

Insurance & Banking Subcommittee

Monday, March 27, 2023
8:00 AM - 11:00 AM
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

Monday, March 27, 2023
8:00 AM – 11:00 AM
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I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

- HB 791 Taxes on Purchases Made Through Private-label Credit Card Programs by Brackett
- HB 1267 Consumer Finance Loans by Fernandez-Barquin
- HB 1353 Commercial Financing Product Brokers and Providers by Bankson
- HB 1545 Health Insurance Identification Cards by Stevenson
- HB 1573 Continuing Care Providers by Persons-Mulicka
- HB 7035 OGSR/Citizens Property Insurance Corporation/Cybersecurity Data and Information by Ethics, Elections & Open Government Subcommittee, Griffitts

Consideration of the following proposed committee substitute(s):

- PCS for HB 1299 -- Payments for Workers' Compensation Expert Witnesses

V. Closing Remarks

VI. Adjournment

HB 791

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 791 Taxes on Purchases Made Through Private-label Credit Card Programs
SPONSOR(S): Brackett
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	19 Y, 2 N	LaTorre	Aldridge
2) Insurance & Banking Subcommittee		Lloyd	Lloyd
3) Commerce Committee			

SUMMARY ANALYSIS

Under Chapter 212, F.S., the state levies a six percent sales and use tax on the retail sale of most tangible personal property, admissions, transient lodgings, and commercial real estate leases. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

Currently, a dealer can take a credit or obtain a refund of up to 64.4 percent for the taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.[1] "Private-label credit cards" are defined as a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchises.[2]

The bill removes the 64.4 percent limit on the maximum amount of tax that can be recovered on the unpaid balance of a worthless or uncollectible private label credit card account.

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have -$3.6 million cash and a -$3.8 million recurring impact on General Revenue, an insignificant negative impact on state trust funds, and a -$.9 million cash and -$1 million recurring impact on local government revenues.

The effective date of this bill is July 1, 2023.

[1] Section 212.17(4), F.S.
[2] *Id.*

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Sales Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the requirements for dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.[3]

Credit or Refund for Bad Debt

A dealer who has remitted sales tax may take a credit or obtain a refund for any tax paid on the unpaid balance due on worthless accounts.[4] The dealer must take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the dealer for federal income tax purposes.[5] If any amount of the worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the Department of Revenue.[6] The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund.

Private Label Credit Cards

In 2014, the legislature amended s. 212.17, F.S., allowing a dealer to take a partial credit or obtain a partial refund of taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.[7] "Private-label credit cards" are defined as a charge card or credit card that carries, refers to, or is branded with the name or logo of a dealer and can be used for purchases from the dealer whose name or logo appears on the card or for purchases from the dealer's affiliates or franchises.[8]

Section 212.17(4), F.S., sets forth the criteria for calculating the amount of the credit or refund that a dealer is eligible to recover. The criteria are similar to the provisions for refunds of bad debt under s. 212.17(3), F.S., but specify that the dealer must take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the lender for federal income tax purposes.[9] If any amount of the worthless account is subsequently paid to the dealer or the lender, the dealer is required to remit the appropriate tax to the Department of Revenue.[10] The dealer that paid the tax, or an entity related by a direct or indirect common ownership of 50 percent or more, is the only person allowed to take the credit or claim the refund.[11] The lender is not eligible to apply for a credit or refund. In addition, the statute specifies that the dealer must use either an apportionment method or a sampling method to determine the amount of the credit or refund.[12] The total amount of the credit or refund is limited to 64.4 percent of the amount of taxes paid on a worthless account.[13]

Effect of Proposed Changes

[3] Section 212.06(1)(a), F.S.
[4] Section 212.17(3), F.S.
[5] *Id.*
[6] *Id.*
[7] Section 212.17(4)(a), F.S.
[8] Section 212.17(4)(h)3., F.S.
[9] Section 212.17(4)(a)(3), F.S.
[10] Section 212.17(4)(b), F.S.
[11] Section 212.17(4)(f), F.S.
[12] Section 212.17(4)(d), F.S.
[13] Section 212.17(4)(g), F.S.

The bill amends s. 212.17(4), F.S., removing the 64.4 percent limit on the maximum amount of tax that can be recovered on the unpaid balance of a worthless or uncollectible private label credit card account. Dealers will instead be eligible for a full refund or credit for tax paid on worthless or uncollectible private label credit card debts, beginning July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.17(4), F.S., removing 64.4 percent limit on the maximum amount of tax that can be recovered by a dealer on the unpaid balance of a worthless or uncollectible private label credit card account.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have -$3.6 million cash and a -$3.8 million recurring impact on General Revenue, and an insignificant negative impact on state trust funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that in FY 2023-24, the bill would have a -$.9 million cash and -$1 million recurring impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Dealers will be eligible to recover the full amount of taxes remitted on the unpaid balance of a worthless or uncollectible private-label credit card account.

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 expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to taxes on purchases made through private-label credit card programs; amending s. 212.17, F.S.; removing the limitation on the maximum amount of tax that can be recovered from certain payments; providing an effective date.

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

Section 1. Paragraph (g) of subsection (4) of section 212.17, Florida Statutes, is amended to read:

212.17 Tax credits or refunds.—

(4) With respect to the payment of taxes on purchases made through a private-label credit card program:

~~(g) The amount of the credit or refund that a dealer is eligible to recover under this subsection is limited to 64.4 percent of the tax paid to the department which is attributable to bad debt.~~

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

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

HB 1267

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1267 Consumer Finance Loans
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 580

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

The Florida Consumer Finance Act, ch. 516, F.S. (Act), prohibits individuals and entities from engaging in the business of making consumer finance loans unless first authorized to do so under the Act. It permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure, such that the maximum annual interest rate allowed on each tier deceases as principal amount increases:

- 30% per annum, computed on the first $3,000 of the principal amount;
- 24% per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and
- 18% per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

The Act provides that, at the time of applying for a license, the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200. The Act prohibits licensees from applying delinquency charges until a borrower has been in default for 10 days.

The bill:

- Provides a definition for the term “branch;”
- Prohibits a person from operating a branch engaged in the business of making consumer finance loans without first obtaining a license;
- Requires an application fee of $625 to be paid to the office for each branch application filed;
- Increases the maximum interest rate for a consumer finance loan to 36% and removes the tiered-interest structure altogether;
- Changes the 10-day rule for a licensee applying delinquency charges to 12 days;
- Requires licensees providing assistance programs during a disaster to report to the OIR details of such assistance programs; and
- Requires licensees to annually submit to the OFR reports of certain information, which OFR may publish in a report after consolidating the data for all licensees.

The bill has a negative, likely insignificant, fiscal impact on state government, no impact on local government, and an indeterminate fiscal impact on the private sector.

The bill provides 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 (Commission) relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[1] OFR's Division of Consumer Finance (Division) licenses and regulates non-depository financial service industries and individuals, and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.[2]

The Florida Consumer Finance Act, ch. 516, F.S. (Act), prohibits individuals and entities from engaging in the business of making consumer finance loans unless first authorized to do so under the Act.[3] A consumer finance loan is defined as "a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum."[4]

Currently, the Act provides that, at the time of applying for a license, the applicant shall pay to the office a nonrefundable biennial license fee of $625. Applications, except for applications to renew or reactivate a license, must also be accompanied by a nonrefundable investigation fee of $200.

The Act permits licensed lenders to make secured or unsecured loans up to $25,000 with a tiered interest rate structure, such that the maximum annual interest rate allowed on each tier deceases as principal amounts increase:

- 30% per annum, computed on the first $3,000 of the principal amount;
- 24% per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and
- 18% per annum on that part of the principal amount exceeding $4,000 and up to $25,000.

Effect of the Bill

General

The bill provides a definition for the term "branch," namely, "any location, other than a licensee's principal place of business, at which a licensee operates or conducts business … or which the licensee owns or controls for the purposes of conducting business…."

The bill clarifies a person must not engage in the business of making consumer finance loans *or operate a branch of such business* unless first authorized to do so under the Act. The bill requires an application fee of $625 be paid to the office for each branch application filed, which is in

[1] S. 20.121(3)(a)2., F.S. *See also* Florida Office of Financial Regulation, Agency Analysis of 2023 House Bill 1267, p. 1 (Mar. 10, 2023).
[2] Florida Office of Financial Regulation, *Division of Consumer Finance*, https://flofr.gov/sitePages/DivisionOfConsumerFinance.htm (last visited Mar. 13, 2023).
[3] S. 516.02(1), F.S.
[4] S. 516.01(2), F.S.

addition to the $625 application fee for the branch's principal place of business. The bill provides that applications for a license for the principal place of business be accompanied by a nonrefundable investigation fee of $200.

Maximum Rate Increase; Delinquency Charges

The bill increases the maximum interest rate a licensee may charge for a loan from 30% to 36% and removes the tiered interest rate structure altogether. The bill also changes the 10-day rule for delinquency charges to 12 days, such that, licensees may not charge delinquency charges until the borrower has been in default for 12 days rather than 10 days.

Disaster Relief and Suspension of Penalties

The bill provides that in the event of a Federal Emergency Management Agency (FEMA) response to a Presidential Disaster Declaration in Florida, if a licensee offers any assistance program to borrowers impacted by the disaster, the licensee must send to the office a written notice within 10 days after the licensee's establishment of the assistance program. The notice must include, at a minimum, the following:

- The licensed locations impacted by the disaster, including the physical addresses, if applicable;
- The telephone number, e-mail address, or other contact information for the licensee;
- A brief description of the assistance programs available to borrowers in the impacted areas; and
- The start date and, if known, the end date of the assistance program.

Similarly, in the event of a FEMA response to a Presidential Disaster Declaration in Florida, the bill requires a licensee operating in a county designated in the disaster declaration to suspend, within 90 days after the date of the initial declaration, all of the following:

- Application of delinquency charges;
- Repossessions of collateral pledged to loans made under the Act; and
- Filing of lawsuits for collection of amounts owed for loans made under the Act.

Annual Reports

The bill requires a licensee, by March 15, 2024, and annually thereafter, to file a report with the office, in a form and manner prescribed by commission rule, using aggregated and anonymized data without reference to any borrower's nonpublic personal information. The bill requires the report to include the following information for the preceding calendar year:

- The number of licenses under the Act held by the licensee as of December 31st of the preceding calendar year;
- The number of loan originations by the licensee from all licenses held under the Act during the preceding calendar year;
- The total number and dollar amount of loans outstanding by the licensee from all licenses held under the Act as of December 31st of the preceding calendar year;
- The total number of unsecured loans as of December 31st of the preceding calendar year;
- The total number of loans separated by principal amount in the following ranges as of December 31st of the preceding calendar year:
    - From $0 to $5,000
    - From $5,001 to $10,000
    - From $10,001 to $15,000
    - From $15,001 to $20,000
    - From $20,001 to $25,000; and

- The total number and dollar amount of loans charged off as of December 31st of the preceding calendar year.

The bill requires a licensee to submit the report to the office with an accompanying affidavit certifying that all the information submitted is designated as trade secret. The bill allows the office to publish a report of the information submitted if all the data published in the report are anonymized aggregate data from all licensees.

B. SECTION DIRECTORY:

Section 1. Amends s. 516.01, F.S., relating to definitions.

Section 2. Amends s. 516.02, F.S., relating to loans; lines of credit; rates of interest; license.

Section 3. Amends s. 516.03, F.S., relating to application for license; fees; etc.

Section 4. Amends s. 516.031, F.S., relating to finance charge; maximum rates.

Section 5. Amends 516.15, F.S., relating to duties of licensee.

Section 6. Creates s. 516.151, F.S., relating to suspension of penalties and remedial measures after disaster declaration.

Section 7. Creates s. 516.331, F.S., relating to annual reports by licensees.

Section 8. Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The OFR estimates its revenues may decrease by as much as $5,000 per fiscal year if it no longer receives the background investigation fee of $200 required for each additional location once replaced by a branch office license requirement.[5] The OFR considers this to be negligible amount which would not impact its operations.[6] Additionally, according to the OFR, the reduction in staff time no longer needed to review a full license application for each additional location when replaced with a branch office license would likely offset any loss in revenues.[7]

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[5] Florida Department of Financial Regulation, Agency Analysis of 2023 HB 1267, p. 5 (Mar. 10, 2023).
[6] *Id.*
[7] *Id.*

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate fiscal impact on the private sector.[8] Applicants will no longer be required to pay a $200 background investigation fee for each additional location with the implementation of a branch office license.[9] This may save applicants up to $5,000 per fiscal year in reduced fees.[10]

D. FISCAL COMMENTS:

The bill proposes to create a branch license in lieu of a full license for each additional location of a licensee.[11] The branch licenses will not include the $200 background investigation fee and thus result in a fee reduction.[12]

Additionally, the bill would require the OFR to make technology changes to its internal licensing system to create a branch office license and annual reporting functionality.[13] The cost of these changes would be negligible and could be covered within the OFR's existing budget.[14]

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:

The bill could require a fee bill, as the bill creates a branch license fee in lieu of a full license fee for each additional location of a licensee.

B. RULE-MAKING AUTHORITY:

The bill creates a new section of statute that will require a licensee to file an annual report with the office "in a form and manner prescribed by commission rule." This section will require rulemaking. Rule 69V-160.111, F.A.C., which adopts Disciplinary Guidelines for Consumer Finance Companies, will also require an update.

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.* at 5.
[12] *Id.*
[13] *Id.* at 6.
[14] *Id.* at 6.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 207-2010: The term "assistance program" is undefined. While the OFR is not tasked with approving the assistance program, it is unclear how the OFR will determine whether a program is actually an assistance program that may be noticed to the OFR pursuant to s. 516.15(5), F.S.[15]

Lines 223-234: It is unclear when the suspension on application of delinquency charges, repossession of collateral, and filing of lawsuits for collections would begin or end. "Within 90 days" does not specify the precise starting date, implying that the lender can start or suspend anytime from the day of the declaration through the following 90 days.

Line 238: It is unclear whether the deadline will be March 15th of each year.

Line 251: This line references "loans outstanding by the licensee." Replacing the word "with" instead of the word "by" may provide clarity.

Line 272-274: The bill requires the licensee to submit a certification that all information reported required to be reported under the bill is trade secret information. However, trade secret protections are a question of law and fact to be decided by a court of competent jurisdiction upon an action by a licensee to defend against publication pursuant to a public record request. It may be appropriate to revise the bill to state that the license shall submit a certification identifying those portions of information submitted that the licensee claims to be trade secret.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[15] *Id.*

A bill to be entitled

An act relating to consumer finance loans; amending s. 516.01, F.S.; defining the term "branch"; amending s. 516.02, F.S.; prohibiting persons from operating branches of consumer finance loans businesses unless authorized and licensed; amending s. 516.03, F.S.; specifying application fees for making loans at principal places of business and at branch offices; making a technical change; amending s. 516.031, F.S.; revising the maximum interest rates that consumer finance loans licensees may charge, contract for, and receive on loans; revising the timeframe after which delinquency charges may be imposed; amending s. 516.15, F.S.; requiring licensees to notify within a specified timeframe the Office of Financial Regulation of certain information under certain circumstances; providing requirements for such notices; creating s. 516.151, F.S.; requiring licensees to suspend penalties and remedial measures within a specified timeframe under certain circumstances; creating s. 516.331, F.S.; providing reporting requirements; authorizing the office to publish a report under certain circumstances; providing an effective date.

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

Section 1. Section 516.01, Florida Statutes, is amended to read:

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

(1) "Branch" means any location, other than a licensee's principal place of business, at which a licensee operates or conducts business under this chapter or which the licensee owns or controls for the purpose of conducting business under this chapter.

(2)~~(3)~~ "Commission" means the Financial Services Commission.

(3)~~(1)~~ "Consumer finance borrower" or "borrower" means a person who has incurred either direct or contingent liability to repay a consumer finance loan.

(4)~~(2)~~ "Consumer finance loan" means a loan of money, credit, goods, or choses in action, including, except as otherwise specifically indicated, provision of a line of credit, in an amount or to a value of $25,000 or less for which the lender charges, contracts for, collects, or receives interest at a rate greater than 18 percent per annum.

(5)~~(8)~~ "Control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a

company if, with respect to a particular company, that person:

(a) Is a director, general partner, or officer exercising executive responsibility or having similar status or functions;

(b) Directly or indirectly may vote 10 percent or more of a class of a voting security or sell or direct the sale of 10 percent or more of a class of voting securities; or

(c) In the case of a partnership, may receive upon dissolution or has contributed 10 percent or more of the capital.

(6) ~~(5)~~ "Interest" means the cost of obtaining a consumer finance loan and includes any profit or advantage of any kind whatsoever that a lender may charge, contract for, collect, receive, or in anywise obtain, including by means of any collateral sale, purchase, or agreement, as a condition for a consumer finance loan. Charges specifically permitted by this chapter, including commissions received for insurance written as permitted by this chapter, shall not be deemed interest.

(7) ~~(6)~~ "License" means a permit issued under this chapter to make and collect loans in accordance with this chapter at a single place of business.

(8) ~~(7)~~ "Licensee" means a person to whom a license is issued.

(9) ~~(4)~~ "Office" means the Office of Financial Regulation of the commission.

Section 2. Subsection (1) of section 516.02, Florida

Statutes, is amended to read:

516.02 Loans; lines of credit; rate of interest; license.—

(1) A person must not engage in the business of making consumer finance loans or operate a branch of such business unless she or he is authorized to do so under this chapter or other statutes and unless the person first obtains a license from the office.

Section 3. Subsection (1) of section 516.03, Florida Statutes, is amended to read:

516.03 Application for license; fees; etc.—

(1) APPLICATION.—Application for a license to make loans under this chapter shall be in the form prescribed by rule of the commission. The commission may require each applicant to provide any information reasonably necessary to determine the applicant's eligibility for licensure. The applicant shall also provide information that the office requires concerning any officer, director, control person, member, partner, or joint venturer of the applicant or any person having the same or substantially similar status or performing substantially similar functions or concerning any individual who is the ultimate equitable owner of a 10-percent or greater interest in the applicant. The office may require information concerning any such applicant or person, including, but not limited to, his or her full name and any other names by which he or she may have been known, age, social security number, residential history,

qualifications, educational and business history, and disciplinary and criminal history. The applicant must provide evidence of liquid assets of at least $25,000 or documents satisfying the requirements of s. 516.05(10). At the time of making such application, the applicant shall pay to the office a nonrefundable biennial license fee of $625 for the principal place of business and for each branch application filed. Applications for a license for the principal place of business, ~~except for applications to renew or reactivate a license,~~ must also be accompanied by a nonrefundable investigation fee of $200. An application is considered received for purposes of s. 120.60 upon receipt of a completed application form as prescribed by commission rule, a nonrefundable application fee of $625, and any other fee prescribed by law. The commission may adopt rules requiring electronic submission of any form, document, or fee required by this chapter ~~act~~ if such rules reasonably accommodate technological or financial hardship. The commission may prescribe by rule requirements and procedures for obtaining an exemption due to a technological or financial hardship.

Section 4. Subsections (1) and (3) of section 516.031, Florida Statutes, are amended to read:

516.031 Finance charge; maximum rates.—

(1) INTEREST RATES.—A licensee may lend any sum of money up to $25,000. A licensee may not take a security interest

secured by land on any loan less than $1,000. The licensee may charge, contract for, and receive thereon interest charges as provided and authorized by this section. The maximum interest rate shall be 36 ~~30~~ percent per annum, ~~computed~~ on ~~the first $3,000 of~~ the principal amount~~; 24 percent per annum on that part of the principal amount exceeding $3,000 and up to $4,000; and 18 percent per annum on that part of the principal amount exceeding $4,000 and~~ up to $25,000. The original principal amount as used in this section is the same as the amount financed as defined by the federal Truth in Lending Act and Regulation Z of the Board of Governors of the Federal Reserve System. In determining compliance with the statutory maximum interest and finance charges set forth herein, the computations used shall be simple interest and not add-on interest or any other computations. ~~If two or more interest rates are applied to the principal amount of a loan, the licensee may charge, contract for, and receive interest at that single annual percentage rate which, if applied according to the actuarial method to each of the scheduled periodic balances of principal, would produce at maturity the same total amount of interest as would result from the application of the two or more rates otherwise permitted, based upon the assumption that all payments are made as agreed.~~

(3) OTHER CHARGES.—

(a) In addition to the interest, delinquency, and

insurance charges provided in this section, further or other charges or amount for any examination, service, commission, or other thing or otherwise may not be directly or indirectly charged, contracted for, or received as a condition to the grant of a loan, except:

1. An amount of up to $25 to reimburse a portion of the costs for investigating the character and credit of the person applying for the loan;

2. An annual fee of $25 on the anniversary date of each line-of-credit account;

3. Charges paid for the brokerage fee on a loan or line of credit of more than $10,000, title insurance, and the appraisal of real property offered as security if paid to a third party and supported by an actual expenditure;

4. Intangible personal property tax on the loan note or obligation if secured by a lien on real property;

5. The documentary excise tax and lawful fees, if any, actually and necessarily paid out by the licensee to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which may be collected when the loan is made or at any time thereafter;

6. The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the licensee in connection with the loan if the premium does not exceed the fees which would otherwise be payable, which may be

collected when the loan is made or at any time thereafter;

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

8. Actual and commercially reasonable expenses for repossession, storing, repairing and placing in condition for sale, and selling of any property pledged as security; or

9. A delinquency charge for each payment in default for at least 12 ~~10~~ days if the charge is agreed upon, in writing, between the parties before imposing the charge. Delinquency charges may be imposed as follows:

a. For payments due monthly, the delinquency charge for a payment in default may not exceed $15.

b. For payments due semimonthly, the delinquency charge for a payment in default may not exceed $7.50.

c. For payments due every 2 weeks, the delinquency charge for a payment in default may not exceed $7.50 if two payments are due within the same calendar month, and may not exceed $5 if three payments are due within the same calendar month.

Any charges, including interest, in excess of the combined total of all charges authorized and permitted by this chapter constitute a violation of chapter 687 governing interest and usury, and the penalties of that chapter apply. In the event of a bona fide error, the licensee shall refund or credit the borrower with the amount of the overcharge immediately but

within 20 days after the discovery of such error.

Section 5. Subsection (5) is added to section 516.15, Florida Statutes, to read:

516.15 Duties of licensee.—Every licensee shall:

(5) In the event of a Federal Emergency Management Agency response to a Presidential Disaster Declaration in the state, if the licensee offers any assistance program to borrowers impacted by the disaster, send to the office a written notice in a physical or electronic format within 10 days after the licensee's establishment of the assistance program. The notice must include, at a minimum, the following information, subject to change as additional declarations are made or revoked:

(a) The licensed locations impacted by the disaster, including the physical addresses, if applicable.

(b) The telephone number, e-mail address, or other contact information for the licensee.

(c) A brief description of the assistance programs available to borrowers in the impacted areas.

(d) The start date and, if known, the end date of the assistance program.

Section 6. Section 516.151, Florida Statutes, is created to read:

516.151 Suspension of penalties and remedial measures after disaster declaration.—In the event of a Federal Emergency Management Agency response to a Presidential Disaster

Declaration in the state, a licensee operating in a county designated in the disaster declaration shall suspend within 90 days after the date of the initial declaration the following:

(1) The application of delinquency charges as provided in s. 516.031(3)(a)9.

(2) Repossessions of collateral pledged to loans made under this chapter.

(3) Filing of lawsuits for collection of amounts owed for loans made under this chapter.

Section 7. Section 516.331, Florida Statutes, is created to read:

516.331 Annual reports by licensees.—

(1) By March 15, 2024, and annually thereafter, a licensee shall file a report with the office, in a form and manner prescribed by commission rule, using aggregated and anonymized data without reference to any borrower's nonpublic personal information.

(2) The report must include the following information for the preceding calendar year:

(a) The number of licenses under this chapter held by the licensee as of the last day of the preceding calendar year.

(b) The number of loan originations by the licensee from all licenses held under this chapter during the preceding calendar year.

(c) The total number and dollar amount of loans

outstanding by the licensee from all licenses held under this chapter as of the last day of the preceding calendar year.

(d) The total number of loans whereby the licensee held a security interest in collateral as of the last day of the preceding calendar year.

(e) The total number of unsecured loans as of the last day of the preceding calendar year.

(f) The total number of loans separated by principal amount in the following ranges as of the last day of the preceding calendar year:

1. From $0 to $5,000.

2. From $5,001 to $10,000.

3. From $10,001 to $15,000.

4. From $15,001 to $20,000.

5. From $20,001 to $25,000.

(g) The total number and dollar amount of loans charged off as of the last day of the preceding calendar year.

(3) The licensee shall submit the report to the office with an accompanying affidavit certifying pursuant to s. 655.0591 that all information submitted is designated as trade secret.

(4) The office may publish a report of the information submitted pursuant to this section if all the data published in the report are anonymized aggregate data from all licensees.

Section 8. This act shall take effect July 1, 2023.

INSURANCE & BANKING SUBCOMMITTEE

HB 1267 by Rep. Fernandez-Barquin
Relating to Consumer Finance Loans

AMENDMENT SUMMARY
March 25, 2023

Amendment 1 by Rep. Fernandez-Barquin (Line 267): The amendment:

- Adds to the proposed licensee reporting requirements of the bill to create reporting requirements regarding delinquent loans.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Fernandez-Barquin offered the following:

Amendment

Between lines 267 and 268, insert:

(h) The total number and dollar amount of loans with delinquency status listed as:

1. Current or less than 30 days past due.

2. From 30 to 59 days past due.

3. From 60 to 89 days past due.

4. At least 90 days past due.

HB 1353

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1353 Commercial Financing Product Brokers and Providers
SPONSOR(S): Bankson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1624

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

SUMMARY ANALYSIS

A commercial financing product, also known as revenue-based financing, is a loan that a business agrees to pay back over time by pledging a portion of its future revenue to the lender until a set amount is paid back. Unlike bank loans and private investors, commercial financing products can help businesses access capital without the business owner having to incur a personal loan guarantee or lose equity. Commercial financing products are provided by private companies, often via brokers.

The Florida Office of Financial Regulation (OFR) is responsible for all activities relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry. Florida's laws relating to the regulation of trade, commerce, and investments are codified at ch. 559, F.S. Currently, there are no Florida laws regulating commercial financing product brokers and providers.

Generally, the bill:

- Creates Part XIII of ch. 599, F.S., entitled "Florida Commercial Financing Disclosure Law;"
- Provides definitions for, and scope of, Part XIII, as more particularly described below;
- Creates disclosure requirements for commercial financing product providers;
- Prohibits brokers from engaging in certain activities; and
- Grants the Attorney General the exclusive authority to enforce Part XIII.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Business owners who need to meet unexpected demand, stock up on product, or quickly repair or replace failed equipment have options for financing such costs. Options include obtaining a small business loan from a bank or working with venture capitalists or angel investors. Oftentimes, however, banks require a personal guarantee for such loans and venture capitalists and angel investors seek equity in the business in exchange for providing capital.[1]

A commercial financing product, also known as revenue-based financing (RBF), is a loan that a business agrees to pay back over time by pledging a portion of its future revenue to the lender until a set amount is paid back.[2] Unlike bank loans and private investors, commercial financing products can help businesses access capital without the business owner having to incur a personal loan guarantee or lose equity.[3]

Commercial financing products are provided by private companies, often via brokers. In a commercial financing product transaction (CFPT), the business essentially "sells" its future revenue to the RBF-providing company by entering into a contract. The company providing the RBF assumes the liability of potentially not being paid back the full amount of the RBF, making it an unsecured debt obligation. This is unlike obtaining a bank loan or working with investors, where the debt obligation is secured by property and partial ownership of the enterprise, respectively.

The Florida Office of Financial Regulation (OFR) is responsible for all activities relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.[4] Florida's laws relating to the regulation of trade, commerce, and investments are codified at ch. 559, F.S. Currently, there are no Florida laws regulating commercial financing product brokers and providers.

Effect of the Bill

Generally, the bill:

- Creates Part XIII of ch. 599, F.S., entitled "Florida Commercial Financing Disclosure Law;"
- Provides definitions for, and scope of, Part XIII, as more particularly described below;
- Creates disclosure requirements for commercial financing product providers;
- Prohibits brokers from engaging in certain activities; and
- Grants the Attorney General exclusive enforcement authority.

Definitions

As used in Part XIII, the bill creates the following definitions:

- "Accounts receivable purchase transaction" (ARPT) means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business' accounts, as defined in s.

[1] Business News Daily, *Using Revenue-Based Financing to Grow Your Business*, https://www.businessnewsdaily.com/6659-revenue-based-financing-tips.html (last visited Mar. 22, 2023).
[2] *Id.*
[3] *Id.*
[4] S. 20.121(3)(a)2., F.S.

679.1021, F.S.,[5] or payment intangibles, as defined in s. 679.1021, F.S.,[6] at a discount to the expected value of the account or payment intangibles. For purposes of Part XIII, the provider's characterization of an ARPT as a purchase is conclusive that the ARPT is not a loan or a transaction for the use, forbearance, or detention of money.

- "Advance fee" means any consideration that is assessed or collected by a broker before the closing of CFPT.
- "Broker" means:
  - A person who, for compensation, arranges a CFPT or an offer between a third party and a business in the state which would be binding upon that third party.
  - The term excludes a provider and any individual or entity whose compensation is not dependent upon the terms of the specific CFPT obtained or offered.
- "Business" means an individual or group of individuals, sole proprietorship, corporation, limited liability company, trust, estate, cooperative, association, or limited or general partnership engaged in a business activity.
- "Commercial financing product" means:
  - A commercial loan, ARPT, commercial open-ended credit plan, or each to the extent the transaction is a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not for personal, family, or household purposes (i.e., a "business purpose transaction" (BPT)).
  - To determine whether a transaction is a BPT, the provider may rely on any written statement of intended purpose signed by the business.
- "Commercial loan" means a loan to a business, whether secured or unsecured.
- "Commercial open-end credit plan" (COECP) means commercial financing extended by any provider under a plan in which:
  - The provider reasonably contemplates repeat transactions.
  - The amount of financing that may be extended to the business during the term of the plan, up to any limit set by the provider, is generally made available to the extent that any outstanding balance is repaid.
- "Depository institution" means:
  - A bank, trust company, or industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the U.S., Florida, or any other state, district, territory, or commonwealth of the U.S. which is authorized to transact business in Florida;
  - A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in Florida; or
  - A savings and loan association, savings bank, or credit union organized under the laws of Florida or any other state which is authorized to transact business in Florida.
- "Provider" means:
  - A person who consummates more than five CFPTs in any calendar year.
  - The term also includes a person who enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person.

[5] "Account," means a right to payment of a monetary obligation, whether or not earned by performance, for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of; for services rendered or to be rendered; for a policy of insurance issued or to be issued; for a secondary obligation incurred or to be incurred; for energy provided or to be provided; for the use or hire of a vessel under a charter or other contract; arising out of the use of a credit or charge card or information contained on or for use with the card; or as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include rights to payment evidenced by chattel paper or an instrument; commercial tort claims; deposit accounts; investment property; letter-of-credit rights or letters of credit; or rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card. S. 679.1021(1)(b), F.S.

[6] "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. S. 679.1021(1)(iii), F.S.

- The fact a provider extends a specific offer for a commercial financing product on behalf of a depository institution may not be construed to mean the provider engaged in lending or financing or originated that loan or financing.

Scope

Part XIII applies to any CFPT consummated on or after January 1, 2024, but **does not** apply to a:

- Provider that:
  - Is a federally insured depository institution or an affiliate or holding company of such institution;
  - Is a subsidiary or service corporation that is owned and controlled by a federally insured depository institution;
  - Is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001, *et seq.*;
  - Is licensed as a money transmitter in accordance with a license, certificate, or charter issued by Florida or any other state, district, territory, or commonwealth of the U.S.; or
  - Consummates no more than five CFPTs in Florida in a 12-month period.
- CFPT:
  - That is secured by real property; a lease; or a purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used; or
  - In which the recipient is a motor vehicle dealer or an affiliate thereof, or a vehicle rental company or an affiliate thereof, pursuant to a commercial loan or COECP of at least $50,000 or a commercial financing product offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses, or distributes, or whose parent company or any of its subsidiaries manufactures, licenses, or distributes.
  - Of more than $500,000.

Disclosures by Providers

The bill requires a provider that consummates a CFPT to disclose the terms of the CFPT. The bill mandates such disclosures be provided at the time of or before consummation of the CFPT, requires only one disclosure for each CFPT, and does not require a disclosure for any modification, forbearance, or change to a CFPT.

A provider must disclose the following information in connection with each CFPT:

(a) The total amount of funds ***provided*** to the business under the terms of the agreement;
(b) The total amount of funds ***disbursed*** to the business if less than the amount specified in paragraph (a) as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business;
(c) The total amount ***to be paid*** to the provider under the terms of the agreement;
(d) The total dollar cost under the terms of the agreement, calculated by finding the difference between the amount specified in paragraph (a) and the amount specified in paragraph (c).
(e) The ***manner, frequency, and amount of each payment***. If the payments may vary, the provider must instead disclose the manner, frequency, and the estimated amount of the initial payment and a description of the methodology for calculating any variable payment and the circumstances when payments may vary.
(f) A ***statement of whether there are any costs or discounts associated with prepayment***, including a reference to the paragraph in the agreement which creates the contractual rights of the parties related to prepayment.

Prohibited Acts for Brokers

The bill prohibits brokers from:

- Assessing, collecting, or soliciting an advance fee from a business to provide services as a broker.

    - Notably, however, this prohibition does not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual services necessary to apply for a commercial financing product (i.e., a credit check or appraisal of security) if such payment is made by check or money order payable to a party independent of the broker;
- Making or using any false or misleading representation or omitting any material fact in the offer or sale of the services of a broker, or engage in any act that operates or would operate as fraud or deception in connection with the offer or sale of the services of a broker, notwithstanding the lack of reliance by the business;
- Making or using any false or deceptive representation in its business dealings; and
- Offering the services of a broker by making, publishing, disseminating, circulating, or placing before the public within Florida an advertisement in which the offer or advertisement does not disclose the name, business address, and telephone number of the broker.
    - For purposes of the above, the broker must disclose the actual address and telephone number of the business of the broker in addition to the address and telephone number of any forwarding service the broker may use.

Enforcement of Part XIII

The bill provides exclusive authority to the Attorney General to enforce Part XIII. Specifically, the Attorney General may:

- Receive and act on complaints;
- Take action designed to obtain voluntary compliance with Part XIII; and
- Commence administrative or judicial proceedings to enforce compliance with Part XIII.

The bill sets forth the following with regard to violations of Part XIII:

- A violation of any provision of Part XIIII is punishable by a ***fine of $500 per incident***, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of Part XIII;
- A subsequent violation of any provision of Part XIII after receipt of a written notice of a prior violation from the Attorney General is punishable by a ***fine of $1,000 per incident***, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of Part XIII;

The bill provides a violation of any provision of Part XIII does not affect the enforceability or validity of the underlying CFPT. The bill also provides that nothing in Part XIII creates or is intended to create a private right of action against any person or entity based upon compliance or noncompliance with the provisions of Part XIII.

B. SECTION DIRECTORY:

Section 1: Creates Part XIII of ch. 559, F.S., relating to Florida Commercial Financing Disclosure Law.

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 impact on the Department of Legal Affairs to the extent that the Attorney General pursues enforcement of the bill. See Fiscal Comments, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on businesses to the extent that they have access to new capital to assist or expand their endeavors.

Businesses who qualify as a provider under Part XIII would need to make the disclosures relating to CFPT required by the bill.

D. FISCAL COMMENTS:

The bill could increase the workload of the Attorney General's office. It is currently unknown whether additional resources would be needed to address the additional workload impact, but it is likely current resources would be sufficient to handle the initial impact. Any potential impact for staffing could be addressed later through the traditional Legislative Budget Request process.[7]

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:

Not applicable. The bill does not provide rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides the scope of Part XIII does not apply to CFPTs of more than $500,000. It might be appropriate to amend the bill to remove this limitation of scope, as CFPTs of more than $500,000 would not be subject to any other regulatory authority.

Additionally, because OFR is traditionally responsible for all activities relating to the regulation of banks, credit unions, financial institutions, finance companies, and the securities industry in Florida, it might be

[7] Email from Adam Keith, Budget Chief, Justice Appropriations Subcommittee, RE: Rep Bankson – HB 1353 Commercial Financing Product Brokers and Providers (Mar. 17, 2023).

appropriate to amend the bill to expressly grant OFR regulatory authority over commercial financing product providers and brokers and related CFPTs.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to commercial financing product brokers and providers; creating part XIII of ch. 559, F.S., entitled "Florida Commercial Financing Disclosure Law"; creating s. 559.961, F.S.; providing a short title; creating s. 559.9611, F.S.; providing definitions; creating s. 559.9612, F.S.; providing scope; creating s. 559.9613, F.S.; providing requirements for disclosure of certain information by commercial financing product providers under certain circumstances; creating s. 559.9614, F.S.; providing prohibited acts by commercial financing product providers; creating s. 559.9615, F.S.; providing exclusive authority of the Attorney General to enforce specified provisions; providing fines; providing construction; providing an effective date.

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

Section 1. Part XIII of chapter 559, Florida Statutes, consisting of sections 559.961, 559.9611, 559.9612, 559.9613, 559.9614, and 559.9615, is created to read:

PART XIII

FLORIDA COMMERCIAL FINANCING DISCLOSURE LAW

559.961 Short title.—This part may be cited as the

"Florida Commercial Financing Disclosure Law."

559.9611 Definitions.—As used in this part, the term:

(1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business' accounts, as defined in s. 679.1021, or payment intangibles, as defined in s. 679.1021, at a discount to the expected value of the account or payment intangibles. For purposes of this part, the provider's characterization of an accounts receivable purchase transaction as a purchase is conclusive that the accounts receivable purchase transaction is not a loan or a transaction for the use, forbearance, or detention of money.

(2) "Advance fee" means any consideration that is assessed or collected by a broker before the closing of a commercial financing product transaction.

(3) "Broker" means a person who, for compensation or the expectation of compensation, arranges a commercial financing product transaction or an offer between a third party and a business in the state which would, if executed, be binding upon that third party. The term excludes a provider and any individual or entity whose compensation is not based or dependent upon on the terms of the specific commercial financing product transaction obtained or offered.

(4) "Business" means an individual or group of individuals, a sole proprietorship, a corporation, a limited

liability company, a trust, an estate, cooperative, an association, or a limited or general partnership engaged in a business activity.

(5) "Commercial financing product" means a commercial loan, accounts receivable purchase transaction, commercial open-end credit plan, or each to the extent the transaction is a business purpose transaction. As used in this subsection, the term "business purpose transaction" means a transaction the proceeds of which are provided to a business or are intended to be used to carry on a business and not for personal, family, or household purposes. For purposes of determining whether a transaction is a business purpose transaction, the provider may rely on any written statement of intended purpose signed by the business. The statement may be a separate statement or may be contained in an application, agreement, or other document signed by the business or the business owner.

(6) "Commercial loan" means a loan to a business, whether secured or unsecured.

(7) "Commercial open-end credit plan" means commercial financing extended by any provider under a plan in which:

(a) The provider reasonably contemplates repeat transactions.

(b) The amount of financing that may be extended to the business during the term of the plan, up to any limit set by the provider, is generally made available to the extent that any

outstanding balance is repaid.

(8) "Depository institution" means:

(a) A bank, a trust company, or an industrial loan company doing business under the authority of, or in accordance with, a license, certificate, or charter issued by the United States, this state, or any other state, district, territory, or commonwealth of the United States which is authorized to transact business in this state;

(b) A federally chartered savings and loan association, federal savings bank, or federal credit union that is authorized to transact business in the state; or

(c) A savings and loan association, savings bank, or credit union organized under the laws of this or any other state which is authorized to transact business in the state.

(9) "Provider" means a person who consummates more than five commercial financing product transactions to a business located in the state in any calendar year. The term also includes a person who enters into a written agreement with a depository institution to arrange for the extension of a commercial financing product by the depository institution to a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing product on behalf of a depository institution may not be construed to mean that the provider engaged in lending or financing or originated that loan or

financing.

559.9612 Scope of this part.—This part applies to any commercial financing product transaction consummated on or after January 1, 2024. This part does not apply to:

(1) A provider that is:

(a) A federally insured depository institution or an affiliate or holding company of such institution; or

(b) A subsidiary or service corporation that is owned and controlled by a federally insured depository institution.

(2) A provider that is a lender regulated under the Farm Credit Act of 1971, 12 U.S.C. ss. 2001 et seq.

(3) A commercial financing product transaction that is:

(a) Secured by real property;

(b) A lease; or

(c) A purchase money obligation that is incurred as all or part of the price of the collateral or for value given to enable the business to acquire rights in or the use of the collateral if the value is in fact so used.

(4) A commercial financing product transaction in which the recipient is a motor vehicle dealer or an affiliate of such a dealer, or a vehicle rental company or an affiliate of such a company, pursuant to a commercial loan or commercial open-end credit plan of at least $50,000 or a commercial financing product offered by a person in connection with the sale or lease of products or services that such person manufactures, licenses,

or distributes, or whose parent company or any of its directly or indirectly owned and controlled subsidiaries manufacturers, licenses or distributes.

(5) A provider that is licensed as a money transmitter in accordance with a license, certificate, or charter issued by this state or any other state, district, territory, or commonwealth of the United States.

(6) A provider that consummates no more than five commercial financing product transactions in the state in a 12-month period.

(7) A commercial financing product transaction of more than $500,000.

559.9613 Disclosures.—

(1) A provider that consummates a commercial financing product transaction shall disclose the terms of the commercial financing product transaction as required by this part. The disclosures must be provided at or before consummation of the transaction. Only one disclosure must be provided for each commercial financing product transaction, and a disclosure is not required as result of a modification, forbearance, or change to a consummated commercial financing product transaction.

(2) A provider must disclose the following information in connection with each commercial financing product transaction:

(a) The total amount of funds provided to the business under the terms of the agreement.

(b) The total amount of funds disbursed to the business if less than the amount specified in paragraph (a) as a result of any fees deducted or withheld at disbursement, any amount paid to the provider to satisfy a prior balance, and any amount paid to a third party on behalf of the business.

(c) The total amount to be paid to the provider under the terms of the agreement.

(d) The total dollar cost under the terms of the agreement, calculated by finding the difference between the amount specified in paragraph (a) and the amount specified in paragraph (c).

(e) The manner, frequency, and amount of each payment. If the payments may vary, the provider shall instead disclose the manner, frequency, and the estimated amount of the initial payment and a description of the methodology for calculating any variable payment and the circumstances when payments may vary.

(f) A statement of whether there are any costs or discounts associated with prepayment, including a reference to the paragraph in the agreement which creates the contractual rights of the parties related to prepayment.

559.9614 Prohibited acts.—A broker may not:

(1) Assess, collect, or solicit an advance fee from a business to provide services as a broker. However, this subsection does not preclude a broker from soliciting a business to pay for, or preclude a business from paying for, actual

services necessary to apply for a commercial financing product, including, but not limited to, a credit check or an appraisal of security, if such payment is made by check or money order payable to a party independent of the broker;

(2) Make or use any false or misleading representation or omit any material fact in the offer or sale of the services of a broker or engage, directly or indirectly, in any act that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a broker, notwithstanding the absence of reliance by the business;

(3) Make or use any false or deceptive representation in its business dealings; or

(4) Offer the services of a broker by making, publishing, disseminating, circulating, or placing before the public within the state an advertisement in a newspaper or other publication or an advertisement in the form of a book, notice, handbill, poster, sign, billboard, bill, circular, pamphlet, letter, photograph, or motion picture or an advertisement circulated by radio, loudspeaker, telephone, television, telegraph, or in any other way, in which the offer or advertisement does not disclose the name, business address, and telephone number of the broker. For purposes of this subsection, the broker shall disclose the actual address and telephone number of the business of the broker in addition to the address and telephone number of any forwarding service that the broker may use.

559.9615 Enforcement.—

(1) The Attorney General has exclusive authority to enforce this part. The Attorney General may:

(a) Receive and act on complaints.

(b) Take action designed to obtain voluntary compliance with this part.

(c) Commence administrative or judicial proceedings to enforce compliance with this part.

(2)(a) A violation of any provision of this part is punishable by a fine of $500 per incident, not to exceed $20,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(b) A violation of any provision of this part after receipt of a written notice of a prior violation from the Attorney General is punishable by a fine of $1,000 per incident, not to exceed $50,000 for all aggregated violations arising from the use of the transaction documentation or materials found to be in violation of this part.

(c) A violation of any provision of this part does not affect the enforceability or validity of the underlying commercial financing product transaction.

(3) Nothing in this part creates or is intended to create a private right of action against any person or entity based upon compliance or noncompliance with the provisions of this

part.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1545 Health Insurance Identification Cards
SPONSOR(S): Stevenson
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The Department of Financial Services (DFS) has broad duties, including insurance consumer assistance and protection. DFS conducts insurance-related consumer outreach through its Division of Consumer Services (DCS). DCS provides education, information, and assistance to consumers for all products or services regulated by DFS or the Financial Services Commission. The Florida Insurance Code (Code) regulates the insurance industry in Florida and is primarily administered by the Florida Office of Insurance Regulation (OIR).

The Code requires certain content for prescription identification cards, health benefit plan identification cards, and health management organization identification cards (collectively referred to as health-related identification cards). This requirement includes required information such as the insured's name, identification number, and policy/group number.

The bill requires that health plans regulated by the state of Florida print the letters "FL" on the back left of the health-related identification card accompanied with a quick response (QR) code that links to DCS consumer complaint website. For health plans regulated by the federal government, the letters "FED" must be printed on the back of the health-related identification card accompanied with a QR code that links to consumer complaint website of the Centers for Medicare and Medicaid Services.

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

The bill has an effective date of January 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Department of Financial Services and Division of Consumer Finance

The Department of Financial Services (DFS) has a number of regulatory responsibilities over the Florida insurance market. DFS conducts insurance-related consumer outreach through its Division of Consumer Services (DCS). DCS provides education, information, and assistance to consumers for all products or services regulated by DFS or the Financial Services Commission (via the Office of Insurance Regulation).[1] The divisions' duties specifically include:

- Receiving consumer questions and complaints;
- Educating the public about insurance-related topics;
- Providing mediation to resolve disputes between a consumer and insurance company; and
- Serving as a conduit for referrals for further legal action by DFS.[2]

Office of Insurance Regulation

The Office of Insurance Regulation (OIR) is the primary regulator over the transaction of insurance in the state, in accordance with the Florida Insurance Code (Code). The Life and Health Unit of OIR provides financial, conduct, and product oversight of health insurers, health maintenance organizations, and other regulated entities providing health care coverage pursuant to various chapters of the Code. The following laws constitute the Code:[3]

Chapter 624, F.S. – Insurance Code: Administration and General Provisions
Chapter 626, F.S. – Insurance Field Representatives and Operations
Chapter 627, F.S. – Insurance Rates and Contracts
Chapter 631, F.S. – Insurer Insolvency; Guaranty of Payment
Chapter 632, F.S. – Fraternal Benefit Societies
Chapter 636, F.S. – Prepaid Limited Health Service Organizations and Discount Medical Plan Organizations
Chapter 641, F.S. – Health Care Service Programs
Chapter 651, F.S. – Continuing Care Contracts

OIR regulatory activities include licensing, rate and form approval, market conduct review, issuing certificates of authority, ensuring solvency, and administrative supervision.

Health Insurance

Health insurance is the insurance of human beings against bodily injury or disablement by accident or sickness, including the expenses associated with such injury, disablement, or sickness.[4] Individuals purchase health insurance coverage with the purpose of managing anticipated expenses related to health or protecting themselves from unexpected medical bills or large health care costs. Managed care systems combine the delivery and financing of health care services by limiting the choice of doctors and hospitals. In return for this limited choice, however, medical care is less costly due to the

[1] DFS, *Department of Financial Services Long Range Program Plan: Fiscal Years 2020-21 through 2024-25*, 15 (Sept. 30, 2019), *available at* http://floridafiscalportal.state.fl.us/Document.aspx?ID=19566&DocType=PDF (last visited March 23, 2023).
[2] S. 624.307(10)(a), F.S.
[3] S. 624.01, F.S.
[4] S. 624.603, F.S.

managed care network's ability to control health care services.[5] Some common forms of managed care are preferred provider organizations[6] and health maintenance organizations[7] (HMO).

There are three types of health-related identification cards that require specific information to be printed on the card under Florida law. This includes prescription benefits identification cards,[8] health benefit plans identification cards,[9] and health management organization identification cards.[10] Some of the statutorily required information on these cards include the insured's name, identification number, and group number.[11] This information is provided to "improve patient care by minimizing confusion, eliminating unnecessary work, decreasing patient wait time, and improving business efficiencies."[12]

ERISA

The federal Employee Retirement and Income Security Act (ERISA) was passed in 1974 and prevents states from directly regulating employee welfare benefits, including employer-sponsored health plans.[13] Even though ERISA preempts state regulation over employer-sponsored health plans, states retain regulatory power over insurance carriers and health maintenance organizations (HMOs).[14] However, employers that choose to "self-fund" are not subject to traditional state insurance laws. ERISA has directly contributed to the current legal environment where a sizeable portion of health insurance plans are regulated by the federal government.[15]

Effect of the Bill

The bill specifies additional information that must be included on prescription identification cards, health benefit plan identification cards, and health maintenance organization identification cards. If the insurance plan is subject to state regulation the identification card must include the letters "FL" on the back left of the card and a quick response (QR) code that links to the consumer complaint website of DCS. If the insurance plan is subject to Federal regulation the identification card must include the letters "FED" on the back left of the card and a QR code that links to the consumer complaint website of the Centers for Medicare and Medicaid Services. Finally, the bill allows for DFS to adopt rules to implement necessary changes to the consumer complaint website and hotline of DCS.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.4302, F.S., relating to identification cards for processing prescription drug claims.

Section 2: Amends s. 627.642, F.S., relating to outline of coverage.

Section 3: Amends s. 627.657, F.S., relating to provisions of group health insurance policies.

Section 4: Amends s. 641.31, F.S., relating to health maintenance contracts.

Section 5: Provides an effective date of January 1, 2024.

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[5] MedlinePlus, *Managed Care*, https://medlineplus.gov/managedcare.html (last visited March 23, 2023).
[6] *See* s. 627.6471, F.S.
[7] *See* part I of chapter 641, F.S.
[8] *See* s. 627.4302., F.S.
[9] Health benefit plan is defined in s. 627.6699(3)(k). *See* ss. 627.642 and 627.657, F.S.
[10] *See* s. 641.31, F.S.
[11] *See* s. 627.4302(2), F.S.
[12] S. 627.4302(1), F.S.
[13] Kaiser Family Foundation, *ERISA Plans*, https://www.kff.org/wp-content/uploads/sites/3/2015/06/c11.pdf (last visited March 23, 2023).
[14] *Id.*
[15] U.S. Department of Labor, *Fact Sheet: What Is ERISA,* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/what-is-erisa (last visited March 23, 2023). As of 2013 ERISA covered 141 million individuals. *Id.*

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.[16]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private businesses will be required to add content to health-related identification cards that are not currently required. This will have an indeterminant negative impact as businesses will need to comply with the bill's requirements.

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:

This bill provides DFS with the authority necessary to implement the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear what power, if any, the state has to regulate the identification cards of federally regulated health plans. Additionally, the Centers for Medicare and Medicaid Services is the regulator for Medicare plans but does not regulate self-funded plans. Self-funded plans are regulated by the Department of Labor and would be the appropriate resource for individuals with a self-funded plan to refer to.

[16] While health insurance cards issued under the authority of the Division of State Group Insurance, for current and former state employees, and the Agency for Health Care Administration, for Medicaid and other state health program beneficiaries, will need to comply with the bill, this will be done as new and replacement cards are issued. This should mitigate any fiscal impact on the state.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to health insurance identification cards; amending s. 627.4302, F.S.; requiring certain prescription drug benefits-identification cards to include specified information in a certain manner; providing applicability; authorizing the Department of Financial Services to adopt certain rules; amending ss. 627.642, 627.657, and 641.31, F.S.; requiring certain health insurance and health maintenance organization identification cards to include specified information in a certain manner; providing applicability; authorizing the department to adopt certain rules; providing an effective date.

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

Section 1. Paragraph (h) of subsection (2) of section 627.4302, Florida Statutes, is redesignated as paragraph (i), and a new paragraph (h) is added to that subsection, to read:

627.4302 Identification cards for processing prescription drug claims.—

(2) Any health insurer or health maintenance organization and all state and local government entities entering into an agreement to provide coverage for prescription drugs on an outpatient basis shall provide a benefits-identification card

containing the following information:

(h) The type of plan, only if the plan is filed in this state; an indication that the plan is self-funded; or the name of the network.

1. If the plan is subject to state regulation, the identification card must include the letters "FL" on the back left-hand corner of the card, under which a quick response (QR) code must be displayed directing the insured or the subscriber to the consumer complaint website of the Division of Consumer Services of the department.

2. If the plan is exclusively federally regulated, the identification card must include the letters "FED" on the back left-hand corner of the card, under which a QR code must be displayed directing the insured or the subscriber to the consumer complaint website of the Centers for Medicare and Medicaid Services.

3. This paragraph applies to benefits-identification cards issued or reissued on or after January 1, 2024.

4. The department may adopt rules to implement necessary changes to the consumer complaint website and hotline of the Division of Consumer Services to best assist insureds or subscribers who are at an impasse with their insurers or health maintenance organizations, respectively.

The information required in paragraphs (a), (b), (g), and (i)

~~(h)~~ must be provided on the card, unless instruction is provided on the card for ready access to such information by electronic means.

Section 2. Paragraph (c) of subsection (3) of section 627.642, Florida Statutes, is amended to read:

627.642 Outline of coverage.—

(3) In addition to the outline of coverage, a policy as specified in s. 627.6699(3)(k) must be accompanied by an identification card that contains, at a minimum:

(c) The type of plan, only if the plan is filed in this ~~the~~ state~~;~~, an indication that the plan is self-funded~~;~~, or the name of the network.

1. If the plan is subject to state regulation, the identification card must include the letters "FL" on the back left-hand corner of the card, under which a quick response (QR) code must be displayed directing the insured to the consumer complaint website of the Division of Consumer Services of the department.

2. If the plan is exclusively federally regulated, the identification card must include the letters "FED" on the back left-hand corner of the card, under which a QR code must be displayed directing the insured to the consumer complaint website of the Centers for Medicare and Medicaid Services.

3. Subparagraphs 1. and 2. apply to identification cards issued or reissued on or after January 1, 2024.

4. The department may adopt rules to implement necessary changes to the consumer complaint website and hotline of the Division of Consumer Services to best assist insureds who are at an impasse with their insurers.

The identification card must present the information in a readily identifiable manner or, alternatively, the information may be embedded on the card and available through magnetic stripe or smart card. The information may also be provided through other electronic technology.

Section 3. Paragraph (c) of subsection (2) of section 627.657, Florida Statutes, is amended to read:

627.657 Provisions of group health insurance policies.—

(2) The medical policy as specified in s. 627.6699(3)(k) must be accompanied by an identification card that contains, at a minimum:

(c) The type of plan, only if the plan is filed in this ~~the~~ state; ~~,~~ an indication that the plan is self-funded; ~~,~~ or the name of the network.

1. If the plan is subject to state regulation, the identification card must include the letters "FL" on the back left-hand corner of the card, under which a quick response (QR) code must be displayed directing the insured to the consumer complaint website of the Division of Consumer Services of the department.

2. If the plan is exclusively federally regulated, the identification card must include the letters "FED" on the back left-hand corner of the card, under which a QR code must be displayed directing the insured to the consumer complaint website of the Centers for Medicare and Medicaid Services.

3. Subparagraphs 1. and 2. apply to identification cards issued or reissued on or after January 1, 2024.

4. The department may adopt rules to implement necessary changes to the consumer complaint website and hotline of the Division of Consumer Services to best assist insureds who are at an impasse with their insurers.

The identification card must present the information in a readily identifiable manner or, alternatively, the information may be embedded on the card and available through magnetic stripe or smart card. The information may also be provided through other electronic technology.

Section 4. Paragraph (c) of subsection (42) of section 641.31, Florida Statutes, is amended to read:

641.31 Health maintenance contracts.—

(42) The contract, certificate, or member handbook must be accompanied by an identification card that contains, at a minimum:

(c) A statement that the health plan is a health maintenance organization. Only a health plan with a certificate

of authority issued under this chapter may be identified as a health maintenance organization.

1. If the health plan is subject to state regulation, the identification card must include the letters "FL" on the back left-hand corner of the card, under which a quick response (QR) code must be displayed directing the subscriber to the consumer complaint website of the Division of Consumer Services of the department.

2. If the health plan is exclusively federally regulated, the identification card must include the letters "FED" on the back left-hand corner of the card, under which a QR code must be displayed directing the subscriber to the consumer complaint website of the Centers for Medicare and Medicaid Services.

3. Subparagraphs 1. and 2. apply to identification cards issued or reissued on or after January 1, 2024.

4. The department may adopt rules to implement necessary changes to the consumer complaint website and hotline of the Division of Consumer Services to best assist subscribers who are at an impasse with their health maintenance organizations.

The identification card must present the information in a readily identifiable manner or, alternatively, the information may be embedded on the card and available through magnetic stripe or smart card. The information may also be provided through other electronic technology.

Section 5. This act shall take effect January 1, 2024.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1573 Continuing Care Providers
SPONSOR(S): Persons-Mulicka
TIED BILLS: **IDEN./SIM. BILLS:** SB 622

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Fortenberry	Lloyd
2) Health & Human Services Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Continuing care retirement communities (CCRCs) offer a transitional approach to the aging process, accommodating residents' evolving levels of care needs. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. CCRCs may also offer at-home programs that provide residents with services while continuing to live in their own homes until they are ready to move to the CCRC. The fees associated with a CCRC include a reservation deposit, an initial entrance fee (that is often a major sum) and monthly fees to cover costs related to health care and other aspects of community living. Regulatory oversight of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). OIR regulates CCRC providers as specialty insurers, while AHCA regulates the provision of health care.

The bill makes changes to the law governing CCRCs, including amending law enacted in 2019 following insolvencies at two Tampa area CCRCs. The bill:

- Creates more flexibility in meeting reporting requirements for CCRCs seeking to expand a facility and in financial statements that must be submitted to the OIR with the CCRCs' annual statements.
- Allows a CCRC provider to keep their escrow account in a national bank with a branch in Florida, rather than only institutions with a Florida branch.
- Changes when escrow funds can be accessed – escrow release is available when 3/4ths of the total units are reserved, rather than only when half of the total units have been paid in full, plus, the provider submits a required attestation concerning use of the entrance fees collected.
- Reduces the timeline for OIR review and approval of expansion applications from 45 days to 30 days.
- Establishes additional grounds that a provider may rely on to request that temporary suspension of some or all of the applicable financial and operating requirements.
- Revises the parameters allowing a provider to withdraw funds from its debt service reserves.
- Significantly expands the list of financial institutions that may supply a provider with a letter of credit in order to satisfy the statutory minimum liquid reserve requirements, including institutions without a Florida branch.
- Changes the conditions under which an individual must pay a penalty for cancelling a contract with a CCRC.
- Shortens the lookback period for required OIR market conduct examinations.
- Increases transparency for the benefit of authorized resident councils in CCRC operations, budgeting, planning, pricing, and OIR examining.
- Clarifies that a residents' council has the authority to establish and maintain its own governance documents and that residents have the right to participate in resident council matters, including elections.
- Requires facilities with common ownership in Florida must each have its own designated resident representative.
- Specifies resident representative obligations of good faith and as a fiduciary to the residents.

The bill has no effect on state or local revenues or expenditures. It has an indeterminate 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

Continuing Care Retirement Communities

Continuing care retirement communities (CCRCs) offer a transitional approach to the aging process, accommodating residents' evolving levels of care needs. A CCRC can include independent living apartments or houses, as well as an assisted living facility or a nursing home. CCRCs may also offer at-home programs that provide residents with services while continuing to live in their own homes until they are ready to move to the CCRC.[1] The fees associated with a CCRC include an initial entrance fee and monthly fees to cover costs related to health care and other aspects of community living.[2]

Regulatory oversight of CCRCs in Florida is shared primarily between the Agency for Health Care Administration (AHCA) and the Office of Insurance Regulation (OIR). OIR regulates CCRC providers[3] as specialty insurers. AHCA regulates aspects of the CCRCs related to the provision of health care, such as nursing facilities, assisted living facilities, home health agencies, quality of care, and medical facilities.[4]

History of Regulatory Oversight

Certificate of Authority Granted by OIR

Because residents may pay, in some cases, considerable amounts in entrance fees and ongoing monthly fees, OIR is given primary responsibility to regulate and monitor the operation of CCRCs and to determine facilities' financial condition and the management of capabilities of their managers and owners.[5] If a provider is accredited through a process "substantially equivalent" to the requirements of ch. 651, F.S., OIR may waive any requirements of the chapter.[6]

To operate a CCRC in Florida, a provider must obtain from OIR a certificate of authority (COA) predicated upon first receiving a provisional COA.[7] The application process involves submitting various financial statements and information, expectations of the financial condition of the project, and copies of contracts.[8] Further, the applicant must provide evidence that the applicant is reputable and of responsible character.[9] A COA will be issued once a provider meets the requirements set forth in s. 651.023, F.S.[10]

Continuing Care Contracts

Continuing care services are governed by a contract between the facility and the resident of a CCRC. In Florida, continuing care contracts are considered an insurance product and are reviewed and approved by OIR.[11] A CCRC enters into contracts with prospective residents to provide housing and

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[1] S. 651.057, F.S.
[2] AARP, *How Continuing Care Retirement Communities Work*, available at https://www.aarp.org/caregiving/basics/info-2017/continuing-care-retirement-communities.html (last visited Mar. 24, 2023).
[3] A "provider" is "the owner or operator… which… provides continuing care or continuing care at-home for a fixed or variable fee… for the period of care." S. 651.011(23), F.S.
[4] Agency for Health Care Administration, *Consumer Guides: Nursing Home Care in Florida*, available at https://quality.healthfinder.fl.gov/reports-guides/nursinghomesfl.aspx (last visited Mar. 24, 2023).
[5] Ss. 651.021, 651.022, 651.023, F.S.
[6] S. 651.028, F.S.
[7] S. 651.022, F.S.
[8] Ss. 651.021-651.023, F.S.
[9] S. 651.022(2)(c), F.S.
[10] S. 651.023(4)(a), F.S.

medical care in exchange for an entrance fee and monthly fees. Entrance fees are a significant commitment by the resident, as entrance fees range from approximately $100,000 to over $1 million.[12] CCRCs offer different types of contracts that provide for varying amounts of monthly fees and levels of healthcare discounts.[13]

All CCRC contracts provide for a refund of a declining portion of the entrance fee if the contract is cancelled for reasons other than the death of the resident during the first four years of occupancy by the resident.[14] However, many contracts exceed this requirement and contain minimum refund provisions that promise a refund of a specified portion (typically 50 to 90 percent) of the entrance fee upon the death of the resident or termination of the contract regardless of the length of occupancy by the resident.[15]

Financial Requirements/Solvency

CCRCs are required to file an annual report with OIR, which includes an audited financial report, and other detailed financial information, such as a listing of assets maintained in the liquid reserve required under s. 651.035, F.S., and information about fees required of residents.[16] OIR requires unaudited quarterly reports from CCRCs, but OIR will waive such quarterly reports for accredited CCRCs.[17] OIR may also require more frequent filing of financial reports and additional information if OIR deems such reports necessary to monitor and evaluate the financial condition of a CCRC that is subject to a corrective action plan; declining financial position; refinancing; acquisition; or administrative supervision, delinquency, receivership, or bankruptcy proceedings.[18]

Section 651.033, F.S., prescribes requirements for the establishment and maintenance of escrow accounts, duties of escrow agents, and procedures for withdrawals from a CCRC's reserve funds. As prescribed in s. 651.035, F.S., CCRCs are required to maintain a minimum liquid reserve consisting of, as applicable, a debt service reserve, operating reserve, and renewal and replacement reserve.

Rights of Residents in a Continuing Care Retirement Community

OIR is also authorized to discipline a facility for violations of residents' rights.[19] These rights include:

- Aright to live in a safe and decent living environment, free from abuse and neglect;
- Freedom to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community; and
- Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal.[20]

Each CCRC must establish a resident's council to provide a forum for residents' input on issues that affect the general residential quality of life, such as the facility's financial trends, and problems, as well as proposed changes in policies, programs, and services. [21] CCRCs are required to maintain and make

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[11] S. 651.055(1), F.S.

[12] Kennedy, Jayme, *The cost of continuing care retirement communities: Can you afford it?*, Care.com, published Jan. 31, 2021, available at https://www.care.com/c/continuing-care-retirement-community-cost/ (last visited Mar. 25, 2023).

[13] *Id.*

[14] S. 651.055, F.S.

[15] Jones, Roger J., *Continuing Care Retirement Communities (CCRCs) Fees – A Primer on the Tax Treatment of Entrance and Monthly Fees*, The National Law Review, published Dec. 6, 2012, available at https://www.natlawreview.com/article/continuing-care-retirement-communities-ccrcs-fees-primer-tax-treatment-entrance-and- (last visited Mar. 25, 2023).

[16] S. 651.026, F.S.

[17] S. 651.0261. F.S., Rr. 69O-193.005(1) and 69O-193.055, F.A.C.

[18] R69O-193.005(2). F.A.C.

[19] S. 651.083, F.S.

[20] Id.

[21] S. 651.081, F.S.

available certain public information and records, such as records of all cost and inspection reports pertaining to that facility, a concise summary of the last examination report issued by OIR, and a summary of the most recent annual statement.[22]

OIR Enforcement Authority

If a provider fails to meet the requirements of ch. 651, F.S., relating to a provisional COA or a COA, OIR must notify the provider of any deficiencies and require the provider to take corrective action within a time period determined by OIR.[23] If the provider does not correct the deficiencies by the expiration of such time, OIR may initiate delinquency proceedings as provided in s. 651.114, F.S., or seek other relief provided under ch. 651, F.S.[24] OIR may deny, suspend, or revoke the provisional COA or the COA of any applicant or provider for grounds specified in s. 651.106, F.S.

Except in limited circumstances, OIR's right to initiate delinquency proceedings against a provider is subordinate to the rights of a trustee or lender if the trustee or lender agrees that the rights of residents under a CCRC contract will be honored and will not be disturbed by a foreclosure.[25] If OIR recommends that the Department of Financial Services (DFS) Division Rehabilitation and Liquidation institute receivership or liquidation proceedings against a CCRC, the continuing care contracts are deemed preferred claims against assets of the provider.[26] Such claims are subordinate, however, to any secured claim.

Until 2019, even though OIR had enforcement authority over CCRCs, ch. 651, F.S., lacked the framework that OIR uses to protect consumers of other insurance products, including early intervention concepts like impairment, a statutory requirement to provide supplementary information to support or explain filings, and clear authority to prohibit certain individuals from exercising control over a CCRC.

The need for better regulatory oversight became apparent with the case of a CCRC in Tampa in which unapproved owners and managers failed to cooperate with examination by OIR and with other provisions of state law. Previously, a bankruptcy court in 1997 cancelled residents' contracts for a different CCRC in Tampa. Additionally, a CCRC in St. Augustine filed for bankruptcy in 2013 and 2016, which resulted in former residents or their estates receiving only 20 percent of their entrance fee refunds.

Involvement by the Department of Financial Services

DFS may become involved with a resident after a CCRC contractual agreement has been signed by both parties or during a mediation or arbitration process.[27] Typically, residents will contact DFS Division of Consumer Services, which receives and resolves complaints involving products and persons regulated by OIR or DFS.[28]

Chapter 631, F.S., governs the rehabilitation and liquidation process for insurers in Florida. Federal law provides that insurance companies are not eligible to be a debtor in federal bankruptcy proceedings and are instead subject to state laws regarding receivership.[29] In Florida, the Division of Rehabilitation and Liquidation within DFS is responsible for managing insurance companies placed into receivership. The goal of rehabilitation is to return the insurer to solvency. The goal of liquidation, however, is to liquidate the business of the insurer and use the proceeds to pay claims, including those of policyholders, creditors, and employees.

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[22] S. 651.091, F.S.
[23] S. 651.105(4), F.S.
[24] *Id.*
[25] S. 651.114(8), F.S.
[26] S. 651.071, F.S.
[27] Rr. 69O-193.062 and 69O-193.063, F.A.C.
[28] S. 624.307, F.S.
[29] Historically and currently, Florida CCRCs have entered bankruptcy despite being regulated as a specialty insurer in Florida and despite the federal Bankruptcy Code precluding insurance companies from being a debtor in bankruptcy.

2019 Statutory Changes Regarding CCRCs

In 2019, the state enacted broad statutory changes to enhance OIR's authority to regulate CCRCs.[30] Section 651.034, F.S., was created to establish a framework of required actions if a provider falls below specified levels of three key indicators at the time of the annual report: occupancy, days cash on hand, and the debt service coverage ratio. The key indicators were selected based on their tendency to highlight problematic financial developments. If the provider's performance falls below the specified levels on two of the following three key indicators at the time of the annual report, it is considered a "regulatory action level event."

In the event that a "regulatory action level event" occurs, the provider is required to submit a corrective action plan; OIR is required to perform an examination or analysis of the provider; and OIR is required to issue a corrective order specifying any corrective actions that OIR determines are required. For new CCRCs, OIR may exempt a provider from the consequences of a regulatory action level event or impairment until the earlier of the CCRC reaching stabilized occupancy, the time projected to achieve stabilized occupancy, or five years from the date of issuance of the COA.

A definition for "impaired" was to allow for earlier intervention by OIR in an effort to prevent harm to Florida consumers. The impairment framework has been an effective tool in preventing, or minimizing the impact of, insurer insolvencies. The previous intervention framework for CCRCs was triggered only after a provider became insolvent, meaning it is unable to pay its obligations as they come due in the normal course of business. The establishment of the impairment framework allows OIR to begin partnering with a provider much sooner in order to mitigate or resolve any potential issues that would put resident interests in jeopardy. A provider is considered impaired if it fails to hold the minimum liquid reserve. Additionally, a provider without mortgage or bond financing is considered impaired if it does not maintain the specified level of days cash on hand, and a provider with mortgage or bond financing is considered impaired if it does not maintain specified levels of days cash on hand and debt service coverage ratio. If the provider is a member of an obligated group having cross-collateralized debt, the obligated group's debt service coverage ratio and days cash on hand must be used to determine if the provider is impaired. OIR may forego taking action for up to 180 days after an impairment occurs if OIR finds there is a reasonable expectation that the impairment may be eliminated within the 180-day period.

The 2019 law created a number of new requirements for the provider to give notice to the residents or residents' council. These help residents and prospective residents to remain apprised of the status and stability of the provider and to take action to protect their interests.

Previously, OIR received advance notice of new financing and receives financing documents after the transaction closes, and the residents' council receives notice of all financing documents filed with the OIR. Although the OIR received advance notice of a financing transaction, the OIR had no authority to disapprove or otherwise intervene in the financing transaction if it considered it a hazardous transaction. 2019 amendments to ss. 651.019 and 651.091(2), F.S., shifted the notice requirements so that financing documents are first received by the residents' council. A provider is required to provide to the residents' council, at least 30 days before the closing date of the transaction, a general outline of the amount and terms of the transaction and the intended use of proceeds for any new financing or refinancing. This allows residents the ability to object to financing transactions that concern them. Additionally, it removed the illusion that the OIR could prevent a provider from securing new financing, additional financing, or refinancing that may be hazardous to the residents.

Section 651.091(2), Florida Statutes, was amended to require the provider to furnish the following information to the chair of the residents' council:

- A notice of the issuance of any examination reports;
- A notice of the initiation of any legal or administrative proceedings by the OIR or the DFS;
- A notice of any change in ownership filing submitted to the OIR; and

[30] Ch. 2019-160, L.O.F. (2019).

- Any master plans approved by the provider's governing board and any plans for expansion or phased development.

Additionally, a provider must post in a prominent place in the facility a notice that contains the OIR's website and phone number and the website and toll-free consumer helpline for the DFS Division of Consumer Services. The notice must also state that either the OIR or DFS Division of Consumer Services may be contacted for the submission of inquiries and complaints with respect to potential violations of law.

Section 651.035, F.S., which contains minimum liquid reserve requirements, was amended to require providers that do not have a mortgage loan or other financing on the facility, to deposit monthly in escrow one-twelfth of their annual property tax liability and to pay property taxes out of such escrow. 2019 bill provided a framework for CCRCs to request a withdrawal of reserve funds and grants the OIR authority to require the transfer of reserve funds into the custody of the DFS Bureau of Collateral Management if the OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets. Any increase in the minimum liquid reserve must be funded no later than 61 days after the minimum liquid reserve calculation is due to be filed. If the minimum liquid reserve is less than the required minimum amount at the end of any fiscal quarter due to a change in the market value of the invested funds, the provider must fund the shortfall within 10 business days.

Section 651.033, F.S., contains requirements for a provider's escrow account and was amended to clarify the duties that apply to escrow agents, including the prohibition that an escrow agent may not release or otherwise allow the transfer of funds without the written approval of the OIR, unless the withdrawal is from funds in excess of specified statutory requirements. Additionally, the statutory change now permits an escrow account to be held in a national bank that has a branch in this state.

Effect of the Bill

The bill makes changes and updates to the extensive regulatory revisions for CCRCs that were enacted in 2019.

The bill establishes that, for a provider who is applying for expansion of a facility, the independent evaluation and examination opinion portion of the required feasibility study may be satisfied by a:

- Compilation report acceptable to OIR; or
- Comparable opinion prepared by the provider's CPA and acceptable to OIR.

The bill eliminates the requirement that a provider's escrow account be established in a bank that has a branch in Florida. In addition to the current ability to secure the release of escrow moneys when payment in full has been received for at least 50 percent of the total units of a phase or phases constructed, the bill allows for the release of such funds when:

- 75 percent of the units in a phase have been reserved; and
- The provider submits an attestation to OIR to use the entrance fees collected and held in escrow for the sole purpose of paying debts as specified in the feasibility study.[31]

If the expansion is to be completed in multiple phases, the 75 percent reservation escrow-release option applies separately to each phase. The bill reduces the number of days that OIR has to review and approve an expansion application for a CCRC from 45 days to 30 days.[32]

The bill creates parameters for the financial statements that a provider must submit to OIR with its annual statement. If the provider's financial statements are consolidated with the financial statements of

[31] The language in this section of the bill could use additional clarity. *See* drafting comment below regarding lines 147-156 of the bill.

[32] No fiscal impact on OIR is expected from the reduction in review time for OIR. *See* Office of Insurance Regulation (OIR), Agency Analysis of 2023 SB 622, p. 6 (Feb. 15, 2023) (SB 622 is the Senate companion bill to HB 1573).

additional entities owned or controlled by the provider, in accordance with generally accepted accounting principles,[33] the financial report must include:

- The provider's consolidated or combined financial statements; and
- Supplemental information showing the individual financial statements for each CCRC facility.

In addition to existing ones, the bill establishes further grounds for which a provider may request that OIR temporarily suspend some or all of the financial and operating requirements of ch. 651, F.S. A provider may ask for such a suspension due to an extraordinary event rendering it incapable of continuing normal operations, including but not limited to:

- Pandemic;
- Fire; or
- Federal order of Governor's executive order or proclamation declaring a natural disaster; that forces the provider to:
    - Evacuate;
    - Curtail operations;
    - Restrict admissions; or
    - Suspend marketing; for life safety reasons; or repairs related to the event.

OIR may only grant a provider's request if the provider remains compliant with annual reporting requirements, quarterly and monthly statement requirements, and minimum liquid reserve requirements, and the provider is not insolvent or impaired. Even if the request is granted, the provider must continue to comply with required reporting requested by OIR, including the estimated time to complete repairs or remediate problems related to admissions or marketing restrictions. In considering a provider's request, OIR must consider any formal action or amendments that a lender or trustee approved to the provider's lending agreement or bond covenants because of the event.

The bill adds the following requirements that must be met for a provider to withdraw funds from its debt service reserves:

- The trust indenture, loan agreement, or escrow agreement must provide that the provider, trustee, lender, escrow agent, or a person designated to act in its place, must notify OIR in writing at least ten days before the withdrawal of any portion of the debt service reserves required to be held in escrow; and
- Such notice must be accompanied by a sworn affidavit by the provider, trustee, or a person designated to act in its place that includes:
    - The amount of the scheduled debt service payment;
    - The payment due date;
    - The amount of the withdrawal;
    - The accounts from which the withdrawal will be made; and
    - A plan with a schedule for replenishing the withdrawn funds. Any revised plan must be submitted to OIR within ten days of approval by the lender or trustee.

Under the bill, a provider is permitted to withdraw escrow funds without OIR approval if the withdrawal is from a debt service reserve required to be held in escrow pursuant to trust indenture or mortgage lien on the facility and the withdrawn funds will be used to pay delinquent principal and interest payments the debtor is obligated to pay on the facility.

The bill broadens the financial institutions from which a provider may obtain a letter of credit in order to satisfy the statutory MLR requirements to include the following institutions, in addition to an institution participating in the State of Florida Treasury Certificate of Deposit Program:

- A Florida bank;
- A Florida savings and loan association;
- A Florida trust company; or
- A national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the U.S. Department of the Treasury.

[33] Insurers generally utilize statutory accounting principles. However, CCRCs use generally accepted accounting principles, which often require consolidated audits.

In general, a resident has the right to rescind a continuing care contract, and receive a full refund of any funds paid, without penalty or forfeiture, within seven days of executing the contract.[34] However, the bill changes the conditions under which an individual must pay a penalty for cancelling a contract with a CCRC. If an individual signs a reservation contract, fails to cancel it within 30 days after executing the contract, and then signs a care contract and rescinds it within seven days of execution, the authorized forfeiture penalty may be deducted from the refund, unless there is evidence of extenuating circumstances, including but not limited to:

- Death, illness, or diagnosis or a chronic or terminal illness of the individual or the individual's spouse; or
- A change in financial or asset position which warrants cancellation of the contract.

The bill clarifies the examination timeframes for a CCRC. Such and exam must cover the preceding three or five fiscal years of the provider, whichever is applicable,[35] and must begin within 12 months after the end of the most recent fiscal year covered by the exam. It may include examination of events following the end of the most recent fiscal year and events of any prior period that affect the provider's present financial condition. As part of the examination, OIR must interview the current president or chair of the residents' council or another designated officer if the president or chair is not available.

It also requires that, following an examination, every CCRC must provide a copy of the final examination report and corrective action plan, if required by OIR, to the executive officer of the provider's governing body and the president or chair of the residents' council within 60 days after the report is issued, rather than only the executive officer of the governing body. Additionally, all CCRCs must provide written notice of any change in management to the president or chair of the residents' council within 10 business days.

It provides new definitions related to the residents of a CCRC. It defines designated resident representative as a resident elected by the residents' council to represent residents on matters related to changes in fees or services within a CCRC. The bill defines the residents' council as an organized body that represents the resident population of a CCRC. The residents' council serves as a liaison between residents and the provider.

It clarifies that a residents' council has the authority to establish and maintain its own governance documents such as bylaws, operating agreements, policies, and operating procedures, which may include establishing committees. Additionally, residents have the right to participate in resident council matters, including elections.

The bill also clarifies that the resident representative designated to represent the residents before the governing body of the provider:

- Must be a resident as defined in s. 651.011, F.S.;
- Must be elected to the position; and
- Need not be a current member of the residents' council.

If a provider owns or operates more than one facility in Florida, each facility must have its own designated resident representative. Designated resident representatives must perform their duties in good faith. Additionally, the bill requires that a resident who serves as a member of the board or governing body of the facility must perform his or her duties in a fiduciary manner, including the following duties:

- Confidentiality;
- Care;
- Loyalty; and
- Obedience.

[34] S. 651.055(2), F.S.

[35] Accredited CCRCs may be examined by OIR on a five-year schedule, but non-accredited CCRCs are examined by OIR on a three-year schedule.

A representative of the provider must notify the designated resident representative at least 14 days in advance of any meeting of the full governing body at which the annual budget and any proposed changes or increases in resident fees are on the agenda or will be discussed.

B. SECTION DIRECTORY:

Section 1. Amends s. 651.011, F.S., relating to definitions.

Section 2. Amends s. 651.012, F.S., relating to exempted facility; written disclosure of exemption.

Section 3. Amends s. 651.0246, F.S., relating to expansions.

Section 4. Amends s. 651.026, F.S., relating to annual reports.

Section 5. Amends s. 651.0261, F.S., relating to quarterly and monthly statements.

Section 6. Amends s. 651.033, F.S., relating to escrow accounts.

Section 7. Amends s. 651.034, F.S., relating to financial and operating requirements for providers.

Section 8. Amends s. 651.035, F.S., relating to minimum liquid reserve requirements.

Section 9. Amends s. 651.055, F.S., relating to continuing care contracts; right to rescind.

Section 10. Amends s. 651.081, F.S., relating to residents' council.

Section 11. Amends s. 651.083, F.S., relating to residents' rights.

Section 12. Amends s. 651.085, F.S., relating to quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.

Section 13. Amends s. 651.091, F.S., relating to availability, distribution, and posting of reports and Records; requirement of full disclosure.

Section 14. Amends s. 651.105, F.S., relating to examination.

Section 15. 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:

The bill has an indeterminate 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:

While the bill neither authorizes nor requires administrative rulemaking, OIR has indicated that it will need to update its expansion application and annual report forms, which will require rulemaking.[36] Current rules may conflict with the requirements contained in the bill, which may require rules to be amended. Additionally, OIR has stated that it will need to update its review procedures and checklists for expansion applications, release of escrowed entrance fees, and examinations to account for the changes in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 147-156: The new language in these lines is ambiguous.[37] The drafting seems to indicate that the 75 percent requirement applies to a phase or the whole project, but also that it applies separately to each phase. It is also unclear what "reserved" means in this context. Consideration should be given to clarifying what the 75 percent requirement applies to and to the definition of "reserved."

Lines 281-300: The language in these lines regarding suspending financial and operating requirements lacks clarity.[38] "Suspension" as used in the Florida Insurance Code usually refers to the suspension of a certificate of authority. "Financial and operating requirements" appears in the title of s. 651.034, F.S., but is not a defined term. Revising the bill would explain more clearly how OIR would determine whether to exempt a provider from certain requirements under extraordinary circumstances.

Lines 414-423: These lines of the bill are confusing regarding whether they refer to a continuing care contract or a reservation contract. More specificity regarding the type of contract mentioned on lines 415-417 would clear up the confusion.

Lines 562-573: The revisions on these lines of the bill may limit OIR's ability to investigate possible violations of ch. 651, F.S., by CCRCs that occurred prior to a date certain.[39] The language of the bill

[36] OIR, *supra*, note 1, at p. 4. OIR has additional concerns in its agency analysis that have not been referenced here.
[37] *Id.* at p. 6.
[38] *Id.* at p. 7.
[39] *Id.*

should make it clear that OIR retains the ability to conduct target market examinations based upon specific findings or allegations.[40]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[40] *Id.*

A bill to be entitled

An act relating to continuing care providers; amending s. 651.011, F.S.; providing definitions; amending s. 651.012, F.S.; conforming a cross-reference; amending s. 651.0246, F.S.; revising requirements for the feasibility study submitted by continuing care providers for expansion of certificated facilities; revising circumstances under which continuing care providers are entitled to secure release of moneys held in escrow; revising the timeframe for the review and approval of certificated facility expansion applications; amending s. 651.026, F.S.; revising requirements under certain circumstances for financial reports filed with the Office of Insurance Regulation; amending s. 651.0261, F.S.; conforming a cross-reference; amending s. 651.033, F.S.; revising requirements for escrow accounts of certificated facilities; revising the circumstance under which a provider may hold an entrance fee check for a specified timeframe; amending s. 651.034, F.S.; revising the timeframe during which the office may exempt a provider from certain regulatory actions; authorizing the office to temporarily suspend certain requirements for providers under certain circumstances; amending s. 651.035, F.S.; providing

requirements for certain agreements relating to debt service reserve funds maintained in escrow by providers; revising minimum liquid reserve requirements; revising proof that such requirements are met; revising circumstances under which provider may withdraw funds held in escrow without the office's approval; amending s. 651.055, F.S.; providing circumstances under which forfeiture penalties are authorized upon cancellations of continuing care contracts; providing exceptions; conforming a provision to changes made by the act; amending s. 651.081, F.S.; revising residents' council authority; providing residents' rights; amending s. 651.083, F.S.; revising residents' rights; amending s. 651.085, F.S.; providing requirements and duties for designated resident representatives rather than designated representatives; providing qualifications; providing duties for residents serving on a facility's board or governing body; amending s. 651.091, F.S.; providing additional duties for continuing care facilities and providers relating to distribution and disclosure of certain documents and information; amending s. 651.105, F.S.; providing requirements for examinations of certain continuing care businesses and providers; deleting a provision requiring delivery of certain

reports; providing an effective date.

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

Section 1. Subsections (13) through (26) and subsection (27) of section 651.011, Florida Statutes, are renumbered as subsections (14) though (27) and subsection (29), respectively, and a new subsection (13) and subsection (28) are added to that section, to read:

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

(13) "Designated resident representative" means a resident who has been elected by the residents' council to represent residents on matters related to changes in fees or services as specified in s. 651.085(2) and (3).

(28) "Residents' council" means an organized body that represents the resident population of a certificated facility. A residents' council shall serve as a liaison between residents and the appropriate representative of the provider.

Section 2. Section 651.012, Florida Statutes, is amended to read:

651.012 Exempted facility; written disclosure of exemption.—Any facility exempted under s. 632.637(1)(e) or excluded from the definition of the term "provider" in s. 651.011 ~~ss. 632.637(1)(e) and 651.011(23)~~ must provide written disclosure of such exemption to each person admitted to the

facility. This disclosure must be written using language likely to be understood by the person and must briefly explain the exemption.

Section 3. Paragraph (a) of subsection (2), paragraph (b) of subsection (4), and subsection (6) of section 651.0246, Florida Statutes, are amended to read:

651.0246 Expansions.—

(2) A provider applying for expansion of a certificated facility must submit all of the following:

(a) A feasibility study prepared by an independent certified public accountant. The feasibility study must include at least the following information:

1. A description of the facility and proposed expansion, including the location, the size, the anticipated completion date, and the proposed construction program.

2. An identification and evaluation of the primary and, if applicable, secondary market areas of the facility and the projected unit sales per month.

3. Projected revenues, including anticipated entrance fees; monthly service fees; nursing care revenues, if applicable; and all other sources of revenue.

4. Projected expenses, including for staffing requirements and salaries; the cost of property, plant, and equipment, including depreciation expense; interest expense; marketing expense; and other operating expenses.

5. A projected balance sheet of the applicant.

6. The expectations for the financial condition of the project, including the projected cash flow and an estimate of the funds anticipated to be necessary to cover startup losses.

7. The inflation factor, if any, assumed in the study for the proposed expansion and how and where it is applied.

8. Project costs; the total amount of debt financing required; marketing projections; resident rates, fees, and charges; the competition; resident contract provisions; and other factors that affect the feasibility of the facility.

9. Appropriate population projections, including morbidity and mortality assumptions.

10. The name of the person who prepared the feasibility study and his or her experience in preparing similar studies or otherwise consulting in the field of continuing care.

11. Financial forecasts or projections prepared in accordance with standards adopted by the American Institute of Certified Public Accountants or in accordance with standards for feasibility studies for continuing care retirement communities adopted by the Actuarial Standards Board.

12. An independent evaluation and examination opinion or compilation report acceptable to the office for the first 5 years of operations, or a comparable opinion acceptable to the office, by the certified public accountant ~~consultant~~ who prepared the study, of the underlying assumptions used as a

basis for the forecasts or projections in the study and that the assumptions are reasonable and proper and the project as proposed is feasible.

13. Any other information that the provider deems relevant and appropriate to provide to enable the office to make a more informed determination.

If any material change occurs in the facts set forth in an application filed with the office pursuant to this section, an amendment setting forth such change must be filed with the office within 10 business days after the applicant becomes aware of such change, and a copy of the amendment must be sent by registered mail to the principal office of the facility and to the principal office of the controlling company.

(4) The provider is entitled to secure release of the moneys held in escrow within 7 days after receipt by the office of an affidavit from the provider, along with appropriate copies to verify, and notification to the escrow agent by certified mail that the following conditions have been satisfied:

(b) Payment in full has been received for at least 50 percent of the total units of a phase or of the total of the combined phases constructed; or for at least 75 percent of the proposed units for which an entrance fee is charged for a phase, or for which a total of the combined phases are reserved, and the provider submits an attestation to the office to use the

entrance fees collected and held in escrow for the sole purpose of paying secured indebtedness as specified in the feasibility study submitted to the office pursuant to paragraph (2)(a). If the expansion is to be completed in multiple phases, the 75 percent reservation requirement applies separately to each phase of the expansion. If a provider offering continuing care at-home is applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

Notwithstanding chapter 120, only the provider, the escrow agent, and the office have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter.

(6) Within 30 ~~45~~ days after the date on which an application is deemed complete as provided in paragraph (5)(b), the office shall complete its review and, based upon its review, approve an expansion by the applicant and issue a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. If the application is denied, the office must notify

the applicant in writing, citing the specific failures to meet the requirements of this chapter. The denial entitles the applicant to a hearing pursuant to chapter 120.

Section 4. Paragraph (b) of subsection (2) of section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(b) A financial report audited by an independent certified public accountant which must contain, for two or more periods if the facility has been in existence that long, all of the following:

1. An accountant's opinion and, in accordance with generally accepted accounting principles:

a. A balance sheet;

b. A statement of income and expenses;

c. A statement of equity or fund balances; and

d. A statement of changes in cash flows.

2. Notes to the financial report considered customary or necessary for full disclosure or adequate understanding of the financial report, financial condition, and operation.

3. If the provider's financial statements are consolidated or combined in accordance with generally accepted accounting principles with the financial statements of additional entities owned or controlled by the provider, the financial report must,

in addition to the provider's consolidated or combined financial statements, provide as supplemental information the provider's financial statements with the items in subparagraph 1. for the individual facility shown separately.

4. If the facility is a member of an obligated group, the facility may use the obligated group's audited financial statements if they contain the items in subparagraph 1. for the individual facility shown separately from other members of the obligated group.

Section 5. Subsection (1) of section 651.0261, Florida Statutes, is amended to read:

651.0261 Quarterly and monthly statements.—

(1) Within 45 days after the end of each fiscal quarter, each provider shall file a quarterly unaudited financial statement of the provider or of the facility in the form prescribed by commission rule and days cash on hand, occupancy, debt service coverage ratio, and a detailed listing of the assets maintained in the liquid reserve as required under s. 651.035. The last quarterly statement for a fiscal year is not required if a provider does not have pending a regulatory action level event, impairment, or a corrective action plan. If a provider falls below two or more of the thresholds set forth in s. 651.011(26) ~~s. 651.011(25)~~ at the end of any fiscal quarter, the provider shall submit to the office, at the same time as the quarterly statement, an explanation of the circumstances and a

description of the actions it will take to meet the requirements.

Section 6. Paragraph (a) of subsection (1) and paragraph (c) of subsection (3) of section 651.033, Florida Statutes, are amended, and paragraph (a) of subsection (3) of that section is republished, to read:

651.033 Escrow accounts.—

(1) When funds are required to be deposited in an escrow account pursuant to s. 651.0215, s. 651.022, s. 651.023, s. 651.0246, s. 651.035, or s. 651.055:

(a) The escrow account must be established in a Florida bank, Florida savings and loan association, Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury ~~and that has a branch in this state~~, which is acceptable to the office, or such funds must be deposited with the department and be kept and maintained in an account separate and apart from the provider's business accounts.

(3) When entrance fees are required to be deposited in an escrow account pursuant to s. 651.0215, s. 651.022, s. 651.023, s. 651.0246, or s. 651.055:

(a) The provider shall deliver to the resident a written receipt. The receipt must show the payor's name and address, the date, the price of the care contract, and the amount of money

paid. A copy of each receipt, together with the funds, must be deposited with the escrow agent or as provided in paragraph (c). The escrow agent must release such funds to the provider 7 days after the date of receipt of the funds by the escrow agent if the provider, operating under a certificate of authority issued by the office, has met the requirements of s. 651.0215(8), s. 651.023(6), or s. 651.0246. However, if the resident rescinds the contract within the 7-day period, the escrow agent must release the escrowed fees to the resident.

(c) As an alternative to paragraph (a) ~~At the request of an individual resident of a facility~~, the provider may hold the check for the 7-day period and may not deposit it during this time period. If the resident rescinds the contract within the 7-day period, the check must be immediately returned to the resident. Upon the expiration of the 7 days, the provider shall deposit the check.

Section 7. Subsection (7) of section 651.034, Florida Statutes, is renumbered as subsection (8), subsection (6) is amended, and a new subsection (7) is added to that section, to read:

651.034 Financial and operating requirements for providers.—

(6) The office may exempt a provider from subsection (1) or subsection (2) until stabilized occupancy is reached or until the time projected to achieve stabilized occupancy as reported

in the last feasibility study required by the office as part of an application filing under s. 651.0215, s. 651.023, s. 651.024, or s. 651.0246 has elapsed, but for no longer than 5 years following the end of the provider's fiscal year in which ~~after the date of issuance of~~ the certificate of occupancy was issued.

(7) Upon written request of a provider, the office may temporarily suspend all or a portion of the financial and operating requirements under this chapter due to an extraordinary event rendering the provider incapable of continuing normal operations such as, but not limited to, a pandemic, a fire, or a federal order or a Governor's executive order or proclamation declaring a natural disaster that forces the provider to evacuate, curtail operations, restrict admissions, or suspend marketing for life safety reasons or repairs related to the event. Such temporary suspension may be granted by the office if the provider maintains compliance with ss. 651.026, 651.0261, and 651.035 and the provider is not insolvent or impaired. The provider shall comply with required reporting requested by the office, including the estimated time for completing repairs or remediating problems related to restrictions on admissions or marketing. When determining whether to grant a suspension of specific regulatory requirements, the office must consider any formal action or amendments approved by a lender or trustee to the provider's lending agreements or bond covenants as a result of the event.

Section 8. Paragraph (b) of subsection (1), paragraph (a) of subsection (2), subsection (5), and paragraph (a) of subsection (7) of section 651.035, Florida Statutes, are amended to read:

651.035 Minimum liquid reserve requirements.—

(1) A provider shall maintain in escrow a minimum liquid reserve consisting of the following reserves, as applicable:

(b) A provider that has outstanding indebtedness that requires a debt service reserve to be held in escrow pursuant to a trust indenture or mortgage lien on the facility and for which the debt service reserve may only be used to pay principal and interest payments on the debt that the debtor is obligated to pay, and which may include property taxes and insurance, may include such debt service reserve in computing the minimum liquid reserve needed to satisfy this subsection if the provider furnishes to the office a copy of the agreement under which such debt service reserve is held, together with a statement of the amount being held in escrow for the debt service reserve, certified by the lender or trustee and the provider to be correct. The trustee shall provide the office with any information concerning the debt service reserve account upon request of the provider or the office. In addition, the trust indenture, loan agreement, or escrow agreement must provide that the provider, trustee, lender, escrow agent, or a person designated to act in its place shall notify the office in

writing at least 10 days before the withdrawal of any portion of the debt service reserve funds required to be held in escrow as described in this paragraph. The notice must include an affidavit sworn to by the provider, the trustee, or a person designated to act in its place which includes the amount of the scheduled debt service payment, the payment due date, the amount of the withdrawal, the accounts from which the withdrawal will be made, and a plan with a schedule for replenishing the withdrawn funds. If the plan is revised by a consultant that is retained as prescribed in the provider's financing documents, the revised plan must be submitted to the office within 10 days after the approval by the lender or trustee. Any such separate debt service reserves are not subject to the transfer provisions set forth in subsection (8).

(2)(a) In facilities where not all residents are under continuing care or continuing care at-home contracts, the reserve requirements of subsection (1) shall be computed only with respect to the proportional share of operating expenses that are applicable to residents. For purposes of this calculation, the proportional share shall be based upon the ratio of residents under continuing care or continuing care at-home contracts to the total of all residents, including those residents who do not hold such contracts.

(5) A provider may satisfy the minimum liquid reserve requirements of this section by acquiring from a financial

institution, as specified in paragraph (b), a clean, unconditional irrevocable letter of credit equal to the requirements of this section, less the amount of escrowed operating cash required in paragraph (d).

(a) The letter of credit must be issued by a financial institution participating in the State of Florida Treasury Certificate of Deposit Program or a Florida bank, Florida savings and loan association, Florida trust company, or a national bank that is chartered and supervised by the Office of the Comptroller of the Currency within the United States Department of the Treasury, and must be approved by the office before issuance and before any renewal or modification thereof. At a minimum, the letter of credit must provide for:

1. Ninety days' prior written notice to both the provider and the office of the financial institution's determination not to renew or extend the term of the letter of credit.

2. Unless otherwise arranged by the provider to the satisfaction of the office, deposit by the financial institution of letter of credit funds in an account designated by the office no later than 30 days before the expiration of the letter of credit.

3. Deposit by the financial institution of letter of credit funds in an account designated by the office within 4 business days following written instructions from the office that, in the sole judgment of the office, funding of the minimum

liquid reserve is required.

(b) The terms of the letter of credit must be approved by the office and the long-term debt of the financial institution providing such letter of credit must be rated in one of their top three long-term debt rating categories by either Moody's Investors Service, Standard & Poor's Corporation, or a recognized securities rating agency acceptable to the office.

(c) The letter of credit must name the office as beneficiary.

(d) Notwithstanding any other provision of this section, a provider using a letter of credit pursuant to this subsection shall, at all times, have and maintain in escrow an operating cash reserve equal to 2 months' operating expenses as determined pursuant to s. 651.026.

(e) If the issuing financial institution no longer participates in the State of Florida Treasury Certificate of Deposit Program, such financial institution shall deposit as collateral with the department eligible securities, as prescribed by s. 625.52, having a market value equal to or greater than 100 percent of the stated amount of the letter of credit.

(7)(a) A provider may withdraw funds held in escrow without the approval of the office if:

1. The amount held in escrow exceeds the requirements of this section and if the withdrawal will not affect compliance

with this section; or

2. The withdrawal is from a debt service reserve required to be held in escrow pursuant to a trust indenture or mortgage lien on the facility as described in paragraph (1)(b) and the funds withdrawn will be used to pay delinquent principal and interest payments that the debtor is obligated to pay on the facility.

Section 9. Subsection (2) of section 651.055, Florida Statutes, is amended to read:

651.055 Continuing care contracts; right to rescind.—

(2) A resident has the right to rescind a continuing care contract and receive a full refund of any funds paid, without penalty or forfeiture, within 7 days after executing the contract. However, if an individual signs a reservation contract pursuant to s. 651.023(4) and fails to cancel such contract within 30 days after executing the contract and subsequently signs a contract and rescinds the contract within 7 days, the forfeiture penalty authorized under s. 651.023(4) may be deducted from the refund unless there is evidence of extenuating circumstances such as, but not limited to, the death, illness, or diagnosis of a chronic or terminal illness of the individual or the individual's spouse or partner or a change in financial or asset position which warrants cancellation of the contract. A resident may not be required to move into the facility designated in the contract before the expiration of the 7-day

period. During the 7-day period, the resident's funds must be held in an escrow account, or the provider may hold the check until the 7-day period expires ~~unless otherwise requested by the resident~~ pursuant to s. 651.033(3)(c).

Section 10. Paragraph (a) of subsection (2) of section 651.081, Florida Statutes, is amended to read:

651.081 Residents' council.—

(2)(a) Each facility shall establish a residents' council created for the purpose of representing residents on matters set forth in s. 651.085. A residents' council has the authority to establish and maintain its own governance documents such as bylaws, operating agreements, policies, and operating procedures, which may include establishment of committees. Residents, as defined in s. 651.011, have the right to participate in resident council matters, including elections. The residents' council shall be established through an election in which the residents, as defined in s. 651.011, vote by ballot, physically or by proxy. If the election is to be held during a meeting, a notice of the organizational meeting must be provided to all residents of the community at least 10 business days before the meeting. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election creating a residents' council is valid if at least 40 percent of the total resident population participates in the

election and a majority of the participants vote affirmatively for the council. The initial residents' council created under this section is valid for at least 12 months. A residents' organization formalized by bylaws and elected officials must be recognized as the residents' council under this section and s. 651.085. Within 30 days after the election of a newly elected president or chair of the residents' council, the provider shall give the president or chair a copy of this chapter and rules adopted thereunder, or direct him or her to the appropriate public website to obtain this information. Only one residents' council may represent residents before the governing body of the provider as described in s. 651.085(2).

Section 11. Paragraph (f) of subsection (1) of section 651.083, Florida Statutes, is amended to read:

651.083 Residents' rights.—

(1) No resident of any facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, by the State Constitution, or by the United States Constitution solely by reason of status as a resident of a facility. Each resident of a facility has the right to:

(f) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsman volunteers and staff and advocates and the

right to be a member of, and active in, and to associate with, advocacy or special interest groups or associations.

Section 12. Subsections (2), (3), and (5) of section 651.085, Florida Statutes, are amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(2) A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall nominate and elect ~~designate~~ a designated resident representative to represent them before the governing body of the provider on matters specified in subsection (3). The initial designated resident representative elected under this section shall be elected to serve at least 12 months. The designated resident representative does not have to be a current member of the residents' council; however, such individual must be a resident, as defined in s. 651.011.

(3) The designated resident representative shall be notified by a designated representative of the provider at least 14 days in advance of any meeting of the full governing body at which the annual budget and proposed changes or increases in resident fees or services are on the agenda or will be discussed. The designated resident representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes. Designated

resident representatives shall perform their duties in good faith. For providers that own or operate more than one facility in the state, each facility must have its own designated resident representative.

(5) The board of directors or governing board of a licensed provider may at its sole discretion allow a resident of the facility to be a voting member of the board or governing body of the facility. The board of directors or governing board of a licensed provider may establish specific criteria for the nomination, selection, and term of a resident as a member of the board or governing body. If the board or governing body of a licensed provider operates more than one licensed facility, regardless of whether the facility is in-state or out-of-state, the board or governing body may select at its sole discretion one resident from among its facilities to serve on the board of directors or governing body on a rotating basis. A resident who serves as a member of the board or governing body of the facility shall perform his or her duties in a fiduciary manner, including the duty of confidentiality, duty of care, duty of loyalty, and duty of obedience, as required of any individual serving on the board or governing body of the facility.

Section 13. Paragraphs (e) through (k) and paragraph (l) of subsection (2) of section 651.091, Florida Statutes, are redesignated as paragraphs (f) through (l) and paragraph (n), respectively, and new paragraphs (e) and (m) are added to that

subsection and paragraph (m) is added to subsection (3) of that section, to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(2) Every continuing care facility shall:

(e) Provide a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the provider's governing board and to the president or chair of the residents' council within 60 days after issuance of the report.

(m) Provide to the president or chair of the residents' council a written notice of any change in management within 10 business days.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, obtain written acknowledgment of receipt, and provide copies of the disclosure documents to the prospective resident or his or her legal representative, of the following information:

(m) Disclosure of whether the provider has one or more residents serving on its governing board and whether that resident has a vote or is serving in a nonvoting, ex officio capacity.

Section 14. Subsection (7) of section 651.105, Florida

Statutes, is renumbered as subsection (6), and subsection (1) and present subsection (6) of that section are amended to read:

651.105 Examination.—

(1) The office may at any time, and shall at least once every 3 years, examine the business of any applicant for a certificate of authority and any provider engaged in the execution of care contracts or engaged in the performance of obligations under such contracts, in the same manner as is provided for the examination of insurance companies pursuant to ss. 624.316 and 624.318. For a provider as deemed accredited under s. 651.028, such examinations must take place at least once every 5 years. The examinations must cover the preceding 3 or 5 fiscal years of the provider, whichever is applicable, and shall be commenced within 12 months after the end of the most recent fiscal year covered by the examinations. The examinations may include examination of events subsequent to the end of the most recent fiscal year and the events of any prior period that affect the present financial condition of the provider. As part of the examinations, the office shall conduct an interview in person, by telephone, or through the Internet with the current president or chair of the residents' council or another designated officer of the council if the president or chair is not available. The ~~Such~~ examinations must be made by a representative or examiner designated by the office whose compensation will be fixed by the office pursuant to s. 624.320.

Routine examinations may be made by having the necessary documents submitted to the office; and, for this purpose, financial documents and records conforming to commonly accepted accounting principles and practices, as required under s. 651.026, are deemed adequate. The final written report of each examination must be filed with the office and, when so filed, constitutes a public record. Any provider being examined shall, upon request, give reasonable and timely access to all of its records. The representative or examiner designated by the office may at any time examine the records and affairs and inspect the physical property of any provider, whether in connection with a formal examination or not.

~~(6) A representative of the provider must give a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the governing body of the provider within 60 days after issuance of the report.~~

Section 15. This act shall take effect July 1, 2023.

INSURANCE & BANKING SUBCOMMITTEE

HB 1573 by Rep. Persons-Mulicka
Relating to Continuing Care Providers

AMENDMENT SUMMARY
March 25, 2023

Amendment 1 by Rep. Persons-Mulicka (Line 147): The amendment:

- Clarifies the means to document financial statements when the CCRC provider is presenting consolidated or combined financial statements to OIR.
- Makes grammatical changes.

Amendment 2 by Rep. Persons-Mulicka (Line 430): The amendment:

- Conforms existing language regarding resident council governance that is relocated and expanded by another portion of the bill.
- Revises a required disclosure by the CCRC provider to prospective residents whether one or more residents serve on the CCRC provider's board or governing body and the nature and capacity of the resident's or residents' service on the providers board or governing body.
- Makes technical and grammatical changes.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Insurance & Banking Subcommittee

Representative Persons-Mulicka offered the following:

Amendment

Remove lines 147-204 and insert:

combined phases constructed; or at least 75 percent of the proposed units for which an entrance fee is charged for a phase or a total of the combined phases are reserved, and the provider submits an attestation to the office to use the entrance fees collected and held in escrow for the sole purpose of paying secured indebtedness as specified in the feasibility study submitted to the office pursuant to paragraph (2)(a). If the expansion is to be completed in multiple phases, the 75 percent reservation requirement applies separately to each phase of the expansion. If a provider offering continuing care at-home is

applying for a release of escrowed entrance fees, the same minimum requirement must be met for the continuing care and continuing care at-home contracts independently of each other.

Notwithstanding chapter 120, only the provider, the escrow agent, and the office have a substantial interest in any office decision regarding release of escrow funds in any proceedings under chapter 120 or this chapter.

(6) Within 30 ~~45~~ days after the date on which an application is deemed complete as provided in paragraph (5)(b), the office shall complete its review and, based upon its review, approve an expansion by the applicant and issue a determination that the application meets all requirements of law, that the feasibility study was based on sufficient data and reasonable assumptions, and that the applicant will be able to provide continuing care or continuing care at-home as proposed and meet all financial and contractual obligations related to its operations, including the financial requirements of this chapter. If the application is denied, the office must notify the applicant in writing, citing the specific failures to meet the requirements of this chapter. The denial entitles the applicant to a hearing pursuant to chapter 120.

Section 4. Paragraph (b) of subsection (2) of section 651.026, Florida Statutes, is amended to read:

651.026 Annual reports.—

(2) The annual report shall be in such form as the commission prescribes and shall contain at least the following:

(b) A financial report audited by an independent certified public accountant which must contain, for two or more periods if the facility has been in existence that long, all of the following:

1. An accountant's opinion and, in accordance with generally accepted accounting principles:

a. A balance sheet;

b. A statement of income and expenses;

c. A statement of equity or fund balances; and

d. A statement of changes in cash flows.

2. Notes to the financial report considered customary or necessary for full disclosure or adequate understanding of the financial report, financial condition, and operation.

3. If the provider's financial statements are consolidated or combined in accordance with generally accepted accounting principles with the financial statements of additional entities owned or controlled by the provider, the financial report must provide as supplemental information the financial statements of the provider with the items in subparagraph 1. for the individual facility shown separately along with the additional entities comprising the consolidated or combined financial report.

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 Persons-Mulicka offered the following:

Amendment

Remove lines 430-547 and insert:

Section 10. Paragraphs (a) and (d) of subsection (2) of section 651.081, Florida Statutes, are amended to read:

651.081 Residents' council.—

(2)(a) Each facility shall establish a residents' council created for the purpose of representing residents on matters set forth in s. 651.085. A residents' council has the authority to establish and maintain its own governance documents such as bylaws, operating agreements, policies, and operating procedures, which may include establishment of committees. Residents, as defined in s. 651.011, have the right to

participate in resident council matters, including elections. The residents' council shall be established through an election in which the residents, as defined in s. 651.011, vote by ballot, physically or by proxy. If the election is to be held during a meeting, a notice of the organizational meeting must be provided to all residents of the community at least 10 business days before the meeting. Notice may be given through internal mailboxes, communitywide newsletters, bulletin boards, in-house television stations, and other similar means of communication. An election creating a residents' council is valid if at least 40 percent of the total resident population participates in the election and a majority of the participants vote affirmatively for the council. The initial residents' council created under this section is valid for at least 12 months. A residents' organization formalized by bylaws and elected officials must be recognized as the residents' council under this section and s. 651.085. Within 30 days after the election of a newly elected president or chair of the residents' council, the provider shall give the president or chair a copy of this chapter and rules adopted thereunder, or direct him or her to the appropriate public website to obtain this information. Only one residents' council may represent residents before the governing body of the provider as described in s. 651.085(2).

(d) ~~A residents' council shall adopt its own bylaws and governance documents subject to the vote and approval of the~~

~~residents. The residents' council shall provide for open meetings when appropriate.~~ The residents' council's governing documents shall define the manner in which residents may submit an issue to the council and define a reasonable timeframe in which the residents' council shall respond to a resident submission or inquiry. A residents' council may include term limits in its governing documents to ensure consistent integration of new leaders. If a licensed facility files for bankruptcy under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. chapter 11, the facility, in its required filing of the 20 largest unsecured creditors with the United States Trustee, shall include the name and contact information of a designated resident selected by the residents' council, and a statement explaining that the designated resident was chosen by the residents' council to serve as a representative of the residents' interest on the creditors' committee, if appropriate.

Section 11. Paragraph (f) of subsection (1) of section 651.083, Florida Statutes, is amended to read:

651.083 Residents' rights.—

(1) No resident of any facility shall be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, by the State Constitution, or by the United States Constitution solely by reason of status as a resident of a facility. Each resident of a facility has the right to:

(f) Present grievances and recommend changes in policies, procedures, and services to the staff of the facility, governing officials, or any other person without restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsman volunteers and staff and advocates and the right to be a member of, and active in, and to associate with, advocacy or special interest groups or associations.

Section 12. Subsections (2), (3), and (5) of section 651.085, Florida Statutes, are amended to read:

651.085 Quarterly meetings between residents and the governing body of the provider; resident representation before the governing body of the provider.—

(2) A residents' council formed pursuant to s. 651.081, members of which are elected by the residents, shall nominate and elect ~~designate~~ a designated resident representative to represent them before the governing body of the provider on matters specified in subsection (3). The initial designated resident representative elected under this section shall be elected to serve at least 12 months. The designated resident representative does not have to be a current member of the residents' council; however, such individual must be a resident, as defined in s. 651.011.

(3) The designated resident representative shall be notified by a representative of the provider at least 14 days in advance of any meeting of the full governing body at which the

annual budget and proposed changes or increases in resident fees or services are on the agenda or will be discussed. The designated resident representative shall be invited to attend and participate in that portion of the meeting designated for the discussion of such changes. Designated resident representatives shall perform their duties in good faith. For providers that own or operate more than one facility in the state, each facility must have its own designated resident representative.

(5) The board of directors or governing board of a licensed provider may at its sole discretion allow a resident of the facility to be a voting member of the board or governing body of the facility. The board of directors or governing board of a licensed provider may establish specific criteria for the nomination, selection, and term of a resident as a member of the board or governing body. If the board or governing body of a licensed provider operates more than one licensed facility, regardless of whether the facility is in-state or out-of-state, the board or governing body may select at its sole discretion one resident from among its facilities to serve on the board of directors or governing body on a rotating basis. A resident who serves as a member of the board or governing body of the facility shall perform his or her duties in a fiduciary manner, including the duty of confidentiality, duty of care, duty of

loyalty, and duty of obedience, as required of any individual serving on the board or governing body of the facility.

Section 13. Paragraphs (e) through (k) and paragraph (l) of subsection (2) of section 651.091, Florida Statutes, are redesignated as paragraphs (f) through (l) and paragraph (n), respectively, and new paragraphs (e) and (m) are added to that subsection and paragraph (m) is added to subsection (3) of that section, to read:

651.091 Availability, distribution, and posting of reports and records; requirement of full disclosure.—

(2) Every continuing care facility shall:

(e) Provide a copy of the final examination report and corrective action plan, if one is required by the office, to the executive officer of the provider's board or governing body and to the president or chair of the residents' council within 60 days after issuance of the report.

(m) Provide to the president or chair of the residents' council a written notice of any change in management within 10 business days.

(3) Before entering into a contract to furnish continuing care or continuing care at-home, the provider undertaking to furnish the care, or the agent of the provider, shall make full disclosure, obtain written acknowledgment of receipt, and provide copies of the disclosure documents to the prospective

resident or his or her legal representative, of the following information:

(m) Disclosure of whether the provider has one or more residents serving on its board or governing body and whether that

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB EEG 23-07 OGSR/Citizens Property Insurance Corporation/Cybersecurity Data and Information
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Griffitts
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	18 Y, 0 N	Villa	Toliver
1) Insurance & Banking Subcommittee		Fortenberry	Lloyd
2) State Affairs Committee			

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it is automatically repealed on October 2nd of the fifth year after enactment.

Current law provides a public record exemption for information held by Citizens Property Insurance Corporation (Citizens) that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, and for portions of risk assessments, evaluations, audits, and other reports of Citizens' cybersecurity program for its data, information, and information technology (I.T.) resources. Additionally, portions of public meetings that would reveal such information are exempt from public meeting requirements.

The bill removes a redundant public record exemption for information held by Citizens, which identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches. The bill removes the scheduled repeal date, thereby maintaining the public record and public meeting exemption for those portions of risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources and portions of public meetings that would reveal such information. The information protected by current public record exemption specific to Citizens remains confidential and exempt under the general public record exemption for cybersecurity that was enacted in 2022.

The bill does not appear to have a fiscal impact on state government or local governments. It does not appear to have a direct economic impact on the private sector.

The bill is effective on October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)[1] sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[2]

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[3]

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.[4] If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

General Public Record Exemption for Cybersecurity Information

In 2022, the Legislature created a general public record exemption[5] for the following cybersecurity[6] related information held by an agency:[7]

- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of information technology[8] (I.T.) systems, operational technology[9] (O.T.) systems, or data of an agency.
- Information relating to critical infrastructure.[10]
- Certain cybersecurity incident information required to be reported pursuant to law.

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[1] Section 119.15, F.S.

[2] Section 119.15(3), F.S.

[3] Section 119.15(6)(b), F.S.

[4] Article I, s. 24(c), FLA. CONST.

[5] Section 119.0725, F.S.

[6] "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 119.0725(1)(c), F.S.

[7] "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

[8] "Information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. Section 119.0725(1)(f), F.S.

[9] "Operational technology" means the hardware and software that cause or detect a change through the direct monitoring or control of physical devices, systems, processes, or events. Section 119.0725(1)(g), F.S.

[10] "Critical infrastructure" means existing and proposed information technology and operational technology systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches,[11] if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
    - Data[12] or information, whether physical or virtual; or
    - I.T. resources, which include an agency's existing or proposed I.T. systems.

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, all portions of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record requirements.[13]

The confidential and exempt information is required to be made available to a law enforcement agency, the Auditor General, the Cybercrime Office within the Florida Department of Law Enforcement (FDLE), the Florida Digital Service (FLDS),[14] and for agencies under the jurisdiction of the Governor, the Chief Inspector General. In addition, the confidential and exempt information may be released in the furtherance of the custodial agency's duties and responsibilities, to another governmental entity in the furtherance of its statutory duties and responsibilities, and cybersecurity incident information may be reported in an aggregate format.[15]

Citizens Property Insurance Corporation

Citizens Property Insurance Corporation (Citizens) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted[16] market. It is not a private insurance company.[17] Citizens was statutorily created in 2002 when the Legislature combined the state's two insurers of last resort, the Florida Residential Property and Casualty Joint Underwriting Association (RPCJUA) and the Florida Windstorm Underwriting Association (FWUA).[18]

Citizens is governed by a nine-member board of governors that administers its plan of operations. The plan of operations is reviewed and approved by the Financial Service Commission.[19] The Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer each appoint two members to the board.[20] The Governor appoints one additional member to advocate solely on behalf of the consumer.[21] Citizens is subject to regulation by the Office of Insurance Regulation.

Public Record and Public Meeting Exemptions under Review

In 2018, the Legislature created public record exemptions for records held by Citizens that identify detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, and for portions of risk assessments, evaluations, audits, and other reports of Citizens' cybersecurity program for its data, information, and I.T. resources. Such records, and portions thereof, are confidential and exempt[22] from public record requirements if

[11] "Breach" means unauthorized access of data in electronic form containing personal information. Good faith access of personal information by an employee or agent of an agency does not constitute a breach, provided that the information is not used for a purpose unrelated to the business or subject to further unauthorized use. Section 119.0725(1)(a), F.S.

[12] "Data" means a subset of structured information in a format that allows such information to be electronically retrieved and transmitted. Section 119.0725(1)(d), F.S.

[13] Section 119.0725(3), F.S.

[14] FLDS is a subdivision of DMS charged with overseeing the state's I.T. resources. Section 20.22(2)(b), F.S.

[15] Section 119.0725(5), F.S.

[16] Admitted market means insurance companies licensed to transact insurance in Florida.

[17] Section 627.351(6)(a)1., F.S.

[18] *See* ch. 2002-240, L.O.F.

[19] Section 627.351(6)(a)2., F.S.

[20] Section 627.351(6)(c)4.a., F.S.

[21] Section 627.351(6)(c)4., F.S.

[22] There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain

disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

- Data or information, whether physical or virtual; or
- I.T. resources, including:
  - Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
  - Physical or virtual security information that relates to Citizens' existing or proposed I.T. systems.[23]

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information; however, all portions of an exempt meeting must be recorded and transcribed. The recording and transcript are confidential and exempt from public record requirements unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of confidential and exempt data and information. If such a determination occurs, only the portion of the recording or transcript that reveals nonexempt data may be disclosed.[24]

The exemptions provide that the recording and transcript of public meetings that would reveal the confidential and exempt information must be available to the Auditor General, the Cybercrime Office of FDLE, and the Office of Insurance Regulation. Such records may also be available to a state or federal agency for security purposes or in furtherance of the agency's official duties.[25]

The 2018 public necessity statement[26] for the exemptions provides that:

> The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of the corporation's data and information technology resources. It is a public necessity that this information be made confidential in order to protect the technology systems, resources, and data of the corporation.

Pursuant to the Open Government Sunset Review Act, the exemptions will repeal on October 2, 2023, unless reenacted by the Legislature.

During the 2022 interim, subcommittee staff met with Citizens' staff as part of its review under the OGSR Act. Citizens' staff indicated they had not had any issues interpreting or applying the exemption and that they were unaware of the existence of any litigation concerning the exemption. Further, Citizens' staff indicated they had not received any complaints concerning the exemption. As such, Citizens' staff recommended the exemption be reenacted.

Effect of the Bill

The bill removes a redundant public record exemption for information held by Citizens which identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches. The general cybersecurity exemption created by the Legislature in 2022 protects the same records from disclosure and is applicable to all agencies subject to public record requirements, including Citizens.

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circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* Attorney General Opinion 85-62 (August 1, 1985).

[23] Section 627.352(1), F.S.

[24] Section 627.352(2), F.S.

[25] Section 627.352(3), F.S.

[26] Article I, s. 24(c), FLA. CONST., requires each public record exemption and each public meeting exemption state with specificity the public necessity justifying the exemption.

The bill removes the scheduled repeal date of the public record exemption, thereby maintaining the exemption, for those portions of risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources if disclosure would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual; or I.T. resources, including:

- Information relating to the security of Citizens' technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
- Physical or virtual security information that relates to Citizens' existing or proposed I.T. systems.

The bill also maintains the public meeting exemption for portions of a public meeting that would reveal such information. Lastly, the bill specifically allows the Auditor General, the Cybercrime Office of FDLE, and the Office of Insurance Regulation to access records relating to risk assessments, evaluations, audits, and other reports of Citizen's cybersecurity program for its data, information, and I.T. resources.

B. SECTION DIRECTORY:

Section 1 amends s. 627.352, F.S., relating to security of data and information technology of Citizens Property Insurance Corporation.

Section 2 provides an effective date of October 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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 627.352, F.S., which provides an exemption from public record and public meeting requirements for certain data and information relating to cybersecurity; repealing exemptions relating to data and information from technology systems; making technical changes; revising specified information that is required to be made available to certain entities; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 627.352, Florida Statutes, is amended to read:

627.352 Security of data and information technology in Citizens Property Insurance Corporation.—

(1) ~~The following data and information from technology systems owned by, under contract with, or maintained by Citizens Property Insurance Corporation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:~~

~~(a) Records held by the corporation which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including~~

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

~~suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:~~

~~1. Data or information, whether physical or virtual; or~~

~~2. Information technology resources, including:~~

~~a. Information relating to the security of the corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or~~

~~b. Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.~~

~~(b)~~ Any portion ~~Those portions~~ of a risk assessment ~~assessments~~, an evaluation ~~evaluations~~, an audit ~~audits~~, and any other report ~~reports~~ of the Citizens Property Insurance Corporation's information technology security program for its data, information, and information technology resources which are held by the corporation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~,~~ if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

(a)~~1.~~ Data or information, whether physical or virtual; or

(b)~~2.~~ Information technology resources, which include:

1.~~a.~~ Information relating to the security of the

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

corporation's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

2.~~b.~~ Security information, whether physical or virtual, which relates to the corporation's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(3) The confidential and exempt records and portions of public meeting recordings and transcripts ~~described in subsection (2)~~ must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, and the

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Office of Insurance Regulation. Such records and portions of public meeting ~~meetings,~~ recordings~~,~~ and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

(4) The exemptions provided by this section apply to records held by the corporation before, on, or after March 21, 2018 ~~the effective date of this act~~.

~~(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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

PCS for HB 1299

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1299 Payments for Workers' Compensation Expert Witnesses
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

Florida's Workers' Compensation Law (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Department of Financial Services, Division of Workers' Compensation (DFS), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers.

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they limited to a maximum $200, per day.

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

The bill has no impact on state or local government revenue. It has a negative, but likely insignificant, impact on state and local government expenditures and has a positive and negative impacts on the private sector.

The bill is effective July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Workers' Compensation

Florida's Workers' Compensation Law[1] (WC Law) requires employers to provide injured employees all medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require.[2] The Department of Financial Services, Division of Workers' Compensation (DFS), provides regulatory oversight of Florida's workers' compensation system, including the workers' compensation health care delivery system. The law specifies certain reimbursement formulas and methodologies to compensate workers' compensation health care providers[3] that provide medical services to injured employees. Where a reimbursement amount or methodology is not specifically included in statute, the Three-Member Panel is authorized to annually adopt statewide schedules of maximum reimbursement allowances (MRAs) to provide uniform fee schedules for the reimbursement of various medical services.[4] DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[5] through the rulemaking process provided by the Administrative Procedures Act.[6]

Medical Services

DWC is responsible for ensuring that employers provide medically necessary treatment, care, and attendance for injured workers. Healthcare providers must receive authorization from the insurer before providing treatment and submit treatment reports to the insurer. Insurers must reimburse healthcare providers based on statewide schedules of maximum reimbursement allowances developed by the DWC or an agreed-upon contract price. DWC mediates utilization and reimbursement disputes.[7]

Expert Witness Fees for Health Care Providers

The WC Law limits the amount a health care provider can be paid for expert testimony during depositions on a workers' compensation claim. As an expert medical witness, a workers' compensation health care provider is limited to a maximum $200, per hour, unless they only provided an expert medical opinion following a medical record review or provided direct personal services unrelated to the case in dispute, then they limited to a maximum $200, per day.[8]

Effect of the Bill

The bill increases the maximum hourly amount allowed expert witnesses from $200, per hour, to $300, per hour. For those expert witnesses subject to the daily rate, the maximum amount allowed is increased from $200, per day, to $300, per day.

B. SECTION DIRECTORY:

Section 1. Amends s. 440.13, F.S., relating to medical services and supplies; penalty for violations; limitations

[1] Ch. 440, F.S.
[2] S. 440.13(2)(a), F.S.
[3] The term "health care provider" includes a physician or any recognized practitioner licensed to provide skilled services pursuant to a prescription or under the supervision or direction of a physician. It also includes any hospital licensed under chapter 395 and any health care institution licensed under chapter 400 or chapter 429. S. 440.13(1)(g), F.S.
[4] S. 440.13(12), F.S.
[5] Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.
[6] Ch. 120, F.S.
[7] S. 440.13, F.S.
[8] S. 440.13(10), F.S.

Section 2. Providing 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 may have a negative, likely insignificant, impact on expenditures for litigated state employee workers' compensation claims to the extent the state elects to increase expert witness fees, as allowed by the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative, likely insignificant, impact on self-insured local government expenditures for litigated public employee workers' compensation claims to the extent they elect to increase expert witness fees, as allowed by the bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may increase payments to medical providers who appear as expert witnesses in litigated workers' compensation claim.

The bill may increase worker's compensation claim costs in litigated cases. If this is significant enough to impact workers' compensation rates, it may increase workers' compensation premiums paid by employers.

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:

None provide by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to payments for workers' compensation expert witnesses; amending s. 440.13, F.S.; increasing the maximum amounts of certain witness fees related to workers' compensation cases; providing an effective date.

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

Section 1. Subsection (10) of section 440.13, Florida Statutes, is amended to read:

440.13 Medical services and supplies; penalty for violations; limitations.—

(10) WITNESS FEES.—Any health care provider who gives a deposition shall be allowed a witness fee. The amount charged by the witness may not exceed $300 ~~$200~~ per hour. An expert witness who has never provided direct professional services to a party but has merely reviewed medical records and provided an expert opinion or has provided only direct professional services that were unrelated to the workers' compensation case may not be allowed a witness fee in excess of $300 ~~$200~~ per day.

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