

Insurance & Banking Subcommittee

Tuesday, March 14, 2023
11:30 AM - 2:30 PM
Morris Hall (17 HOB)

Meeting Packet

Paul Renner
Speaker

Wyman Duggan
Chair

The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

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Meeting Agenda

Tuesday, March 14, 2023
11:30 AM – 2:30 PM
Morris Hall (17 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 599 Debt Management Services by Garcia
- HB 677 Interchange Fees on Taxes by Caruso
- HB 721 Paid Family Leave Insurance by Chaney
- HB 793 Collateral Protection Insurance on Real Property by Fernandez-Barquin
- HB 987 Public Deposits by Botana

Consideration of the following proposed committee substitute(s):

- PCS for HB 541 -- Motor Vehicle Glass

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
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HB 599

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 599 Debt Management Services
SPONSOR(S): Garcia
TIED BILLS: **IDEN./SIM. BILLS:** SB 628

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fletcher	Lloyd
2) Commerce Committee			

SUMMARY ANALYSIS

Debt management services laws regulate the fees credit counseling organizations may charge debtors for debt management services and credit counseling services. Debt management services include effectuating an adjustment, compromise, or discharge of indebtedness, and advising debtors on debt reduction and general money management practices.

There are two types of organization that provide debt management services: non-profit, 501(c)(3) credit counseling agencies and debt settlement companies, typically for-profit organizations. While debt settlement companies often ruin a debtor's credit and sever ties with the debtor's lenders, non-profit credit counseling agencies work with debtors' creditors, educate debtors about credit practices, and enroll qualifying debtors in debt management plans tailored to their specific situation and budget.

The Legislature created laws in 2004 limiting the amount and types of fees credit counseling agencies may charge debtors for debt management services. Since 2004, however, Florida's limitation on fees for debt management services has not been increased.

The bill revises the fee chargeable to a debtor for receiving from the debtor, and subsequently disbursing to a creditor, money or anything of value from greater of 7.5 percent of the monthly payment or $35 monthly to the lesser of 15 percent of the monthly payment or $75 monthly.

This bill will not have a fiscal impact on state and local governments but will have both positive and negative fiscal impacts on the private sector.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Credit Counseling Organizations

Debtors seeking to manage and reduce their debts often engage credit counseling organizations who provide debt management services and credit counseling services.[1] Non-profit credit counseling agencies assist debtors with managing and reducing their debt by offering free counseling on credit practices, enrolling qualifying debtors in debt management plans, and providing community education to individuals and families on money management skills.[2]

Floridians are among the many individuals who could benefit from non-profit credit counseling organizations. According to Experian, the average Floridian carried $84,926 in debt in 2021.[3] The majority consisted of mortgages which averaged $208,536.[4] Credit card debt, student loans, and auto loans accounted for the other main sources, with a state average of $5,620, $40,866, and $10,110, respectively.[5] In 2022, the average Floridian carried $89,195 in debt, a 5% increase from 2021.[6]

Debt Management Services

Debt management services is defined by Florida statute as services provided for a fee to "effect the adjustment, compromise, or discharge of any unsecured note, account, or other indebtedness of the debtor; or receive from the debtor and disburse to a creditor any money or other item of value."[7]

Credit counseling agencies and creditors classify individuals who find it particularly difficult to manage their debt, whether due to their health or specific situation, as "vulnerable."[8] If an agency or creditor is aware an individual is vulnerable, taking extra measures to ensure the individual receives the same services as others, while not being placed at a disadvantage because of their unique situation, is imperative.[9]

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[1] Consumer Financial Protection Bureau, *What is credit counseling?*, https://www.consumerfinance.gov/ask-cfpb/what-is-credit-counseling-en-1451/ (last visited Mar. 10, 2023).
[2] Financial Counseling Association of America, https://fcaa.org/ (last visited Mar. 10, 2023).
[3] Experian, *Average Consumer Debt Levels Increase in 2022*, https://www.experian.com/blogs/ask-experian/research/consumer-debt-study/ (last visited Mar. 7, 2023).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] S. 817.801(4), F.S.
[8] Step Change: Debt Charity, *Dealing with the debts of a vulnerable person*, https://www.stepchange.org/debt-info/dealing-with-the-debts-of-vulnerable-people.aspx (last visited Mar. 10, 2023).
[9] *Id.*

Florida's Limitations on Fees for Debt Management Services

In 2004, the Legislature recognized the importance of easy access to debt management services, while also acknowledging the vulnerability of debtors, by prescribing the maximum fees a person or entity could charge a debtor for debt management services.[10]

Specifically, the 2004 legislation made it unlawful for any entity or individual engaging in debt management services or credit counseling services, to charge a debtor:

- a fee greater than $50 for an initial consultation;[11] and
- a fee greater than $120 per year for additional consultations or, alternatively, in the case of receiving debt payments from the debtor and disbursing to a creditor any money or other item of value, the greater of 7.5% of the amount paid monthly by the debtor or $35 per month.[12]

No state agency directly regulates credit counseling organizations. Regulation is self-executing by means of private civil actions under part II of ch. 501, including possible action by the Attorney General or local prosecutors.[13] Any person in violation of the debt services statute "commits an unfair or deceptive trade practice."[14] A violation results in criminal and civil penalties. Namely, a violation is a third-degree felony, and an individual injured by a violation can bring an action for damages, where judgement is entered for actual damages no less than the amount paid by the aggrieved individual to the credit counseling organization.[15]

Although a 2006 amendment narrowed the scope of debtors protected to those debtors specifically residing in the State of Florida,[16] the limitation on fees for debt management services has not been increased since its enactment in 2004.

Effect of the Bill

The bill changes the fee a person or entity may charge for the debt management services described in s. 817.802(4)(b) (namely, receiving from the debtor and disbursing to a creditor any money or item of value) to the lesser of 15 percent of the amount paid monthly by the debtor or $75 per month, rather than the greater of 7.5 percent of the amount paid or $35 per month. The following table illustrates the current and proposed fees.

	Current			HB 599			
	Greater of			Lesser of			
Monthly Payment	7.5% of monthly	$35	Monthly Fee Allowed	15% of monthly	$75	Monthly Fee Allowed	Result of Current vs. HB 599
$100	$ 7.50	$ 35.00	$ 35.00	$ 15.00	$ 75.00	$ 15.00	Reduction
$500	$ 37.50	$ 35.00	$ 37.50	$ 75.00	$ 75.00	$ 75.00	Increase
$1,000	$ 75.00	$ 35.00	$ 75.00	$ 150.00	$ 75.00	$ 75.00	No Change
$1,500	$ 112.50	$ 35.00	$ 112.50	$ 225.00	$ 75.00	$ 75.00	Reduction

[10] Chapter 2004-351, Laws of Florida, created s. 817.802, F.S.
[11] S. 817.802(1), F.S.
[12] *Id.*
[13] Ch. 501, part II, F.S., relating to the protection of consumers from unfair trade practices, and remedies for violations thereof, similar to federal policies relating to consumer protection.
[14] S. 817.806, F.S.
[15] S. 17.806, F.S.
[16] Chapter 2006-136, Laws of Florida, amended s. 817.802, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 817.802(1), F.S., relating to unlawful fees and costs.

Section 2. Provides an effective date of July 1, 2023.

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:

Credit counseling organizations and debtors residing in Florida would experience fiscal impact from this bill. Specifically, the change in fees to the greater of 15% of the amount paid monthly by the debtor and $75 would likely result in an increase in some revenue for credit counseling organizations. On the other hand, the increase in the maximum chargeable amount might have a negative, possibly significant, fiscal impact on debtors residing in Florida.[17] Please see *Section III.C., Drafting Issues or Other Comments*, below.

D. FISCAL COMMENTS:

The bill would increase some revenues for credit counseling organizations, but the bill would have a negative fiscal impact on debtors residing in Florida.

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:

[17] Florida Office of Financial Regulations, Agency Analysis of 2023 House Bill 599, p. 3 (Mar. 3, 2023).

B. RULE-MAKING AUTHORITY:

This bill does not appear to amend or create rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Current law and the bill provide for a specified monthly fee allowed to debt management services providers. However, correspondence received from Cambridge Credit indicates that they charge less than the allowed fee. If the bill were to provide for a fee "up to" the lesser of 15 percent of the monthly amount or $75, then the debt management service providers would be specifically authorized to charge less than a maximum allowed fee. The providers would then have the option to operate within a range of allowed monthly fees, subject to a statutory cap.[18] This could also mitigate the possible direct fiscal impacts on the private sector (i.e., debtors receiving debt management services).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[18] Email from Martin Lynch, President, Cambridge Credit, Re: HB 599, regarding fee practices (Mar. 10, 2023).

A bill to be entitled

An act relating to debt management services; amending s. 817.802, F.S.; increasing the maximum fee that may be charged for debt management services; providing an effective date.

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

Section 1. Subsection (1) of section 817.802, Florida Statutes, is amended to read:

817.802 Unlawful fees and costs.—

(1) It is unlawful for any person, while engaging in debt management services or credit counseling services, to charge or accept from a debtor residing in this state, directly or indirectly, a fee or contribution greater than $50 for the initial setup or initial consultation. Subsequently, the person may not charge or accept a fee or contribution from a debtor residing in this state greater than $120 per year for additional consultations or, alternatively, if debt management services as defined in s. 817.801(4)(b) are provided, the person may charge the lesser ~~greater~~ of 15 ~~7.5~~ percent of the amount paid monthly by the debtor to the person or $75 ~~$35~~ per month.

Section 2. This act shall take effect July 1, 2023.

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

HB 677

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 677 Interchange Fees on Taxes
SPONSOR(S): Caruso
TIED BILLS: **IDEN./SIM. BILLS:** SB 564

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Sellas	Lloyd
2) Commerce Committee			

SUMMARY ANALYSIS

Electronic payments through either a debit card or credit card involve many parties to authorize, settle, and fund the transaction between customer and merchant. A merchant will pay part of the transaction proceeds to the facilitating parties of this electronic transaction. This amount is known as a merchant discount fee, and typically amounts to 1-3% of the total transaction amount. The largest portion of the merchant discount fee is the interchange fee which is a fee charged by an issuing bank to the merchant bank. The interchange fee allows for card benefits to the cardholder but also reflects the risk of nonpayment from a cardholder as issuing banks will send out payments to merchant banks before the cardholder pays the issuing bank.

The bill prohibits the charge of interchange fees on the sales tax proportion of an electronic payment transaction. This prohibition applies to debit cards, credit cards, and any other payment devices approved through a payment card network. A payment card network can comply with this prohibition by deducting the tax portion of a transaction before calculating the interchange fee or the payment card network can rebate the merchant for the portion of the interchange fee attributable to the tax portion of the transaction.

The bill provides for a $1,000 civil penalty per each violation in addition to refunding the entire surcharge to the merchant.

The bill has an indeterminate negative impact on state expenditures and no impact on state revenues and local government. It also has indeterminate negative impacts on the private sector.

The bill has an effective date of July 1, 2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Florida Office of Financial Regulation (OFR) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] The OFR has three divisions: the Division of Consumer Finance, the Division of Financial Institutions, and the Division of Securities. The OFR also has a Bureau of Financial Investigations, which functions as a criminal justice agency and has a separate budget.[2]

Florida law defines the term "financial institution" as "a state or federal savings or thrift association, bank, savings bank, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. s. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et seq."[3]

Financial institutions may be either state or federally chartered. OFR's Division of Financial Institutions provides general supervision over all state financial institutions, their subsidiaries, and service corporations,[4] and is charged with the administration of the financial institutions codes, which apply to all state-authorized or state-chartered financial institutions and to the enforcement of all laws relating to state-authorized or state-chartered financial institutions.[5] The specific chapters under the financial institutions codes, which govern state-chartered financial institutions, are:

- Chapter 655, F.S. – Financial Institutions Generally
- Chapter 657, F.S. – Credit Unions
- Chapter 658, F.S. – Banks and Trust Companies
- Chapter 660, F.S. – Trust Business
- Chapter 662, F.S. – Family Trust Companies
- Chapter 663, F.S. – International Banking
- Chapter 665, F.S. – Capital Stock Associations
- Chapter 667, F.S. – Savings Banks

As of June 30, 2020, the Division of Financial Institutions regulates 197 financial institutions:[6]

- 69 banks
- 66 credit unions
- 21 international bank offices
- 15 trust companies
- 16 family trust companies
- 10 qualified limited service affiliates

Chapter 655, F.S., governs financial institutions generally. Pursuant to section 655.001(1), F.S., one of the stated purposes of the financial institutions codes is to provide general regulatory powers to be exercised by the Financial Services Commission and the OFR in relation to the regulation of financial institutions. Other purposes include providing for and promoting the safe and sound conduct of the

[1] S. 20.121(3)(a)2., F.S.
[2] *Id.*
[3] S. 655.005(1)(i), F.S.
[4] S. 655.012(1), F.S.
[5] Ss. 655.001(1) and 655.012(1), F.S.
[6] Office of Financial Regulation, *Fast Facts* (2021 ed.), https://flofr.gov/sitePages/documents/FastFacts.pdf.

business of state financial institutions, the prudent conservation of their assets, the maintenance of public confidence therein, and the protection of the interests of their depositors and creditors.[7]

Electronic Payment Transactions and Interchange Fees

Even the smallest credit or debit card transactions involve a host of parties that facilitate the exchange between the merchant and customer.

These parties include the cardholder, merchant, merchant bank, payment processors, issuing banks, and card associations.[8] In a typical transaction, a cardholder will purchase a good or service from a merchant through the use of a credit or debit card. At this time the merchant will send a payment authorization request to the merchant's payment processor who in turn submits the transaction to the correct card association.[9] The card association will then send this authorization request to the issuing bank where the transaction will either be approved or denied.[10] The issuing bank's response will then be sent back to the card association which sends the information to the merchant bank who send the information to the merchant.[11]

The parties:

- The cardholder is the buyer in the transaction and has a line of credit or a checking account with an issuing bank.
- The merchant is the seller in the transaction and in choosing to accept debit card and credit card purchases will partner with a payment processor.
- A payment processor sends payment information to the customer's card association.
- A card association acts as an intermediary between the issuing bank (customer's bank) and the merchant bank as they relay both payment information to the issuing bank and the issuing bank's response to the merchant bank.
- The issuing bank receives purchase information from the card association and either approves or denies the transaction. It will inform the card association of its determination. Upon determination from the issuing bank for a transaction the card association will inform the merchant bank.
- The merchant bank is the bank of the merchant and will inform the merchant of the issuing bank's determination.[12]

A credit card transaction is made up of three processes, the authorization process, the settlement process, and the funding process.[13] The authorization process happens near instantaneously and results in either approval or denial.[14] The authorization process reflects the issuing bank's approval or denial of a transaction which is then relayed through the card association's payment network to the merchant, as described above.

The settlement and funding process reflect the movement of funds from the issuing bank to the merchant.[15] Here, the merchant will send authorized transactions to their payment processor who sends this information to the card association, who in turn sends this information to the issuing bank.[16] The issuing bank then charges the cardholder for the amount of the transaction.[17] At this time the

[7] *See* s. 655.001(2)(a)-(e), F.S.
[8] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] This process plays out in full when a debit or credit card is either accepted or rejected at a payment terminal.
[15] FIS Global, *How Credit Card Processing Works*, https://www.fisglobal.com/en/insights/merchant-solutions-worldpay/article/how-credit-card-processing-works (last visited Mar. 7, 2023).
[16] *Id.*
[17] *Id.*

issuing bank transfers the transaction amount to the merchant bank, minus the interchange fee.[18] Finally, the merchant bank deposits the transaction amount (minus interchange fees and other service fees) into the merchant's account.[19]

In a debit or credit card transaction, a merchant will pay a portion of their sales to the various parties that facilitate the use of the card. This payment is known as a merchant discount fee and is made of three parts; the interchange fee, the acquirer fee, and the network processing fee.[20] The:

- Interchange fee is paid to the issuing bank of the card in the transaction,
- Acquirer fee is paid to the merchant's bank, and
- Network processing fee is paid to the card association.[21]

The interchange fee is charged against the merchant bank by the issuing bank, but the merchant bank will typically pass this cost onto the merchant.[22] The default interchange fee amount is set by the card association,[23] but issuing and merchant banks can negotiate rates that differ from the default amount.[24] The interchange fee is typically a percentage of the underlying transaction amount, a flat fee, or a combination of both.[25] Typically, interchange fees will vary from 1-3% of the total transaction amount.[26] Interchange fees cover the cost and risks that issuing banks face in facilitating the transaction as well as funding the issuing bank's reward programs accessible to cardholders.[27]

In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. An amendment to this act, the Durbin Amendment, was adopted which mandated the Federal Reserve Board of Governors ("The Board") to reduce debit card interchange fees.[28] Following this mandate the Board issued Regulation II (Debit Card Interchange Fees and Routing) which established a cap on the debit card interchange fees a financial institution with more than $10 billion in assets can charge a merchant bank.[29] Regulation II limited the debit card interchange fee for these financial institutions to a base fee of $0.21, per transaction, to cover the issuer's processing cost, 0.05% of the transaction cost to cover fraud losses, as well as a $0.01, per transaction, to cover fraud loss.[30] On average, this regulation cut the debit card interchange fee rate in half.[31]

While the Durbin Amendment reduced the interchange fee rate it is unclear what the magnitude of this effect had on reducing interchange cost for merchants.[32] An unintended effect of this bill was that small value transactions, that had been charged a reduce rate in order to incentivize debit card adoption amongst merchants, now had their rates raised to the maximum allowed amount as the revenue generated on large value transactions, that made up for the loss on the small value reduced

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[18] *Id.*
[19] *Id.*
[20] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[21] *Id.*
[22] Testimony from Sarah Bloom Raskin, Governor, Board of Governors of the Federal Reserve System, Testimony regarding Interchange fees from Feb. 17, 2011, https://www.federalreserve.gov/newsevents/testimony/raskin20110217a.htm (last visited Mar. 7, 2023).
[23] *Id.*
[24] Electronic Payments Coalition, *Overview of Interchange and its Value*, https://electronicpaymentscoalition.org/resources/overview-of-interchange-and-its-value/ (last visited Mar. 7, 2023).
[25] Julia Kagan, *Interchange Rate: Definition, calculation Factors, Examples*, https://www.investopedia.com/terms/i/interchange-rate.asp#:~:text=Interchange%20rates%20are%20set%20by%20credit%20card%20companies%20such%20as,might%20set%20their%20rates%20annually. (last visited Mar. 7, 2023).
[26] *Id.*
[27] Payment Depot, *A Practical Guide to Understanding Interchange Fees*, https://paymentdepot.com/blog/interchange-fees/ (last visited Mar. 7, 2023).
[28] Renee Haltom and Zhu Wang, *Did the Durbin Amendment Reduce Merchant Costs? Evidence from Survey Results*, Federal Reserve Bank of Richmond, Dec. 2015, at 1.
[29] *Id.*
[30] *Id.* at 2.
[31] *Id.*
[32] *Id.*

interchange rate, were now impossible to reach due to this lower maximum limit.[33] This led to interchange fee cost increasing for merchants with small value transactions such as the fast food and delivery service industry.[34] Speaking for merchants generally, it is unclear whether the Durbin Amendment reduced debit card interchange fee costs on merchants in more than just a limited manner.[35]

Effect of the Bill

The bill prohibits payment card networks from charging interchange fees on taxes and fees levied by county governments and the state sales tax.

The payment card network must deduct tax from the calculation of the interchange fee or rebate the amount attributable to the tax. The deduction or rebate must occur at settlement. The bill provides a mechanism for merchants to submit proof of tax amounts to the card network when the matter cannot be handled at time of settlement. The card network must then promptly credit the merchant's settlement account.

The bill creates a civil penalty of up to $1,000, per violation, for violations of the bill's requirements. In addition the merchant must refund the portion of the interchange fee impermissibly charged against the tax collected.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates s. 655.969, F.S., relating to interchange fees on taxes prohibited.

Section 2: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has an indeterminate, negative fiscal impact on OFR for implementation of the bill's requirements. OFR does not currently regulate some participants in the transactions affected by the bill and may need resources to accomplish enforcement.[36]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[33] *Id.*
[34] *Id.* at 3.
[35] *Id.* at 2.
[36] Florida Office of Insurance Regulation, Agency Analysis of HB 677, p, 4 (Feb. 21, 2023).

The bill may require the implementation of new point of sale hardware and software and transaction processing software by the various participants in the transaction process to implement the bills requirements.

D. FISCAL COMMENTS:

State and local government, when making purchases using credit or debit cards will be impacted in the same fashion as the general public.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Payment card networks do not meet the definition of “financial institution” in section 655.005(1)(i), Fla. Stat, and are not currently regulated by the OFR as such. An appropriation may be necessary to fund this expansion of OFR regulation and oversight.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to interchange fees on taxes; creating s. 655.969, F.S.; defining terms; requiring that certain taxes listed on evidences of sales must be excluded from the amount on which an interchange fee is charged for that electronic payment transaction; specifying requirements for payment card networks in deducting taxes or rebating amounts; specifying requirements for payment card networks if a merchant or seller is unable to capture and transmit tax amounts relevant to the sale at the time of sale; providing a penalty; providing an effective date.

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

Section 1. Section 655.969, Florida Statutes, is created to read:

655.969 Interchange fees on taxes prohibited.—

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

(a) "Credit card" means a card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card":

1. Means a card, or other payment code or device, issued or approved for use through a payment card network to debit an

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

asset account, regardless of the purpose for which the account is established, whether authorization is based on signature, personal identification number, or other means;

2. Includes a general-use prepaid card as defined in 15 U.S.C. s. 1693l-1; and

3. Excludes paper checks.

(c) "Electronic payment transaction" means a transaction in which a person uses a debit card, credit card, or other payment code or device, issued or approved through a payment card network, to debit a deposit account or use a line of credit, whether authorization is based on a signature, personal identification number, or other means.

(d) "Interchange fee" means a fee established, charged, or received by a payment card network for the purpose of compensating the issuer for its involvement in an electronic payment transaction.

(e) "Issuer" means a person, or the person's agent, issuing a debit card or credit card.

(f) "Payment card network" means an entity that:

1. Directly or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that routes information and data to conduct debit card or credit card transaction authorization, clearance, and settlement; and

2. A merchant or seller uses to accept as a form of

payment a brand of debit card, credit card, or other device that may be used to carry out debit or credit transactions.

(g) "Settlement" means the transfer of funds from a customer's account to a seller or merchant upon electronic submission of finalized sales transactions to the payment card network.

(h) "Tax" means all taxes and fees levied under chapters 125 and 212.

(2) The amount of tax listed separately on the payment invoice, sales slip, or other evidence of sale must be excluded from the amount on which an interchange fee is charged for that electronic payment transaction.

(3) A payment card network shall either:

(a) Deduct the amount of tax imposed from the calculation of interchange fees specific to each form or type of electronic payment transaction; or

(b) Rebate an amount of interchange fees proportionate to the amount attributable to the tax.

(4) The deduction or rebate must occur at the time of settlement when the merchant or seller is able to capture and transmit tax amounts relevant to the sale at the time of sale as part of the transaction finalization.

(5) If a merchant or seller is unable to capture and transmit tax amounts relevant to the sale at the time of sale, the payment card network must accept proof of tax amounts

collected on sales subject to an interchange fee upon the submission of sales data by the merchant or seller, and promptly credit the merchant or seller's settlement account.

(6) A payment card network that violates this section is subject to a civil penalty of up to $1,000 per violation and shall refund the surcharge to each merchant or seller.

Section 2. This act shall take effect July 1, 2023.

INSURANCE & BANKING SUBCOMMITTEE

HB 677 by Rep. Caruso
Interchange Fees on Taxes

AMENDMENT SUMMARY
March 14, 2023

Amendment 1 by Rep. Caruso (Line 47): The amendment:

- Replaces the term “debit card or credit card transaction” with “electronic payment transaction”.
- Clarifies which tax types are subject to the bill’s provisions. Accordingly, an interchange fee could not be charged on state sales tax and local tourist development tax, rather than state sales tax and any county tax under ch. 125, F.S.
- Establishes that if the merchant is unable to transmit tax amounts at the time of sale, the merchant has 180 days to submit proof of tax amounts to the payment card network to access a rebate for the interchange fees on taxes.
- Clarifies that the rebate or credit must be settled within 30 days of the payment card network receiving proof of the tax amount when it is not captured at the point of sale.
- Changes the effective date from July 1, 2023, to October 1, 2023.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Caruso offered the following:

Amendment

Remove lines 47-82 and insert:

software that routes information and data to conduct electronic payment transaction authorization, clearance, and settlement; and

2. A merchant or seller uses to accept as a form of payment a brand of debit card, credit card, or other device that may be used to carry out electronic payment transactions.

(g) "Settlement" means the transfer of funds from a customer's account to a seller or merchant upon electronic submission of finalized sales transactions to the payment card network.

(h) "Tax" means all taxes and fees levied under chapter 212 and s. 125.0104.

(2) The amount of tax listed separately on the payment invoice, sales slip, or other evidence of sale must be excluded from the amount on which an interchange fee is charged for that electronic payment transaction.

(3) A payment card network shall either:

(a) Deduct the amount of tax imposed from the calculation of interchange fees specific to each form or type of electronic payment transaction; or

(b) Rebate an amount of interchange fee proportionate to the amount attributable to the tax.

(4) The deduction or rebate must occur at the time of settlement when the merchant or seller is able to capture and transmit tax amounts relevant to the sale at the time of sale as part of the transaction finalization.

(5) If a merchant or seller is unable to capture and transmit tax amounts relevant to the sale at the time of sale, the merchant or seller shall have 180 days to submit proof of tax amounts or sales data to the payment card network. Such proof may include tax returns filed with the Department of Revenue or local taxing authorities. The payment card network shall proportionally rebate the amount of interchange fee to the merchant or seller or credit the merchant or seller's settlement account within 30 days.

(6) A payment card network that violates this section is subject to a civil penalty of up to $1,000 per violation and shall refund the surcharge to each merchant or seller.

Section 2. This act shall take effect October 1, 2023.

HB 721

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 721 Paid Family Leave Insurance
SPONSOR(S): Chaney
TIED BILLS: **IDEN./SIM. BILLS:** SB 670

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

SUMMARY ANALYSIS

Currently, life insurers in the state are authorized to transact health insurance, disability income insurance, excess coverage for health maintenance organizations and multiple-employer welfare arrangements, but are not expressly authorized to issue paid family leave insurance.

Family leave guarantees originated with the Family Medical Leave Act of 1993 (FMLA), requiring covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

The bill creates a regulatory structure for production and sale of paid family leave insurance policies by life insurers. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA, but rather gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance providing benefits covering certain lost wages.

Among other things, the bill:

- revises the definition of "kinds of insurance" to include paid family leave insurance,
- defines "paid family leave insurance"
- specifies requirements under which family leave insurance benefits may be provided,
- requires insurance policies to specify details and requirements for covered leave reasons,
- specifies requirements for polices relating to benefit periods and waiting periods,
- permits limitations, exclusions and reductions for eligibility, and
- authorizes the Financial Services Commission to adopt rules.

While the bill does not have a fiscal impact on local governments, the bill does have an indeterminate, but likely positive, fiscal impact on state government. The bill has a positive and negative fiscal impact on the private sector.

The bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida's Insurance Industry

The Florida Office of Insurance Regulation (OIR) regulates the insurance industry in the state. As regulator, OIR is responsible for all activities in the state concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision.[1]

The OIR is housed within the Florida Department of Financial Services (DFS), and its funding is appropriated by the Legislature from the Insurance Regulatory Trust Fund (IRTF).[2] The IRTF is funded by insurance company licensing fees, premium tax, surplus lines tax, and fines that may be levied for non-compliance with provisions of the Florida Insurance Code (Insurance Code).[3]

Under Florida's Insurance Code, a qualifying insurer is authorized to transact any one kind or combination of insurance, including life, health, property, casualty, surety, marine, and title.[4] Among the types of authorized insurance, paid family leave insurance is not currently included. Nonetheless, OIR has already approved paid family leave insurance products and such products have been sold and marketed in the state as riders to disability income benefits for individuals out on family and medical leave.[5]

Paid Family Leave Insurance

The federal Family Medical Leave Act of 1993 (FMLA) requires covered employers to provide eligible employees job-protected leave for qualifying family and medical reasons. Covered employers under FMLA include private-sector employers who employ 50 or more employees in 20 or more workweeks during a calendar year, all public agencies, and all educational agencies. FMLA protects leave for the birth or adoption of a child, the serious health condition of an employee, care for an employee's family member who has a serious health condition, and reasons related to a family member's service in the military.

In 2022, the National Council of Insurance Legislators (NCOIL) adopted the Paid Family Leave Insurance Model Act (NCOIL Model Act).[6] The Model Act created a new product of life insurance, known as paid family leave insurance, under which any insurer licensed to transact life insurance

[1] Florida Office of Insurance Regulation, *Organization and Operation*, https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative (last visited Mar. 10, 2023). *See also* s. 624.308, F.S., and R. 69O, *et seq.*, F.A.C.
[2] Florida Office of Insurance Regulation, *Organization and Operation*, https://floir.com/about-us/organization-and-operation#:~:text=The%20Florida%20Office%20of%20Insurance,settlements%2C%20premium%20financing%2C%20and%20administrative (last visited Mar. 10, 2023).
[3] *Id.* Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. *See also* s. 624.01, F.S.
[4] Ss. 624.406(1), and 624.6011, F.S.
[5] Email from Stephen Marante, Deputy Director of Government Affairs, Office of Insurance Regulation, Re: Family Leave Insurance (Feb. 17, 2023).
[6] National Council of Insurance Legislators, *Paid Family Leave Insurance Model Act* (Adopted on Nov. 19, 2022).

or disability income insurance business could be authorized to issue policies covering benefits for employees unable to work due to circumstances eligible for FMLA protection.

Some states provide a program using either a social insurance policy design that funds benefits through pooled payroll taxes on employees and/or employers, or private insurance to fund the programs.[7] Programs available in these states are the result of legislation either making such programs mandatory or voluntary.[8] States currently offering paid family leave insurance benefits through private insurers are New York (mandatory), New Hampshire (voluntary), and Virginia (voluntary).[9]

Effect of the Bill

The bill creates a regulatory structure for production and sale of paid family leave insurance policies both as a stand-alone product, as a group insurance policy, and as a rider to a group disability income policy. Notably, the bill does not create a right to paid family leave benefits for employees not otherwise eligible under FMLA, but rather gives their employers the option to offer, and authorizes life insurers to transact, paid family leave insurance benefits.

The bill includes paid family leave insurance as a type of insurance product with life, health, property, casualty, surety, marine, and title insurance products. The bill defines paid family leave insurance as insurance issued to an employer to pay for a percentage or portion of the employee's income loss due to:

- The birth of a child or adoption of a child by the employee;
- Placement of a foster child with the employee;
- Care of an employee's family member who has a serious health condition; or
- Circumstances arising out of the fact the employee's family member is a servicemember on active duty or has been notified of an impending call or order to active duty.

Defined Terms

The bill defines the following terms as follows:

- "Child" is someone who is:
  - Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and
  - A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.
- "Family leave" is any leave taken by an employee for work for any of the reasons specified in the newly created s. 627.445(4), F.S. (as more particularly described below).
- "Family member" includes a child, spouse, or parent, or other person defined as a family member in the policy.
- "Health care provider" means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in this state.
- "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child
- "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to an

[7] Department of Financial Services, Agency Analysis of SB 670, p. 1 (Feb. 27, 2023).
[8] *Id.*
[9] *Id.*

organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider as defined in the policy.

Requirements and Specifications for the Policy

The bill provides family leave insurance may be written as an amendment or a rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer. The bill also provides the policy must specify:

- Details and requirements with regard to each of the covered family leave reasons;
- The length of family leave insurance benefits available for each covered family leave reason, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks;
- Whether there is an unpaid waiting period, and if so, the terms and conditions of the unpaid waiting period;
- The amount of benefits that will be paid for covered family reasons;
- Definition of the wages or other income upon which the amount of family leave insurance benefits will be issued; and
- Whether the family leave insurance benefits are subject to offsets for wages or other income received or for which the insured may be eligible, and if so, all such wages or income that may be set off and the circumstances under which it may be offset.

Permissible Limitations, Exclusions and Reductions for Eligibility

The bill allows eligibility for family leave insurance benefits to be limited, excluded, or reduced, but requires any such limitation, exclusion, or reduction be specified in the policy. Permissible limitations, exclusions, and reductions under the bill include, but are not limited to, any period of leave:

- Wherein the required notice and medical certification as prescribed in the policy has not been provided;
- Related to a serious health condition or other harm to a family member caused by the willful intention of the employee;
- During which the employee performed work for remuneration or profit;
- For which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance;
- In which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;
- Commencing before the employee becomes eligible for family leave insurance benefits under the policy; or
- Where more than one person seeks family leave insurance for the same family member.

The bill provides family leave insurance benefits provided under the newly created statute be paid periodically and promptly, except as to a contested period of leave and subject to any of the limitations, exclusions, or reductions explained above. The bill also provides rates for policies or riders providing paid family leave insurance benefits must meet Florida's rate making standard, to wit, they must not be inadequate, excessive, or unfairly discriminatory.[10]

B. SECTION DIRECTORY:

[10] S. 627.062, F.S.

Section 1. Provides a short title, "Florida Paid Family Leave Insurance Act."

Section 2. Amends s. 624.6011, F.S., relating to combinations of insuring powers, one insurer.

Section 3. Amends s., 624.6011, F.S., relating to "kinds of Insurance" defined.

Section 4. Creates s. 624.6086, F.S., relating to "paid family leave insurance" defined.

Section 5. Creates s. 627.445, F.S., relating to paid family leave insurance.

Section 6. Provides the bill shall become effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill has an indeterminate, but likely positive, fiscal impact on state government. The state may see increased premium tax revenues to the extent that a paid family leave insurance market develops.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Employees eligible to receive family leave insurance benefits can receive compensation they would not have otherwise received while unable to work due to eligible parental leave or their own or their family member's serious health condition or military service. Although the paid family leave insurance is optional for private employers not otherwise covered under FMLA, the insurance policy would be funded by the employer and/or the employee.

D. FISCAL COMMENTS:

The bill has an indeterminate impact on state government and none on local governments. The bill has a fiscal impact on the private sector, specifically, a positive fiscal impact for eligible employees and a negative fiscal impact for employers and employees due to premiums funding the policies, but may see greater employee satisfaction and productivity. They may also be more competitive in hiring quality employees.

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 authorizes the Financial Services Commission to adopt rules to administer the Paid Family Leave Income Replacement Act, s. 627.445, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to paid family leave insurance; providing a short title; amending s. 624.406, F.S.; authorizing life insurers to transact paid family leave insurance; amending s. 624.6011, F.S.; revising the definition of the term "kinds of insurance" to include paid family leave insurance; creating s. 624.6086, F.S.; defining terms; creating s. 627.445, F.S.; providing a short title; providing legislative findings and intent; defining terms; specifying circumstances under which family leave benefits may be provided; requiring paid family leave insurance policies to specify details and requirements with regard to covered family leave reasons; specifying requirements for policies relating to benefit periods, waiting periods, benefit amounts and certain offsets, and the payment of benefits; providing that eligibility for family leave benefits may be limited, excluded, or reduced but must be specified in the policy; specifying permissible limitations, exclusions, and reductions; providing applicable provisions for calculating rates; specifying the means by which a policy may offer family leave benefits; authorizing the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. This act may be cited as the "Florida Paid Family Leave Insurance Act."

Section 2. Subsection (1) of section 624.406, Florida Statutes, is amended to read:

624.406 Combinations of insuring powers, one insurer.—An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance except health insurance, disability income insurance, paid family leave insurance, excess coverage for health maintenance organizations, or excess insurance, specific and aggregate, for self-insurers of a plan of health insurance and multiple-employer welfare arrangements.

Section 3. Subsection (8) is added to section 624.6011, Florida Statutes, to read:

624.6011 "Kinds of insurance" defined.—Insurance shall be classified into the following "kinds of insurance":

(8) Paid family leave.

Section 4. Section 624.6086, Florida Statutes, is created to read:

624.6086 "Paid family leave insurance" defined.—

(1) "Paid family leave insurance" is insurance issued to an employer which is related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to:

(a) The birth of a child or adoption of a child by the employee;

(b) Placement of a child with the employee for foster care;

(c) Care of the employee's family member who has a serious health condition; or

(d) Circumstances arising out of the fact that the employee's family member who is a servicemember is on active duty or has been notified of an impending call or order to active duty.

(2) Family leave insurance may be written as an amendment or a rider to a group disability income policy, included in a group disability income policy, or written as a separate group insurance policy purchased by an employer.

(3) As used in this section, the terms "child," "family leave," and "family member" have the same meanings as provided in s. 627.445(3).

Section 5. Section 627.445, Florida Statutes, is created to read:

627.445 Paid family leave insurance.—

(1) SHORT TITLE.—This section may be cited as the "Paid Family Leave Income Replacement Benefits Act."

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature intends to provide the workers of this family-friendly state with access to paid family leave insurance to encourage an entrepreneurial atmosphere, to encourage economic growth, and to promote a healthy business climate. Many workers need to take time off work for family reasons, including bonding with a new child or caring for an ill family member. Increasingly, employers in this state want to make paid leave benefits available to workers who need time off for these reasons. Employers recognize workers will be healthier and more productive when able to take care of family responsibilities without a complete loss of income, and employers believe that offering paid family leave benefits to their employees will improve recruitment opportunities and reduce turnover in the workplace. Disability insurers currently offer income replacement benefits to workers who need time off from work because of their own disabling medical condition. Disability insurers have extensive experience, claims staff, systems, and expertise that can be used to provide fully insured paid family leave benefits for employees, either through employer-sponsored group insurance policies or voluntarily purchased employee policies. It is in the best interests of this state's workers and employers to permit disability insurers to expand their

fully insured benefits in this state to include paid family leave benefits.

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

(a) "Armed Forces of the United States" includes members of the National Guard and the reserves.

(b) "Child" means a person who is:

1. Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and

2. A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.

(c) "Family leave" is any leave taken by an employee from work for any of the reasons specified in subsection (4).

(d) "Family member" includes a child, spouse, or parent, or other person defined as a family member in the policy.

(e) "Health care provider" means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed or otherwise authorized to practice in this state.

(f) "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.

(g) "Serious health condition" means an illness, injury,

impairment, or physical or mental condition, including transplantation preparation and recovery from surgery related to organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider as defined in the policy. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

(4) FAMILY LEAVE BENEFITS.—Family leave benefits may be provided for any leave taken by an employee from work to:

(a) Participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) Bond with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption by or foster care with the employee;

(c) Address a qualifying exigency as interpreted under the Family and Medical Leave Act of 1993, 29 U.S.C. s. 2612(a)(1)(E) and 29 C.F.R. s. 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty, in the Armed Forces of the United States;

(d) Care for a family servicemember injured in the line of duty; or

(e) Take other leave to provide care for a family member or other family leave as specified in the policy.

(5) EXPLANATION OF FAMILY LEAVE REASONS.—The policy must specify details and requirements with regard to each of the covered family leave reasons.

(6) BENEFIT PERIOD.—The policy must specify the length of family leave benefits available for each covered family leave reason, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks. For purposes of this subsection, 52 consecutive calendar weeks may be calculated by:

(a) A calendar year;

(b) Any fixed period starting on a particular date, such as the effective or anniversary date;

(c) The period measured forward from the employee's first day of family leave;

(d) A rolling period measured by looking back from the employee's first day of family leave; or

(e) Any other method specified in the policy.

(7) WAITING PERIOD.—The policy must specify whether there is an unpaid waiting period, and if so, the terms and conditions of the unpaid waiting period, which may include, but are not limited to, whether:

(a) The waiting period runs over a consecutive calendar

day period;

(b) The waiting period is counted toward the annual allotment of family leave benefits or is in addition to the annual allotment of family leave benefits;

(c) The waiting period must be met only once per benefit year or must be met for each separate claim for benefits; and

(d) The employee may work or receive paid time off or other compensation by the employer during the waiting period.

(8) AMOUNT OF FAMILY LEAVE BENEFITS; OTHER INCOME.—

(a) The policy must specify:

1. The amount of benefits that will be paid for covered family reasons;

2. The definition of the wages or other income upon which the amount of family leave benefits will be issued; and

3. How such wages or other income will be calculated.

(b) If the family leave benefits are subject to offsets for wages or other income received or for which the insured may be eligible, the policy must specify all such wages or other income that may be set off and the circumstances under which it may be offset.

(9) PERMISSIBLE LIMITATIONS, EXCLUSIONS, OR REDUCTIONS.—Eligibility for family leave benefits under this section may be limited, excluded, or reduced, but any limitation, exclusion, or reduction must be specified in the policy. Permissible limitations, exclusions, or reductions may include, but are not

limited to, any of the following reasons:

(a) For any period of family leave wherein the required notice and medical certification as prescribed in the policy has not been provided;

(b) For any family leave related to a serious health condition or other harm to a family member brought about by the willful intention of the employee;

(c) For any period of family leave during which the employee performed work for remuneration or profit;

(d) For any period of family leave for which the employee is eligible to receive from his or her employer, or from a fund to which the employer has contributed, remuneration or maintenance;

(e) For any period of family leave in which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, statutory disability benefits, statutory paid leave benefits, or any paid time off or employer's paid leave policy;

(f) For any period of family leave commencing before the employee becomes eligible for family leave benefits under the policy; or

(g) For periods of family leave where more than one person seeks family leave for the same family member.

(10) PAYMENT OF FAMILY LEAVE BENEFITS.—Family leave benefits provided under this section must be paid periodically and promptly, except as to a contested period of family leave and subject to any of the limitations, exclusions, or reductions under subsection (9).

(11) INSURANCE POLICY.—

(a) Rates for policies or riders providing paid family leave benefits must be calculated pursuant to s. 627.062.

(b) A policy issued pursuant to this section may offer coverage for paid family leave benefits or may offer paid family leave benefits as a rider to a policy of disability income insurance.

(12) RULEMAKING.—The commission may adopt rules to administer this section.

Section 6. This act shall take effect upon becoming a law.

INSURANCE & BANKING SUBCOMMITTEE

HB 721 by Rep. Chaney
Paid Family Leave Insurance

AMENDMENT SUMMARY
March 14, 2023

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

- Revises definitions, including:
  - Armed Forces of the United States
  - Health care provider; and
  - Serious health condition;
- Establishes that forms for policies or riders providing paid family leave insurance benefits are subject to review by the Office of Insurance Regulation;
- Makes technical changes to conform the model act on which the bill is based to conform to the requirements of the Florida Insurance Code; and
- Removes superfluous language from the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Chaney offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (1) of section 624.406, Florida Statutes, is amended to read:

624.406 Combinations of insuring powers, one insurer.—An insurer which otherwise qualifies therefor may be authorized to transact any one kind or combination of kinds of insurance as defined in part V except:

(1) A life insurer may also grant annuities, but shall not be authorized to transact any other kind of insurance except health insurance, disability income insurance, paid family leave insurance, excess coverage for health maintenance organizations,

or excess insurance, specific and aggregate, for self-insurers of a plan of health insurance and multiple-employer welfare arrangements.

Section 2. Section 624.6086, Florida Statutes, is created to read:

624.6086 "Paid family leave insurance" defined.—

(1) "Paid family leave insurance" is insurance issued to an employer which is related to a benefit program provided to an employee to pay for a percentage or portion of the employee's income loss due to:

(a) The birth of a child or adoption of a child by the employee;

(b) Placement of a child with the employee for foster care;

(c) Care of the employee's family member who has a serious health condition; or

(d) Circumstances arising out of the fact that the employee's family member who is a servicemember is on active duty or has been notified of an impending call or order to active duty.

(2) Paid family leave insurance may be issued to and purchased by an employer as an amendment or a rider to a group disability income policy, included in a group disability income policy, or issued as a separate group insurance policy.

(3) As used in this section, the terms "child," "family

leave," and "family member" have the same meanings as provided in s. 627.445(1).

Section 3. Section 627.445, Florida Statutes, is created to read:

627.445 Paid family leave insurance.—

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

(a) "Armed Forces of the United States" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, Space Force, or Coast Guard of the United States, the Florida National Guard, and the United States Reserve Forces.

(b) "Child" means a person who is:

1. Under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability; and

2. A biological, adopted, or foster son or daughter; a stepson or stepdaughter; a legal ward; or a son or daughter of a person to whom the employee stands in loco parentis.

(c) "Family leave" is any leave taken by an employee from work for any of the circumstances specified in subsection (4).

(d) "Family member" includes a child, spouse, or parent, or other person defined as a family member of the employee in the policy.

(e) "Health care provider" means any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429 or a individual licensed under

chapter 458, chapter 459, chapter 460, chapter 461, chapter 464, or chapter 466.

(f) "Parent" means a biological, foster, or adoptive parent; a stepparent; a legal guardian; or other person who stood in loco parentis to the employee when the employee was a child.

(g) "Serious health condition" means an illness, injury, impairment, or physical or mental condition, including, but not limited to, pregnancy complications that threaten the life of the mother or unborn child; transplantation preparation and recovery from surgery related to organ or tissue donation, which involves inpatient care in a hospital, hospice, or residential health care facility; continuing treatment; or continuing supervision by a health care provider. Continuing supervision by a health care provider includes a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective and where the family member need not be receiving active treatment by a health care provider.

(4) COVERED FAMILY LEAVE BENEFITS.—Family leave insurance benefits provided in a paid family leave insurance policy may be provided for any leave taken by an employee from work for any of the following circumstances:

(a) Participation in providing care, including physical or psychological care, for a family member made necessary by a serious health condition of the family member;

(b) Bonding with the employee's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption by or foster care with the employee;

(c) Addressing a qualifying exigency as interpreted under the Family and Medical Leave Act of 1993, 29 U.S.C. s. 2612(a)(1)(E) and 29 C.F.R. s. 825.126(a)(1)-(8), arising out of the fact that the spouse, child, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces of the United States;

(d) Caring for a family injured in the line of duty with the Armed Forces of the United States; or

(e) Caring for a family member or other leave as specified in the policy.

(5) REQUIRED POLICY SPECIFICITY.—The policy must specify:

(a) Details and requirements with regard to each of the covered circumstances specified in subsection (4),

(b) The length of family leave benefits available for each covered circumstance, which may not be less than 2 weeks during a period of 52 consecutive calendar weeks.

(c) Whether there is an uncovered waiting period, and if so, the terms and conditions of the uncovered waiting period, which may include, but are not limited to, whether:

1. The period runs over a consecutive calendar day period;

2. The period is counted toward the annual allotment of

covered family leave benefits or is in addition to the annual allotment of covered family leave benefits;

3. The period must be met only once per benefit year or must be met for each separate claim for benefits; and

4. The employee may work or receive paid time off or other compensation during the period.

(d) The amount of benefits that will be paid for covered circumstances provided in subsection (4).

(e) The definition of the wages or other income upon which the amount of benefits will be issued.

(f) How such wages or other income will be calculated.

(g) If the family leave benefits are subject to offsets for wages or other income received or for which the insured may be eligible, all such wages or other income that may be set off and the circumstances under which it may be offset.

(h) The frequency of payments due for covered benefits.

(6) For purposes of this section, 52 consecutive calendar weeks may be calculated by:

(a) A calendar year;

(b) Any fixed period starting on a particular date, such as the effective or anniversary date of the policy;

(c) The employee's hiring date or anniversary of hiring date;

(d) The period measured forward from the employee's first day of family leave;

(e) A rolling period measured by looking back from the employee's first day of family leave; or

(f) Any other method specified in the policy.

(7) PERMISSIBLE LIMITATIONS, EXCLUSIONS, OR REDUCTIONS.—Eligibility for family leave benefits under this section may be limited, excluded, or reduced, but any limitation, exclusion, or reduction must be specified in the policy and not conflict with the Insurance Code. Permissible limitations, exclusions, or reductions may be made for the following:

(a) For any period wherein the required notice and medical certification as prescribed in the policy has not been provided;

(b) For any leave related to a serious health condition or other harm to a family member brought about by a willful act by the employee;

(c) For any period during which the employee performed work for remuneration or profit;

(d) For any period for which the employee is eligible to receive remuneration or maintenance from her or his employer, or from a fund to which the employer has contributed;

(e) For any period during which the employee is eligible to receive benefits under any other statutory program or employer-sponsored program, including, but not limited to, unemployment insurance benefits, workers' compensation benefits, or any paid time off or employer's paid leave policy;

(f) For any period commencing before the employee becomes

eligible for family leave benefits under the policy; or

(g) For periods where more than one person seeks family leave for the same family member under the same policy, unless the policy specifies otherwise.

(h) other reasons specified in the policy.

(8) PAYMENT OF FAMILY LEAVE BENEFITS.—Family leave benefits provided under a policy that complies with this section must be paid periodically and promptly, as specified in the policy, except as to a contested period of family leave and subject to any of the limitations, exclusions, or reductions permitted under subsection (7).

(9) INSURANCE POLICY.—

(a) Rates for policies or riders providing paid family leave insurance benefits must be calculated in accordance with the rate standards provided in s. 627.062.

(b) Forms for policies or riders providing paid family leave insurance benefits are subject to review by the office under s. 627.410.

(c) A policy issued under to this section must be issued as provided in s. 624.6086(2).

(10) RULEMAKING.—The commission may adopt rules to implement this section.

Section 6. This act shall take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to paid family leave insurance; amending s. 624.406, F.S.; authorizing life insurers to transact paid family leave insurance; creating s. 624.6086, F.S.; defining terms; creating s. 627.445, F.S.; defining terms; specifying circumstances under which family leave benefits may be provided; requiring paid family leave insurance policies to specify details and requirements with regard to covered circumstances; specifying requirements for policies relating to benefit periods, waiting periods, benefit amounts and certain offsets, and the payment of benefits; providing that eligibility for family leave benefits may be limited, excluded, or reduced but must be specified in the policy; specifying permissible limitations, exclusions, and reductions; providing applicable provisions for calculating rates; specifying the means by which a policy may offer family leave benefits; authorizing the Financial Services Commission to adopt rules; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 793 Collateral Protection Insurance on Real Property
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 410

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

SUMMARY ANALYSIS

In general, mortgages require borrowers to maintain adequate homeowners' insurance on their property. Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market. If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.

A lender-placed, or force-placed, insurance policy is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer. In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business. Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage. Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states. Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance (CPI). The bill creates a new statutory chapter part (Part XXII) for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or servicers, and insurers or insurance agents; and
- Minimizing the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes are subject to Part XXII, with certain exceptions. The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property. CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. The bill provides the Office of Insurance Regulation with authority to develop rules related to the regulation of Part XXII.

The bill has no effect local revenues or expenditures or state revenues. It has an indeterminate impact on state expenditures. It may have a positive direct economic impact on the private sector.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mortgages on Real Property

A mortgage is an agreement between a borrower and a lender that gives the lender the right to take the property if the borrower fails to pay the loan plus interest.[1] A mortgage is generally secured by a mortgage note, which is a note evidencing a loan for which real property has been offered as security.[2] All mortgages require borrowers to maintain adequate homeowners' insurance on their property.[3] Borrowers may fail to maintain the required insurance coverage for a variety of reasons, including cancellation or withdrawal of an insurer from the market.[4] If the policy lapses and the borrower does not secure a replacement policy, most mortgages allow the lender to obtain insurance for the borrower and "force-place" it.[5]

Lender-placed Insurance/Collateral Protection Insurance (CPI)

A lender-placed insurance policy[6] is an insurance policy placed by a bank or mortgage servicer on a home when the homeowners' property insurance has lapsed or is deemed insufficient by the bank or mortgage servicer.[7] In recent years, there has been significant media attention on the rates charged for lender-placed insurance policies and whether insurers and lenders are making excess profits on this line of business.[8] Lender-placed insurance typically is more expensive than the insurance a borrower purchases on his or her own and provides more limited coverage.[9] Concerns have also been raised about "reverse competition" stemming from the use of lender-place insurance because the lender chooses the coverage provider and amount, but the borrower must pay for the coverage.[10]

In order to address some of these concerns, the National Association of Insurance Commissioners (NAIC) issued a Real Property Lender-Placed Insurance Model Act (Model Act) that can be adopted by member states.[11] Its state purpose includes creating a legal framework within which lender-placed insurance on real property may be written in a particular state.[12] However, Florida law does not use the term lender-placed insurance. Instead, it refers to collateral protection insurance, which is defined as:

> [C]ommercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real or personal property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as

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[1] Consumer Financial Protection Bureau, *What is a mortgage?*, What is a mortgage? | Consumer Financial Protection Bureau (consumerfinance.gov) (last visited Mar. 12, 2023). The borrower and the lender are also referred to as the mortgagor and mortgagee, respectively.
[2] Black's Law Dictionary (11th ed. 2019).
[3] NAIC, *Lender-Placed Insurance*, https://content.naic.org/cipr-topics/lender-placed-insurance (last visited Mar. 12, 2023)
[4] *Id.*
[5] *Id.*
[6] Lender-placed insurance is also known as creditor-placed or force-placed insurance.
[7] NAIC, *supra* note 3.
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.* Some of these concerns regarding price and coverage have been raised regarding the lender-place insurers issuing policies in Florida. However, the largest two insurers issuing these policies are already bound by consent orders with the Office of Insurance Regulation (OIR) with conditions very similar to those contained in the Model Act. A copy of these consent orders has been requested from OIR, but has not been received as of the publication of this analysis.
[12] *Id.*

required by the mortgage or other lending document. Collateral protection insurance is not residential coverage.[13]

Review of Insurance Policy Forms and Rates

In general, an insurer may not use forms to issue insurance policies in the state unless the forms have been filed with, and approved by, the Office of Insurance Regulation (OIR).[14] Once filed, OIR has 30 days to review insurance forms.[15] At the end of the 30-day period, forms will be deemed approved unless they have been affirmatively approved or disapproved by OIR.[16]

Insurers must also file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by OIR.[17] OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.[18] In doing so, OIR must consider factors including, but not limited to, the following:

- Past and prospective loss experience in and out of Florida.
- Past and prospective expenses.
- Degree of competition among insurers for particular risk to be insured.
- Investment income reasonably expected by the insurer.
- Reasonableness of the judgment reflected in the filing.
- Dividends, savings, or unabsorbed premium deposits allowed or returns to policyholders, members or subscribers in Florida.
- Adequacy of loss reserves.
- Cost of reinsurance.
- Trend factors.
- Conflagration and catastrophe hazards, if applicable.
- Projected hurricane losses.
- Projected flood losses.
- Reasonable margin for underwriting profit and contingencies.

Insurers may make rate filings with OIR on a file and use, or use and file basis. If a filing is made on a file and use basis, OIR has 90 days to review and approve the filing before an insurer may use the filed rate.[19] In contrast, a use and file rate may be used before filing, but must be filed within 30 days of the effective date.[20] A use and fie rate is still subject to review and disapproval by OIR.[21]

Effect of the Bill

The bill creates a new statutory part of chapter 627, F.S. (Part XXII),[22] for the purposes of:

- Regulating CPI on real property;
- Establishing a legal framework for the writing of CPI on real property in Florida;
- Maintaining separation between lenders or services, and insurers or insurance agents; and
- Minimizing the possibilities of unfair competition practices in the sale, placement, or solicitation, and negotiation of CPI.

[13] S. 627.6085, F.S.
[14] S. 627.410(1), F.S.
[15] S. 627.410(2), F.S.
[16] *Id.*
[17] S. 627.062(2)(a), F.S.
[18] S. 627.062(1), F.S.
[19] S. 627.062(2)(a)1., F.S.
[20] S. 627.062(2)(a)2., F.S.
[21] *Id.*
[22] The new statutory chapter part will be part XXII of chapter 627, F.S., and will contain ss. 627.9901-627.9913, F.S. It is similar to the NAIC Model Act, but is drafted in a way that will fit appropriately within the Florida Insurance Code. Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the Florida Insurance Code. S. 624.01, F.S.

Part XXII applies to insurers and insurance agents engaged in transactions of CPI on real property. All CPI policies for mortgaged real property, including manufactured and mobile homes is subject to Part XXII except:

- Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.
- Insurance offered by a lender or servicer and elected by the mortgagor at the mortgagor's option.
- Insurance purchased by a lender or servicer on real-estate owned property.[23]
- Insurance for which no specific charge is made to the mortgagor or mortgagor's account.

The bill contains statutory definitions of CPI and several related terms. CPI is defined as commercial property insurance under which a creditor is the primary beneficiary and policyholder, and which protects or covers the creditor's interest arising out of a credit transaction secured by the real property.[24] CPI is triggered by the mortgagor's failure to maintain insurance coverage required by the mortgage or other lending document. CPI under Part XXII applies only to mortgaged real property, not personal property.

Individual CPI is defined in the bill as coverage for individual real property evidenced by a certificate of coverage under a master CPI policy or a CPI policy for individual real property. A master CPI policy is a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio, as needed.

Pursuant to the bill, CPI becomes effective no earlier than the date of lapse of insurance on mortgaged real property. Individual CPI terminates on the earliest of the following dates:

- The date on which insurance acceptable under the mortgage agreement becomes effective.
- The date on which the applicable real property no longer serves as collateral for a mortgage loan.
- Such other date specified by the individual policy or certificate of insurance.
- Such other date as specified by the lender or servicers
- The termination date of the policy.

According to the bill, CPI coverage, and the calculation of the related premium, should be based on the replacement cost value of the real property serving as collateral, as best determined by the last known coverage amount. The last known coverage amount is the dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee. The bill requires that an insurer or insurance agent ask the insured, at least once, for the last known coverage amount. If the insurer or insurance agent cannot obtain the last known coverage amount from the insured or by another means, the CPI coverage and the calculation of the related premium may be based on the:

- Replacement cost value of the real property serving as collateral as calculated by the insurer; or
- Unpaid principal balance of the mortgage loan.

Part XXII prohibits the following practices by insurers or insurance agents related to CPI:

- Issuing CPI on a mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property.
- Compensating a lender, insurer, investor, or servicer, including through the payment of commissions, on CPI policies issued by the insurer.
- Sharing CPI premium or risk with the lender, investor, or servicer that obtained the CPI.
- Offering contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with CPI.
- Providing free or below-cost outsourced services to a lender, investor, or servicer and outsourcing its own functions to a lender, investor, or servicer at a rate above cost.

[23] Real-estate owned property is often referred to as bank-owned property, and may be property that failed to sell during a foreclosure.

[24] This definition is similar to the definition of collateral protection insurance in s. 624.6085, F.S., discussed above, except that definition also includes coverage secured by personal property.

- Making any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer to secure CPI business or related outsourced services.

The bill requires that proof of CPI is provided in an individual policy or certificate of insurance, which must be delivered to the mortgagor either by mail, in person, or electronically.[25] The individual policy or certificate of insurance must include all of the following information:

- Address and identification of the insured real property.
- Coverage amount, or amounts if multiple coverages are provided.
- Effective date of coverage.
- Term of coverage.
- Premium charged for the coverage.
- Contact information for filing a claim.
- Complete description of the coverage provided.

The policy forms and certificates of insurance for CPI, and related premium rates, must be reviewed and approved by OIR. As part of the rate review, OIR must also evaluate whether expenses included by the insurer in the rates are appropriate. The bill requires that insurers subject to Part XXII refile CPI insurance rates at least once every four years. All insurers writing CPI must have separate rates for CPI and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

By April 1 each year, each insurer with at least $100,000 in direct written premium for CPI in Florida during the prior calendar year must report the following information to OIR for the prior calendar year:

- Actual loss ratio.[26]
- Earned premiums.
- Any aggregate schedule rating debit or credit to earned premium.
- Itemized expenses.
- Paid losses.
- Loss reserves, including case reserves and reserves for incurred but not reported losses.[27]

The bill provides OIR with the rights and powers to enforce Part XXII, and all proceedings brought pursuant to Part XXII will be conducted under the Florida Administrative Procedures Act.[28] It also provides OIR with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII. Finally, the bill contains a severability clause so that if any portion of Part XXII is held invalid, the remainder of the Part is not affected.

B. SECTION DIRECTORY:

Section 1. Creates part XXII of chapter 627, F.S., relating to real property collateral protection insurance.

Section 2. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

[25] The Uniform Electronic Transaction Act, s. 668.50, F.S., provides the requirements for electronic delivery.
[26] Loss ratio is an insurer's actual claims paid plus loss adjustment expenses divided by total earned premiums.
[27] Incurred but not reported losses are estimated liabilities from losses that have taken place and not yet but reported to insurers as claims.
[28] The Florida Administrative Procedures Act is ch. 120, F.S.

Indeterminate.[29]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the requirements of Part XXII result in lower CPI premiums for mortgagors, the bill may have a positive direct economic impact on the private sector.

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 provides OIR with rulemaking authority so that it may, after notice and hearing, adopt reasonable rules and regulations to implement and administer Part XXII.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[29] An analysis HB 793 has been requested from OIR, but not yet received. It should contain information from OIR regarding the bill's impact on state expenditures.

A bill to be entitled

An act relating to collateral protection insurance on real property; creating part XXII of ch. 627, F.S., titled "Real Property Collateral Protection Insurance"; creating s. 627.9901, F.S.; providing purpose; creating s. 627.9902, F.S.; providing scope; creating s. 627.9903, F.S.; providing definitions; creating s. 627.9904, F.S.; providing the effective date of collateral protection insurance on mortgaged real property; providing the termination date of individual collateral protection insurance; prohibiting insurance charges under certain circumstances; creating s. 627.9905, F.S.; providing calculations of coverages and premiums; creating s. 627.9906, F.S.; prohibiting collateral protection insurers and insurance agents from engaging in certain practices; creating s. 627.9907, F.S.; providing construction; creating s. 627.9908, F.S.; providing requirements for proof of collateral protection insurance; creating s. 627.9909, F.S.; providing requirements for policy forms, certificates of insurance, and rate filings; providing reporting requirements for certain insurers; creating s. 627.9911, F.S.; providing rights and powers of the Office of Insurance Regulation for enforcement

purposes; providing requirements for proceedings; providing penalties; creating s. 627.9912, F.S.; providing rulemaking authority; creating s. 627.9913, F.S.; providing severability; providing an effective date.

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

Section 1. Part XXII of chapter 627, Florida Statutes, consisting of sections 627.9901, 627.9902, 627.9903, 627.9904, 627.9905, 627.9906, 627.9907, 627.9908, 627.9909, 627.9911, 627.9912, and 627.9913, Florida Statutes, is created to read:

PART XXII

REAL PROPERTY COLLATERAL PROTECTION INSURANCE

627.9901 Purpose.—The purpose of this part is to:

(1) Promote the public welfare by regulating collateral protection insurance on real property.

(2) Create a legal framework within which collateral protection insurance on real property may be written in the state.

(3) Help maintain the separation between lenders or servicers, and insurers or insurance agents.

(4) Minimize the possibilities of unfair competitive practices in the sale, placement, solicitation, and negotiation of collateral protection insurance.

627.9902 Scope.—This part applies to insurers and insurance agents engaged in any transaction involving collateral protection insurance on real property. All collateral protection insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this part, except:

(1) Transactions involving extensions of credit primarily for business, commercial, or agricultural purposes.

(2) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor's option.

(3) Insurance purchased by a lender or servicer on real-estate owned property.

(4) Insurance for which no specific charge is made to the mortgagor or the mortgagor's account.

627.9903 Definitions.—As used in this part, the term:

(1) "Collateral protection insurance" means commercial property insurance under which a creditor is the primary beneficiary and policyholder and which protects or covers an interest of the creditor arising out of a credit transaction secured by real property. Initiation of such coverage is triggered by the mortgagor's failure to maintain insurance coverage as required by the mortgage or other lending document. For purposes of this part, collateral protection insurance applies only to mortgaged real property, not personal property.

(2) "Individual collateral protection insurance" means

coverage for individual real property evidenced by a certificate of coverage under a master collateral protection insurance policy or a collateral protection insurance policy for individual real property.

(3) "Insurer" means an insurer authorized to issue collateral protection insurance on mortgaged real property in the state.

(4) "Investor" means a person or an entity, and affiliates of the person or entity, holding a beneficial interest in loans secured by real property.

(5) "Lapse" means the moment in time in which a mortgagor has failed to secure or maintain valid or sufficient insurance upon a mortgaged real property as required by a mortgage agreement.

(6) "Last known coverage amount" means a dwelling coverage amount specified in the most recent evidence of insurance coverage provided by the mortgagee.

(7) "Lender" means a person or entity, and affiliates of the person or entity, making loans secured by an interest in real property.

(8) "Loss ratio" means the ratio of incurred losses to earned premium.

(9) "Master collateral protection insurance policy" means a group policy issued to a lender or servicer providing coverage for all loans in the lender's or servicer's loan portfolio as

needed.

(10) "Mortgage agreement" means a written document that specifies an obligation or a liability of any kind secured by a lien on a real property and due from, and owing or incurred by, a mortgagor to a lender on account of a mortgage loan, including the security agreement, deed of trust, any other document of similar effect, and any other document incorporated by reference.

(11) "Mortgage loan" means a loan, an advance, a guarantee, or other extension of credit from a lender to a mortgagor.

(12) "Mortgagee" means a person or an entity that holds a mortgaged real property, or, as applicable, a lien on mortgaged real property, as security for repayment of a mortgage agreement.

(13) "Mortgagor" means a person who is obligated on a mortgage loan pursuant to a mortgage agreement.

(14) "Real-estate owned property" means a real property owned or held by a lender or servicer following foreclosure under the related mortgage agreement or the acceptance of a deed in lieu of foreclosure.

(15) "Replacement cost value" is the estimated cost to replace a covered real property at the time of loss or damage without deduction for depreciation. Replacement cost value is not market value, but the cost to replace the covered real

property to its condition before the loss or damage.

(17) "Servicer" means a person or an entity, and affiliates of the person or entity, contractually obligated to service one or more mortgage loans for a lender or investor. The term includes persons or entities involved in subservicing arrangements.

627.9904 Terms of policies.—

(1) Collateral protection insurance shall become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement or any other state or federal law requiring the same.

(2) Individual collateral protection insurance shall terminate on the earliest of the following dates:

(a) The date on which insurance that is acceptable under the mortgage agreement becomes effective, subject to the mortgagor providing sufficient evidence of such acceptable insurance.

(b) The date on which the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement.

(c) Such other date as specified by the individual policy or certificate of insurance.

(d) Such other date as specified by the lender or servicer.

(e) The termination date of the policy.

(3) An insurance charge may not be made to a mortgagor for collateral protection insurance for a term longer than the scheduled term of the collateral protection insurance, and an insurance charge may not be made to the mortgagor for collateral protection insurance before the effective date of the collateral protection insurance.

627.9905 Calculations of coverages and premiums.—

(1)(a) Any collateral protection insurance coverage and subsequent calculation of premium should be based upon the replacement cost value of the real property serving as collateral as best determined by the last known coverage amount, if known to the lender or servicer.

(b) An insurer or insurance agent shall inquire of the insured, at least once, as to the last known coverage amount and, if the insurer or insurance agent cannot obtain the last known coverage amount from the insured or in another manner, the collateral protection insurance coverage and subsequent calculation of premium may be based upon:

1. The replacement cost value of the real property serving as collateral as calculated by the insurer, if the use of replacement cost value for this purpose is not prohibited by other state or federal law; or

2 The unpaid principal balance of the mortgage loan, if the use of replacement cost value for this purpose is prohibited by other state or federal law or if the replacement cost value

is not available.

(c) In the event of a covered loss, any replacement cost value coverage provided by an insurer in excess of the unpaid principal balance of the mortgage loan shall be paid to the mortgagor.

(2) An insurer may not write collateral protection insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the office as of the effective date of such policy.

627.9906 Prohibited practices.—An insurer or insurance agent may not:

(1) Issue collateral protection insurance on a mortgaged real property if the insurer or insurance agent or an affiliate of the insurer or insurance agent owns the real property or performs the servicing for, or owns the servicing rights to, the real property;

(2) Compensate a lender, insurer, investor, or servicer, including through the payment of commissions, on collateral protection property insurance policies issued by the insurer;

(3) Share collateral protection insurance premium or risk with the lender, investor, or servicer that obtained the collateral protection insurance;

(4) Offer contingent commissions, profit-sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with

collateral protection insurance;

(5) Provide free or below-cost outsourced services to a lender, investor, or servicer and may not outsource its own functions to a lender, investor, or servicer on an above-cost basis; or

(6) Make any payments, including, but not limited to, the payment of expenses to a lender, insurer, investor, or servicer for the purpose of securing collateral protection insurance business or related outsourced services.

627.9907 Noncircumvention.—This part may not be construed to allow an insurance agent or insurer underwriting collateral protection insurance solely to circumvent the requirements specified in this part. Any such requirement, limitation, or exclusion provided in this part applies to all insurers or insurance agents involved in collateral protection insurance.

627.9908 Evidence of coverage.—Proof of collateral protection insurance must be provided in an individual policy or a certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage shall be mailed by first-class mail or delivered in person to the last known address of the mortgagor or delivered in accordance with s. 668.50, the Uniform Electronic Transaction Act. Notwithstanding any other general law to the contrary, the individual policy or certificate of insurance coverage must include the following information:

(1) The address and identification of the insured real property.

(2) The coverage amount or, if multiple coverages are provided, amounts.

(3) The effective date of the coverage.

(4) The term of coverage.

(5) The premium charge for the coverage.

(6) Contact information for filing a claim.

(7) A complete description of the coverage provided.

627.9909 Policy forms and certificates of insurance; rate filings.—

(1) Except as otherwise provided in this part, all policy forms and certificates of insurance to be delivered or issued for delivery in the state are subject to the applicable provisions of s. 627.410, and the schedules of premium rates pertaining thereto are subject to the applicable provisions of s. 627.062.

(2) With respect to an analysis of rates in accordance with s. 627.062(1), the analysis must also include a determination as to whether expenses included by the insurer in the rates are appropriate.

(3) Notwithstanding s. 627.0645, insurers subject to this part shall refile collateral protection property insurance rates at least once every 4 years.

(4) All insurers writing collateral protection insurance

must have separate rates for collateral protection insurance and voluntary insurance obtained by a mortgage servicer on real-estate owned property.

(5) Upon the introduction of a new collateral protection insurance program, the insurer shall reference its experience in existing programs in the associated filings. This part does not limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria, or other unique or different characteristics. Moreover, an insurer may, if actuarially acceptable, rely upon models or, in the case of flood filings if applicable experience is not credible, on the Federal Emergency Management Agency's National Flood Insurance Program data.

(6)(a) By April 1 of each year, each insurer with at least $100,000 in direct written premium for collateral protection insurance in the state during the prior calendar year shall report to the office the following information for the prior calendar year:

1. Actual loss ratio.

2. Earned premiums.

3. Any aggregate schedule rating debit or credit to earned premium.

4. Itemized expenses.

5. Paid losses.

6. Loss reserves, including case reserves and reserves for

incurred but not reported losses.

(b) The report shall be separately produced for each collateral protection insurance program and presented on both an individual-jurisdiction and countrywide basis.

(7) Except in the case of collateral protection insurance covering the peril of flood, to which this subsection does not apply, if an insurer experiences an annual loss ratio of less than 35 percent in any collateral protection insurance program for 2 consecutive years, the insurer shall submit a rate filing, either adjusting its rates or supporting the continuance of its rates, to the office no more than 90 days after the submission of the data required in paragraph (6)(a).

(8) Except as provided in this section, rate and form filing requirements are subject to the Florida Insurance Code.

627.9911 Enforcement and judicial review.—The office shall have all rights and powers to enforce the provisions of this part, as provided in s. 624.307. All proceedings, including judicial review, shall be conducted in accordance with the administrative procedures prescribed in chapter 120. Penalties for any violation of this part shall be assessed in accordance with s. 624.4211.

627.9912 Rulemaking authority.—The office may, after notice and hearing, adopt reasonable rules and regulations to implement and administer this part.

627.9913 Severability provisions.—If any provision of this

part or the application of the provision to any person or circumstance is held invalid, the remainder of this part and the application of such provision to other persons or circumstances are not affected thereby.

Section 2. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 987 Public Deposits
SPONSOR(S): Botana
TIED BILLS: **IDEN./SIM. BILLS:** SB 1360

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

SUMMARY ANALYSIS

State and local governments are required, unless exempted by law, to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act (Act), which is administered by the Chief Financial Officer (CFO) and Department of Financial Services (DFS). Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill makes the following amendments to the Act:

- Allows state-chartered and federally-chartered credit unions to become QPDs and custodians for another QPD's pledged collateral;
- Provides criteria a credit union must meet before the CFO can designate the credit union as a QPD;
- Creates separate mutual responsibility and contingent liability provisions for credit union QPDs to prevent banks from sharing liability with credit unions in the event of a credit union QPD's default or insolvency, and vice versa; and
- Requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any banks, savings bank, or savings association.

Although the bill would potentially have a positive impact on the state government's revenues, the bill will require recurring and non-recurring expenditures. See *Fiscal Impact on State Government* section. Further, the bill does not include an appropriation to fund DFS's implementation and ongoing maintenance of credit unions as QPDs. The bill has an indeterminate fiscal impact on local governments and the private sector.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Pursuant to the Florida Security for Public Deposits Act (Act),[1] and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).[2] A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended[3];
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.[4]

Upon approval from the CFO, these banks, savings banks, and savings associations may accept "public deposits" from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of "qualified public depository." As of May 20, 2022, there are 118 active QPDs in this state.[5]

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.[6] The Act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[7] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[8] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[9]

A "custodian" can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public

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[1] Ch. 280, F.S.
[2] S. 280.03(1)(b), F.S.
[3] 12 U.S.C. ss. 1811 *et seq.*
[4] S. 280.02(26), F.S.
[5] Florida Department of Financial Services, *List of Active QPDs*, https://myfloridacfo.com/docs-sf/treasury-libraries/treasury-documents/listofactiveqpds.pdf (last visited Mar. 9, 2023).
[6] S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.
[7] S. 280.041(6), F.S.
[8] 12 U.S.C. § 1821(a)(1)(E).
[9] S. 280.07, F.S.

deposits.[10] Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;[11]
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;[12]
- CFO's custody arrangement for collateral deposited in the CFO's name, subject to certain requirements;[13]
- Federal Home Loan Bank letter of credit arrangement for collateral issued with the CFO as beneficiary, subject to certain requirements.[14]

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.[15] The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.[16] In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.[17]

Regulation of Credit Unions

Like banks, savings banks, and savings associations, credit union accept deposits and make loans, and can be state-chartered or federally-chartered:

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[18] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[19] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[20] and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-

[10] Ss. 280.02(10) and 280.041(1)(a), F.S.
[11] S. 280.041(1)(a), F.S.
[12] S. 280.041(1)(b), F.S.
[13] S. 280.041(1)(c), F.S.
[14] S. 280.041(1)(d), F.S.
[15] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[16] S. 280.05, F.S.
[17] *Id.* at (10).
[18] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[19] S. 657.003, F.S.
[20] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq*.

chartered credit unions.[21] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[22] The standard maximum share insurance amount is $250,000.[23]

Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral.

The bill creates s. 280.042, F.S., to provide criteria that a credit union must meet before the CFO can designate a credit union as a QPD. These provisions are designed to protect public deposits. The credit union is required to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

- The credit union must submit a signed statement from a public depositor (i.e., a state or local government) indicating that, if the credit union is designated as a QPD, the public depositor intends to deposit public funds with the credit union; and
- There are at least four other credit unions that are designated as QPDs or have applied to be designated as QPDs and have submitted an agreement of contingent liability, a collateral agreement, and a signed statement from a public depositor of intent to deposit public funds with the credit union.

The CFO must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as QPDs and the number of eligible credit unions applying to be designated as QPDs is less than five. As a result of the CFO's withdrawal, the credit union loses its designation as a QPD, and must within 10 days after the CFO's notification of such withdrawal, return all public deposits that the credit union holds to the public depositor who deposited the funds. Additionally, the CFO may limit the amount of public deposits any one credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs. In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

The bill requires the CFO to segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from those attributable to any bank, savings bank, or savings association. Subject to this segregation of funds requirement, the CFO is authorized to pay any losses to public depositors from the Public Deposits Trust Fund.

[21] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, How Your Accounts Are Federally Insured, available at https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf (last visited Mar. 10, 2023).
[22] Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[23] NCUA, *supra* note 21.

Lastly, the bill makes conforming changes to allow credit unions to participate in the public deposit program and to subject credit union QPDs to the regulatory oversight of the CFO.

B. SECTION DIRECTORY:

Section 1. Amends s. 17.68, F.S., relating to Financial Literacy Program for Individuals with Developmental Disabilities.

Section 2. Amends s. 280.02, F.S., relating to definitions.

Section 3. Amends s. 280.03, F.S., relating to public deposits to be secured; prohibitions; exemptions.

Section 4. Creates s. 280.042, F.S., relating to credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.

Section 5. Amends s. 280.05, F.S., relating to powers and duties of the Chief Financial Officer.

Section 6. Amends s. 280.052, F.S., relating to order of suspension or disqualification; procedure.

Section 7. Amends s. 280.053, F.S., relating to period of suspension or disqualification; obligations during period; reinstatement.

Section 8. Amends s. 280.055, F.S., relating to cease and desist order; corrective order; administrative penalty.

Section 9. Amends s. 280.07, F.S., relating to mutual responsibility and contingent liability.

Section 10. Amends s. 280.08, F.S., relating to procedure for payment of losses.

Section 11. Amends s. 280.085, F.S., relating to notice to claimants.

Section 12. Amends s. 280.09, F.S., relating to Public Deposits Trust Fund.

Section 13. Amends s. 280.10, F.S., relating to effect of merger, acquisition, or consolidation; change of name or address.

Section 14. Amends s. 280.13, F.S., relating to eligible collateral.

Section 15. Amends s. 280.17, F.S., relating to requirements for public depositors; notice to public depositors and governmental units; loss of protection.

Sections 16-33. Reenacts various sections of statutes to incorporate amendments to ch. 280, F.S.

Section 34. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill's impact on state government revenues is indeterminate. However, the potential positive impact to revenues of state government is the same as the potential positive impact to revenues of local governments. See *Fiscal Impact on Local Governments* section below.

2. Expenditures:

According to DFS, allowing credit unions to be QPDs will require:[24]

- $188,650 in non-recurring expenditures for DFS's Office of Information Technology (OIT) to make:
  - Significant programming changes to the Collateral Administration Program (CAP), a computer application used to administer Florida's public deposits program.
  - Modifications to the Florida Planning Accounting, and Ledger Management (PALM) system to accommodate the required segregated accounting of collateral proceeds, assessments, or administrative penalties attributable to credit unions.
- $5,728 in recurring expenditures for independent ranking service data on credit unions.
- $75,450 in recurring expenditures for one additional Financial Examiner/Analyst II FTE, class code 1564, pay grade 023.

The cost estimate for OIT changes described above may differ, as the cost of such changes has not been evaluated as of 2022.[25] The addition of credit unions as QPDs may also require additional ongoing OIT support, especially at the outset.[26]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill's impact on local government revenues is indeterminate. However, a 2014 study by the Office of Program Policy Analysis and Government Accountability explained the potential positive impact to local government public depositors:

> Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.[27]

2. Expenditures:

[24] Department of Financial Services, Agency Analysis of 2022 House Bill 1559 (Jan. 27, 2022). 2022 HB 1559 is identical to this bill. An updated bill analysis has been requested from DFS, but not yet received as of the date of this bill analysis.
[25] Id.
[26] Id.
[27] Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Allowing credit unions to accept public deposits may generate additional income for the credit unions and provide more options for the public depositors. It is unclear what impact the bill will have on existing QPDs (banks, savings banks, or savings associations). The bill's impact on the private sector is indeterminate due to the number of variables involved in determining such impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The CFO has rulemaking authority to administer ch. 280, F.S. In order to add credit unions as QPDs, rulemaking is necessary to amend ch. 69C-2, F.A.C., and several forms incorporated by reference in the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public deposits; amending s. 17.68, F.S.; providing requirements for credit unions that are qualified public depositories; requiring the Department of Financial Services to provide its brochures to such credit unions upon request; amending s. 280.02, F.S.; revising definitions; amending s. 280.03, F.S.; providing that public deposits in credit unions by specified trust departments or trust companies are exempt from certain requirements and protection; creating s. 280.042, F.S.; prohibiting the Chief Financial Officer from designating credit unions as qualified public depositories unless certain requirements are met; requiring the Chief Financial Officer to withdraw from specified collateral agreements under certain circumstances; prohibiting credit unions from being designated as qualified public depositories if the Chief Financial Officer withdraws from collateral agreements; requiring specified credit unions to return all public deposits in the credit unions within a specified timeframe under certain circumstances; authorizing the Chief Financial Officer to limit the amount of public deposits in credit unions for a specified purpose; amending s. 280.05, F.S.; revising the losses for

which the Chief Financial Officer may sell securities to protect the integrity of the public deposits program; amending s. 280.052, F.S.; providing requirements for the suspension or disqualification of credit unions as qualified public depositories; amending s. 280.053, F.S.; authorizing credit unions to be reinstated, or to reapply for qualification, as qualified public depositories under specified circumstances; providing exceptions; amending s. 280.055, F.S.; authorizing the Chief Financial Officer to issue a cease and desist order and a corrective order to credit unions upon certain determinations; providing penalties; amending s. 280.07, F.S.; specifying the losses against which certain solvent banks, savings banks, savings associations, and credit unions must guarantee public depositors; amending s. 280.08, F.S.; revising the Chief Financial Officer's procedures upon a default or insolvency of a qualified public depository; amending s. 280.085, F.S.; revising the exemptions to the notice to claimants upon a default or insolvency of a qualified public depository; amending s. 280.09, F.S.; requiring the Chief Financial Officer to segregate and separately account for certain proceeds, assessments, and administrative penalties; revising the payment of any

losses to public depositors; amending s. 280.10, F.S.; revising the duties, responsibilities, and liabilities of resulting institutions upon specified mergers, acquisitions, and consolidations; amending s. 280.13, F.S.; providing that the limits imposed on specified securities apply to qualified public depositories, rather than to banks and savings associations; amending s. 280.17, F.S.; revising the evidence that public depositors must submit when in default or insolvent; reenacting ss. 17.57(7)(a), 24.114(1), 125.901(3)(e), 136.01, 159.608(11), 175.301, 175.401(8), 185.30, 185.50(8), 190.007(3), 191.006(16), 215.34(2), 218.415(16)(c), (17)(c), and (23)(a), 255.502(4)(h), 331.309(1) and (2), 373.553(2), 631.221, and 723.06115(3)(c), F.S., relating to deposits and investments of state money; bank deposits and control of lottery transactions; children's services and independent special districts; county depositories; powers of housing finance authorities; depositories for pension funds; retiree health insurance subsidies; depositories for retirement funds; retiree health insurance subsidies; board of supervisors; general powers; state funds and noncollectible items; local government investment policies; definitions; treasurer, depositories, and

fiscal agent; treasurer of the board, payment of funds, and depositories; deposit of moneys collected; and the Florida Mobile Home Relocation Trust Fund, respectively, to incorporate the amendments made by the act; providing an effective date.

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

Section 1. Subsection (4) of section 17.68, Florida Statutes, is amended to read:

17.68 Financial Literacy Program for Individuals with Developmental Disabilities.—

(4) Within 90 days after the department establishes the website clearinghouse and publishes the brochure, each bank, credit union, savings association, and savings bank that is a qualified public depository as defined in s. 280.02 shall:

(a) Make copies of the department's brochures available, upon the request of the consumer, at its principal place of business and each branch office located in this state which has in-person teller services by having copies of the brochure available or having the capability to print a copy of the brochure from the department's website. Upon request, the department shall provide copies of the brochure to a bank, credit union, savings association, or savings bank.

(b) Provide on its website a hyperlink to the department's

website clearinghouse. If the department changes the website address for the clearinghouse, the bank, credit union, savings association, or savings bank must update the hyperlink within 90 days after notification by the department of such change.

Section 2. Subsections (6), (10), (21), (23), and (26) of section 280.02, Florida Statutes, are amended to read:

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

(6) "Capital account" or "tangible equity capital" means total equity capital, as defined on the balance-sheet portion of the Consolidated Reports of Condition and Income (call report), or net worth, as described in the National Credit Union Administration 5300 Call Report, less intangible assets, as submitted to the regulatory financial ~~banking~~ authority.

(10) "Custodian" means the Chief Financial Officer or a bank, credit union, savings association, or trust company that:

(a) Is organized and existing under the laws of this state, any other state, or the United States;

(b) Has executed all forms required under this chapter or any rule adopted hereunder;

(c) Agrees to be subject to the jurisdiction of the courts of this state, or of the courts of the United States which are located within this state, for the purpose of any litigation arising out of this chapter; and

(d) Has been approved by the Chief Financial Officer to act as a custodian.

(21) "Pool figure" means the total average monthly balances of public deposits held by all banks, savings banks, or savings associations or held separately by all credit unions ~~qualified public depositories~~ during the immediately preceding 12-month period.

(23) "Public deposit" means the moneys of the state or of any state university, county, school district, community college district, special district, metropolitan government, or municipality, including agencies, boards, bureaus, commissions, and institutions of any of the foregoing, or of any court, and includes the moneys of all county officers, including constitutional officers, which are placed on deposit in a bank, credit union, savings bank, or savings association. This includes, but is not limited to, time deposit accounts, demand deposit accounts, and nonnegotiable certificates of deposit. Moneys in deposit notes and in other nondeposit accounts such as repurchase or reverse repurchase operations are not public deposits. Securities, mutual funds, and similar types of investments are not public deposits and are not subject to this chapter.

(26) "Qualified public depository" means a bank, credit union, savings bank, or savings association that:

(a) Is organized and exists under the laws of the United States, ~~or~~ the laws of this state, or the laws of any other state or territory of the United States.

(b) Has its principal place of business in this state or has a branch office in this state which is authorized under the laws of this state or of the United States to receive deposits in this state.

(c) Is insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund ~~Has deposit insurance pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. ss. 1811 et seq~~.

(d) Has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits.

(e) Meets all the requirements of this chapter.

(f) Has been designated by the Chief Financial Officer as a qualified public depository.

Section 3. Paragraph (a) of subsection (3) of section 280.03, Florida Statutes, is amended to read:

280.03 Public deposits to be secured; prohibitions; exemptions.—

(3) The following are exempt from the requirements of, and protection under, this chapter:

(a) Public deposits deposited in a bank, credit union, or savings association by a trust department or trust company which are fully secured under trust business laws.

Section 4. Section 280.042, Florida Statutes, is created to read:

280.042 Credit union designations as qualified public depositories; withdrawal by the Chief Financial Officer from collateral agreements; limits on public deposits.—

(1) The Chief Financial Officer may not designate a credit union as a qualified public depository unless, at the time the credit union submits its agreement of contingent liability and its collateral agreement:

(a) The credit union submits a signed statement from a public depositor indicating that if the credit union is designated as a qualified public depository, the public depositor intends to deposit public funds with the credit union.

(b) The combined total of the numbers in subparagraphs 1. and 2. is at least four:

1. The number of credit unions designated as qualified public depositories.

2. The number of credit unions that meet all of the following requirements:

a. Apply to be designated as qualified public depositories.

b. Meet the requirements in paragraph (a).

(2) The Chief Financial Officer must withdraw from a collateral agreement previously entered into with a credit union if, during any 90 calendar days, the combined total of the number of credit unions designated as qualified public depositories and the number of eligible credit unions applying

to be designated as qualified public depositories is less than five.

(3) A credit union that is a party to a collateral agreement from which the Chief Financial Officer withdraws in accordance with subsection (2) may no longer be designated as a qualified public depository. Within 10 business days after the Chief Financial Officer notifies the credit union that the Chief Financial Officer has withdrawn from the collateral agreement, the credit union must return all public deposits that the credit union holds to the public depositor who deposited the funds. The notice provided for in this subsection may be sent to a credit union by regular mail or by e-mail.

(4) The Chief Financial Officer may limit the amount of public deposits that a credit union may hold in order to make sure that no single credit union holds an amount of public deposits that might adversely affect the integrity of the public deposits program.

Section 5. Subsection (11) of section 280.05, Florida Statutes, is amended to read:

280.05 Powers and duties of the Chief Financial Officer.—In fulfilling the requirements of this act, the Chief Financial Officer has the power to take the following actions he or she deems necessary to protect the integrity of the public deposits program:

(11) Sell securities for the purpose of paying losses to

public depositors not covered by deposit or share insurance.

Section 6. Subsection (1) of section 280.052, Florida Statutes, is amended to read:

280.052 Order of suspension or disqualification; procedure.—

(1) The suspension or disqualification of a bank, credit union, or savings association as a qualified public depository must be by order of the Chief Financial Officer and must be mailed to the qualified public depository by registered or certified mail.

Section 7. Paragraph (c) of subsection (1) and paragraph (c) of subsection (2) of section 280.053, Florida Statutes, are amended to read:

280.053 Period of suspension or disqualification; obligations during period; reinstatement.—

(1)

(c) Upon expiration of the suspension period, the bank, credit union, or savings association may, by order of the Chief Financial Officer, be reinstated as a qualified public depository, unless the cause of the suspension has not been corrected or the bank, credit union, or savings association is otherwise not in compliance with this chapter or any rule adopted pursuant to this chapter.

(2)

(c) Upon expiration of the disqualification period, the

bank, credit union, or savings association may reapply for qualification as a qualified public depository. If a disqualified bank, credit union, or savings association is purchased or otherwise acquired by new owners, it may reapply to the Chief Financial Officer to be a qualified public depository before ~~prior to~~ the expiration date of the disqualification period. Redesignation as a qualified public depository may occur only after the Chief Financial Officer has determined that all requirements for holding public deposits under the law have been met.

Section 8. Section 280.055, Florida Statutes, is amended to read:

280.055 Cease and desist order; corrective order; administrative penalty.—

(1) The Chief Financial Officer may issue a cease and desist order and a corrective order upon determining that:

(a) A qualified public depository has requested and obtained a release of pledged collateral without approval of the Chief Financial Officer;

(b) A bank, credit union, savings association, or other financial institution is holding public deposits without a certificate of qualification issued by the Chief Financial Officer;

(c) A qualified public depository pledges, deposits, or arranges for the issuance of unacceptable collateral;

(d) A custodian has released pledged collateral without approval of the Chief Financial Officer;

(e) A qualified public depository or a custodian has not furnished to the Chief Financial Officer, when the Chief Financial Officer requested, a power of attorney or bond power or bond assignment form required by the bond agent or bond trustee for each issue of registered certificated securities pledged and registered in the name, or nominee name, of the qualified public depository or custodian; or

(f) A qualified public depository; a bank, credit union, savings association, or other financial institution; or a custodian has committed any other violation of this chapter or any rule adopted pursuant to this chapter that the Chief Financial Officer determines may be remedied by a cease and desist order or corrective order.

(2) Any qualified public depository or other bank, credit union, savings association, or financial institution or custodian that violates a cease and desist order or corrective order of the Chief Financial Officer is subject to an administrative penalty not exceeding $1,000 for each violation of the order. Each day the violation of the order continues constitutes a separate violation.

Section 9. Section 280.07, Florida Statutes, is amended to read:

280.07 Mutual responsibility and contingent liability.—

(1) A ~~Any~~ bank, savings bank, or savings association that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other banks, savings banks, or savings associations that are designated as qualified public depositories.

(2) A credit union that is designated as a qualified public depository and that is not insolvent shall guarantee public depositors against loss caused by the default or insolvency of other credit unions that are designated as qualified public depositories.

Each qualified public depository shall execute a form prescribed by the Chief Financial Officer for such guarantee which must ~~shall~~ be approved by the board of directors and must ~~shall~~ become an official record of the institution.

Section 10. Subsections (1) and (3) of section 280.08, Florida Statutes, are amended to read:

280.08 Procedure for payment of losses.—When the Chief Financial Officer determines that a default or insolvency has occurred, he or she shall provide notice as required in s. 280.085 and implement the following procedures:

(1) The Division of Treasury, in cooperation with the Office of Financial Regulation of the Financial Services Commission or the receiver of the qualified public depository in

default, shall ascertain the amount of funds of each public depositor on deposit at such depository and the amount of deposit or share insurance applicable to such deposits.

(3)(a) The loss to public depositors shall be satisfied, insofar as possible, first through any applicable deposit or share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The Chief Financial Officer may assess qualified public depositories as provided in paragraph (b), subject to the segregation of contingent liability in s. 280.07, for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

(b) The Chief Financial Officer shall provide coverage of any remaining loss by assessment against the other qualified public depositories. The Chief Financial Officer shall determine such assessment for each qualified public depository by multiplying the total amount of any remaining loss to all public depositors by a percentage which represents the average monthly balance of public deposits held by each qualified public depository during the previous 12 months divided by the total average monthly balances of public deposits held by all qualified public depositories, excluding the defaulting depository, during the same period. The assessment calculation must ~~shall~~ be computed to six decimal places.

Section 11. Subsection (4) of section 280.085, Florida

Statutes, is amended, and subsection (1) of that section is republished, to read:

280.085 Notice to claimants.—

(1) Upon determining the default or insolvency of a qualified public depository, the Chief Financial Officer shall notify, by first-class mail, all public depositors that have complied with s. 280.17 of such default or insolvency. The notice must direct all public depositors having claims or demands against the Public Deposits Trust Fund occasioned by the default or insolvency to file their claims with the Chief Financial Officer within 30 days after the date of the notice.

(4) The notice required in subsection (1) is not required if the default or insolvency of a qualified public depository is resolved in a manner in which all Florida public deposits are acquired by another insured bank, credit union, savings bank, or savings association.

Section 12. Section 280.09, Florida Statutes, is amended to read:

280.09 Public Deposits Trust Fund.—

(1) In order to facilitate the administration of this chapter, there is created the Public Deposits Trust Fund, hereafter in this section designated "the fund." The proceeds from the sale of securities or draw on letters of credit held as collateral or from any assessment pursuant to s. 280.08 must ~~shall~~ be deposited into the fund. The Chief Financial Officer

must segregate and separately account for any collateral proceeds, assessments, or administrative penalties attributable to a credit union from any collateral proceeds, assessments, or administrative penalties attributable to any bank, savings bank, or savings association. Any administrative penalty collected pursuant to this chapter shall be deposited into the Treasury Administrative and Investment Trust Fund.

(2) The Chief Financial Officer is authorized to pay any losses to public depositors from the fund, subject to the limitations provided in subsection (1), and there are hereby appropriated from the fund such sums as may be necessary from time to time to pay the losses. The term "losses," for purposes of this chapter, must ~~shall~~ also include losses of interest or other accumulations to the public depositor as a result of penalties for early withdrawal required by Depository Institution Deregulatory Commission Regulations or applicable successor federal laws or regulations because of suspension or disqualification of a qualified public depository by the Chief Financial Officer pursuant to s. 280.05 or because of withdrawal from the public deposits program pursuant to s. 280.11. In that event, the Chief Financial Officer is authorized to assess against the suspended, disqualified, or withdrawing public depository, in addition to any amount authorized by any other provision of this chapter, an administrative penalty equal to the amount of the early withdrawal penalty and to pay that

amount over to the public depositor as reimbursement for such loss. Any money in the fund estimated not to be needed for immediate cash requirements shall be invested pursuant to s. 17.61.

Section 13. Subsections (1) and (3) of section 280.10, Florida Statutes, are amended to read:

280.10 Effect of merger, acquisition, or consolidation; change of name or address.—

(1) When a qualified public depository is merged into, acquired by, or consolidated with a bank, credit union, savings bank, or savings association that is not a qualified public depository:

(a) The resulting institution shall automatically become a qualified public depository subject to the requirements of the public deposits program.

(b) The contingent liability of the former institution shall be a liability of the resulting institution.

(c) The public deposits and associated collateral of the former institution shall be public deposits and collateral of the resulting institution.

(d) The resulting institution shall, within 90 calendar days after the effective date of the merger, acquisition, or consolidation, deliver to the Chief Financial Officer:

1. Documentation in its name as required for participation in the public deposits program; or

2. Written notice of intent to withdraw from the program as provided in s. 280.11 and a proposed effective date of withdrawal which shall be within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(e) If the resulting institution does not meet qualifications to become a qualified public depository or does not submit required documentation within 90 calendar days after the effective date of the merger, acquisition, or consolidation, the Chief Financial Officer shall initiate mandatory withdrawal actions as provided in s. 280.11 and shall set an effective date of withdrawal that is within 180 days after the effective date of the acquisition, merger, or consolidation of the former institution.

(3) If the default or insolvency of a qualified public depository results in acquisition of all or part of its Florida public deposits by a bank, credit union, savings bank, or savings association that is not a qualified public depository, the bank, credit union, savings bank, or savings association acquiring the Florida public deposits is subject to subsection (1).

Section 14. Subsection (1) of section 280.13, Florida Statutes, is amended to read:

280.13 Eligible collateral.—

(1) Securities eligible to be pledged as collateral by

qualified public depositories ~~banks and savings associations~~ shall be limited to:

(a) Direct obligations of the United States Government.

(b) Obligations of any federal agency that are fully guaranteed as to payment of principal and interest by the United States Government.

(c) Obligations of the following federal agencies:

1. Farm credit banks.

2. Federal land banks.

3. The Federal Home Loan Bank and its district banks.

4. Federal intermediate credit banks.

5. The Federal Home Loan Mortgage Corporation.

6. The Federal National Mortgage Association.

7. Obligations guaranteed by the Government National Mortgage Association.

(d) General obligations of a state of the United States, or of Puerto Rico, or of a political subdivision or municipality thereof.

(e) Obligations issued by the Florida State Board of Education under authority of the State Constitution or applicable statutes.

(f) Tax anticipation certificates or warrants of counties or municipalities having maturities not exceeding 1 year.

(g) Public housing authority obligations.

(h) Revenue bonds or certificates of a state of the United

States or of a political subdivision or municipality thereof.

(i) Corporate bonds of any corporation that is not an affiliate or subsidiary of the qualified public depository.

Section 15. Paragraph (b) of subsection (4) of section 280.17, Florida Statutes, is amended to read:

280.17 Requirements for public depositors; notice to public depositors and governmental units; loss of protection.—In addition to any other requirement specified in this chapter, public depositors shall comply with the following:

(4) If public deposits are in a qualified public depository that has been declared to be in default or insolvent, each public depositor shall:

(b) Submit to the Chief Financial Officer for each public deposit, within 30 days after the date of official notification from the Chief Financial Officer, the following:

1. A claim form and agreement, as prescribed by the Chief Financial Officer, executed under oath, accompanied by proof of authority to execute the form on behalf of the public depositor.

2. A completed public deposit identification and acknowledgment form, as described in subsection (2).

3. Evidence of the insurance afforded the deposit pursuant to the Federal Deposit Insurance Act or the Federal Credit Union Act, as appropriate.

Section 16. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a

reference thereto, paragraph (a) of subsection (7) of section 17.57, Florida Statutes, is reenacted to read:

17.57 Deposits and investments of state money.—

(7) In addition to the deposits authorized under this section and notwithstanding any other provisions of law, funds that are not needed to meet the disbursement needs of the state may be deposited by the Chief Financial Officer in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the Chief Financial Officer.

Section 17. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (1) of section 24.114, Florida Statutes, is reenacted to read:

24.114 Bank deposits and control of lottery transactions.—

(1) All moneys received by each retailer from the operation of the state lottery, including, but not limited to, all ticket sales, interest, gifts, and donations, less the amount retained as compensation for the sale of the tickets and the amount paid out as prizes, shall be remitted to the department or deposited in a qualified public depository, as defined in s. 280.02, as directed by the department. The department shall have the responsibility for all administrative functions related to the receipt of funds. The department may

also require each retailer to file with the department reports of the retailer's receipts and transactions in the sale of lottery tickets in such form and containing such information as the department may require. The department may require any person, including a qualified public depository, to perform any function, activity, or service in connection with the operation of the lottery as it may deem advisable pursuant to this act and rules of the department, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person.

Section 18. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (e) of subsection (3) of section 125.901, Florida Statutes, is reenacted to read:

125.901 Children's services; independent special district; council; powers, duties, and functions; public records exemption.—

(3)

(e)1. All moneys received by the council on children's services shall be deposited in qualified public depositories, as defined in s. 280.02, with separate and distinguishable accounts established specifically for the council and shall be withdrawn only by checks signed by the chair of the council and countersigned by either one other member of the council on children's services or by a chief executive officer who shall be

so authorized by the council.

2. Upon entering the duties of office, the chair and the other member of the council or chief executive officer who signs its checks shall each give a surety bond in the sum of at least $1,000 for each $1 million or portion thereof of the council's annual budget, which bond shall be conditioned that each shall faithfully discharge the duties of his or her office. The premium on such bond may be paid by the district as part of the expense of the council. No other member of the council shall be required to give bond or other security.

3. No funds of the district shall be expended except by check as aforesaid, except expenditures from a petty cash account which shall not at any time exceed $100. All expenditures from petty cash shall be recorded on the books and records of the council on children's services. No funds of the council on children's services, excepting expenditures from petty cash, shall be expended without prior approval of the council, in addition to the budgeting thereof.

Section 19. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 136.01, Florida Statutes, is reenacted to read:

136.01 County depositories.—Each county depository shall be a qualified public depository as defined in s. 280.02 for the following funds: county funds; funds of all county officers,

including constitutional officers; funds of the school board; and funds of the community college district board of trustees. This enumeration of funds is made not by way of limitation, but of illustration; and it is the intent hereof that all funds of the county, the board of county commissioners or the several county officers, the school board, or the community college district board of trustees be included.

Section 20. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (11) of section 159.608, Florida Statutes, is reenacted to read:

159.608 Powers of housing finance authorities.—A housing finance authority shall constitute a public body corporate and politic, exercising the public and essential governmental functions set forth in this act, and shall exercise its power to borrow only for the purpose as provided herein:

(11) To invest and reinvest surplus funds of the housing finance authority in accordance with s. 218.415. However, in addition to the investments expressly authorized in s. 218.415(16)(a)-(g) and (17)(a)-(d), a housing finance authority may invest surplus funds in interest-bearing time deposits or savings accounts that are fully insured by the Federal Deposit Insurance Corporation regardless of whether the bank or financial institution in which the deposit or investment is made is a qualified public depository as defined in s. 280.02. This

subsection is supplementary to and may not be construed as limiting any powers of a housing finance authority or providing or implying a limiting construction of any other statutory provision.

Section 21. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 175.301, Florida Statutes, is reenacted to read:

175.301 Depository for pension funds.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, all funds of the firefighters' pension trust fund of any chapter plan or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. However, any funds so deposited with the treasurer of the municipality or special fire control district shall be kept in a separate fund by the treasurer or clearly identified as such funds of the firefighters' pension trust fund. In lieu thereof, the board of trustees shall deposit the funds of the firefighters' pension trust fund in a qualified public depository as defined in s.

280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 22. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 175.401, Florida Statutes, is reenacted to read:

175.401 Retiree health insurance subsidy.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, under the broad grant of home rule powers under the Florida Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. In addition, special fire control districts may, by resolution, establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF HEALTH INSURANCE SUBSIDY FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality or special fire control district, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality or special fire control district. Any funds so deposited shall be segregated by the treasurer in a separate fund, clearly identified as funds of the health insurance

subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 23. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 185.30, Florida Statutes, is reenacted to read:

185.30 Depository for retirement fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all funds of the municipal police officers' retirement trust fund of any municipality, chapter plan, local law municipality, or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the treasurer of the municipality shall be kept in a separate fund by the municipal treasurer or clearly identified as such funds of the municipal police officers' retirement trust fund. In lieu

thereof, the board of trustees shall deposit the funds of the municipal police officers' retirement trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

Section 24. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, subsection (8) of section 185.50, Florida Statutes, is reenacted to read:

185.50 Retiree health insurance subsidy.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, under the broad grant of home rule powers under the Florida Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(8) DEPOSIT OF PENSION FUNDS.—All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. Any funds so deposited shall be segregated by said treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health

insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter 280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

Section 25. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (3) of section 190.007, Florida Statutes, is reenacted to read:

190.007 Board of supervisors; general duties.—

(3) The board is authorized to select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the board may deem just and reasonable.

Section 26. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (16) of section 191.006, Florida Statutes, is reenacted to read:

191.006 General powers.—The district shall have, and the board may exercise by majority vote, the following powers:

(16) To select as a depository for its funds any qualified public depository as defined in s. 280.02 which meets all the requirements of chapter 280 and has been designated by the Chief Financial Officer as a qualified public depository, upon such terms and conditions as to the payment of interest upon the funds deposited as the board deems just and reasonable.

Section 27. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 215.34, Florida Statutes, is reenacted to read:

215.34 State funds; noncollectible items; procedure.—

(2) Whenever a check, draft, or other order for the payment of money is returned by the Chief Financial Officer, or by a qualified public depository as defined in s. 280.02, to a state officer, a state agency, or the judicial branch for collection, the officer, agency, or judicial branch shall add to the amount due a service fee of $15 or 5 percent of the face amount of the check, draft, or order, whichever is greater. An agency or the judicial branch may adopt a rule which prescribes a lesser maximum service fee, which shall be added to the amount due for the dishonored check, draft, or other order tendered for a particular service, license, tax, fee, or other charge, but in no event shall the fee be less than $15. The service fee shall be in addition to all other penalties imposed by law, except that when other charges or penalties are imposed by an agency

related to a noncollectible item, the amount of the service fee shall not exceed $150. Proceeds from this fee shall be deposited in the same fund as the collected item. Nothing in this section shall be construed as authorization to deposit moneys outside the State Treasury unless specifically authorized by law.

Section 28. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in references thereto, paragraph (c) of subsection (16), paragraph (c) of subsection (17), and paragraph (a) of subsection (23) of section 218.415, Florida Statutes, are reenacted to read:

218.415 Local government investment policies.—Investment activity by a unit of local government must be consistent with a written investment plan adopted by the governing body, or in the absence of the existence of a governing body, the respective principal officer of the unit of local government and maintained by the unit of local government or, in the alternative, such activity must be conducted in accordance with subsection (17). Any such unit of local government shall have an investment policy for any public funds in excess of the amounts needed to meet current expenses as provided in subsections (1)-(16), or shall meet the alternative investment guidelines contained in subsection (17). Such policies shall be structured to place the highest priority on the safety of principal and liquidity of funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity. Each unit of local

government shall adopt policies that are commensurate with the nature and size of the public funds within its custody.

(16) AUTHORIZED INVESTMENTS; WRITTEN INVESTMENT POLICIES.—Those units of local government electing to adopt a written investment policy as provided in subsections (1)-(15) may by resolution invest and reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories as defined in s. 280.02.

(17) AUTHORIZED INVESTMENTS; NO WRITTEN INVESTMENT POLICY.—Those units of local government electing not to adopt a written investment policy in accordance with investment policies developed as provided in subsections (1)-(15) may invest or reinvest any surplus public funds in their control or possession in:

(c) Interest-bearing time deposits or savings accounts in qualified public depositories, as defined in s. 280.02.

The securities listed in paragraphs (c) and (d) shall be invested to provide sufficient liquidity to pay obligations as they come due.

(23) AUTHORIZED DEPOSITS.—In addition to the investments authorized for local governments in subsections (16) and (17) and notwithstanding any other provisions of law, a unit of local government may deposit any portion of surplus public funds in

its control or possession in accordance with the following conditions:

(a) The funds are initially deposited in a qualified public depository, as defined in s. 280.02, selected by the unit of local government.

Section 29. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (h) of subsection (4) of section 255.502, Florida Statutes, is reenacted to read:

255.502 Definitions; ss. 255.501-255.525.—As used in this act, the following words and terms shall have the following meanings unless the context otherwise requires:

(4) "Authorized investments" means and includes without limitation any investment in:

(h) Savings accounts in, or certificates of deposit of, qualified public depositories as defined in s. 280.02, in an amount that does not exceed 15 percent of the net worth of the institution, or a lesser amount as determined by rule by the State Board of Administration, provided such savings accounts and certificates of deposit are secured in the manner prescribed in chapter 280.

Investments in any security authorized in this subsection may be under repurchase agreements or reverse repurchase agreements.

Section 30. For the purpose of incorporating the amendment

made by this act to section 280.02, Florida Statutes, in references thereto, subsections (1) and (2) of section 331.309, Florida Statutes, are reenacted to read:

331.309 Treasurer; depositories; fiscal agent.—

(1) The board shall designate an individual who is a resident of the state, or a qualified public depository as defined in s. 280.02, as treasurer of Space Florida, who shall have charge of the funds of Space Florida. Such funds shall be disbursed only upon the order of or pursuant to the resolution of the board by warrant, check, authorization, or direct deposit pursuant to s. 215.85, signed or authorized by the treasurer or his or her representative or by such other persons as may be authorized by the board. The board may give the treasurer such other or additional powers and duties as the board may deem appropriate and shall establish the treasurer's compensation. The board may require the treasurer to give a bond in such amount, on such terms, and with such sureties as may be deemed satisfactory to the board to secure the performance by the treasurer of his or her powers and duties. The board shall audit or have audited the books of the treasurer at least once a year.

(2) The board is authorized to select as depositories in which the funds of the board and of Space Florida shall be deposited any qualified public depository as defined in s. 280.02, upon such terms and conditions as to the payment of interest by such depository upon the funds so deposited as the

board may deem just and reasonable. The funds of Space Florida may be kept in or removed from the State Treasury upon written notification from the chair of the board to the Chief Financial Officer.

Section 31. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, subsection (2) of section 373.553, Florida Statutes, is reenacted to read:

373.553 Treasurer of the board; payment of funds; depositories.—

(2) The board is authorized to select as depositories in which the funds of the board and of the district shall be deposited in any qualified public depository as defined in s. 280.02, and such deposits shall be secured in the manner provided in chapter 280.

Section 32. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, section 631.221, Florida Statutes, is reenacted to read:

631.221 Deposit of moneys collected.—The moneys collected by the department in a proceeding under this chapter shall be deposited in a qualified public depository as defined in s. 280.02, which depository with regards to such funds shall conform to and be bound by all the provisions of chapter 280, or invested with the Chief Financial Officer pursuant to chapter

18. For the purpose of accounting for the assets and transactions of the estate, the receiver shall use such accounting books, records, and systems as the court directs after it hears and considers the recommendations of the receiver.

Section 33. For the purpose of incorporating the amendment made by this act to section 280.02, Florida Statutes, in a reference thereto, paragraph (c) of subsection (3) of section 723.06115, Florida Statutes, is reenacted to read:

723.06115 Florida Mobile Home Relocation Trust Fund.—

(3) The department shall distribute moneys in the Florida Mobile Home Relocation Trust Fund to the Florida Mobile Home Relocation Corporation in accordance with the following:

(c) Funds transferred from the trust fund to the corporation shall be transferred electronically and shall be transferred to and maintained in a qualified public depository as defined in s. 280.02 which is specified by the corporation.

Section 34. This act shall take effect July 1, 2023.

PCS for HB 541

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 541 Motor Vehicle Glass
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill addresses the following issues regarding motor vehicle glass replacements and repairs:

Incentives: Some motor vehicle glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement. Many industries and professions currently prohibit incentives in exchange for an act that would earn the inducer additional income. The bill provides that a motor vehicle repair shop may not offer a customer a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including calibration or recalibration of an advanced driver assistance system (ADAS). The bill prohibits an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of claims, from offering such an incentive. The bill establishes that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice to a customer whether the calibration or recalibration of an ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and to ensure that the service meets or exceeds the specifications of the vehicle manufacturer. The bill also provides a definition of ADAS as a motor vehicle electronic safety system associated with motor vehicle glass and designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.

Deductibles: A "deductible" is the amount an insured must pay before an insurance company will make any payment on an insurance claim. The deductible provisions of a motor vehicle insurance policy providing comprehensive or combined additional coverage are not applicable to the damage to the windshield of any motor vehicle covered under such policy. Therefore, a consumer who owes money on a motor vehicle often qualifies for motor vehicle glass repair or replacement without paying a deductible out of pocket. The bill allows an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant a deductible of $250 for claims of damage to the windshield of a motor vehicle. The insured or applicant may decline the offer of the deductible. The bill also establishes that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes damage in addition to windshield damage, no windshield damage deductible may apply.

Assignments of Benefits (AOB): An assignment of benefits (AOB) is a binding agreement between an insured and a provider of repair services that allows a third-party, in this instance a motor vehicle glass repair shop, to "stand in the shoes" of the insured to obtain the benefits the insured is entitled to under the motor vehicle insurance contract, including payment of the claim. The glass repair shop to which the insured has assigned benefits can negotiate directly with, or file a lawsuit in the name of the insured against, the insurer, if the insurer and the glass repair company do not agree on the amount the insurer will pay for the glass claim. The bill prohibits a policyholder, or another person, from signing an AOB for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an ADAS, under an motor vehicle insurance policy issued or renewed on or after July 1, 2023. The bill also provides a definition of an AOB for motor vehicle glass replacement or repair, which includes inspecting, protecting, repairing, restoring, or replacing the glass, or calibrating or recalibrating an ADAS.

The bill has no effect on state or local revenues or expenditures. It may have a positive or negative direct economic impact on certain aspects of the private sector including motor vehicle insurance policyholders and motor vehicle glass repair shops.

The bill has an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Background

Motor Vehicle Repair Shops

Motor vehicle repair shops in Florida are regulated by the Department of Agriculture and Consumer Services (DACS) under the Florida Motor Vehicle Repair Act (Repair Act).[1] This Repair Act requires that all motor vehicle repair shops, with minor exceptions, register with DACS.[2] A motor vehicle repair shop may be fixed or mobile and includes a person or business that does motor vehicle glass work for compensation.[3]

Under the Repair Act, it is unlawful for a motor vehicle repair shop or its employee to engage in various activities such as misrepresenting that repairs of been made to a motor vehicle or fraudulently altering any customer contract, estimate, invoice, or other document.[4] The Repair Act provides for various remedies for unlawful acts by motor vehicle repair shops, including notices of noncompliance, administrative fines, orders to cease and desist, probation of registrants, and suspension or revocation of registrations.[5]

Motor Vehicle Insurance

When a consumer purchases the minimum motor vehicle insurance required by Florida law, including personal injury protection coverage (PIP), that consumer does not have first-party insurance coverage for the repair or replacement of motor vehicle glass. However, a consumer who purchases comprehensive coverage, which pays for damage to a motor vehicle caused by an event besides a collision, generally has coverage for damaged or broken motor vehicle glass.[6] Because lenders often require borrowers who obtain motor vehicle loans to also purchase comprehensive motor vehicle insurance coverage, a consumer who owes money on a motor vehicle often has motor vehicle glass coverage.[7] See discussion on deductible below.

Incentives for Motor Vehicle Glass Insurance Claims

Some motor vehicle glass repair shops currently offer incentives, including cash and gift cards, in exchange for a consumer filing an insurance claim for motor vehicle glass repair or replacement.[8] Consumers have also complained to DACS that they never received the incentives promised by the motor vehicle glass repair shops, even after their motor vehicle glass was replaced and the claims were submitted to the motor vehicle insurance companies.[9]

Auto Glass America, a motor vehicle glass repair shop that advertises up to $100 cash back and a $100 gift card for submitting a "qualifying" motor vehicle glass insurance claim, filed over 15,300 motor

[1] Ss. 559.901-559.9221, F.S.
[2] S. 559.904, F.S.
[3] S. 559.903(6) and (7), F.S.
[4] S. 559.920, F.S.
[5] S. 559.921, F.S.
[6] *See* Florida Department of Financial Services, *Automobile Insurance a Toolkit for Consumers,* https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/consumer-guides/english---automobile-insurance-toolkit.pdf?sfvrsn=6b999793_4 (last visited Mar. 11, 2023).
[7] *Id.*
[8] *See, e.g.,* https://webuywindshields.com/ (last visited Mar. 11, 2023).
[9] *See, e.g.,* Consumer Complaint No.: 225337/Case No. 1509-37312, submitted to DACS on Sept. 18, 2015; available on request from DACS.

vehicle glass related lawsuits against insurers in Florida between January 1, 2016, and February 7, 2019.[10]

Many industries and professions currently prohibit incentives in exchange for an act that would earn the inducer additional income. For example:

- Section 456.054, F.S., prohibits a healthcare provider from offering a kickback to anyone in exchange for patient referrals;
- Section 468.456(1)(f), F.S., prohibits an athlete agent from offering anything of value to a student athlete to induce the athlete to enter into an agreement for representation;
- Section 626.854(7)(a)2., F.S., prohibits a public adjuster from inducing an insured to submit an insurance claim; and
- Section 626.9541, F.S., prohibits an insurance agent from offering inducements in many situations, including offering a rebate to induce a customer to enter into an insurance contract, or offering a reduced fee for providing title insurance.

Advanced Driver Assistance Systems (ADAS)

ADAS include automatic emergency braking, lane and highway assistance features, and driver monitoring.[11] They make roadways safer and help save lives by using radar, lidar, cameras, computer imaging, sensors, networking, and other features.[12] While repair or replacement of motor vehicle glass often includes calibration or recalibration of ADAS, the Repair Act does not currently include a definition of ADAS.

Effect of the Bill

The bill provides that a motor vehicle repair shop may not offer a customer a rebate, gift, gift card, cash, coupon, or other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair, including calibration or recalibration of an ADAS. The bill prohibits an employee of a motor vehicle repair shop or a nonemployee, who is compensated by a motor vehicle repair shop for the solicitation of claims, from offering such an inducement.

The bill establishes that it is a violation of law for a motor vehicle repair shop, or an employee of such shop, to fail to provide electronic or written notice to a customer whether the calibration or recalibration of an ADAS is required as part of the replacement or repair of motor vehicle glass to make the ADAS operable and ensure that the service meets or exceeds the specifications of the vehicle manufacturer.

Additionally, the bill defines ADAS for its use in the Repair Act. According to the bill, ADAS means any motor vehicle electronic safety system associated with motor vehicle glass and designed to support the driver and motor vehicle in a manner intended to:

- Increase motor vehicle safety; and
- Reduce losses associated with motor vehicle crashes.

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[10] Data retrieved from Department of Financial Services Service of Process Reports application, https://apps.fldfs.com/LSOPReports/Reports/Report.aspx (last visited Feb. 7, 2019).
[11] ARM, *Advanced Driver Assistance Systems*, https://www.arm.com/markets/automotive/adas?utm_source=google&utm_medium=cpc&utm_content=solutions&utm_campaign=2022_automotive_mk12_adas&utm_term=adas%20system&gclid=Cj0KCQiA6rCgBhDVARIsAK1kGPL3OcDDtlD90i-oBymynl453g40Y5iNZmFyjRcQmdqeFYag_tACRlYaAoPSEALw_wcB (last visited Mar. 11, 2023).
[12] Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (Feb. 27, 2023) (Senate Bill 1002 is the companion bill to PCS for HB 541).

Windshield Deductibles

A "deductible" is the amount an insured must pay before an insurance company will make any payment on an insurance claim. Pursuant to s. 627.7288, F.S., the deductible provisions of a motor vehicle insurance policy "delivered or issued" in Florida and providing "comprehensive coverage or combined additional coverage shall not be applicable to the damage to the windshield of any motor vehicle covered under such policy."[13] Therefore, a consumer who owes money on a motor vehicle often qualifies for motor vehicle glass repair or replacement without paying a deductible out of pocket.[14]

Effect of the Bill

The bill allows an insurer, when issuing or renewing a policy providing comprehensive coverage or combined additional coverage, to offer an insured or applicant a deductible of $250 for claims of damage to the windshield of a motor vehicle. The insured or applicant may decline the offer of the deductible. The bill also establishes that, if a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes other damage in addition to windshield damage, no windshield damage deductible may apply.

Assignment of Post-loss Motor Vehicle Glass Benefits

Motor Vehicle Glass Replacement and Repair

Florida law has no specific requirements applicable to insurance claims made for damaged motor vehicle glass.[15] Instead, these claims are handled according to the terms of a consumer's motor vehicle insurance policy.[16] Some Florida motor vehicle insurers have set up a network of motor vehicle glass repair shops that will provide motor vehicle glass repair or replacement at negotiated rates.[17] If a consumer utilizes one of these network shops, the consumer's motor vehicle glass is repaired or replaced and paid for directly by the insurance company.[18] If an insured uses an motor vehicle glass repair shop that is not within the insurer's network, the provider often obtains an assignment of benefits from the consumer.[19]

An assignment of benefits (AOB) is a binding agreement between an insured and a provider of repair services that allows a third-party, in this instance a motor vehicle glass repair shop, to "stand in the shoes" of the insured to obtain the benefits the insured is entitled to under the motor vehicle insurance contract, including payment of the claim. The glass repair shop to which the insured has assigned benefits can negotiate directly with, or file a lawsuit in the name of the insured against, the insurer if the insurer and the glass repair company do not agree on the amount that the insurer will pay for the motor vehicle glass claim.

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[13] Combined additional coverage is an obsolete auto physical damage term that still appears in the Florida Insurance Code. It refers to hazards other than fire or theft. *IRMI,* combined additional coverage, https://www.irmi.com/term/insurance-definitions/combined-additional-coverage (last visited Mar. 11, 2023).
[14] Department of Financial Services, *supra* note 6.
[15] Dale Parker and Brendan McKay, *Florida Auto Glass Claims: A Cracked System*, Trial Advocate Quarterly Fall 2016, *21 (Westlaw Citation: 35 No. 4 Trial Advoc. Q. 20).
[16] *Id.*
[17] *Id.*
[18] *See id.*
[19] *See id.*

Motor Vehicle Glass Litigation

According to data provided by the Department of Financial Services, the number of motor vehicle glass lawsuits has increased significantly in the past decade:[20]

Year	2011	2012	2021	2022
# of law suits	478	1,389	24,080	33,196

Florida law allows the insured or the assignee to obtain attorney fees from the insurer if the insured or assignee obtains a judgment against an insurer in a lawsuit regarding an motor vehicle insurance claim.[21] However, this operates in one direction. An insurer that prevails in a lawsuit against an insured or assignee is not permitted to recover attorney fees.[22] The purpose is to "discourage contesting of valid claims of insureds against insurance companies . . . and to reimburse successful insureds reasonably for their outlays for attorney's fees when they are compelled to defend or to sue to enforce their contracts. . . ."[23]

Some insurers have asserted that the increase in litigation is the result of the practice by some motor vehicle glass repair shops to execute AOBs, sue for unpaid claims, and collect attorney fees under s. 627.428, F.S.[24] They have also alleged that some motor vehicle glass repair shops obtain AOBs from the insured and inflate the costs of the motor vehicle glass repair or replacement when billing the insurance company.[25] Insurers also believe that some motor vehicle glass claims submitted by assignees are fraudulent.[26] If they believe claims are fraudulent or inflated, insurers are left with a choice between paying those claims or paying attorneys to litigate cases that may result in payment of attorney's fees to assignees if the insurers do not prevail regardless of the amount of increased benefit payment awarded.

Some motor vehicle glass repair shops have argued that the litigation is necessary because motor vehicle insurers have entered into agreements with preferred vendors (i.e., the network shops) and the insurers will not pay the "prevailing competitive price" for motor vehicle glass repair or replacement.[27] These repair shops contend that the insurers will only pay them the price that they pay to their preferred vendors and that they must litigate against the insurers to force them to pay the "prevailing competitive price" provided for by insurance policies.[28]

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[20] Data provided by the Department of Financial Services to the Senate Committee on Banking and Insurance on January 22, 2019 (Senate Meeting Packet), http://flsenate.gov/PublishedContent/Committees/2018-2020/BI/MeetingRecords/MeetingPacket_4350.pdf (last visited Mar. 11, 2023) and data provided in Florida Department of Financial Services, Agency Analysis of 2023 Senate Bill 1002, p. 1 (Feb. 27, 2023) (Senate Bill 1002 is the companion bill to PCS for HB 541).

[21] S. 627.428, F.S.; The Florida Supreme Court has recognized the right of assignees to obtain attorney fees under s. 627.428, F.S., (and its predecessor statute) since at least 1972. *See All Ways Reliable Building Maintenance, Inc. v. Moore*, 261 So. 2d 131 (Fla. 1972). The First District Court of Appeal has recognized the right since at least 1961. *See Travelers Insurance Co. v. Tallahassee Bank and Trust Co.*, 133 So. 2d 463 (Fla. 1st DCA 1961). However, in December 2022, the Legislature prohibited the use of AOBs for property insurance claims, and the recovery of attorney fees for litigation regarding property insurance claims.

[22] In certain circumstances, insurers can recovery attorney fees by using offers of judgment and proposals for settlement. *See* s. 768.79, F.S., and Fla. R. Civ. P. 1.442.

[23] *Wilder v. Wright,* 269 So. 2d 434, 436 (Fla. 2d DCA 1972).

[24] *See Parker and McKay, supra* note 10.

[25] *Id.*

[26] *See, e.g., Government Employees Insurance Co. v. Clear Vision Windshield Repair, L.L.C.,* 2017 WL 1196438 (M.D. Fla. Mar. 29, 2017).

[27] *VIP Auto Glass, Inc. v. Geico General Insurance Co.,* 2017 WL 3712918, *1 (M.D. Fla. Mar. 17, 2017).

[28] *Id.*

Effect of the Bill

The bill prohibits a policyholder, or another person, from signing an AOB for motor vehicle glass replacement or repair, including, but not limited to, calibration or recalibration of an ADAS, under an motor vehicle insurance policy issued or renewed on or after July 1, 2023. The bill also provides a definition of an AOB for motor vehicle glass replacement or repair, which includes inspecting, protecting, repairing, restoring, or replacing the glass, or calibrating or recalibrating an ADAS.

B. SECTION DIRECTORY:

Section 1. Amends s. 559.903, F.S, relating to definitions.

Section 2. Amends s. 559.920, F.S., relating to unlawful acts and practices.

Section 3. Amends s. 627.7288, F.S., relating to comprehensive coverage; deductible not to apply to motor vehicle glass.

Section 4. Creates s. 627.7289, F.S., relating to assignment of post-loss motor vehicle glass benefits prohibited.

Section 5. Provides an effective date of July 1, 2023.

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:

Indeterminate. Motor vehicle repair shops may claim their business is negatively affected by the inability to provide incentives to consumers. However, given the number motor vehicle glass lawsuits over the past several years, and the reports of individuals receiving incentives to submit motor vehicle glass claims to their motor vehicle insurers, it is possible that eliminating incentives provided by motor vehicle repair shops for these claims would reduce the number of disputed motor vehicle glass claims, and thereby reduce the number of motor vehicle glass lawsuits. Additionally, the elimination of AOBs for motor vehicle glass claims, will likely reduce the number of motor vehicle glass lawsuits.

The reduction in the number of motor vehicle glass lawsuits may have a positive impact on motor vehicle insurance premiums, particularly the portion of the rate that pertains to comprehensive coverage. Policyholders' election of deductibles for windshield glass may also reduce their motor vehicle insurance premiums.

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 motor vehicle glass; amending s. 559.903, F.S.; defining the term "advanced driver assistance system"; revising the definition of the term "motor vehicle repair"; amending s. 559.920, F.S.; prohibiting motor vehicle repair shops or their employees from offering anything of value to a customer in exchange for making an insurance claim for motor vehicle glass replacement or repair, including offers made through certain persons; specifying that the failure to provide certain electronic or written notice relating to calibrating or recalibrating an advanced driver assistance system is unlawful; amending s. 627.7288, F.S.; allowing an optional deductible for windshield glass; specifying deductible amount; limiting deductible application; creating s. 627.7289, F.S.; prohibiting persons from entering into assignment agreements of post-loss benefits for motor vehicle glass replacement or repair after a specified date; providing that such assignment agreements are void and unenforceable; defining the term "assignment agreement"; 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. Present subsections (1) through (5), (6), and (7) of section 559.903, Florida Statutes, are redesignated as subsections (2) through (6), (8), and (9), respectively, a new subsection (1) is added to that section, and present subsection (8) of that section is amended, to read:

559.903 Definitions.—As used in this act:

(1) "Advanced driver assistance system" means any motor vehicle electronic safety system that is associated with motor vehicle glass and is designed to support the driver and motor vehicle in a manner intended to increase motor vehicle safety and reduce losses associated with motor vehicle crashes.

(7) ~~(8)~~ "Motor vehicle repair" means all maintenance of and modifications and repairs to motor vehicles, and diagnostic work incident thereto, including, but not limited to, the rebuilding or restoring of rebuilt vehicles, body work, painting, warranty work, calibration or recalibration of advanced driver assistance systems, and other work customarily undertaken by motor vehicle repair shops.

Section 2. Section 2. Section 559.920, Florida Statutes, is amended to read:

559.920 Unlawful acts and practices.—It is ~~shall be~~ a violation of this act for any motor vehicle repair shop or employee thereof to do any of the following:

(1) Engage or attempt to engage in repair work for compensation of any type without first being registered with or

having submitted an affidavit of exemption to the department.~~;~~

(2) Make or charge for repairs that ~~which~~ have not been expressly or impliedly authorized by the customer.~~;~~ (3) Misrepresent that repairs have been made to a motor vehicle.~~;~~

(4) Misrepresent that certain parts and repairs are necessary to repair a vehicle.~~;~~

(5) Misrepresent that the vehicle being inspected or diagnosed is in a dangerous condition or that the customer's continued use of the vehicle may be harmful or cause great damage to the vehicle.~~;~~

(6) Fraudulently alter any customer contract, estimate, invoice, or other document.~~;~~

(7) Fraudulently misuse any customer's credit card.~~;~~

(8) Make or authorize in any manner or by any means ~~whatever~~ any written or oral statement that ~~which~~ is untrue, deceptive, or misleading~~,~~ and that ~~which~~ is known, or that ~~which~~ by the exercise of reasonable care should be known, to be untrue, deceptive, or misleading.~~;~~

(9) Make false promises of a character likely to influence, persuade, or induce a customer to authorize the repair, service, or maintenance of a motor vehicle.~~;~~

(10) Substitute used, rebuilt, salvaged, or straightened parts for new replacement parts without notice to the motor vehicle owner and to her or his insurer if the cost of repair is to be paid pursuant to an insurance policy and the identity of

the insurer or its claims adjuster is disclosed to the motor vehicle repair shop.~~;~~

(11) Cause or allow a customer to sign any work order that does not state the repairs requested by the customer or the automobile's odometer reading at the time of repair.~~;~~

(12) Fail or refuse to give to a customer a copy of any document requiring the customer's signature upon completion or cancellation of the repair work.~~;~~

(13) Willfully depart from or disregard accepted practices and professional standards.~~;~~

(14) Have repair work subcontracted without the knowledge or consent of the customer unless the motor vehicle repair shop or employee thereof demonstrates that the customer could not reasonably have been notified.~~;~~

(15) Conduct the business of motor vehicle repair in a location other than that stated on the registration certificate.~~;~~

(16) Rebuild or restore a rebuilt vehicle without the knowledge of the owner in such a manner that it does not conform to the original vehicle manufacturer's established repair procedures or specifications and allowable tolerances for the particular model and year.~~; or~~

(17) Offer to a customer a rebate, gift, gift card, cash, coupon, or any other thing of value in exchange for making an insurance claim for motor vehicle glass replacement or repair,

including, but not limited to, calibration or recalibration of an advanced driver assistance system. A nonemployee who is compensated for the solicitation of insurance claims is also prohibited from making such offer.

(18) Fail to provide electronic notice or written notice in at least 12-point type to the customer whether the calibration or recalibration of the advanced driver assistance system is required as part of the replacement or repair of motor vehicle glass to make such system operable and to ensure such service is performed in a manner that meets or exceeds the vehicle manufacturer's specifications.

(20) Perform any other act that is a violation of this part or that constitutes fraud or misrepresentation.

(19) ~~(18)~~ Violate any provision of s. 713.585.

Section 3. Section 627.7288, Florida Statutes, is amended to read:

627.7288 Comprehensive coverage; deductible not to apply to motor vehicle windshield ~~glass~~; exceptions.—

(1) Except as otherwise provided in this section, the deductible provisions of any policy of motor vehicle insurance, delivered or issued in this state by an authorized insurer, providing comprehensive coverage or combined additional coverage shall not be applicable to damage to the windshield of any motor vehicle covered under such policy.

(2) An insurer may offer to an insured or applicant, upon

the issuance or renewal of a policy providing comprehensive coverage or combined additional coverage, a deductible of $250 for claims of damage to the windshield of any motor vehicle covered under such policy. The insured or applicant may decline the offer of a deductible.

(3) If a deductible for comprehensive coverage or combined additional coverage is applied to a loss that includes damage in addition to windshield damage, no deductible under section this may apply.

Section 4. Section 627.7289, Florida Statutes, is created to read:

627.7289 Assignment of post-loss motor vehicle glass benefits prohibited.—

(1) A policyholder or any other person may not enter into an assignment agreement of post-loss benefits for motor vehicle glass replacement or repair, including, but not limited to, for calibration or recalibration of advanced driver assistance systems as defined in s. 559.903, under a policy of motor vehicle insurance issued or renewed in this state by an authorized insurer on or after July 1, 2023. Any such assignment agreement entered into in violation of this subsection is void and unenforceable.

(2) As used in this section, the term "assignment agreement" means any instrument, regardless of how such agreement is named or styled, by which post-loss benefits,

including, but not limited to, claim payments, under a motor vehicle insurance policy are, in whole or in part, assigned or transferred to, or acquired in any manner by, a person providing services for motor vehicle glass replacement or repair, including, but not limited to, inspecting, protecting, repairing, restoring, or replacing the motor vehicle glass or calibrating or recalibrating advanced driver assistance systems.

Section 5. This act shall take effect July 1, 2023.