criteria for granting access to the FBI's CHRI are as follows:

a. The statute must exist as a result of a legislative enactment;
b. It must require the fingerprinting of applicants who are to be subjected to a national criminal history background check;
c. It must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants;
d. It must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding over breadth;
e. It must not be against public policy; and
f. It may not authorize receipt of the CHRI by a private entity.

Access to the FBI's CHRI was previously authorized for fingerprints pursuant to ch. 560, F.S. However, in order to obtain CHRI for applicants to the recently created Financial Technology Sandbox under s. 559.952, F.S., created in the 2020 legislative session,[41] FDLE sent correspondence to the FBI's Criminal Justice Information Law Unit (CJILU) to obtain an Originating Agency Identifier (ORI). The ORI validates legal authorization to access criminal justice information and identifies the specific agency requesting the information. CJILU reviewed s. 559.952, F.S., which derives its fingerprinting authority from s. 560.141, F.S. CJILU responded to this request stating that s. 560.141, F.S., does not qualify for CHRI because the terms "responsible person" and "control of a money services business" as used in s. 560.141, F.S., are overly broad and, thus, do not sufficiently define the categories of people subject to the background check.[42] The CJILU acknowledged that MSB fingerprinting was previously approved by the CJILU and that the FBI will continue to honor fingerprints submitted for MSB licensure.[43] However, the CJILU has placed MSB fingerprinting on a grace period of unspecified length in order to allow

[33] S. 560.126(3), F.S.
[34] S. 560.126(3)(b), F.S.
[35] S. 560.126(3)(a), F.S.; r. 69v-560.201(3), F.A.C.
[36] S. 560.126(3)(c), F.S.; r. 69v-560.201(6), F.A.C.
[37] Ss. 560.126(3) and 560.143(1), F.S.
[38] 20 C.F.R. § 20.33.
[39] Federal Bureau of Investigation, *Testimony of Dennis Lormel Before the House Financial Services Committee (Mar. 06, 2001)*, https://archives.fbi.gov/archives/news/testimony/fbis-perspective-on-criminal-history-record-information-checks-on-individuals-conducting-insurance-business (last visited Jan. 25, 2022).
[40] Email from Heather R. Postlethwait, FBI Office of the General Counsel, to Nathan Pate, Florida Department of Law Enforcement, RE: ORI Request - Florida Office of Financial Regulation (Mar. 22, 2021).
[41] Ch. 2020-161, Laws of Fla.
[42] Email from Heather R. Postlethwait, *supra* note 40.
[43] *Id*.

Florida to amend MSB fingerprinting statutes such that the statutes specifically identify the categories of licensees or employees falling within the purview of the statutes; CJILU will not allow fingerprinting of additional categories of applicants (i.e., those applying under the Financial Technology Sandbox) during this grace period.[44]

Effect of the Bill

The bill creates the term "control person" and defines the term as:

- A person that possesses the power, directly or indirectly, to direct the management or policies of a money services business, whether through ownership of securities, by contract, or through other means, and regardless of whether such person has an official title or receives a salary or other compensation. The following persons are each presumed to be a control person:
  - The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and compliance officer.
  - A person holding any of the officer positions named in the money services business's governing documents.
  - A person holding any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.
  - A director of the money services business's board of directors.
- For a corporation that is not publicly traded,[45] all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.
- For a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the partnership's capital.
- For a trust, all trustees.
- For a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the limited liability company's capital.

The bill repeals the definitions of "officer" and "responsible person" and repeals s. 560.127, F.S., which defines when a person has a controlling interest in a money services business. Some of the elements from these repealed definitions and statute are made part of the "control person" definition, and the bill inserts "control person" throughout ch. 560, F.S., in place of these repealed definitions and statute. Thus, a person who meets the definition of "control person", as defined in the bill, must submit fingerprints and be vetted by the OFR.

The bill repeals the requirement that a person or group of persons proposing to acquire a controlling interest in an MSB submit an application for licensure prior to the acquisition. The bill deletes portions of current law that relate to the change of control application process, including a provision that caps fees when a change of control application is filed. If a new "control person", as defined in the bill, is added, such person must submit fingerprints and be vetted by the OFR.

The bill provides an effective date of October 1, 2022.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.103, F.S., relating to definitions.

Section 2. Amends s. 560.118, F.S., relating to reports.

Section 3. Amends s. 560.123, F.S., relating to Florida Control of Money Laundering in Money Services Business Act.

[44] *Id.*

[45] The term "publicly traded" is currently defined s. 560.141(1)(c)6., F.S., and only applies to paragraph (c). The bill relocates the definition of "publicly traded" to s. 560.103, F.S., which contains definitions applicable to the entire chapter.

Section 4. Amends s. 560.126, F.S., required notice by licensee.

Section 5. Repeals s. 560.127, F.S., relating to control of a money services business.

Section 6. Amends s. 560.141, F.S., relating to license application.

Section 7. Amends s. 560.143, F.S., relating to fees.

Section 8. Reenacts s. 559.952, F.S., relating to Financial Technology Sandbox.

Section 9. Reenacts s. 560.114, F.S., disciplinary actions; penalties.

Section 10. Provides an effective date of October 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The repeal of the requirement to submit a change of control application may result in a decrease in revenue to the OFR. As such, this change may have an indeterminate negative fiscal impact on the state.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The repeal of the requirement to submit a change of control application will have a positive but indeterminate fiscal impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission (commission)[46] will need to amend rules to conform to changes made by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The changes proposed by the bill have not yet been reviewed by the FBI. Continued access to national criminal history record information for persons required to submit fingerprints pursuant to ch. 560, F.S., is reliant upon the FBI's approval of the changes made by the bill.[47] FDLE has stated that, based on past FDLE legislative analysis, the FBI may continue to consider the term "control person" to be overly vague and not acceptable (as they did with "responsible person") when re-evaluating the fingerprinting provisions of ch. 560, F.S.[48]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[46] S. 657.028(6), F.S. The 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 the OFR's agency head for the purpose of rulemaking. S. 20.121(3)(c), F.S.

[47] Florida Department of Law Enforcement, Agency Analysis of 2022 Senate Bill 1536 (Jan. 10, 2022).

[48] *Id*.

A bill to be entitled

An act relating to money services businesses; amending s. 560.103, F.S.; defining the terms "control person" and "publicly traded"; revising and deleting definitions; amending s. 560.118, F.S.; providing that a rule may require certain reports to the Office of Financial Regulation to contain declarations by control persons, rather than officers or other responsible persons; amending s. 560.123, F.S.; providing that control persons, rather than officers, are not liable for loss or damages under certain circumstances; amending s. 560.126, F.S.; requiring licensees to report changes in control persons, rather than certain other entities or persons; deleting a requirement for certain persons to submit a licensure application under certain circumstances; deleting the definition of the term "controlling interest"; providing that the addition of a control person, rather than certain other entities or persons, is subject to certain requirements; deleting a requirement for the Financial Services Commission to adopt rules; repealing s. 560.127, F.S., relating to control of a money services business; amending s. 560.141, F.S.; revising requirements for applications for licensure as a money services business; amending

s. 560.143, F.S.; revising a limitation for certain fees to apply to a change in control, rather than in a controlling interest; reenacting s. 559.952(4)(a), F.S., relating to the Financial Technology Sandbox, to incorporate the amendments made to ss. 560.118 and 560.141, F.S., in references thereto; reenacting s. 560.114(2)(c), F.S., relating to disciplinary actions and penalties, to incorporate the amendment made to s. 560.141, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 560.103, Florida Statutes, is amended to read:

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

(1) "Affiliated party" means a control ~~director, officer, responsible~~ person, employee, or foreign affiliate of a money services business~~, or a person who has a controlling interest in a money services business as provided in s. 560.127~~.

(2) "Appropriate regulator" means a state, federal, or foreign agency that has been granted authority to enforce state, federal, or foreign laws related to a money services business or deferred presentment provider.

(3) "Authorized vendor" means a person designated by a

money services business licensed under part II of this chapter to act on behalf of the licensee at locations in this state pursuant to a written contract with the licensee.

(4) "Branch office" means the physical location, other than the principal place of business, of a money services business operated by a licensee under this chapter.

(5) "Cashing" means providing currency for payment instruments except for travelers checks.

(6) "Check casher" means a person who sells currency in exchange for payment instruments received, except travelers checks.

(7) "Commission" means the Financial Services Commission.

(8) "Compliance officer" means the individual in charge of overseeing, managing, and ensuring that a money services business is in compliance with all state and federal laws and rules relating to money services businesses, as applicable, including all money laundering laws and rules.

(9) "Conductor" means a natural person who presents himself or herself to a licensee for purposes of cashing a payment instrument.

(10) "Control person" means:

(a) A person that possesses the power, directly or indirectly, to direct the management or policies of a money services business, whether through ownership of securities, by contract, or through other means, and regardless of whether such

person has an official title or receives a salary or other compensation. The following persons are each presumed to be a control person:

1. The president, chief executive officer, chief financial officer, chief operations officer, chief legal officer, and compliance officer.

2. A person holding any of the officer positions named in the money services business's governing documents.

3. A person holding any position named by the money services business's liability insurance coverage for directors and officers, if the business has such coverage.

4. A director of the money services business's board of directors.

(b) For a corporation that is not publicly traded, all shareholders that, directly or indirectly, own 25 percent or more or that have the power to vote 25 percent or more of a class of voting securities.

(c) For a partnership, all general partners, and those limited or special partners that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more of the partnership's capital.

(d) For a trust, all trustees.

(e) For a limited liability company, all managers, and those members that have contributed 25 percent or more or that have the right to receive, upon dissolution, 25 percent or more

of the limited liability company's capital.

(11) ~~(10)~~ "Corporate payment instrument" means a payment instrument on which the payee named on the instrument's face is other than a natural person.

(12) ~~(11)~~ "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.

(13) ~~(12)~~ "Deferred presentment provider" means a person who is licensed under part II or part III of this chapter and has filed a declaration of intent with the office to engage in deferred presentment transactions as provided under part IV of this chapter.

(14) ~~(13)~~ "Department" means the Department of Financial Services.

(15) ~~(14)~~ "Electronic instrument" means a card, tangible object, or other form of electronic payment for the transmission or payment of money or the exchange of monetary value, including a stored value card or device that contains a microprocessor chip, magnetic stripe, or other means for storing information; that is prefunded; and for which the value is decremented upon

each use.

(16) ~~(15)~~ "Financial audit report" means a report prepared in connection with a financial audit that is conducted in accordance with generally accepted auditing standards prescribed by the American Institute of Certified Public Accountants by a certified public accountant licensed to do business in the United States, and which must include:

(a) Financial statements, including notes related to the financial statements and required supplementary information, prepared in conformity with accounting principles generally accepted in the United States. The notes must, at a minimum, include detailed disclosures regarding receivables that are greater than 90 days, if the total amount of such receivables represents more than 2 percent of the licensee's total assets.

(b) An expression of opinion regarding whether the financial statements are presented in conformity with accounting principles generally accepted in the United States, or an assertion to the effect that such an opinion cannot be expressed and the reasons.

(17) ~~(16)~~ "Foreign affiliate" means a person located outside this state who has been designated by a licensee to make payments on behalf of the licensee to persons who reside outside this state. The term also includes a person located outside of this state for whom the licensee has been designated to make payments in this state.

(18) ~~(17)~~ "Foreign currency exchanger" means a person who exchanges, for compensation, currency of the United States or a foreign government to currency of another government.

(19) ~~(18)~~ "Fraudulent identification paraphernalia" means all equipment, products, or materials of any kind that are used, intended for use, or designed for use in the misrepresentation of a customer's identity. The term includes, but is not limited to:

(a) A signature stamp, thumbprint stamp, or other tool or device used to forge a customer's personal identification information.

(b) An original of any type of personal identification listed in s. 560.310(2)(b) which is blank, stolen, or unlawfully issued.

(c) A blank, forged, fictitious, or counterfeit instrument in the similitude of any type of personal identification listed in s. 560.310(2)(b) which would in context lead a reasonably prudent person to believe that such instrument is an authentic original of such personal identification.

(d) Counterfeit, fictitious, or fabricated information in the similitude of a customer's personal identification information that, although not authentic, would in context lead a reasonably prudent person to credit its authenticity.

(20) ~~(19)~~ "Licensee" means a person licensed under this chapter.

(21) ~~(20)~~ "Location" means a branch office, mobile location, or location of an authorized vendor whose business activity is regulated under this chapter.

(22) ~~(21)~~ "Monetary value" means a medium of exchange, whether or not redeemable in currency.

(23) ~~(22)~~ "Money services business" means any person located in or doing business in this state, from this state, or into this state from locations outside this state or country who acts as a payment instrument seller, foreign currency exchanger, check casher, or money transmitter.

(24) ~~(23)~~ "Money transmitter" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments 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.

(25) ~~(24)~~ "Net worth" means assets minus liabilities, determined in accordance with United States generally accepted accounting principles.

(26) ~~(25)~~ "Office" means the Office of Financial Regulation of the commission.

~~(26) "Officer" means an individual, other than a director,~~

~~who participates in, or has authority to participate in, the major policymaking functions of a money services business, regardless of whether the individual has an official title or receives a salary or other compensation.~~

(27) "Outstanding money transmission" means a money transmission to a designated recipient or a refund to a sender that has not been completed.

(28) "Outstanding payment instrument" means an unpaid payment instrument whose sale has been reported to a licensee.

(29) "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.

(30) "Payment instrument seller" means a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which sells a payment instrument.

(31) "Person" means an individual, partnership, association, trust, corporation, limited liability company, or other group, however organized, but does not include a public agency or instrumentality thereof.

(32) "Personal identification information" means a customer's name that, alone or together with any of the

following information, may be used to identify that specific customer:

(a) Customer's signature.

(b) Photograph, digital image, or other likeness of the customer.

(c) Unique biometric data, such as the customer's thumbprint or fingerprint, voice print, retina or iris image, or other unique physical representation of the customer.

~~(33) "Responsible person" means an individual who is employed by or affiliated with a money services business and who has principal active management authority over the business decisions, actions, and activities of the money services business in this state.~~

(33) "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 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.

(34) "Sells" means to sell, issue, provide, or deliver.

(35) "Stored value" means funds or monetary value represented in digital electronic format, whether or not specially encrypted, and stored or capable of storage on electronic media in such a way as to be retrievable and

transferred electronically.

Section 2. Subsection (2) of section 560.118, Florida Statutes, is amended to read:

560.118 Reports.—

(2) Each licensee must submit quarterly reports to the office in a format and include information as specified by rule. The rule may require the report to contain a declaration by a control ~~an officer, or any other responsible~~ person authorized to make such declaration, that the report is true and correct to the best of her or his knowledge and belief.

Section 3. Paragraph (d) of subsection (3) of section 560.123, Florida Statutes, is amended to read:

560.123 Florida Control of Money Laundering in Money Services Business Act.—

(3) A money services business shall keep a record of each financial transaction occurring in this state which it knows to involve currency or other payment instrument, as prescribed by the commission, having a value greater than $10,000; to involve the proceeds of specified unlawful activity; or to be designed to evade the reporting requirements of this section or chapter 896. The money services business must maintain appropriate procedures to ensure compliance with this section and chapter 896.

(d) A money services business, or control person ~~officer~~, employee, or agent thereof, that files a report in good faith

pursuant to this section is not liable to any person for loss or damage caused in whole or in part by the making, filing, or governmental use of the report, or any information contained therein.

Section 4. Subsection (3) of section 560.126, Florida Statutes, is amended to read:

560.126 Required notice by licensee.—

(3) Each licensee must report any change in the control ~~partners, officers, members, joint venturers, directors, controlling shareholders, or responsible~~ persons of the licensee or changes in the form of business organization by written amendment in such form and at such time as specified by rule.

~~(a) If any person, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in a licensee, such person or group must submit an application for licensure as a money services business or deferred presentment provider before such purchase or acquisition at such time and in such form as prescribed by rule. As used in this subsection, the term "controlling interest" means the same as described in s. 560.127.~~

~~(b)~~ The addition of a control person ~~partner, officer, member, joint venturer, director, controlling shareholder, or responsible person of the applicant who does not have a controlling interest and~~ who has not previously complied with the applicable provisions of ss. 560.1401 and 560.141 is subject

to such provisions. If the office determines that the licensee does not continue to meet the licensure requirements, the office may bring an administrative action in accordance with s. 560.114 to enforce the provisions of this chapter.

~~(c) The commission shall adopt rules providing for the waiver of the license application required by this subsection if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the applicable provisions of ss. 560.1401 and 560.141 under the same legal entity or is currently licensed under this chapter.~~

Section 5. Section 560.127, Florida Statutes, is repealed.

Section 6. Paragraphs (a) and (c) of subsection (1) of section 560.141, Florida Statutes, are amended to read:

560.141 License application.—

(1) To apply for a license as a money services business under this chapter, the applicant must submit:

(a) An application to the office on forms prescribed by rule which includes the following information:

1. The legal name and address of the applicant, including any fictitious or trade names used by the applicant in the conduct of its business.

2. The date of the applicant's formation and the state in which the applicant was formed, if applicable.

3. The name, social security number, alien identification

or taxpayer identification number, business and residence addresses, and employment history for the past 5 years for each control person ~~officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business as provided in s. 560.127~~.

4. A description of the organizational structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded.

5. The applicant's history of operations in other states if applicable and a description of the money services business or deferred presentment provider activities proposed to be conducted by the applicant in this state.

6. If the applicant or its parent is a publicly traded company, copies of all filings made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.

7. The location at which the applicant proposes to establish its principal place of business and any other location, including branch offices and authorized vendors operating in this state. For each branch office and each location of an authorized vendor, the applicant shall include the nonrefundable fee required by s. 560.143.

8. The name and address of the clearing financial institution or financial institutions through which the applicant's payment instruments are drawn or through which the payment instruments are payable.

9. The history of the applicant's material litigation, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld.

10. The history of material litigation, arrests, criminal convictions, pleas of nolo contendere, and cases of adjudication withheld for each control ~~executive officer, director, controlling shareholder, and responsible~~ person.

11. The name of the registered agent in this state for service of process unless the applicant is a sole proprietor.

12. Any other information specified in this chapter or by rule.

(c) Fingerprints for each person listed in subparagraph (a)3. for live-scan processing in accordance with rules adopted by the commission.

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. The office shall review the results of the state and federal criminal history background checks and determine whether the applicant meets licensure requirements.

6. For purposes of this paragraph, fingerprints are not required to be submitted if the applicant is a publicly traded corporation or is exempted from this chapter under s. 560.104(1). ~~The term "publicly traded" means a stock is currently traded on a national securities exchange registered with the federal Securities and Exchange Commission or traded on an exchange in a country other than the United States 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 commission.~~

7. Licensees initially approved before October 1, 2013,

who are seeking renewal must submit fingerprints for each person listed in subparagraph (a)3. for live-scan processing pursuant to this paragraph. Such fingerprints must be submitted before renewing a license that is scheduled to expire between April 30, 2014, and December 31, 2015.

Section 7. Subsection (1) of section 560.143, Florida Statutes, is amended to read:

560.143 Fees.—

(1) LICENSE APPLICATION FEES.—The applicable non-refundable fees must accompany an application for licensure:

(a) Part II..... $375.

(b) Part III..... $188.

(c) Per branch office ..... $38.

(d) For each location of an authorized vendor ..... $38.

(e) Declaration as a deferred presentment provider ..... $1,000.

(f) Fingerprint retention fees as prescribed by rule.

~~(g) License application fees for branch offices and authorized vendors are limited to $20,000 when such fees are assessed as a result of a change in control controlling interest as defined in s. 560.127.~~

Section 8. For the purpose of incorporating the amendments made by this act to sections 560.118 and 560.141, Florida Statutes, in references thereto, paragraph (a) of subsection (4)

of section 559.952, Florida Statutes, is reenacted to read:

559.952 Financial Technology Sandbox.—

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

(a) Notwithstanding any other law, upon approval of a Financial Technology Sandbox application, the following provisions and corresponding rule requirements are not applicable to the licensee during the sandbox period:

1. Section 516.03(1), except for the application fee, the investigation fee, the requirement to provide the social security numbers of control persons, evidence of liquid assets of at least $25,000, and the office's authority to investigate the applicant's background. The office may prorate the license renewal fee for an extension granted under subsection (7).

2. Section 516.05(1) and (2), except that the office shall investigate the applicant's background.

3. Section 560.109, only to the extent that the section requires the office to examine a licensee at least once every 5 years.

4. Section 560.118(2).

5. Section 560.125(1), only to the extent that the subsection would prohibit a licensee from engaging in the business of a money transmitter or payment instrument seller during the sandbox period.

6. Section 560.125(2), only to the extent that the

subsection would prohibit a licensee from appointing an authorized vendor during the sandbox period. Any authorized vendor of such a licensee during the sandbox period remains liable to the holder or remitter.

7. Section 560.128.

8. Section 560.141, except for s. 560.141(1)(a)1., 3., 7.-10. and (b), (c), and (d).

9. Section 560.142(1) and (2), except that the office may prorate, but may not entirely eliminate, the license renewal fees in s. 560.143 for an extension granted under subsection (7).

10. Section 560.143(2), only to the extent necessary for proration of the renewal fee under subparagraph 9.

11. Section 560.204(1), only to the extent that the subsection would prohibit a licensee from engaging in, or advertising that it engages in, the selling or issuing of payment instruments or in the activity of a money transmitter during the sandbox period.

12. Section 560.205(2).

13. Section 560.208(2).

14. Section 560.209, only to the extent that the office may modify, but may not entirely eliminate, the net worth, corporate surety bond, and collateral deposit amounts required under that section. The modified amounts must be in such lower amounts that the office determines to be commensurate with the

factors under paragraph (5)(c) and the maximum number of consumers authorized to receive the financial product or service under this section.

Section 9. For the purpose of incorporating the amendment made by this act to section 560.141, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 560.114, Florida Statutes, is reenacted, to read:

560.114 Disciplinary actions; penalties.—

(2) Pursuant to s. 120.60(6), the office may summarily suspend the license of a money services business if the office finds that a licensee poses an immediate, serious danger to the public health, safety, and welfare. A proceeding in which the office seeks the issuance of a final order for the summary suspension of a licensee shall be conducted by the commissioner of the office, or his or her designee, who shall issue such order. The following acts are deemed to constitute an immediate and serious danger to the public health, safety, and welfare, and the office may immediately suspend the license of a money services business if:

(c) A natural person required to be listed on the license application for a money services business pursuant to s. 560.141(1)(a)3. is criminally charged with, or arrested for, a crime described in paragraph (1)(o), paragraph (1)(p), or paragraph(1)(q).

Section 10. This act shall take effect October 1, 2022.