

Commerce Committee

Monday, April 17, 2023
2:00 PM - 6:00 PM
Webster Hall (212 Knott)

Meeting Packet

Paul Renner
Speaker

Bob Rommel
Chair

The Florida House of Representatives

Commerce Committee

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Bob Rommel
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Meeting Agenda

Monday, April 17, 2023
2:00 PM – 6:00 PM
Webster Hall (212 Knott)

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

CS/HB 125 Utility System Rate Base Values by Energy, Communications & Cybersecurity Subcommittee, McClain

CS/HB 415 Temporary Commercial Kitchens by Regulatory Reform & Economic Development Subcommittee, Porras

CS/HB 505 Insurance by Insurance & Banking Subcommittee, Berfield

CS/CS/HB 591 Social Media Protection for Minors by Choice & Innovation Subcommittee, Regulatory Reform & Economic Development Subcommittee, Rayner-Goolsby, Sirois

CS/HB 637 Motor Vehicle Dealers, Manufacturers, Importers, and Distributors by Civil Justice Subcommittee, Shoaf

CS/HB 639 Issuance of Special Beverage Licenses by Regulatory Reform & Economic Development Subcommittee, Esposito

CS/HB 715 Compensation of Lottery Ticket Retailers by State Administration & Technology Appropriations Subcommittee, Mooney

CS/HB 807 License or Permit to Operate Vehicle for Hire by Regulatory Reform & Economic Development Subcommittee, Borrero

CS/HB 833 Vacation Rentals by Regulatory Reform & Economic Development Subcommittee, Duggan

CS/HB 869 Department of Business and Professional Regulation by State Administration & Technology Appropriations Subcommittee, McClain

HB 917 State Minimum Wage by Yeager

CS/HB 919 Homeowners' Associations by Regulatory Reform & Economic Development Subcommittee, Porras, Fernandez-Barquin

CS/HB 959 Dosage Form Animal Health Products by Regulatory Reform & Economic Development Subcommittee, Tuck

HB 987 Public Deposits by Botana

CS/HB 1185 Consumer Protection by Insurance & Banking Subcommittee, Giallombardo

CS/CS/HB 1209 Economic Development by Ways & Means Committee, Regulatory Reform & Economic Development Subcommittee, Shoaf

CS/HB 1215 Pub. Rec./Inspectors and Investigators/DACS by Ethics, Elections & Open Government Subcommittee, Maggard

CS/HB 1267 Consumer Finance Loans by Insurance & Banking Subcommittee, Fernandez-Barquin

CS/HB 1281 Preemption Over Utility Service Restrictions by Energy, Communications & Cybersecurity Subcommittee, Buchanan

CS/HB 1307 Department of Agriculture and Consumer Services by Criminal Justice Subcommittee, McClure

CS/HB 1317 Local Regulation of Nonconforming or Unsafe Structures by Regulatory Reform & Economic Development Subcommittee, Roach

HB 1353 Commercial Financing Product Brokers and Providers by Bankson

CS/HB 1395 Management and Safety of Condominium and Cooperative Buildings by Regulatory Reform & Economic Development Subcommittee, Lopez, V.

CS/HB 1573 Continuing Care Providers by Insurance & Banking Subcommittee, Persons-Mulicka

HB 1575 Public Safety Emergency Communications Systems by Brackett

Consideration of the following proposed committee substitute(s):

PCS for CS/HB 487 -- Department of Financial Services

PCS for CS/CS/HB 799 -- Property Insurance

PCS for CS/HB 1111 -- Non-coverage-related Regulation of Insurance

PCS for HB 7045 -- Human Trafficking, Prostitution, and Lewdness

V. Closing Remarks

VI. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 125 Utility System Rate Base Values
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 194

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	18 Y, 0 N, As CS	Walsh	Keating
2) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

When a water or wastewater utility regulated by the Public Service Commission (PSC) acquires an existing water or wastewater utility system, the PSC establishes a rate base value for the acquired utility system. The rate base value established by the PSC is the amount upon which the acquiring utility may earn a rate of return. This value is determined using the acquired utility's net book value, i.e., the original cost of the utility's assets when first dedicated to public service, less depreciation. This valuation method is called the "original cost" method.

If the purchase price of a utility system is greater than its net book value, no part of the difference is included in the acquiring utility's rate base absent a showing of extraordinary circumstances, which may include anticipated cost efficiencies and improvements in service quality and regulatory compliance, among other things. If the PSC determines that extraordinary circumstances exist, it will allow the acquiring utility to include all or part of the difference in its rate base as a "positive acquisition adjustment." This adjustment would be reflected in the utility's rates that are set during the utility's next general rate case.

As an alternative to the current process, the bill allows certain PSC-regulated water and wastewater utilities (those with over 10,000 customers or those that are permitted to produce at least 3 million gallons of drinking water per day) who acquire an existing system to petition the PSC to establish rate base for the acquired system based on the lesser of: (1) the purchase price negotiated by the two utilities; or (2) the average of three appraisals of the system conducted by licensed appraisers chosen from a list established by the PSC. Appraisal fees and transaction costs may also be included. An engineering assessment must be conducted and provided to the appraisers to be used for purposes of the appraisal. To support its request to use this approach, the utility must provide the PSC certain information specified in the bill. Within 8 months of receiving a complete petition, the PSC must issue a final order granting the petition, in whole or in part, or denying the petition, consistent with the public interest.

The bill is not expected to have a fiscal impact on state or local governments. The bill may encourage transactions involving the purchase of water or wastewater utility systems by eligible utilities. These transactions may lead to needed infrastructure improvements, cost efficiencies, and improvements in service quality and regulatory compliance for troubled utility systems, though this result is not required by the bill. For acquisitions by PSC-regulated utilities that petition to use the alternative valuation process created in the bill, the PSC may consider potential rate impacts and proposed improvement plans in its consideration of each petition.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regulated Water and Wastewater Utilities

In various areas throughout Florida, water and wastewater services are provided through privately-owned and operated utilities. These privately-owned utilities, sometimes referred to as investor-owned utilities, range in size from very small systems, owned by individuals as sole proprietorships and serving only a few dozen customers in a small neighborhood, to a few systems owned by large interstate corporations which serve tens of thousands of customers in multiple Florida counties.

For privately-owned utilities operating within a single Florida county, the county has the option to regulate rates and service or allow the Public Service Commission (PSC) to regulate those utilities.[1] Regardless of whether the county has opted to regulate those utilities, the PSC has jurisdiction over all water and wastewater utility systems whose service transverses county boundaries, except for systems owned and regulated by intergovernmental authorities.[2] As of 2021, the PSC had jurisdiction over 124 investor-owned water/wastewater utilities in 38 counties.[3] Still, the vast majority of water and wastewater customers in the state are served by water and wastewater utilities not regulated by the PSC, primarily by systems owned, operated, managed, or controlled by governmental authorities.

For each utility within its jurisdiction, the PSC has exclusive authority to regulate the utility's rates and service.[4] The PSC must establish rates that are just, reasonable, compensatory, and not unfairly discriminatory.[5] In doing so, the PSC must consider the value and quality of the service and the cost of providing the service, which includes, but is not limited to: debt interest; the requirements of the utility for working capital; maintenance, depreciation, tax, and operating expenses incurred in the operation of all property used and useful in the public service; and a fair return on the investment of the utility in property used and useful in the public service.[6] The PSC has consistently interpreted the "investment of the utility" to be the original cost of the utility's property when first dedicated to public service.[7] Land is included in the original cost at the time it was first dedicated to public use, meaning that under current accounting practices used to establish a utility's rate base, appreciation of the land's value is not considered.[8]

Acquisition of Water and Wastewater Utility Systems by Regulated Utilities

Each water or wastewater utility subject to the PSC's jurisdiction must obtain a certificate of authorization to provide water or wastewater service.[9] A PSC–regulated utility may not sell, assign, or transfer its certificate of authorization, facilities, or majority organizational control without approval by the PSC. Likewise, PSC approval is required for the transfer of a utility system exempt from PSC jurisdiction, such as a system owned or operated by a governmental authority, to a PSC-regulated utility. To grant approval, the PSC must determine that the sale, assignment, or transfer is in the public interest and that the acquiring utility will fulfill the commitments, obligations, and representations of the utility to be acquired.[10] If a contract for sale is made contingent upon PSC approval, the sale of the

[1] S. 367.171, F.S. If a county chooses to allow regulation by the PSC, it may rescind this election only after 10 continuous years of PSC regulation.
[2] *Id.*
[3] Florida Public Service Commission, *Facts and Figures of the Florida Utility Industry*, p. 28 (Apr. 2022).
[4] S. 367.011, F.S.
[5] S. 367.081, F.S.
[6] *Id.*
[7] Florida Public Service Commission (FPSC), Agency Analysis of 2023 House Bill 125, p. 1 (Feb. 10, 2023).
[8] *Id.* at 5.
[9] S. 367.031, F.S.
[10] S. 367.071(1), F.S.

utility may occur prior to such approval.[11] The PSC considers, among other things, the financial ability of the buyer to maintain and operate the acquired utility and the technical ability of the buyer to provide service.[12]

When the PSC approves a sale, assignment, or transfer of an existing utility system to a PSC-regulated utility, the PSC may establish the rate base for the utility being transferred.[13] The PSC establishes the value of an existing utility's rate base using "original cost." Using original cost, the value of a utility's rate base is determined using the depreciated original cost, or net book value, of the property devoted to the public service. Contributions in aid of construction (CIAC) are deducted from rate base to ensure that costs are not imposed on current customers for infrastructure that was contributed to the utility without the utility's direct investment.[14] This rate base is the amount upon which the utility may earn a fair return, as established by the PSC.[15]

A utility system may be acquired at a price higher or lower[16] than the net book value of its assets. If the purchase price is greater than net book value, no part of the difference is included in a utility's rate base absent a showing by the utility of extraordinary circumstances.[17] In determining whether a utility has demonstrated extraordinary circumstances, the PSC will consider evidence including:

- Anticipated improvements in quality of service;
- Anticipated improvements in compliance with regulatory mandates;
- Anticipated rate reductions or rate stability over a long-term period;
- Anticipated cost efficiencies; and
- Whether the purchase was made as part of an arms-length transaction.[18]

If the PSC determines that extraordinary circumstances exist, it will allow the acquiring utility to include all or part of the difference in its rate base as a "positive acquisition adjustment." This adjustment will be reflected in the utility's rates that are set during the utility's next general rate case.

Challenges for Small Water and Wastewater Utility Systems

Some small water and wastewater systems may struggle to make needed investments. This can happen due to a variety of factors, such as:

- Lack of staff or managerial expertise;
- Lack of capital, or inability to access lower-cost capital, to invest in system infrastructure;
- Lack of economies of scale inherent in larger systems; and
- System abandonment due to disinterest of owners or management in running a system, death of the owner or operator of the system with no clear plan of succession, or frustration with an inability to meet water standards and other regulatory requirements.[19]

These challenges can show up in system violations. Of the 38,853 Safe Drinking Water Act (SDWA)[20] violations in the United States in 2021, 30,153 (77 percent) were in very small systems. For Florida, of the 1,382 SDWA violations, 1,017 (73 percent) were in very small systems.

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[11] FPSC, *supra* note 7, at 1.
[12] Rule 25-30.037 (2), F.A.C.
[13] S. 367.071(5), F.S.
[14] FPSC, *supra* note 7, at 2.
[15] *Id.*at 1.
[16] When the purchase price is equal to or less than 80 percent of net book value, a negative acquisition adjustment must be included in rate base. Rule 25-30.0371(3), F.A.C.
[17] Rule 25-30.0371(2), F.A.C.
[18] *Id.*
[19] National Regulatory Research Institute (NRRI), *A Review of State Fair Market Value Acquisitions Policies for Water and Wastewater Systems*, Sep. 2021, at 8-11, *available at* https://pubs.naruc.org/pub/ED8E5710-1866-DAAC-99FB-B70190F3D64A).
[20] The Safe Drinking Water Act, Pub. L. 93-523, is intended to ensure the quality drinking water by regulating public water systems in the United States. Under this Act, the EPA sets standards for drinking water quality and oversees the states, federally-recognized tribes, and territories that implement the United States' drinking water program.

Given the potential issues with small water and wastewater systems, some states have explored ways to encourage system consolidation. Some states have adopted a rate mechanism referred to as fair market valuation (FMV), which is intended to encourage the acquisition of small or struggling water or wastewater utilities by other utilities that may be positioned to make investments in those systems and provide greater economies of scale, lower cost capital, and greater management and technical expertise.[21] FMV differs from the traditional "original cost" valuation method by allowing a purchasing utility to include in its rate base the "market" value of an acquired water or wastewater utility system, which may be estimated through appraisals. This mechanism may increase the allowable rate base associated with an acquisition.[22]

Proponents of the FMV mechanism state that the original cost methodology can sometimes make it difficult to acquire a struggling water or wastewater utility system because the seller may feel that the original cost methodology undervalues its system and is unwilling to sell.[23] The FMV mechanism also presents risks to an acquiring utility's ratepayers:

- The market forces that control prices in a competitive environment (i.e., buyers and sellers pressuring an acquisition price in opposing directions) are different in a monopoly utility environment. In a monopoly environment, buyers can benefit when a premium is reflected in the rate base upon which they earn a return through rates, and sellers can benefit from sales proceeds that exceed their investment. Thus, both buyers and sellers can benefit from higher purchase prices.[24]
- Monopoly utility assets can be difficult to value because there are not many comparable transactions to rely upon. There may also be a shortage of experts who can do these types of valuations, yet appraisers hold considerable power in the FMV process. FMV determinations can be affected by the party who selects the appraiser, whether the appraiser has a conflict of interest, the method used to determine the final value, the variation between appraisals (a single high appraisal may significantly increase the average price), and the qualifications of the appraiser.[25]
- Use of FMV may encourage utilities to swap assets and increase ratepayer costs without any guarantee of improvement of quality of service or increased cost efficiencies.[26]
- Acquisitions may result in "rate shock" for ratepayers, especially in systems that have been historically underinvested in.[27]
- Use of FMV encourages acquisitions that provide the greatest financial benefit to a purchasing utility, regardless of whether the acquired utility systems are small, struggling systems that may benefit from acquisition.[28]
- Increases in the underlying value of the land upon which the acquired utility is situated may result in significant rate increases solely based on real estate prices.[29]

Given these risks, some states that use the FMV mechanism place restrictions on its use, including:

- Requiring the acquiring utility be of sufficient size.
- Requiring the acquired utility be municipal, small, or disadvantaged or distressed;
- Requiring acquisition benefit from economies of scale;
- Providing an initial moratorium or a limit on rate increases (i.e. "rate shock protection"); and
- Requiring disclosure of anticipated rate impacts in an FMV application.[30]

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[21] NRRI, *supra* note 19, at 1-11.
[22] *Id.*, at 1.
[23] *Id.*
[24] *See, e.g.,* Janice Beecher, *Water utility consolidation: is fair market value fair?*, Michigan State University Institute of Public Utilities, 2019, at 13, *available at* https://ipu.msu.edu/wp-content/uploads/2019/06/Beecher-Fair-Market-Value-Water-June-2019.pdf ; Scott Hempling, *Water Mergers: are they making economic sense?*, Jun. 2019 (*available at* https://energiahoy.com/2019/06/02/water-mergers-are-they-making-economic-sense/).
[25] NRRI, *supra* note 19, at 17.
[26] FPSC, *supra* note 7.
[27] NRRI, *supra* note 19, at 18; FPSC *supra* note 7, at 3.
[28] NRRI, *supra* note 19, at 18-19.
[29] FPSC *supra* note 7, at 5.
[30] NRRI, *supra* note 19, at 19-31.

Pending PSC Rulemaking Proceedings on Acquisition Adjustments

On March 30, 2023, the PSC issued a rule development notice to amend its rules related to water and wastewater utility acquisition adjustments. The notice included a draft rule, and a rule development workshop was scheduled for April 13, 2023.

The draft rule creates two categories of positive acquisition adjustments based on whether the utility system being purchased is considered "viable" or "nonviable." Adjustments for the purchase of viable systems require a showing of a positive cumulative present value benefit over a 5-year period. Adjustments for the purchase of non-viable systems require a lesser showing that customers will benefit through improved quality of service, regulatory compliance, rate reductions or long-term rate stability, and/or cost efficiencies. Proof of "extraordinary circumstances" would no longer be required to obtain a positive acquisition adjustment.[31]

Effect of Proposed Changes

The bill allows certain PSC-regulated water and wastewater utilities who acquire an existing water or wastewater utility system to petition the PSC to establish rate base for the utility system being acquired, without regard to the system's original cost.

Using the alternative approach provided by the bill, an acquiring utility may petition the PSC to establish rate base for the system being acquired based on the lesser of: (1) the negotiated purchase price; or (2) the average of three appraisals of the system conducted by licensed appraisers chosen from a list established by the PSC. The rate base established for the system being acquired may also include reasonable transaction and closing costs incurred by the acquiring utility and reasonable fees paid to appraisers. If the rate base established through this approach exceeds the net book value of the system being acquired, this excess will be reflected in customer rates set during the utility's next general rate case, thus putting upward pressure on rates.

The bill provides that three appraisers will be chosen from a list established by the PSC, and the appraisals will be paid for by the buyer. The bill requires each appraiser to provide an appraisal of the value of the utility system being acquired, in a manner consistent with the Uniform Standards of Professional Appraisal Practice.[32]

Under the bill, the acquiring utility and the utility system being acquired must jointly retain a licensed engineer to assess the tangible assets of the system being acquired. The bill specifies that this assessment must be provided to the three chosen appraisers for use in determining the value of the system being acquired.

A utility that wishes to use this alternative approach must include the following in a petition to the PSC:

- The requested rate base value for the utility system being acquired;
- Copies of the three required appraisals performed by the chosen appraisers, including the average of the valuations produced by each appraisal;
- A copy of the required engineering assessment of tangible assets;
- A 3-year plan to address each deficiency identified in the engineering assessment, which must address impact on quality of service and address any planned improvements to water quality;
- The 5-year projected rate impact on the customers of the utility system being acquired, including, but not limited to the rate impact of any expected cost efficiencies and the rate impact of using of the alternative valuation approach in lieu of the original cost method;

[31] Notice of Development of Rulemaking, In re: Proposed Amendment of Rule 25-30.071, F.A.C., Acquisition Adjustments, Mar. 30, 2023, available at https://www.floridapsc.com/pscfiles/library/FILINGS/2023/02449-2023/02449-2023.pdf.

[32] The Uniform Standards of Professional Appraisal Practice (USPAP) are the generally recognized ethical and performance standards for the appraisal profession in the United States. USPAP was adopted by Congress in 1989, and contains standards for all types of appraisal services, including real estate, personal property, business, and mass appraisal. *See* The Appraisal Foundation, *What is USPAP?*, https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx?hkey=a6420a67-dbfa-41b3-9878-fac35923d2af (last visited Feb. 9, 2023).

- The contract of sale;
- The estimated value of fees and the estimated transaction and closing costs to be incurred by the acquiring utility; and
- A tariff, including rates equal to the rates of the utility system being acquired.

Within 8 months of receiving a complete petition to use this alternative approach, the PSC must issue a final order on the petition. The PSC may grant the petition, in whole or in part or with modifications in the public interest, or the PSC may deny the petition if denial of the petition is in the public interest. The PSC may not approve a rate base value higher than that requested in the petition.

The bill specifies that it applies only to acquiring utilities that:

- Provide water service, wastewater service, or both, to more than 10,000 customers and are engaged in an arms-length acquisition of a water system, wastewater system, or both types of systems; or
- Are permitted to produce 3 million gallons a day of drinking water and are engaged in an arms-length acquisition of a water system, wastewater system, or both types of systems.

Currently, it appears that there are three PSC-regulated utilities to which the bill may apply, though the alternative approach authorized under the bill is not limited to use by utilities that operate in Florida. All other PSC-regulated utilities that acquire a water or wastewater system, or both, would continue to operate under the PSC's current rules that use the original cost approach to establish rate base and that allow a positive acquisition adjustment only upon a demonstration of extraordinary circumstances.

If the alternative approach created by the bill is used to establish rate base for an acquired utility system, that rate base value must be used by the PSC to establish rates during the acquiring utility's next general rate case. The bill specifies that the PSC, in setting future rates for customers of the acquired system, may classify the system as a separate entity, consistent with the public interest.

B. SECTION DIRECTORY:

Section 1. Creates s. 367.0811, F.S., providing an alternative process to establish rate base for an acquired water or wastewater utility system.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may encourage transactions involving the purchase of water and wastewater utility systems by eligible utility systems. These transactions may lead to needed infrastructure improvements, cost efficiencies, and improvements in service quality and regulatory compliance. For acquisitions by PSC-regulated utilities that petition to use the alternative valuation process created in the bill, the PSC may consider potential rate impacts and proposed improvement plans in its consideration of each petition. Use of the alternative valuation process may lead to higher rates for the affected customers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt implementing rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As noted by the PSC, it is unclear how the deficiency-related projects identified by the 3-year plan will interact with the alternative valuation process.[33]

As previously noted, land is included in a utility's rate base at its original cost when dedicated to service for public use. Over time, customers of the utility pay down that cost through rates. Under the alternative valuation method created in the bill, appreciation in land values alone could result in significant increases in rate base, putting upward pressure on customer rates.[34]

The PSC notes that it has no expertise in property appraisal and suggests that an agency with such expertise may be a more appropriate choice to establish the list of approved appraisers required by the bill.[35]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 15, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Corrects a drafting error in the title.
- Revises language to clarify that the Public Service Commission may deny a petition *if denial of the petition* is in the public interest.
- Clarifies the following eligibility requirements for acquiring utilities:
  - The gallonage eligibility option is based on permitted production of drinking water.
  - The arms-length acquisition requirement applies to both the total customer eligibility option and the gallonage eligibility option.

[33] *Id.* at 4.
[34] *See Id.* at 5.
[35] *Id*.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to utility system rate base values; creating s. 367.0811, F.S.; establishing an alternative procedure for the Public Service Commission to establish the rate base value for certain acquired utility systems; requiring the approved rate base value to be reflected in the acquiring utility's next general rate case for ratemaking purposes; establishing a procedure for appraisal of the acquired utility system; providing the contents required for a petition to the commission for approval of the rate base value of the acquired utility system; providing duties of the commission regarding petitions; authorizing the commission to set rates for and classify certain acquired utility systems; providing applicability; requiring the commission to adopt rules; providing an effective date.

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

Section 1. Section 367.0811, Florida Statutes, is created to read:

367.0811 Rates; alternative procedure for establishing rate base value of acquired utility system.—

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

(1)(a) If a utility acquires an existing utility system, including a system described in s. 367.022(2), the utility may petition the commission to establish a rate base value for the utility system being acquired using the valuation process in this section instead of the cost method pursuant to s. 367.081.

(b) The rate base value established by the commission under this section shall be used for ratemaking purposes in the acquiring utility's next general rate case. The rate base value may not exceed the lesser of the purchase price negotiated between the parties to the acquisition transaction or the average of the three appraisals conducted under subsection (2) and may not be adjusted for capital in aid of construction used and useful in serving the public. However, the rate base value may include reasonable transaction and closing costs incurred by the acquiring utility and reasonable fees paid to the appraisers.

(2)(a) For purposes of this section, the utility system being acquired shall be appraised by three licensed appraisers chosen from a list established by the commission. Appraisals shall be paid for by the buyer. Each appraiser shall provide an appraisal of the value of the utility system being acquired that is consistent with the Uniform Standards of Professional Appraisal Practice.

(b) The acquiring utility and the utility system being acquired shall jointly retain a licensed engineer to conduct an

assessment of the tangible assets of the utility system being acquired, and the assessment shall be provided to the three appraisers for use in determining the value of the utility system being acquired.

(3) A petition filed under this section to establish the rate base value for a utility system being acquired must contain all of the following:

(a) The requested rate base value for the utility system being acquired.

(b) Copies of the appraisals required by this section, including the average of the valuations produced by each appraisal.

(c) A copy of the assessment of tangible assets required by this section.

(d) A 3-year plan to address each deficiency identified by the assessment of tangible assets required by this section. The plan must address impact on quality of service and any planned improvements to water quality.

(e) The 5-year projected rate impact on the customers of the utility system being acquired, including, but not limited to, the rate impact of all of the following:

1. Any cost efficiencies expected to result from the acquisition transaction.

2. Use of this section, instead of the cost method pursuant to s. 367.081, to establish the rate base value.

(f) The contract of sale.

(g) The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility.

(h) A tariff, including rates equal to the rates of the utility system being acquired.

(4)(a) If the petition meets the filing requirements of subsection (3), the commission, no later than 8 months after the date the complete petition is filed, shall issue a final order on the petition.

(b) The commission may grant the petition, in whole or in part, or with modifications in the public interest, or may deny the petition if it finds the petition is not in the public interest.

(c) The commission may not approve a rate base value higher than that requested in the petition.

(5) Notwithstanding any provision in this section, the commission may, pursuant to this chapter, set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes if it is deemed to be in the public interest.

(6) This section applies to acquiring utilities that are engaged in an arms-length acquisition of a water or wastewater system, or both, and:

(a) Provide water or wastewater service, or both, to more than 10,000 customers; or

(b) Are permitted to produce at least 3 million gallons per day of drinking water.

(7) The commission shall adopt rules to implement this section.

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

Commerce Committee
CS/HB 125 by Rep. McClain
Utility System Rate Base Values

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. McClain (strike-all):

- Provides a legislative finding that consolidation of water and wastewater utility systems is in the public interest.
- Requires that a utility which petitions to use the alternative valuation process established in the bill must submit a "rate stabilization plan" with its petition if the requested relief would result in a significant individual increase in rates during a defined period.
- Defines "rate stabilization plan."
- Establishes a list of factors that the Public Service Commission (PSC) must consider when reviewing a utility petition to use the alternative valuation process established in the bill and authorizes the PSC to set reasonable performance goals based on these factors for review in a subsequent rate proceeding.

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: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 367.0811, Florida Statutes, is created to read:

367.0811 Rates; alternative procedure for establishing rate base value of acquired utility system.—

(1) The Legislature finds that it is in the public interest to promote consolidation efforts with water and wastewater utility systems in order to encourage economies of scale, better access to lower material and supply costs, better access to capital, improvement in utility infrastructure, and improvement in the quality of service overall.

(2) As used in this section, the term "rate stabilization plan" means an acquiring utility's plan to implement rate changes incrementally over a period of time to mitigate rate increases and to predictably achieve consolidated pricing over time.

(3)(a) If a utility acquires an existing utility system, including a system described in s. 367.022(2), the utility may petition the commission to establish a rate base value for the utility system being acquired using the valuation process in this section instead of the cost method pursuant to s. 367.081.

(b) The rate base value established by the commission under this section shall be used for ratemaking purposes in the acquiring utility's next general rate case. The rate base value may not exceed the lesser of the purchase price negotiated between the parties to the acquisition transaction or the average of the three appraisals conducted under subsection (4) and may not be adjusted for contribution-in-aid-of-construction or used and useful in serving the public. However, the rate base value may include reasonable transaction and closing costs incurred by the acquiring utility and reasonable fees paid to the appraisers.

(4)(a) For purposes of this section, the utility system being acquired shall be appraised by three licensed appraisers chosen from a list established by the commission. Appraisals shall be paid for by the buyer. Each appraiser shall provide an

appraisal of the value of the utility system being acquired that is consistent with the Uniform Standards of Professional Appraisal Practice.

(b) The acquiring utility and the utility system being acquired shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the utility system being acquired, and the assessment shall be provided to the three appraisers for use in determining the value of the utility system being acquired.

(5) A petition filed under this section to establish the rate base value for a utility system being acquired must contain all of the following:

(a) The requested rate base value for the utility system being acquired.

(b) Copies of the appraisals required by this section, including the average of the valuations produced by each appraisal.

(c) A copy of the assessment of tangible assets required by this section.

(d) A 3-year plan to address each deficiency identified by the assessment of tangible assets required by this section. The plan must address impact on quality of service and any planned improvements to water quality.

(e) The 5-year projected rate impact on the customers of the utility system being acquired, including, but not limited to, the rate impact of all of the following:

1. Any cost efficiencies expected to result from the acquisition transaction.

2. Use of this section, instead of the cost method pursuant to s. 367.081, to establish the rate base value.

(f) The contract of sale.

(g) The estimated value of fees and transaction and closing costs to be incurred by the acquiring utility.

(h) A tariff, including rates equal to the rates of the utility system being acquired, and a rate stabilization plan, if applicable to the acquisition. A rate stabilization plan must be filed if the acquisition would result in a significant individual increase in rates during the period identified in paragraph (e).

(6)(a) If the petition meets the filing requirements of subsection (5), the commission, no later than 8 months after the date the complete petition is filed, shall issue a final order on the petition.

(b) The commission may, in the public interest, grant the petition, in whole or in part, or with modifications or may deny the petition.

(c) The commission may not approve a rate base value higher than that requested in the petition.

(7) Notwithstanding any provision in this section, the commission may, pursuant to this chapter, set rates for the acquired utility system in future rate cases and may classify the acquired utility system as a separate entity for ratemaking purposes if it is deemed to be in the public interest.

(8) This section applies to acquiring utilities that are engaged in an arms-length acquisition of a water or wastewater system, or both, and:

(a) Provide water or wastewater service, or both, to more than 10,000 customers; or

(b) Are permitted to produce at least 3 million gallons per day of drinking water.

(9) At minimum, in considering a rate base value petition pursuant to this section, the commission must consider all of the following in serving the public interest and pursuant to the goals of this section:

(a) Improvements in quality of service.

(b) Improvements in compliance with regulatory requirements.

(c) Rate reductions or rate stability over a long-term period.

(d) Cost efficiencies.

(e) A demonstration that the purchase is being made as part of an arms-length transaction.

(f) Economies of scale to be generated by the transaction.

(g) A comparison of the acquiring utility's net book value, to the extent available, and the proposed rate base value of the utility being acquired.

(h) A demonstration that the acquiring utility has greater access to capital than the utility being acquired.

(10) The commission may set reasonable performance goals based on the standards specified in subsection (9) and review utility performance regarding these standards in a rate proceeding.

(11) The commission shall adopt rules to implement this section.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to utility system rate base values; creating s. 367.0811, F.S.; providing legislative findings; defining the term "rate stabilization plan"; establishing an alternative procedure by which the Florida Public Service Commission may establish a rate base value for certain acquired utility systems; requiring that the approved rate base value be reflected in the acquiring utility's next general rate case for ratemaking purposes; establishing a procedure for appraisal of

the acquired utility system; providing the contents required for a petition to the commission for approval of the rate base value of the acquired utility system; providing duties of the commission regarding petitions; authorizing the commission to set rates for and classify certain acquired utility systems; providing applicability; requiring the commission to take certain factors into consideration for certain rate base value petitions; requiring the commission to adopt rules; providing an effective date.

CS/HB 415

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 415 Temporary Commercial Kitchens
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Porras
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 2 N, As CS	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee	15 Y, 0 N	Helpling	Topp
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare. Food trucks are regulated by DBPR as a "mobile food dispensing vehicle,"(MFDV). To obtain a license as an MFDV, an applicant must complete a kitchen plan review for sanitation and safety concerns, apply for a license and pay the license fee, and schedule and pass an initial licensing inspection. Once licensed, Division personnel inspect MFDVs as often as necessary for the protection of the public's health, safety, and welfare.

Ghost kitchens are shared temporary commercial kitchens optimized for use by food delivery services such as Grubhub or DoorDash. Ghost kitchens include physical spaces for operators to create food for off-premises consumption, and can have a central, commissary-style set-up with multiple restaurants or brands working out of the same physical space. Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when food delivery and take-out options were being widely utilized. Recently, due to operational and permitting issues, a few major restaurant chains and ghost kitchen provider platforms have reduced their investments in temporary commercial kitchens.

The bill:

- Requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry to verify that each temporary commercial kitchen that receives such services is properly licensed, and requires operators of temporary commercial kitchens to properly display their public food service establishment license number.
- Preempts the regulation involving licenses, registrations, permits, and fees of temporary commercial kitchens to the state.
- Defines "temporary commercial kitchen" as "any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent."
- Authorizes MFDVs and temporary commercial kitchens that are operated on the same premises as and by a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment.

The bill may have an insignificant fiscal impact on state government and the private sector. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Department of Business and Professional Regulation, Division of Hotels and Restaurants

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the applicable laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.[1]

A "public food service establishment" is defined as:[2]

> …any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of public food service establishment, including:[3]

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;
- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.

Food Trucks[4] are regulated by DBPR as a "mobile food dispensing vehicle,"(MFDV),[5] and defined as:[6]

> …any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

To obtain a license as an MFDV, an applicant must:[7]

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[1] S. 509.032, F.S.
[2] S. 509.013(5)(a), F.S.
[3] S. 509.013(5)(b), F.S.
[4] Generally, a food truck is a large wheeled vehicle from which food is sold that typically contains cooking facilities where the food is prepared. Merriam-Webster Dictionary, *Food Truck*, https://www.merriam-webster.com/dictionary/food%20truck (last visited Feb. 15, 2023).
[5] S. 509.101, F.S.
[6] S. 509.032, F.S.; R. 61C-1.002, F.A.C.

- Complete a kitchen plan review for sanitation and safety concerns (if required);[8]
    - No plan review is required if an operator:
        - buys a vehicle already licensed by the Division and no changes are made
    - A plan review is required if an operator:
        - constructs or uses a vehicle that has never been licensed by the Division;
        - uses a vehicle that has been closed for more than one year; or
        - uses a vehicle that has been remodeled;
    - Plan review requires:
        - a plan of the vehicle with equipment labeled;
        - a sample menu;
        - a side photograph of the vehicle showing the wheels and open service window; and
        - the water/sewer or commissary location;
- Apply for a license and pay the license fee;[9]
    - A $50 application fee is paid in addition to license fees ($347 annual and $178.50 half year fee) when making an application for a new or change of ownership license; and
- Schedule and pass the licensing inspection;[10]
    - All new licensees are required to pass a sanitation and safety inspection prior to opening.

Once licensed, Division personnel have the right to inspect MFDVs as often as necessary for enforcement of the provisions of law and rule, and for the protection of the public's health, safety, and welfare.[11]

The Division is required, upon proper finding, to immediately issue an order to close a licensed public food service establishment in the instance of a severe and immediate public health or safety or welfare threat.[12]

Preemption

The regulation of public food service establishments is preempted to the state. This does not preempt the authority of a local government or local enforcement district to conduct inspections for compliance with the Florida Building Code and the Florida Fire Prevention Code.[13]

The regulation of MFDVs involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local government entity is prohibited from:[14]

- Requiring a separate license, registration, or permit beyond those established by DBPR as a condition for the MFDV's operation within the jurisdiction;
- Requiring a separate fee beyond those established by DBPR as a condition for the MFDV's operation within the jurisdiction; or
- Prohibiting MFDVs from operating within the entirety of the entity's jurisdiction.

The MFDV preemption may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of MFDVs other than the regulations included in the preemption.

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[7] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants – Guide to Mobile Food Dispensing Vehicles, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/mfdv-guide/ (last visited Feb. 15, 2023).
[8] R. 61C-1.002(5)(c), F.A.C.
[9] R. 61C-1.008(4), F.A.C.
[10] R.61C-1.008(3), F.A.C.
[11] S. 509.032(2)(b), F.S.
[12] S. 509.035, F.S.
[13] S. 509.032(7), F.S.
[14] S. 509.102, F.S.

The preemption does not apply to any port authority, aviation authority, airport, or seaport.[15]

Sanitation Rules

The Division is required to adopt and enforce sanitation rules to ensure the protection of the public from food-borne illness in those establishments it licenses. These rules must provide the standards and requirements for obtaining, storing, preparing, processing, serving, or displaying food in public food service establishments, approving public food service establishment facility plans, conducting inspections for compliance with sanitation regulations, cooperating and coordinating with the Department of Health in epidemiological investigations, and initiating enforcement actions, and for other such responsibilities deemed necessary by the Division.[16]

Effective November 1, 2019, the Division has adopted the 2017 Food and Drug Administration (FDA) Food Code (Food Code), which establishes practical, science-based guidance and enforceable provisions for reducing risk factors known to cause or contribute to foodborne illness.[17]

The Food Code is a model for safeguarding public health and ensuring food is unadulterated and honestly presented when offered to the consumer. It represents FDA's best advice for a uniform system of provisions that address the safety and protection of food offered at retail and in food service. This model is offered for adoption by local, state, and federal governmental jurisdictions for food service, retail food stores, or food vending operations.[18]

The Food Code provides a plan review and inspectional guide for “mobile food establishments” based on the mobile unit's menu and operation. Mobile units range in type from push carts to food preparation catering vehicles. The guide provides a matrix of requirements that a mobile food establishment must follow based on the type of food that is available for sale to the consumer. This includes requirements for “time/temperature control for the safety of food”[19] that is prepared on board a mobile food establishment.[20]

Commissary Services Registry

DBPR defines “commissary” to mean “a licensed public food service establishment, which is utilized by a MFDV for the purpose of providing all required support services, including potable water and wastewater disposal that are not available on the mobile food dispensing vehicle.”[21]

Operators of public food service establishments that provide commissary services are required to maintain a daily registry verifying that each MFDV that receives such services is properly licensed. Each MFDV operator must permanently affix in a prominent place on the side of the vehicle, in figures at least 2 inches high and in contrasting colors from the background, the operator’s public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle matches the number on the vehicle operator’s public food service establishment license.[22]

Mobility Requirements

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[15] *Id.*
[16] S. 509.032(2)(d), F.S.
[17] R. 61C-1.001(12), F.A.C.
[18] U.S. Public Health Service, FDA Food Code 2017, p. 327, http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf (last visited Feb. 16, 2022).
[19] "Time/temperature control for safety food" is defined in chapter 1 of the Food Code as a food that requires time/temperature control for safety (TCS) to limit pathogenic microorganism growth or toxin formation.
[20] U.S. Public Health Service, FDA Food Code 2017, p. 754, http://www.myfloridalicense.com/dbpr/hr/statutes/documents/2017-FDA-Food-Code.pdf (last visited Feb. 23, 2023).
[21] R. 61C-1.001(8), F.A.C.
[22] S. 509.101(3), F.S.

Current law describes MFDVs as "mounted public food service establishments which are self-propelled or otherwise movable from place to place…"[23] DBPR's Guide to Mobile Food Establishments (Guide) provides that an MFDV license is a vehicle mounted food service license where the vehicle has adequate hand washing and dishwashing facilities, food protection, refrigeration, power and plumbing system. The Guide provides that an MFDV operator performs food service activities inside the vehicle like food storage, cooking or preparation of food and dishwashing.[24]

According to the Guide, one of the basic requirements for obtaining an MFDV license is to be a vehicle, and to be mobile. In order to be mobile, the Guide provides that "a side photograph of the vehicle showing its wheels and open service window must be submitted at time of application."[25]

Ghost Kitchens

Ghost kitchens, also known as dark kitchens or virtual restaurants, are shared commercial kitchens optimized for food delivery service. Ghost kitchens are typically located in areas with a high concentration of delivery demand. The kitchens don't have a storefront and the staff prepares dishes off of their menus that are only available for delivery. By eliminating the dining room and the wait-staff, this allows food businesses to save on overhead costs by utilizing the shared kitchen model.[26]

Unlike a restaurant with a physical location, ghost kitchen customers do not know exactly where the food is coming from. This may pose a health concern. The Food Code is used to regulate ghost kitchen establishments; however, the Food Code mentions the regulation of Mobile Food Establishments, but not ghost kitchens or similar structures. Ghost kitchens that are not mobile may fall outside of the regulations.[27]

Ghost kitchens became popular in 2020 during the COVID-19 pandemic, when restaurants were shut down due to restrictions, or business volume slowed significantly due to low numbers of patrons being allowed in restaurants.[28] Throughout the pandemic, the delivery-only virtual brand model grew, and through much of 2022 it continued to grow.[29] As a result, venture capitalists invested heavily in the model, which allows access by established restaurant chains and new food entrepreneurs.[30] Recently, due to operational and permitting issues, a few major restaurant chains and provider platforms have reduced their investments in the shared kitchen model. As a result, some of the companies are shifting toward more conventional restaurant development plans.[31]

The U.S. online food delivery market size attained a value of $18.5 billion in the year 2020. The market is further expected to grow between 2023 and 2028 to reach a value of almost $33.7 billion by 2026.[32] However, a recent survey of nearly 1,600 Americans shows that consumers are changing their dining

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[23] S. 509.101, F.S., and R. 61C-1.002, F.A.C.
[24] DBPR, *supra* note 7.
[25] *Id.*
[26] CloudKitchens, *What is a ghost kitchen?: the ultimate guide for your restaurant*, https://cloudkitchens.com/blog/ultimate-guide-to-ghost-kitchens/#:~:text=The%20kitchens%20themselves%20don't,working%20on%20fulfilling%20online%20orders. (last visited Feb. 15, 2023).
[27] Coppolino, Andrew, *Ghost Kitchens, Home Cooks Shake up Food Industry but Raise Safety Concerns*, CBCnews, CBC/Radio Canada (Jan. 28, 2023), https://www.cbc.ca/news/canada/kitchener-waterloo/andrew-coppolino-food-safety-home-cooks-ghost-kitchens-1.6728312 (last visited Feb. 20, 2023).
[28] GlobalData, *Struggling foodservice brands must embrace dark kitchens*, says GlobalData, https://www.globaldata.com/media/consumer/struggling-foodservice-brands-must-embrace-dark-kitchens-says-globaldata/ (last visited Feb. 15, 2023).
[29] PYMNTS, *Inflation Puts Pressure on Ghost Kitchen Model*, https://www.pymnts.com/restaurant-innovation/2023/inflation-puts-pressure-on-ghost-kitchen-model/ (last visited Feb. 15, 2023).
[30] TechCrunch, *The next big restaurant chain may not own any kitchens*, https://techcrunch.com/2018/10/07/the-next-big-restaurant-chain-may-not-own-any-kitchens/ (last visited Feb. 15, 2023).
[31] Restaurant Dive, *Ghost kitchens need to go omnichannel if they want to survive*, experts say, https://www.restaurantdive.com/news/ghost-kitchens-need-to-go-omnichannel-if-they-want-to-survive-experts-say/641555/ (last visited Feb. 15, 2023).
[32] Expert Market Research, *United States Online Food Delivery Market Outlook*, https://www.expertmarketresearch.com/reports/united-states-Online-food-delivery-market (last visited Feb. 15, 2023).

and tipping habits, with 67 percent saying they're dining out less and 31 percent tipping less when they are dining out.[33]

Ghost kitchens come in all shapes and sizes, with some spaces being shared and others being used by just one restaurant brand. The three main types are depicted in the following table:[34]

Type 1	Incubator/Pop-Up Kitchens	An incubator/pop-up ghost kitchen is affiliated with a traditional restaurant but focuses primarily on online orders and deliveries.
Type 2	Kitchen Pods	Kitchen pods are small shipping containers that come with outfitted kitchens.
Type 3	Commissary/Shared Kitchens	Commissary kitchens are shared kitchen spaces owned and operated by a third-party company or entrepreneur rather than a restaurant. They usually house multiple restaurants, brands, or concepts under one roof, where staff shares everything from refrigerator space to frying pans.

Miami Pilot Program for App-based Mobile Operations

On March 11, 2021, the City of Miami created a pilot program for previously unregulated "mobile operating units." The pilot program defined "mobile operation unit" as a movable stand, cart, vehicle, truck, van, or trailer through which mobile operations are performed on a parking lot site or on vacant land, and "delivery food vehicle" is defined as any vehicle used as or in conjunction with a mobile operation unit operating with app-based meal production for delivery only to be consumed off-premises.[35] The regulations require the mobile operating units to refrain from providing on-site takeout or dine-in service.

Mobile operating units are required to obtain city permits, and provide information about the number of participating sites and employees to the city, and to report on the total number of code violations. Violations are punishable by a fine of $250 for a first offense and $500 for each subsequent offense. The pilot was renewed on March 24, 2022, for a second year.[36]

According to reports, in the year since Miami adopted the pilot program, other cities have followed suit, including Orlando.[37]

Other States

In 2020, the U.S. had 1,500 ghost kitchens open across the country.[38] It has been reported that ghost kitchens have continued to open and operate in states such as New Jersey[39], California[40], Texas[41], and

[33] Lending Tree, *Nearly 70% of Americans Say They're Dining Out Less Frequently Due to Inflation, and Almost a Third Are Tipping Less*, https://www.lendingtree.com/credit-cards/study/restaurants-groceries-inflation/#:~:text=Nearly%207%20in%2010%20(67,impacted%20their%20grocery%20shopping%20habits. (last visited Feb. 16, 2023).

[34] Cheetah, 3 Types of Ghost Kitchens and Which One Is the Best Business to Start, https://www.gocheetah.com/blog/types-of-ghost-kitchens-best-for-you/ (last visited Feb. 17, 2023).

[35] City of Miami Ordinance S. 31-51. Food trucks operating on private land.

[36] City of Miami, City Commission Agenda March 24, 2022, http://miamifl.iqm2.com/Citizens/FileOpen.aspx?Type=15&ID=2611&Inline=True (last visited Feb. 16, 2023).

[37] The Community Paper, *Ghost kitchens pilot program passed by the City*, https://www.yourcommunitypaper.com/articles/ghost-kitchens-pilot-program-passed-by-city/ (last visited Feb. 16, 2023).

[38] Emma Liem Beckett, *Ghost Kitchens Could Be a $1t Global Market by 2030, Says Euromonitor*, Restaurant Dive (July 10, 2020), https://www.restaurantdive.com/news/ghost-kitchens-global-market-euromonitor/581374/ (last visited Feb. 20, 2023).

[39] Townsquare Media, Inc., *This Restaurant's Rare Ghost Kitchen Is Available in New Jersey*, 92.7 WOBM, 92.7 WOBM (Feb. 16, 2023), https://wobm.com/ixp/942/p/pancake-kitchen-cracker-barrel/ (last visited Feb. 20,2023).

[40] Iman Palm, *Chipotle to Open Spinoff Restaurant in Santa Monica*, KTLA News (Feb. 15, 2023), https://ktla.com/news/california/chipotle-to-open-spinoff-restaurant-in-santa-monica/ (last visited Feb. 20, 2023).

New York.[42] In 2021, the global ghost kitchen market was estimated to be worth approximately $56 billion.[43]

Currently, the regulation of ghost kitchens among the states appears to primarily be conducted at the local level. Policymakers are considering how to adapt existing regulations to fit the unique challenges that ghost kitchens present. Because ghost kitchens do not fit the traditional definition of a restaurant, government officials are unsure how to regulate them. Depending on their operations, ghost kitchens may fall under the definition of "food facilities," which must be registered with the FDA and are subject to FDA inspections. They also must abide by various safety requirements, including allergy management, hazard planning, and sanitation.[44]

If a kitchen is defined as a restaurant, "a facility that prepares and sells food directly to consumers for immediate consumption," it is exempt from FDA registration, but still regulated by state law and local health authorities. Central kitchens that prepare food for a restaurant chain do not fall under the restaurant exemption unless they sell directly to consumers.[45]

Effect of Proposed Changes

The bill requires operators of public food service establishments who provide commissary services to temporary commercial kitchens to maintain a registry in order to verify that each temporary commercial kitchen that receives such services is properly licensed.

The bill requires operators of temporary commercial kitchens to permanently affix in a prominent place on the side of the kitchen, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number.

The bill preempts the regulation involving licenses, registrations, permits, and fees of temporary commercial kitchens to the state. The bill defines "temporary commercial kitchen" as "any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted, that include self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent."

The bill clarifies that the local governments' ability to regulate the operation of a temporary commercial kitchen other than the regulations described in the preemption are not affected.

The bill authorizes MFDVs and temporary commercial kitchens that are operated on the same premises as and by a separately licensed public food service establishment to operate during the same hours of operation as the separately licensed public food service establishment that operates the MFDV or temporary commercial kitchen.

B. SECTION DIRECTORY:

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[41] Brandi Addison, *Ghost Kitchens Are Taking North Texas by Storm. Here's a Guide to Ghost Kitchens around Grapevine*, Dallas New (May 3, 2022), https://www.dallasnews.com/food/restaurant-news/2022/05/03/ghost-kitchens-are-taking-north-texas-by-storm-heres-a-guide-to-ghost-kitchens-around-grapevine/ (last visited Feb. 20, 2023).

[42] Luke Fortney, *This New Manhattan Ghost Kitchen Will Have Di Fara Pizza and a Steak Spot from Bobby Flay*, Eater NY, Eater NY (Feb. 14, 2023), https://ny.eater.com/2023/2/14/23597544/wonder-manhattan-ghost-kitchen-di-fara-pizza-bobby-flay-steak-nyc.

[43] Statista, Ghost Kitchens - Statistics & Facts, *Statista Research Department* (Nov. 25, 2022), https://www.statista.com/topics/7563/ghost-kitchens/#:~:text=As%20of%202022%2C%20the%20market,reach%20223.7%20billion%20by%202027 (last visited Feb. 20, 2023).

[44] The Food and Drug Administration, *Questions and Answers Regarding Food Facility Registration (Seventh Edition): Guidance for Industry*, https://www.fda.gov/files/food/published/Questions-and-Answers-Regarding-Food-Facility-Registration-%28Seventh-Edition%29.pdf (last visited Feb. 20, 2023).

[45] *Id.*

Section 1: amends s. 509.101, F.S.; requiring operators of public food service establishments who provide commissary services to maintain a temporary commercial kitchen registry; requiring temporary commercial kitchen operators to display license number.

Section 2: amends s. 509.102, F.S.; defining the term "temporary commercial kitchen"; preempting regulation of temporary commercial kitchens to the state.

Section 3: provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   There may be an increase in revenue due to new a license classification.[46]

2. Expenditures:

   DBPR has stated that there may be an increase in staff and labor to process, review, and approve license applications and to inspect the temporary commercial kitchens.[47] However, the impact will likely be an insignificant fiscal impact to the department.

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 owners of temporary commercial kitchens by clearly authorizing them to operate in the state. Those owners operating temporary commercial kitchens without a license will be required to pay and obtain a license to continue to operate.

[46] Department of Business and Professional Regulation, Agency Analysis of 2023 House Bill 415, pp. 3-4 (January 24, 2023).
[47] *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

The bill requires DBPR to establish rules for the operation of temporary commercial kitchens. Such broad rulemaking authority may be an improper delegation of legislative authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires DBPR to create certain weight, humidity, disability, water, electrical, plumbing, mechanical, and wind ratings requirements for the facilities to follow, but does not provide DBPR with regulatory, licensure, or enforcement authority or requirements.

The bill defines temporary commercial kitchens as portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted; however, the bill does not include them in the existing statute for food trucks.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 23, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute includes temporary commercial kitchens in the commissary registry and license display requirements for public food service establishments. The committee substitute preempts the regulation of temporary commercial kitchens to the state. The committee substitute also specifies the hours of operation of MFDVs and temporary commercial kitchens under certain circumstances.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to temporary commercial kitchens; amending s. 509.101, F.S.; requiring operators of public food service establishments who provide commissary services to maintain a temporary commercial kitchen registry; requiring temporary commercial kitchen operators to display license numbers; amending s. 509.102, F.S.; defining the term "temporary commercial kitchen"; preempting regulation of temporary commercial kitchens to the state; providing an effective date.

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

Section 1. Subsection (3) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(3) It is the duty of each operator of a public food service establishment that provides commissary services to maintain a daily registry verifying that each mobile food dispensing vehicle or temporary commercial kitchen that receives such services is properly licensed by the division. In order that such licensure may be readily verified, each mobile food

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

dispensing vehicle operator or temporary commercial kitchen operator shall permanently affix in a prominent place on the side of the vehicle or kitchen, in figures at least 2 inches high and in contrasting colors from the background, the operator's public food service establishment license number. Prior to providing commissary services, each public food service establishment must verify that the license number displayed on the vehicle or kitchen matches the number on the vehicle or kitchen operator's public food service establishment license.

Section 2. Subsections (1), (2), and (3) of section 509.102, Florida Statutes, are amended to read:

509.102 Mobile food dispensing vehicles; temporary commercial kitchens; preemption.—

(1)(a) As used in this section, the term "mobile food dispensing vehicle" means any vehicle that is a public food service establishment and that is self-propelled or otherwise movable from place to place and includes self-contained utilities, including, but not limited to, gas, water, electricity, or liquid waste disposal.

(b) As used in this section, the term "temporary commercial kitchen" means any kitchen that is a public food service establishment, used for the preparation of takeout or delivery-only meals housed in portable structures that are movable from place to place by a tow or are self-propelled or otherwise axle mounted, that include self-contained utilities,

including, but not limited to, gas, water, electricity, or liquid waste disposal. Such kitchens are subject to all provisions of this chapter except as may be provided herein. The term does not include a tent.

(2)(a) Regulation of mobile food dispensing vehicles, and temporary commercial kitchens, involving licenses, registrations, permits, and fees is preempted to the state. A municipality, county, or other local governmental entity may not require a separate license, registration, or permit other than the license required under s. 509.241, or require the payment of any license, registration, or permit fee other than the fee required under s. 509.251, as a condition for the operation of a mobile food dispensing vehicle or temporary commercial kitchen within the entity's jurisdiction. A municipality, county, or other local governmental entity may not prohibit mobile food dispensing vehicles or temporary commercial kitchens from operating within the entirety of the entity's jurisdiction.

(b) Any mobile food dispensing vehicle or temporary commercial kitchen that is operated on the same premises as and by a separately licensed public food service establishment may operate during the same hours of operation as the separately licensed public food service establishment that operates such mobile food dispensing vehicle or temporary commercial kitchen.

(3) This section may not be construed to affect a municipality, county, or other local governmental entity's

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

authority to regulate the operation of mobile food dispensing vehicles or temporary commercial kitchens other than the regulations described in subsection (2).

Section 3. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

CS/HB 415 by Rep. Porras
Temporary Commercial Kitchens

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Porras (between lines 74-78):

- Authorizes temporary commercial kitchens to be used in conjunction with a licensed permanent food service establishment to supplement the kitchen operations of the establishment as follows:
    - Provides a 60-day operating period for temporary commercial kitchens for supplementing kitchen operations of a licensed public food service establishment, and authorizes the Division of Hotels and Restaurants to grant one 60 day extension upon request.
    - Provides a 120-day operating period during a period of renovation, repair, or rebuild.
        - Allows operation on the premises of the licensed permanent food service establishment or off the premises within line of sight not to exceed 1,320 feet from the establishment.
        - Allows the Division of Hotels and Restaurants to grant additional extensions of time upon reasonable and reliable demonstration that additional time is needed to complete the renovation, repair, or rebuild.
- Authorizes temporary commercial kitchens to operate during a state of emergency for the length of time necessary to repair or rebuild the licensed establishment as follows:
    - Must notify the division of its location within 7 days after a natural disaster renders the structure or the land upon which the establishment is sited uninhabitable.
    - Must notify the division of its location every 90 days thereafter.
- Except as otherwise provided, authorizes temporary commercial kitchens to operate for no longer than 30 days, and must notify the Division of Hotels and Restaurants within 48 hours of commencing operation.

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: Commerce Committee
Representative Porras offered the following:

Amendment (with directory and title amendments)

Remove lines 74-78 and insert:

(3)(a) A temporary commercial kitchen may be used in conjunction with a licensed permanent food service establishment that is licensed under this chapter for the purpose of supplementing the kitchen operations of the licensed permanent food service establishment.

1. A temporary commercial kitchen may operate in this capacity on the premises of the licensed permanent food service establishment for 60 consecutive days. The operators of the temporary commercial kitchen may request, and the division may grant, one extension of up to 60 additional consecutive days.

2. During a period of renovation, repair, or rebuilding, a temporary commercial kitchen may operate in this capacity on the premises of the licensed permanent food service establishment or off the premises within line of sight not to exceed 1,320 feet from the licensed permanent food service establishment for a period of 120 days. The division may exercise discretion to grant an additional extension of time upon a reasonable and reliable demonstration by the licensed permanent food service establishment that additional time is needed to complete the renovation, repair, or rebuild.

(b) In the event that a licensed permanent food service establishment licensed under this chapter or the land upon which that establishment is sited is rendered uninhabitable due to natural disaster which is the subject of a declared state of emergency, a temporary commercial kitchen may operate on the premises of, or as near as reasonably practicable to, the location of the permanent licensed food service establishment. A temporary commercial kitchen may only operate in this capacity during the period of repair and rebuilding of the permanent establishment with which it is associated. A temporary commercial kitchen operating in this capacity must notify the division of its location within 7 days after a natural disaster renders the structure or the land upon which the establishment is sited uninhabitable and notify the division of its location every 90 days thereafter.

(c) Except as permitted under paragraphs (a) and (b) and s. 509.352(3), a temporary commercial kitchen may not operate in one location for longer than 30 consecutive days. A temporary commercial kitchen must notify the division within 48 hours of commencing operation in a location.

(4)~~(3)~~ This section may not be construed to affect a municipality, county, or other local governmental entity's authority to regulate the operation of mobile food dispensing vehicles or temporary commercial kitchens other than the regulations described in subsection (2).

(5)~~(4)~~ This section does not apply to any port authority, aviation authority, airport, or seaport.

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

Remove lines 35-36 and insert:

Section 2. Section 509.102, Florida Statutes, is amended to read:

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

Remove line 9 and insert:

commercial kitchen"; authorizing mobile food dispensing vehicles and temporary commercial kitchens in specified locations to operate during certain

hours; providing conditions for operating a temporary kitchen; preempting regulation of

CS/HB 505

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 505 Insurance
SPONSOR(S): Insurance & Banking Subcommittee, Berfield
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/CS/SB 418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) State Administration & Technology Appropriations Subcommittee	14 Y, 0 N	Perez	Topp
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Hurricane Modeling:** provides that a property insurer may use a weighted or straight average of two or more approved hurricane models in a rate filing.
- **Commission on Hurricane Loss Projection Methodology (Commission):** provides that designees of the Executive Director of Citizens Property Insurance Corporation and the Director of the Division of Emergency Management may be members of the Commission in lieu of the directors.
- **Mitigation Credits in Residential Property Insurance Rate Filings:** allows residential property insurers to give mitigation credit for compliance with building code-plus standards developed by an independent, not-for-profit, scientific research organization.
- **Automatic Withdrawal of Premium:**
  - modifies the notice requirement for a change in the amount of premium by automatic bank withdrawal from an increase of any amount to increases greater than $10; and
  - changes the number of days' notice that must be given from 15 days to 10 days to match federal law.
- **Policy Documents:**
  - allows the electronic delivery of health insurance policy documents;
  - removes requirements regarding paper insurance policy documents; and
  - revises notice requirements for certain limited-coverage automobile insurance policies.
- **Declination of Wind and Contents Coverage:** allows policyholders to type their intent to decline wind and contents coverage in their property insurance policies, rather than requiring them to handwrite it, as is currently required.

The bill has no impact on state or local government revenues or expenditures. It has an unknown 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:

Commission on Hurricane Loss Projection Methodology

The Florida Commission on Hurricane Loss Projection Methodology (Commission) is a panel of experts created to provide "actuarially sophisticated guidelines as standards for projection of hurricane losses possible, given the current state of actuarial science."[1] The Commission consists of 12 members including the Executive Director of Citizens Property Insurance Corporation (Citizens Director) and the Director of the Division of Emergency Management (Emergency Management Director).[2] However, the Emergency Management Director has indicated that he is sometimes unavailable to attend the Commission's meetings and would like the discretion to send a designee to those meetings. The Citizens Director has indicated that he would like to be able to send a member of his senior management team or someone with actuarial experience to attend those meetings.

Effect of the Bill

The bill allows the Emergency Management Director to designate a full-time employee of the Division of Emergency Management to be a member of the Commission. It also allows the Citizens Director to designate a full-time employee with either actuarial science experience or senior operations management experience to be a member of the Commission.

Use of Hurricane Models in Residential Property Insurance Rate Filings

The law regarding the Office of Insurance Regulation's (OIR) review and approval of residential property insurance rate filings requires that a rate filing consider mitigation measures that policyholders undertake to reduce hurricane losses.[3] It sets forth the criteria under which OIR may disprove rate filings, including disproval of rates that it determines to be excessive, inadequate, or unfairly discriminatory.[4] The law also establishes criteria for the Commission's consideration, and approval, of hurricane loss models and prescribes how those models affect OIR's approval of property insurance rate filings.[5]

Effect of the Bill

The bill amends the parameters for OIR's approval or disapproval of rate filings by providing that, with respect to residential property insurance rate filings, the rate filing may use a modeling indication that is the weighted or straight average of two or more hurricane loss models found to be accurate or reliable by the Commission.

Mitigation Credits in Residential Property Insurance Rate Filings

Current law requires residential property insurers to include "positive and negative rate factors that reflect the manner in which building code enforcement in a particular jurisdiction addresses the risk of wind damage" in their rate filings filed with, and approved by, OIR.[6] Insurers utilize factors that statewide organizations develop to indicate how building code enforcement units evaluate risk in

[1] S. 627.0628(1)(c), F.S.
[2] S. 627.0628(2)(b), F.S.
[3] S. 627.062(2)(j), F.S.
[4] S. 627.062(2)(b), F.S.
[5] Ss. 627.0628-627.06281, F.S.
[6] S. 627.0629(2)(b), F.S.

particular geographical areas.[7] However, these factors are often are flawed and not an accurate depiction of actual building code enforcement activity in a jurisdiction.

Since 2003, residential property insurers have been required to provide credits, discounts, and other rate differentials to reduce insurance premiums for properties with mitigation features.[8] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.[9] Examples of mitigation features include hurricane shutters, a hip roof, or a specific type of roof covering.

Code-plus programs help property owners avoid or reduce damage caused by natural hazards and other risks by implementing additional levels of resilience to hazards beyond those required by building codes.[10] Presently, insurers are unable to submit rating plans for review and approval by OIR that include mitigation credits for those insureds who comply with code-plus standards established by independent, not-for-profit, scientific research organizations.[11]

Effect of the Bill

The bill allows insurers to file a rating plan (plan) with OIR in which the insurer offers additional windstorm mitigation credits based on standards established by an independent, not-for-profit, scientific research organization that meets the requirements of the rate filing statute.

Notification of Automatic Withdrawal of Insurance Premiums

Insurers issuing personal lines residential and commercial property policies are required to provide premium payment options for quarterly and semiannual payments. They may, but are not required to, offer monthly payment plans.[12] Insurers and policyholders may enter into automatic bank withdrawal agreements for paying insurance premiums.[13] Current law requires insurers to provide the policyholder with 15 days' advance written notice prior to any automatic bank withdrawal if the premium payment increases from the previous withdrawal period by any amount.

Federal law gives consumers the option of receiving notice of a change in an automatic bank withdrawal only when the withdrawal differs from the most recent withdrawal by more than an agreed-upon amount.[14] Federal law also only requires that a policyholder receive 10 days' notice as opposed to 15 days' notice before a change in the amount withdrawn.[15]

Effect of the Bill

The bill changes the written notice requirement of any increase in policy premiums to require the notice only if the increase in policy premiums results in the next automatic withdrawal being increased by more than $10. The bill also reduces the number of days' notice required before a change in a withdrawal from 15 days to 10 days to match federal law.

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[7] *See, e.g.*, ISO Mitigation, *ISO's Building Code Effectiveness Grading Schedule (BCEGS)*, https://www.isomitigation.com/bcegs/ (last visited Mar. 1, 2023). BCEGS is a program that provides these rating factors.
[8] *See* s. 627.0629, F.S.
[9] *See id.*
[10] Whole Building Design Guide, *Code-Plus Program for Disaster Resistance*, https://www.wbdg.org/resources/code-plus-programs-disaster-resistance (last visited Mar. 1, 2023).
[11] *See, e.g.,* Insurance Institute of Business & Home Safety, https://ibhs.org/ (last visited Mar. 1, 2023).
[12] S. 627.4035(1)(a), F.S.
[13] S. 627.0665, F.S.
[14] 12 CFR 1005(10)(d).
[15] *Id.*

Electronic Transmission of Policy Documents

The law requires that an insurance policy be mailed, delivered, or electronically transmitted to an insured or other person entitled to receive the policy (designated person) within 60 days of the policy taking effect.[16] An insurer may allow a personal lines policyholder to elect delivery of policy documents by electronic means instead of by mail.[17] Electronic delivery of commercial risks constitutes delivery to the insured or designated person, unless the insured or designated person notifies the insurer that he or she does not agree to electronic delivery.[18] Current law does not include health insurance policies in the list of policies that may be delivered electronically.

If a policy is delivered electronically, the insurer must include with the policy a notice of the right to receive the policy by mail rather than electronically.[19] Additionally, an insurer must provide a paper copy of an insurance policy to an insured or designated person upon his or her request.[20]

Effect of the Bill

The bill adds health insurance policies, and related documents, to the list of policies for which electronic delivery is permitted. It also removes requirements regarding the delivery of paper insurance policy documents.

Declination of Windstorm and Contents Coverage

Under current law, a policyholder may decline windstorm or contents coverage as part of a property insurance policy.[21] However, when a policyholder declines such coverage, the policyholder is required to write the intent to decline windstorm and contents coverage in his or her own hand.[22] This requirement is particularly antiquated when a policyholder elects to receive policy documents electronically.

Effect of the Bill

The bill allows policyholders to decline windstorm and contents coverage in their property insurance policies by typing it, rather than requiring them to handwrite it.

Limited Coverage Notice Requirements

Automobile insurance policies that do not contain coverage for bodily injury and property damage[23] must be stamped on the policy declarations page with the following language in a font larger than the largest font otherwise used in the declarations page (notice):

> THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW.

The stamping requirement is antiquated and prevents these types of policies from being delivered electronically.

Effect of the Bill

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[16] S. 627.421(1), F.S.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *See* s. 627.712, F.S.
[22] *Id.*
[23] S. 627.7276, F.S. These limited policies are typically issued to certain antique cars.

The bill eliminates the requirement that the notice be stamped on the declarations page of limited coverage automobile policies. Instead, the notice must accompany the declarations page and typed in a font at least as large as the font used in the declarations page. This change will allow these types of policies to be delivered electronically.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.062, F.S, relating to rate standards.

Section 2. Amends s. 627.0628, F.S., relating to Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.

Section 3. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 4. Amends s. 627.0665, F.S., relating to automatic bank withdrawal agreements; notification required.

Section 5. Amends s. 627.7276, F.S., relating to notice of limited coverage.

Section 6. 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 may have an unknown positive direct economic impact on the private sector through the application of mitigation credits to residential property insurance policies.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Allows Citizens' Executive Director to designate a person to serve on the Commission in the Director's place and requires such designee to be full-time employee with either actuarial science experience or senior operations management experience;
- Allows the electronic delivery of health insurance policy documents and removes requirements regarding paper insurance policy documents;
- Allows policyholders to decline windstorm and contents coverage in their property insurance policies by typing it, rather than requiring them to handwrite it, as is currently required; and
- Corrects a technical error made in a bill last year.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to insurance; amending s. 626.8411, F.S.; correcting a cross-reference; amending s. 627.062, F.S.; revising requirements for residential property insurance rate filings; amending s. 627.0628, F.S.; authorizing the appointment of certain designees to the Florida Commission on Hurricane Loss Projection Methodology; providing requirements for such designees; amending s. 627.0629, F.S.; authorizing insurers to file with the Office of Insurance Regulation personal lines residential property insurance rating plans relating to windstorm mitigation construction standards; providing requirements for such filings; amending s. 627.0665, F.S.; revising the timeframe for notices from insurers to insureds of automatic bank withdrawal increases; specifying the increase threshold for such notices; amending s. 627.421, F.S.; authorizing electronic delivery of insurance policy documents for certain health insurance policies, certificates of coverage, and contracts; eliminating requirements for paper delivery of certain insurance policies; amending s. 627.712, F.S.; authorizing insurance policyholders to type the intent to decline certain coverage instead of handwriting it; amending s. 627.7276, F.S.; revising

the requirements for the notice of certain automobile policies; providing an effective date.

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

Section 1. Paragraph (d) of subsection (2) of section 626.8411, Florida Statutes, is amended to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(d) Section 626.172, except for paragraph (2)(e) ~~(2)(f)~~ of that section, relating to agent in full-time charge.

Section 2. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing:

1. Must account for mitigation measures undertaken by policyholders to reduce hurricane losses.

2. May use a modeling indication that is the weighted or straight average of two or more hurricane loss projection models found by the Florida Commission on Hurricane Loss Projection Methodology to be accurate or reliable pursuant to s. 627.0628.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 3. Paragraph (b) of subsection (2) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(2) COMMISSION CREATED.—

(b) The commission shall consist of the following 12 members:

1. The insurance consumer advocate.

2. The senior employee of the State Board of Administration responsible for operations of the Florida Hurricane Catastrophe Fund.

3. The Executive Director of the Citizens Property Insurance Corporation or the director's designee. Such designee must be a full-time employee of the corporation with actuarial science experience or senior operations management experience.

4. The Director of the Division of Emergency Management or the director's designee. Such designee must be a full-time employee of the division.

5. The actuary member of the Florida Hurricane Catastrophe Fund Advisory Council.

6. An employee of the office who is an actuary responsible for property insurance rate filings and who is appointed by the director of the office.

7. Five members appointed by the Chief Financial Officer, as follows:

a. An actuary who is employed full time by a property and casualty insurer that was responsible for at least 1 percent of the aggregate statewide direct written premium for homeowner insurance in the calendar year preceding the member's appointment to the commission.

b. An expert in insurance finance who is a full-time member of the faculty of the State University System and who has a background in actuarial science.

c. An expert in statistics who is a full-time member of the faculty of the State University System and who has a background in insurance.

d. An expert in computer system design who is a full-time member of the faculty of the State University System.

e. An expert in meteorology who is a full-time member of the faculty of the State University System and who specializes in hurricanes.

8. A licensed professional structural engineer who is a full-time faculty member in the State University System and who has expertise in wind mitigation techniques. This appointment shall be made by the Governor.

Section 4. Subsection (9) is added to section 627.0629, Florida Statutes, to read:

627.0629 Residential property insurance; rate filings.—

(9) An insurer may file with the office a personal lines residential property insurance rating plan that provides justified premium discounts, credits, or other rate differentials based on windstorm mitigation construction standards developed by an independent, nonprofit scientific research organization, if such standards meet the requirements of this section. Such plan must describe the manner in which the insurer will document the existence of the mitigation features and premium discounts, credits, or other rate differentials created under such plan.

Section 5. Section 627.0665, Florida Statutes, is amended to read:

627.0665 Automatic bank withdrawal agreements; notification required.—Any insurer licensed to issue insurance in the state who has an automatic bank withdrawal agreement with an insured party for the payment of insurance premiums for any type of insurance shall give the named insured at least 10 ~~15~~ days advance written notice of any increase in policy premiums which results in the next automatic bank withdrawal being increased by more than $10. Such notice must be provided before ~~prior to~~ any automatic bank withdrawal containing the ~~of an~~ increased premium.

Section 6. Subsection (1) of section 627.421, Florida Statutes, is amended to read:

627.421 Delivery of policy.—

(1) Subject to the insurer's requirement as to payment of premium, every policy shall be mailed, delivered, or electronically transmitted to the insured or to the person entitled thereto not later than 60 days after the effectuation of coverage. Notwithstanding any other provision of law, an insurer may allow a policyholder of personal lines insurance to affirmatively elect delivery of the policy documents, including, but not limited to, policies, endorsements, notices, or documents, by electronic means in lieu of delivery by mail. Electronic transmission of a policy, related notices, and other documents for individual and group health insurance policies or certificates of coverage pursuant to parts VI and VII, respectively; health maintenance contracts or certificates of coverage pursuant to part I of chapter 641; prepaid limited health service contracts pursuant to part I of chapter 636; and ~~for~~ commercial risks, including, but not limited to, workers' compensation and employers' liability, commercial automobile liability, commercial automobile physical damage, commercial lines residential property, commercial nonresidential property, farmowners insurance, and the types of commercial lines risks set forth in s. 627.062(3)(d), constitutes delivery to the insured or to the person entitled to delivery, unless the

insured or the person entitled to delivery communicates to the insurer in writing or electronically that he or she does not agree to delivery by electronic means. ~~Electronic transmission shall include a notice to the insured or to the person entitled to delivery of a policy of his or her right to receive the policy via United States mail rather than via electronic transmission. A paper copy of the policy shall be provided to the insured or to the person entitled to delivery at his or her request.~~

Section 7. Paragraph (a) of subsection (2) and subsection (3) of section 627.712, Florida Statutes, are amended to read:

627.712 Residential windstorm coverage required; availability of exclusions for windstorm or contents.—

(2) A property insurer must make available, at the option of the policyholder, an exclusion of windstorm coverage.

(a) The coverage may be excluded only if:

1. When the policyholder is a natural person, the policyholder personally writes <u>or types</u> and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her name, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home/condominium unit) to pay for damage from windstorms. I will pay those costs. My insurance will not."

2. When the policyholder is other than a natural person,

the policyholder provides to the insurer on the policyholder's letterhead the following statement that must be signed by the policyholder's authorized representative and dated: "...(Name of entity)... does not want the insurance on its ...(type of structure)... to pay for damage from windstorms. ...(Name of entity)... will be responsible for these costs. ...(Name of entity's)... insurance will not."

(3) An insurer issuing a residential property insurance policy, except for a condominium unit owner policy or a tenant policy, must make available, at the option of the policyholder, an exclusion of coverage for the contents. The coverage may be excluded only if the policyholder personally writes or types and provides to the insurer the following statement ~~in his or her own handwriting~~ and signs his or her signature, which must also be signed by every other named insured on the policy, and dated: "I do not want the insurance on my (home/mobile home) to pay for the costs to repair or replace any contents that are damaged. I will pay those costs. My insurance will not."

Section 8. Section 627.7276, Florida Statutes, is amended to read:

627.7276 Notice of limited coverage.—

(1) An automobile policy that does not contain coverage for bodily injury and property damage must include a notice ~~be clearly stamped or printed to the effect~~ that such coverage is not included in the policy in the following manner:

"THIS POLICY DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE OR ANY OTHER COVERAGE FOR WHICH A SPECIFIC PREMIUM CHARGE IS NOT MADE, AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW."

(2) This notice ~~legend~~ must accompany ~~appear on~~ the policy declarations ~~declaration~~ page ~~and on the filing back of the policy~~ and must be ~~printed~~ in a ~~contrasting color from that used on the policy and in~~ type size at least as large as ~~larger than~~ the ~~largest~~ type size used on the declarations page ~~in the text thereof, as an overprint or by a rubber stamp impression~~.

Section 9. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

CS/HB 505 by Rep. Berfield
Relating to Insurance

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Berfield (Line 205): The amendment:

- Revises limited motor vehicle insurance notice requirements to conform to the Senate.
- Changes the circumstances under which a livery must provide insurance covering a renter.
- Establishes that, when a local governmental entity is a member of a group self-insurance fund, only an elected official of the entity may be the entity's representative on the self-insurer's governing body.
- Changes property insurance deductible requirements for policies providing dwelling limits over $1 million.
- Provides an additional exception to unearned premium reserve requirements for service agreement companies.

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: Commerce Committee
Representative Berfield offered the following:

Amendment (with title amendment)

Remove lines 205-210 and insert:

(2) This notice ~~legend~~ must appear on the policy declaration page ~~and on the filing back of the policy~~ and be printed in bold type ~~a contrasting color from that used on the policy and in type larger than the largest type used in the text thereof, as an overprint or by a rubber stamp impression~~.

Section 9. Subsection (7) of section 327.54, Florida Statutes, is amended to read:

327.54 Liveries; safety regulations; penalty.—

(7) A livery may not lease or rent or offer to lease or rent any livery vessel unless the livery: ~~first~~

(a) Obtains and carries in full force and effect a policy from a licensed insurance carrier in this state which insures the livery ~~and the renter~~ against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel. The insurance policy must provide coverage of at least $500,000 per person and $1 million per event. The livery shall have proof of such insurance available for inspection at the location where livery vessels are being leased or rented, or offered for lease or rent, and shall provide to each renter the insurance carrier's name and address and the insurance policy number; and

(b) Either:

1. Obtains and carries in full force and effect a policy from a licensed insurance carrier in this state which insures the renter in the same manner and amounts of the policy obtained by the livery under paragraph (a) and provides to each renter the insurance carrier's name and address and the insurance policy number; or

2. Presents the renter with the opportunity to purchase coverage which insures the renter against any accident, loss, injury, property damage, or other casualty caused by or resulting from the operation of the livery vessel of at least $500,000 per person and $1 million per event. If a renter chooses not to purchase the coverage, the livery must obtain a

signed acknowledgement from the renter that the opportunity to purchase coverage was declined.

This subsection does not apply to human-powered vessels.

Section 10. Section 1. Subsection (12) is added to section 624.4621, Florida Statutes, to read:

624.4621 Group self-insurance funds.—

(12) For any local governmental entity that is a member of a self-insurer established under this section, only an elected official of the local governmental entity may be the local governmental entity's representative on the self-insurer's governing body.

Section 11. Paragraph (d) of subsection (3) of section 627.701, Florida statutes, is amended to read:

627.701 Liability of Insureds; coinsurance; deductibles.—

(3)

(d) For the following policies, the following alternative deductible amounts are authorized:

1. With respect to a policy covering a risk with dwelling limits of $250,000 or more, the insurer need not offer the $500 hurricane deductible as required by paragraph (a), but must, except as otherwise provided in this subsection, offer the other hurricane deductibles as required by paragraph (a).

2. With respect to a policy covering a risk with dwelling limits of $1 million or more, but less than $3 million, the

insurer may, in lieu of offering the 2 percent deductible as required by paragraph (a), offer a deductible amount applicable to hurricane losses equal to 3 percent of the policy dwelling limits.

3. With respect to a policy covering a risk with dwelling limits of $3 million or more, the insurer need not offer the 2 percent deductible as required by paragraph (a), but must, except as otherwise provided by this subsection, offer the other hurricane deductibles as required by paragraph (a).

Section 12. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the office, which holds a certificate of authority under s. 624.401 to do business within

this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least $15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this subparagraph may either pay 100 percent of claims as they are incurred, or 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

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

Remove line 27 and insert:

policies; amending s. 327.54, F.S.; providing circumstances when liveries must obtain and provide insurance to renters; providing renters the opportunity to purchase insurance covering livery vessels; amending s. 624.4621, F.S.; specifying a qualification for a local governmental entity's representative on a self-insurer's governing body; amending s. 627.701, F.S.; revising and specifying alternative hurricane deductible amounts for personal lines residential property insurance policies covering risks with specified dwelling limits; amending s. 634.401, F.S.; revising the definition of the term "manufacturer"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 591 Social Media Protection for Minors
SPONSOR(S): Choice & Innovation Subcommittee, Regulatory Reform & Economic Development Subcommittee, Rayner-Goolsby and others
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 792

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N, As CS	Wright	Anstead
2) Choice & Innovation Subcommittee	14 Y, 0 N, As CS	McDaniel	Sleap
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

Social media platforms are a computer-based technology that facilitate the sharing of ideas, thoughts, and information through virtual communities to allow electronic communication of content. Social media use by children can have positive and negative influences, and providing them with information and external controls can help prevent harmful effects.

The bill defines "social media platform" as a digital platform operating in the state mainly accessed by children under the age of 18 that offers forms of electronic communication through which users are permitted to create online communities to share information, ideas, personal messages, and other content.

Beginning January 1, 2024, the bill requires social media platforms to:

- Disclose policies, using clear language suited to children, related to:
  - Content moderation.
  - Addictive design or deceptive pattern features, including autoplay or infinite scroll.
  - Manipulated photographs or digital images.
  - Consideration of best interests of minors when designing, developing, and providing services.
  - Protections against harmful behaviors, such as bullying and threats of violence.
  - Collection or sale of personal information of children, including biometrics and geolocation data.
- Provide clear access to the following:
  - Resources for law enforcement, suicide prevention, and domestic violence prevention services.
  - Protective measures such as screen time limitations and other parental settings.
  - Reporting mechanisms related to harmful behaviors, such as bullying and threats of violence.
- Require children to read and accept a disclaimer on the potential harms of using social media at log in.

The bill requires the above operating requirements to be on the social media platform's Internet homepage, platform user login page, or in a clearly labeled, conspicuous, and readily accessible link contained on such page.

The bill allows social media platforms to post a statement on their website confirming that it has complied with the operating requirements. If a social media platform does not have such a statement on their website, then all K-12 schools operating in the state that accept state funding may not use or have an account on such social media platform.

The bill prohibits a public K-12 school from requiring students to participate in social media platforms related to school-sponsored educational activities. Schools may still require student use of portal, email, and message board accounts used for official business with the school.

The bill will have no fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Social Media Platforms

Generally, a social media platform is a computer-based technology that facilitates the sharing of ideas, thoughts, and information through virtual networks and communities. Social media is Internet-based and gives users quick electronic communication of content, such as personal information, videos, and photos. Users engage with social media via a computer, tablet, or smartphone via web-based software or applications.[1]

Effects of Social Media on Children

Generally, social media use by children can have both positive and negative effects on their health.[2] Some potential safety risks of social media use include:[3]

- Exposure to harmful or inappropriate content.
- Exposure to dangerous people.
- Cyberbullying.
- Oversharing personal information.
- Exposure to excessive advertisements.
- Privacy concerns, including the collection of data about minors.
- Identity theft or being hacked.
- Interference with sleep, exercise, homework, or family activities.

While children generally become more attuned to social interactions as they enter adolescence, those who are frequent, early social media users become particularly sensitive to anticipating social risks and rewards from their peers, according to a study published in JAMA Pediatrics.[4]

The researchers found that "habitual" social media users, or those who checked their social feeds 15 times a day or more, responded quicker and more intensely to perceived good or bad emotions from peers, compared to students who checked once a day or less. The areas of the brain associated with motivation and cognitive control became more active among the habitual students when expecting social rewards and punishments. The students who used little social media reacted less strongly to social cues over the same time period.[5]

Another study in the Journal of Adolescent Health found that 9- and 10-year-olds who spent hours a day playing video games or watching online algorithm-based videos had a higher risk of developing obsessive-compulsive disorders.[6]

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[1] Maya Dollarhide, *Social Media: Definition, Effects, and List of Top Apps*, Investopedia.com, https://www.investopedia.com/terms/s/social-media.asp (last visited Mar. 22, 2023).
[2] Mayo Clinic Staff, *Teens and social media use: What's the impact?*, Mayo Foundation for Medical Education and Research, https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437 (last visited Mar. 22, 2023).
[3] Loyola Medicine, *Social Media Safety for Kids and Teens*, https://www.loyolamedicine.org/about-us/blog/social-media-safety-kids-teens, (last visited Mar. 22, 2023)
[4] Sarah D. Sparks, *Preteens" Social Media Habits Could Be Changing Their Brains*, Education Week, Jan. 6, 2023, https://www.edweek.org/leadership/preteens-social-media-habits-could-be-changing-their-brains/2023/01 (last visited Mar. 22, 2023); Maria T. Maza, BS; Kara A. Fox, MA; Seh-Joo Kwon, BS; et al, *Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development*, JAMA Pediatrics, Jan. 3, 2023, https://jamanetwork.com/journals/jamapediatrics/article-abstract/2799812 (last visited Mar. 22, 2023).
[5] Maria T. Maza, *supra* note 4.
[6] *Id*; Jason M. Nagata, M.D., M.Sc.; Jonathan Chu; Gabriel Zamora; Caitlin R. Costello, M.D.; Stuart B. Murray, D.Clin.Psych., Ph.D.; Fiona C. Baker, Ph.D.; *Screen Time and Obsessive-Compulsive Disorder Among Children 9–10 Years Old: A Prospective Cohort*

In 2021, the Wall Street Journal reported internal research showing that Instagram conducted online surveys, diary studies, focus groups and large-scale questionnaires, which showed that 32% of teenage girls reported that Instagram made them have a worse body image. Of research participants who experienced suicidal thoughts, 13% of British teens and 6% of American teens directly linked their interest in suicide to Instagram.[7]

Recently, U.S. Surgeon General Vivek Murthy remarked that 13 years old is "too early" for children to use social media, despite most social media companies allowing 13 year olds to use their platforms. In early adolescence, kids are still "developing their identity, their sense of self," Murthy said on CNN's "Newsroom" on Jan. 29. He stated that "the skewed, and often distorted, environment of social media often does a disservice to many of those children."[8]

However, social media can allow teens to create online identities, communicate with others, and build social networks, which can provide teens with valuable support, especially helping those who experience exclusion. Social media can expose teens to current events, allow them to interact across geographic barriers, and teach them about a variety of subjects, including healthy behaviors. Also, social media that is humorous or provides a meaningful connection to peers may help teens avoid depression.[9]

In 2022, the Pew Research Center conducted a survey asking teens of their views on social media. Generally, they credit social media for helping to build stronger friendships and exposing them to a more diverse world, but they express concern that these sites lead to drama and social pressure.[10]

Safety Measures and Parental Controls

Providing children with information on ways to more safely use social media may decrease the harm they experience. Having conversations about social media, its benefits, and its risks, may help promote positive social media usage.[11]

Also, parental controls can help protect children from inappropriate content, cyberbullying and other online safety issues. Generally, parental controls are a group of settings that put a parent in control of what content a child can see.[12] Many websites, games, software, devices, and user interfaces offer the optional use of parental controls. Examples of parental controls include blocking websites, filtering content, imposing limits on screen time, allowing parents to monitor online activity, location tracking, and disabling Wi-Fi.[13]

Study; Journal of Adolescent Health, Dec. 12, 2022; https://www.jahonline.org/article/S1054-139X(22)00722-4/fulltext (last visited Mar. 22, 2023).

[7] Taylor Hatmaker, *Facebook knows Instagram harms teens. Now, its plan to open the app to kids looks worse than ever*, TechCrunch.com, https://techcrunch.com/2021/09/16/facebook-instagram-for-kids-mosseri-wsj-teen-girls/ (last visited Mar. 22, 2023).

[8] Lauraine Langreo, EducationWeek, *Surgeon General: Kids Under 14 Should Not Use Social Media,* Feb. 2, 2023, https://www.edweek.org/leadership/surgeon-general-kids-under-14-should-not-use-social-media/2023/02 (last visited Mar. 22, 2023).

[9] Mayo Clinic, *supra* note 2.

[10] Pew Research Center, *Teens' Social Media Habits and Experiences,* https://www.pewresearch.org/internet/2018/11/28/teens-social-media-habits-and-experiences/, (last visited Mar. 22, 2023).

[11] WebMD Editorial Contributors, *How to Talk to Your Kids About Social Media*, WebMD.com, https://www.webmd.com/parenting/how-to-talk-to-kids-about-social-media (last visited Mar. 22, 2023).

[12] Internetmatters.org, *Parental Controls*, https://www.internetmatters.org/parental-controls/ (last visited Mar. 22, 2023).

[13] Caroline Knorr, Commonsensemedia.org, *Parents' Ultimate Guide to Parental Controls*, https://www.commonsensemedia.org/articles/parents-ultimate-guide-to-parental-controls (last visited Mar. 22, 2023).

Laws Protecting Children Online

Children's Online Privacy Protection Act (COPPA)

The Children's Online Privacy Protection Act (COPPA)[14] and its related rules, is a federal law that regulates websites' collection and use of children's information. The operator of a website or online service that is directed to children, or that has actual knowledge that it collects children's personal information (covered entities), must comply with requirements regarding data collection and use, privacy policy notifications, and data security.

A covered entity may not collect personal information from a child under the age of 13 without the prior, verifiable consent of his or her parent.[15]

COPPA requires covered entities to:[16]

- Give parents direct notice of their privacy policies, including a description of their data collection and sharing practices;
- Post a clear link to their privacy policies on their home page and at each area of their website where they collect personal information from children;
- Institute procedures to protect the personal information that they hold;
- Ensure that any third party with which they share collected personal information implements the same protection procedures; and
- Delete children's personal information after the purpose for its retention has been fulfilled.

Violations of COPPA are deemed an unfair or deceptive act or practice and may therefore be prosecuted by the FTC. COPPA also authorizes state attorneys general to enforce violations that affect residents of their states. There is no criminal prosecution or private right of action provided for under COPPA.[17]

California Age-Appropriate Design Code Act

In 2022, California adopted the California Age-Appropriate Design Code Act (CAADCA),[18] legislation modelled on the United Kingdom's Age Appropriate Design Code,[19] which requires online platforms to adhere to strict default privacy and safety settings that protect the best interest of children.[20] CAADCA covers children under 18 years of age and will be effective July 1, 2024.[21]

CAADCA requires certain businesses that provide an online service, product, or feature that is likely to be accessed by children to comply with several new requirements and restrictions, including:[22]

- Prohibitions on using any personal information that it knows or should know is materially detrimental to a child's physical or mental health and/or wellbeing; and
- Prohibitions on obscuring user interface features to deliberately defeat consent or manipulate children into providing unnecessary personal information, otherwise called "dark patterns."

Such businesses must complete a Data Protection Impact Assessment for any new feature they wish to offer to the public if it is likely to be accessed by children, which will determine if any dark patterns are

[14] 16 C.F.R. pt. 312.
[15] 15 U.S.C. ss. 6502(a)-(b).
[16] *See*, Federal Trade Commission, *General Questions About the COPPA Rule: What is the Children's Online Privacy Protection Rule?*, https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0 (last visited Mar. 22, 2023).
[17] *Id*.
[18] Cal. Civil Code § 1798.99.28-.35
[19] 5Rights Foundation, *California follows UK lead as child data protection law is passed*, https://5rightsfoundation.com/in-action/california-follows-uk-lead-as-child-data-protection-law-is-passed.html (last visited Mar. 22, 2023).
[20] Office of Governor Gavin Newsome, *Governor Newsom Signs First-in-Nation Bill Protecting Children's Online Data and Privacy*, https://www.gov.ca.gov/2022/09/15/governor-newsom-signs-first-in-nation-bill-protecting-childrens-online-data-and-privacy/ (last visited Mar. 22, 2023).
[21] Cal. Civil Code § 1798.99.28-.35
[22] Briana Kelly, Nelson Mullins Riley & Scarborough LLP, *State of California Passes Bill to Protect Children Online*, Jan. 26, 2023, https://www.nelsonmullins.com/idea_exchange/alerts/privacy_and_data_security_alert/all/state-of-california-passes-bill-to-protect-children-online (last visited Mar. 22, 2023).

employed, if there is an asymmetrical reward, or if targeted advertisements are deployed in a way that could harm or exploit children.[23]

Required Instruction in Florida Schools

Under Florida's Constitution, unless otherwise voted upon by electors, each county constitutes a school district.[24] In Florida, there are 67 school districts to match the 67 counties in the state.[25] The Florida Constitution further states that each school district must have a school board composed of five or more members.[26] The school boards operate, control, and supervise all free public schools within the school district and determine the rate of school district taxes within constitutional limits.[27] The powers and duties of the district school board are further set forth in law.[28]

The law requires each district school board to provide all courses required for middle grades promotion, high school graduation, and appropriate instruction designed to ensure that students meet State Board of Education adopted standards[29] in the following subject areas:

- reading and other language arts;
- mathematics;
- science;
- social studies;
- foreign languages;
- health and physical education; and
- the arts.[30]

In addition, the law identifies specific topics a teacher must teach.[31] One such topic is comprehensive age-appropriate and developmentally appropriate K-12 instruction on health education that addresses concepts of community health, consumer health, environmental health, and family life, including:

- injury prevention and safety;
- Internet safety;
- nutrition;
- personal health;
- prevention and control of disease;
- substance use and abuse; and
- prevention of child sexual abuse, exploitation, and human trafficking.[32]

Teachers must teach the topics specified in law efficiently and faithfully, using books and materials meeting the highest standards for professionalism and historical accuracy, following the prescribed courses of study, and employing approved methods of instruction.[33] Unless otherwise specified, the law generally does not prescribe grade level, instructional hours, or instructional materials requirements for these topics.

[23] *Id*.
[24] Art. IX, s. 4(a), Fla. Const.; s. 1001.30, F.S. Two or more contiguous counties, upon vote of the electors of each county pursuant to law, may be combined into one school district.
[25] Florida Department of Education, *Public Schools/Districts*, https://web03.fldoe.org/Schools/schoolmap_text.asp (last visited Feb. 20, 2023). The Florida School for the Deaf and Blind, the Florida Virtual School, and the university laboratory schools are considered independent school districts but their governing boards are not elected.
[26] Art. IX, s. 4(a), Fla. Const.
[27] Art. IX, s. 4(b), Fla. Const.
[28] Sections 1001.41 and 1001.42, F.S.
[29] In 2020, the State Board of Education adopted new standards for English language arts and mathematics, called the Benchmarks for Excellent Student Thinking (B.E.S.T.) Standards. The English language arts standards implementation began with the 2021-2022 school year and implementation of the math standards began in the 2022-2023 school year. Rule 6A-1.09401, F.A.C.
[30] Section 1003.42(1)(a), F.S.
[31] Section 1003.42(2)(a)-(t), F.S.
[32] Section 1003.42(2)(n)1.a.-g., F.S.
[33] Section 1003.42(2), F.S.

While not required, an elective course on social media[34] is available in CPALMS.[35] A school may offer this social media course to enable students in grades 9 through 12 to develop fundamental skills in the use of social media across print, multimedia, web, and broadcast platforms, including ethical and legal uses. The content of the elective course should include, but not be limited to, the following:[36]

- Demonstrating entry-level skills in digital communication and packaging them across the platforms/mediums of print, multimedia, online, and broadcast;
- Demonstrating fundamental skills in social media platforms and their uses; expressing social connections with maturity and complexity appropriate to writer, audience, purpose, and context;
- Using fundamental research skills and networking formats;
- Collaborating amongst peers; and
- Using effective listening, speaking, and viewing strategies with an emphasis on the use of evidence to support or refute a claim in multimedia presentations, class discussions, and extended text discussions.

Effect of the Bill

The bill defines "social media platform" or "platform" to mean a digital platform operating in the state predominantly accessed by platform users who are under the age of 18 that offers forms of electronic communication through which such platform users are permitted to create online communities to share information, ideas, personal messages, and other content.

Beginning January 1, 2024, the bill requires social media platforms to:

- Disclose the following social media platform policies, in a manner that is clearly, concisely, prominently, and understandably written, using clear language suited to the age of users likely to routinely access the platform without unrelated, confusing, or contradictory materials:
    - The content moderation policies used by the social media platform for content on the platform.
    - Whether the social media platform uses or allows the use of addictive design or deceptive pattern features including autoplay or infinite scroll.
    - Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.
    - Whether the social media platform considers the best interests of minors when designing, developing, and providing services.
    - The methodology the social media platform uses to consider the best interests of minors when designing, developing, and providing services.
    - The policies and protections used by the social media platform to protect against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.
    - Whether the platform collects or sells personal information of platform users who are under the age of 18, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information is collected and the purpose for such, and if such personal information is sold, the platform must disclose to whom the information is sold.
- Provide clear access to the following:
    - Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.
    - Protective measures such as screen time limitations, data usage limitations, content filters, and other parental settings.
    - Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm

[34] CPALMS, Course, *Social Media 1 (#1006375)*, https://www.cpalms.org/PreviewCourse/Preview/17758, (last visited Mar. 22, 2023).
[35] CPALMS is the State of Florida's official source for standards information and course descriptions. It provides access to thousands of standards-aligned, free, and high-quality instructional/educational resources that have been developed specifically for the standards and vetted through a rigorous review process. CPALMS, *About CPALMS*, http://www.cpalms.org/CPALMS/about_us.aspx, (last visited Mar. 22, 2023).
[36] *Id.*

The bill requires the above operating requirements to be on the social media platform's Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link contained on such page.

The bill requires, at the time of log in, and before obtaining access to the platform, a social media platform to require platform users who are under the age of 18 to read and accept a disclaimer which must be in substantially the following form:

> This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information, or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

The bill prohibits a public K-12 school from:

- Using or having an account on a social media platform that does not have a compliance statement on its Internet homepage or platform user login page.
- Requiring students, regardless of age, to register, enroll, or participate in a social media platform as a means to access information, materials, or resources related to school-sponsored educational activities. Schools may still require student use of portal, email, and message board accounts used for official business with the school.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 501.174, F.S.; providing a definition; requiring social media platforms to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing social media platforms to post specified compliance statements on their Internet homepage or platform user login page; prohibiting certain schools from using or having an account on certain social media platforms and from requiring students to register, enroll, or participate in social media platforms for educational purposes; providing applicability.

Section 2: Provides an effective date.

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 will require social media platforms to expend resources to develop standards and mechanisms to comply with the bill.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Defined "social media platform" as an online platform with users that are predominantly children.
- Required social media platforms to clearly post on their website certain user and moderation policies related to actions that may cause harms to children.
- Required social media platforms to provide access to resources and content controls to help prevent harm to children.
- Allowed social media platforms to post a statement on their website confirming that it has complied with the operating requirements.
- Prohibited certain K-12 schools from having social media accounts on platforms that do not contain a statement confirming compliance.
- Prohibited certain K-12 schools from requiring students to use social media as a part of their curriculum.

On March 27, 2023, the Choice & Innovation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment prohibits public K-12 schools, instead of all K-12 schools, from using certain social media platforms and requiring students to register or participate in a social media platform for educational activities.

The bill analysis is drafted to the committee substitute adopted by the Choice & Innovation Subcommittee.

A bill to be entitled

An act relating to social media protection for minors; creating s. 501.174, F.S.; providing a definition; requiring social media platforms to disclose specified policies and provide specified resources, measures, and disclaimers; authorizing social media platforms to post specified compliance statements on their Internet homepage or platform user login page; prohibiting certain schools from using or having an account on certain social media platforms and from requiring students to register, enroll, or participate in social media platforms for educational purposes; providing applicability; providing an effective date.

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

Section 1. Section 501.174, Florida Statutes, is created to read:

501.174 Social media protection for minors.-

(1) As used in this section, the term "social media platform" or "platform" means a digital platform operating in the state predominantly accessed by platform users who are under the age of 18 that offers forms of electronic communication through which such platform users are permitted to create online communities to share information, ideas, personal messages, and

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

other content.

(2) Beginning January 1, 2024, a social media platform, on its Internet homepage or platform user login page or through a clearly labeled, conspicuous, and readily accessible link on such homepage or login page, must:

(a) Disclose the following social media platform policies in a manner that is clearly, concisely, prominently, and understandably written using language suited to the age of users who are under the age of 18 likely to routinely access the platform without unrelated, confusing, or contradictory materials:

1. The content moderation policies the social media platform uses for content on the platform.

2. Whether the social media platform uses or allows the use of addictive design or deceptive pattern features, including autoplay or infinite scroll.

3. Whether the social media platform allows manipulated photographs or digital images to be shared on the platform.

4. Whether the social media platform considers the best interests of platform users who are under the age of 18 when designing, developing, and providing services.

5. The methodology the social media platform uses to consider the best interests of platform users who are under the age of 18 when designing, developing, and providing services.

6. The policies and protections the social media platform

uses to protect platform users who are under the age of 18 against harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

7. Whether the social media platform collects or sells personal information of platform users who are under the age of 18, including personal identifiers, biometrics, and geolocation data. If such personal information is collected, the platform must disclose the type of personal information collected and the purpose of such collection. If such personal information is sold, the platform must disclose to whom the information is sold.

(b) Provide clear access to the following:

1. Zip code-based references to local resources for law enforcement, suicide prevention, and domestic violence prevention services.

2. Protective measures such as screen time limitations, data usage limitations, content filters, and other parental settings.

3. Reporting mechanisms related to harmful behaviors, such as bullying, harassment, and threats of violence or self-harm.

(3) At the time of log in, and before obtaining access to the platform, a social media platform must require platform users who are under the age of 18 to read and accept a disclaimer which must be in substantially the following form:

This application may be harmful to your mental health and may use design features that have addictive qualities or present unverified information or that may be manipulated by [insert platform name] or others for your viewing. This application may also collect your personal data to further manipulate your viewable content and may share your personal data with others.

(4) A social media platform that complies with subsections (2) and (3) may post a statement confirming such compliance on its Internet homepage or platform user login page.

(5) A public K-12 school may not:

(a) Use or have an account on a social media platform that does not have a statement pursuant to subsection (4) on its Internet homepage or platform user login page.

(b) Require students, regardless of age, to register, enroll, or participate in a social media platform as a means to access information, materials, or resources related to school-sponsored educational activities. This paragraph does not apply to portal, email, and message board accounts used for official business with the school.

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

COMMERCE COMMITTEE

CS/CS/HB 591 by Rep. Rayner-Goolsby
Social Media Protection for Minors

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Rayner-Goolsby (line 96):

- Provides that classroom information, materials, or resources on a social media platform may be viewed in a classroom as long as it is on one screen controlled by instructional or administrative personnel of the school.

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: Commerce Committee

Representative Rayner-Goolsby offered the following:

Amendment

Remove line 96 and insert:

business with the school or to classroom information, materials, or resources viewed in a classroom on one screen controlled by instructional or administrative personnel of the school.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 637 Motor Vehicle Dealers, Manufacturers, Importers, and Distributors
SPONSOR(S): Civil Justice Subcommittee, Shoaf
TIED BILLS: **IDEN./SIM. BILLS:** SB 712

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N	Thompson	Anstead
2) Civil Justice Subcommittee	15 Y, 0 N, As CS	Mawn	Jones
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Division of Motor Vehicles ("Division") within the Department of Highway Safety and Motor Vehicles ("DHSMV") is responsible for administering and enforcing the "Florida Automobile Dealers Act" ("Act"), which Act regulates the contractual business relationship between franchised motor vehicle dealers ("dealers") and manufacturers, distributors, and importers operating in the state. The Act also requires that manufacturers, distributors, and importers ("licensees") be licensed by the DHSMV before doing business in the state and provides grounds for which such licenses may be suspended or revoked or an application for such licenses may be denied.

The bill revises the Act to:

- Broaden the definitions of "common entity"; "unfair"; "independent person"; and "sell" and related terms, and define "motor vehicle dealer association."
- Expand the actions which a licensee is prohibited from taking to include:
  - Conditionally or unconditionally reserving a specific motor vehicle for a specific person, except for purposes of replacing a consumer's vehicle under ch. 861, F.S.;
  - Requiring or incentivizing a dealer to sell or lease a:
    - Specific motor vehicle to a specific person; or
    - A motor vehicle at a specific price or profit margin, or restrict the price at which a motor vehicle dealer may sell or lease a motor vehicle;
  - Engaging in any activities of a motor vehicle dealer except as otherwise authorized; and
  - Selling or leasing specified vehicles or for such vehicles activating for a fee or selling any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade except through a licensed motor vehicle dealer.
- Authorize licensees to sell or activate for a fee a permanent or temporary motor vehicle accessory, option add-on, feature, improvement, or upgrade for specified motor vehicles through remote electronic transmission in specified circumstances, including paying a percentage of the gross sale price that is at least commensurate with the dealer margin structure established by the applicant or licensee.
- Modify the entities prohibited from owning or operating motor vehicle dealerships, an exception to such prohibition, and to whom motor vehicle dealer licenses may be issued.
- Require the DHSMV to conduct an inquiry of a licensee relating to any written complaint alleging a violation of any provision of ss. 320.60-.70, F.S. against such licensee made by a motor vehicle dealer or a motor vehicle dealer association meeting specified conditions; provide applicable timelines; expand the DHSMV's subpoena authority as it relates to such an inquiry; and specify the actions the DHSMV may take if the DHSMV determines that a violation occurred.

The bill does not appear to have a fiscal impact on state or local governments. The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Automobile Dealership Act

General Motors established the first motor vehicle franchise in the United States in 1898.[1] Franchise agreements[2] were initially voluntary and unregulated, but in 1970, the Florida Legislature adopted comprehensive regulations, embodied as the Florida Motor Vehicle Dealership Act ("Act") in Ch. 320, F.S.,[3] which chapter generally regulates motor vehicle manufacturer,[4] distributor,[5] and importer[6] licensing and the contractual relationship between such entities and franchised dealers, providing substantial protections for franchised dealers.[7]

General Provisions

The Act, which charges the Division of Motor Vehicles ("Division") within the Department of Highway Safety and Motor Vehicles ("DHSMV") with administering and enforcing the Act, generally specifies:

- That motor vehicle manufacturers, distributors, and importers ("licensees") must be licensed under the Act to engage in business in Florida and the conditions and situations under which the DHSMV may deny, suspend, or revoke such licenses;
- The requirements for licensees wishing to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which the DHSMV may deny such a request;
- The procedures licensees must follow to add a franchised dealership in an area already served by a franchised dealer, the protest process, and the DHSMV's role in such circumstances;
- The damages assessable against a licensee who violates the Act; and
- The DHSMV's authority to adopt rules to implement these sections of law.[8]

Further, the Act provides that all presently existing or future systems of motor vehicle distribution in Florida and all franchise agreements that are renewed, amended, or entered into after October 1, 1988, are governed by the Act and any amendments thereto, unless the amendment specifically provides

[1] Francine Lafontaine and Fiona Scott Morton, *State Franchise Laws, Dealer Terminations, and the Auto Crisis*, 24 J. Econ. Persp. 233, 234 (2010), https://pubs.aeaweb.org/doi/pdfplus/10.1257/jep.24.3.233 (last visited March 27, 2023).

[2] "Franchise agreement" means a contract, franchise, new motor vehicle franchise, sales and service agreement, ore dealer agreement or any other terminology used to describe the contractual relationship between a manufacturer, factory branch, distributor, or importer, and a motor vehicle dealer, pursuant to which the motor vehicle dealer is authorized to transact business pertaining to motor vehicles of a particular line-make. "Line-make vehicles", in turn, means motor vehicles which are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the manufacturer of same (such as Ford, General Motors, or Honda). However, motor vehicles sold or leased under multiple brand names or marks constitute a single line-make when they are included in a single franchise agreement, and every motor vehicle dealer in this state authorized to sell or lease any such vehicles has been offered the right to sell or lease all of the multiple brand names or marks covered by the single franchise agreement. S. 320.60(1) and (14), F.S.

[3] Ch. 70-424, Laws of Fla.

[4] "Motor vehicle manufacturer" means any person, whether a resident or non-resident of this state, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which, when installed, form an integral part of the motor vehicle and which constitute a major manufacturing alteration. This term includes a central or principal sales corporation or other entity through which, by contractual agreement or otherwise, it distributes its products. S. 320.60(9), F.S.

[5] "Distributor" means a person, resident or nonresident, who, in whole or in part, sells or distributes motor vehicles to motor vehicle dealers or who maintains distributor representatives. S. 320.60(5), F.S.

[6] "Importers" means a person who imports vehicles from a foreign country into the United States or into this state for the purpose of sale or lease. S. 320.60(7), F.S.

[7] "Motor vehicle dealer" means any person, firm, company, corporation, or entity who holds a license under s. 32.27, F.S., as a "franchised motor vehicle dealer" and, for commission, money, or other things of value, repairs or services motor vehicles pursuant to a franchise agreement; sells, exchanges, buys, leases or rents, or offers, or attempts to negotiate a sale or exchange of any interest in, motor vehicles,; or is engaged wholly or in party in the business of selling motor vehicles, whether or not such motor vehicles are owned by such person, firm, company, or corporation. Further, any person who repairs or services three or more motor vehicles; buys, sells, or deals in three or more motor vehicles in any 12-month period; or offers or displays for sale three or more motor vehicles is presumed to be a motor vehicle dealer, with exceptions. S. 32.60(11), F.S.

[8] S. 320.011, F.S.; ss. 320.60-320.70, F.S.

otherwise and except to the extent that such application would impair valid contractual agreements in violation of the State and Federal Constitutions.[9]

Manufacturer, Factory Branch, Distributor, and Importer Licenses

An application for a motor vehicle manufacturer, distributor, or importer license ("applicant") may be denied on various grounds as specified in the Act, and, for the same grounds, such a license, once issued, may be revoked or suspended at any specific location or across the state.[10] Generally, such grounds arise principally out of the applicant's or licensee's dealings with motor vehicle dealers with whom the applicant or licensee has a franchise agreement, including that the applicant or licensee, or in some cases a common entity[11] thereof:

- Coerced or attempted to coerce any motor vehicle dealer to enter into any agreement;
- Threatened to discontinue, cancel, or not to renew a franchise agreement of a licensed motor vehicle dealer, where the threatened discontinuation, cancellation, or nonrenewal, if implemented, would violate the Act;
- Threatened to modify or replace, or has modified or replaced, a franchise agreement with a succeeding franchise agreement which would adversely alter the rights or obligations of a motor vehicle dealer under an existing franchise agreement or which substantially impairs the sales, service obligations, or investment of the motor vehicle dealer;
- Without good cause shown, delayed, refused, or failed to provide a supply of motor vehicles by series in reasonable quantities, including the models publicly advertised by the applicant or licensee as being available, or has delayed, refused, or failed to deliver motor vehicle parts and accessories within a reasonable time after receipt of an order by a franchised dealer; or
- Established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by the Act, or which otherwise is unfair,[12] inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers.[13]

Further, licensees and applicants:

- Must maintain for three years records describing their methods or formula for vehicle allocation and distribution, and of their actual allocation and distribution, to their franchised dealers; and
- Are prohibited from:
    - Competing (with respect to any activity covered by the franchise agreement) with a franchised dealer of the same line-make vehicles located in this state with whom the licensees or applicants have entered into a franchise agreement.[14]
    - Selling a motor vehicle to any retail consumer in the state except through a dealer holding a franchise agreement for the line-make vehicles that includes the motor vehicle sold.[15]

Dealer Licenses in Areas Previously Served

Any manufacturer, distributor, or importer who proposes to establish a motor vehicle dealership, or relocate an existing dealership, to a location within a community or territory where the same line-make vehicle is presently represented by a franchised dealer must give written notice of its intention to the DHSMV.[16] An existing franchised dealer has standing to protest a proposed additional or relocated

[9] *See* Article I, s. 10 of the Florida Constitution and Article 1, s. 10 of the United States Constitution. 320.701, F.S.S. 320.6992, F.S.
[10] S. 320.64, F.S.
[11] "Common entity" means a person who is either controlled or owned, beneficially or of record, by one or more persons who also control or own more than 40 percent of the voting equity interests of a manufacturer; or who shares directors, officers, or partners with a manufacturer.
[12] As used in this section, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the manufacturer offers or allocates to its other same line-make dealers in the state.
[13] *Id.*
[14] S. 320.64(23), F.S.
[15] This does not apply to sales to current employees and to employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the federal government. S. 320.64(24), F.S.
[16] S. 320.642(1), F.S.

motor vehicle dealership when the existing dealer has a franchise agreement for the same line-make vehicle to be sold or serviced by the proposed dealership and certain physical location mileage requirements are met.[17] Specifically, in counties with a population of:

- Less than 300,000, an existing dealer of the same line-make vehicles has standing if the dealer:
  - Has a franchise agreement designating the same area of responsibility in which the proposed dealership is to be located;
  - Has a licensed franchise location within a 20-mile radius of the proposed dealership's location; or
  - Can establish that during any 12-month period of the 36-month period preceding the filing of the application for the proposed dealership, the dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a 20-mile radius of the proposed dealership's location, so long as the existing dealer is located in the same county as or any county contiguous to the county of the proposed dealership's location.[18]
- Over 300,000, an existing dealer of the same line-make vehicles has standing if the dealer:
  - Has a licensed franchise location within a radius of 12.5 miles of the location of the proposed dealership; or
  - Can establish that during any 12-month period of the 36-month period preceding the filing of the application for the proposed dealership, the dealer or its predecessor made 25 percent of its retail sales of new motor vehicles to persons whose registered household addresses were located within a 12.5-mile radius of the proposed dealership's location, so long as the existing dealer is located in the same county as or any county contiguous to the county of the proposed dealership's location.[19]

However, different procedures apply where the proposed dealership is a dealership which only services vehicles and does not sell or lease new vehicles ("service-only dealership"). Specifically, an existing dealer only has standing to protest such a proposed dealership when the dealer is within a 20-mile radius in counties with a population less than 300,000 and a 12.5-mile radius in counties with a population over 300,000.[20] Further, a proposed service-only dealership is not subject to protest if:

- The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;
- There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and
- The proposed location of the additional or relocated service-only dealership is at least seven miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.[21]

If a service-only dealership subsequently seeks to sell new motor vehicles at its location, however, all notice and protest provisions apply.[22]

[17] S. 320.642(3), F.S.
[18] S. 320.642(3)(a)2., F.S.
[19] S. 320.642(3)(b)1., F.S.
[20] S. 320.642(6)(a), F.S.
[21] S. 320.642(6)(b), F.S.
[22] S. 320.642(6)(d), F.S.

Restrictions on Owning or Operating Dealerships

The Act prohibits licensees, manufacturers, distributors, agents of a manufacturer or distributor, or any parent, subsidiary, common entity, officer, or representative of a licensee from owning or operating a dealership in Florida for the sale or service of motor vehicles that are already offered for sale[23] under a franchise agreement with a dealer in this state.[24] However, a licensee may operate a dealership and still be deemed to in compliance with the Act if:

- The entity operates a dealership for a temporary period of up to one year, during the transition from one dealership owner to another;
- The entity operates a dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are:
    - Part of a group that has historically been underrepresented in its dealer body; or
    - Deemed to lack the resources to purchase or capitalize the dealership outright; or
- The DHSMV determines, after an administrative hearing on the matter held at the request of any person, that there is no "independent person"[25] available in the community or territory to own and operate the dealership in a manner consistent with the public interest.[26]

In any such case, the licensee must continue to make the dealership available for sale to an independent person at a fair and reasonable price, and approval of the sale may not be unreasonably withheld.[27]

Inspection and Investigation of Books or Other Documents of License

The Act gives the DHSMV the authority to inspect a licensee's pertinent books, records, letters, and contracts relating to any written complaint made to the DHSMV against the licensee.[28] In the exercise of such duties, the Act gives the DHSMV the power to subpoena witness attendance and the production of any documentary evidence necessary for DHSMV's disposition of any such written complaint, but provides that any such information obtained may not be used against the licensee as the basis for a criminal prosecution under Florida law.[29]

Administrative Hearings and Adjudications

A franchised dealer who is directly and adversely affected by the actions or conduct of a manufacturer, distributor, or importer, which actions or conduct allegedly violate the Act, may seek a declaration and adjudication of its rights by filing with the DHSMV either a: [30]

- Request for an administrative hearing under ch. 120, F.S.; or
- Written objection or notice of protest as prescribed by the Act.[31]

If a written objection or notice of protest is filed with the DHSMV, a hearing must occur no sooner than 180 days, or later than 240 days, from the date of the filing of the first written objection or notice of protest, unless the time is extended by the administrative law judge for good cause shown.[32]

Civil Remedies

[23] "Sell," "selling," "sold," "exchange," "retail sales," and "leases" means any transaction where the title of motor vehicle or used motor vehicle is transferred to a retail consumer; any retail lease transaction where a retail customer leases a vehicle for a period of at least 12 months; and lease-purchase transactions. However, under the Act, establishing a price for sale when an applicant or licensee has sold a motor vehicle to any retail consumer in the state except through a motor vehicle dealer holding a franchise agreement for the line-make vehicles that includes the motor vehicle does not constitute a sale or lease. S. 320.60(6) and (15), F.S.

[24] S. 320.645(1), F.S.

[25] "Independent person" means a person who is not an officer, director, or employee of the licensee. S. 320.645(2)(a), F.S.

[26] S. 320.645(1), F.S.

[27] *Id.*

[28] S. 320.67(1), F.S.

[29] S. 320.67(2), F.S.

[30] S. 320.699(1), F.S.

[31] *Id.*

[32] S. 320.699(2), F.S.

Any person who suffers a pecuniary loss or who has been otherwise adversely affected because of a violation of the Act by a manufacturer, distributor, or importer has a cause of action against such manufacturer, distributor, or importer for damages in an amount equal to three times the pecuniary loss, along with reasonable costs and attorney fees.[33] The person bringing such an action must make a prima facie showing that the alleged violation occurred, after which the manufacturer, distributor, or importer has the burden to prove that such a violation did not occur.[34]

Additionally, the DHSMV, or any motor vehicle dealer in the name of the DHSMV and the State and for the use and benefit of the motor vehicle dealer, may generally apply to any circuit court of the state for a temporary or permanent injunction[35] restraining any person from acting as a licensee under the Act without being properly licensed thereunder; from violating or continuing to violate the Act; or from failing or refusing to comply with the requirements of injunction statute or any rule or regulation adopted thereunder.[36]

However, on May 3, 2022, the First District Court of Appeal affirmed a decision by the DHSMV that the Florida Automobile Dealers Association ("FADA") lacked standing to challenge a licensee's alleged violations of the Act.[37] Specifically, the court held that, even though FADA's members are motor vehicle dealers, FADA lacked standing because:

- It is not itself a motor vehicle dealer or other statutorily-authorized person or entity that may bring such a challenge; and
- Was not directly and negatively impacted by the licensee's actions or conduct.[38]

Market Background

Traditionally, dealers rely on licensees for product to fill and move off lots, and such licensees in turn rely on dealers to sell and service their vehicles. However, as more licensees introduce electric vehicles[39] ("EV"), such licensees are re-envisioning their sales methods in ways which may eliminate or reduce a licensee's reliance on dealers. Specifically, some EV manufacturers, distributors, and importers, and newer motor vehicle manufacturers, distributors, and importers without existing franchise agreements, have adopted a "direct-to-consumer" approach for selling their vehicles; in other words, they sell their vehicles directly to consumers without the need for a dealership to act as a go-between.[40] These manufacturers, distributors, and importers often also:

- Adopt a cost-effective distribution method known as "build-to-order," in which a vehicle purchaser can custom-design his or her vehicle online and have it delivered without needing to involve a dealer; and
- Operate their own dealerships and service centers to handle any in-person needs a customer may have.[41]

How the traditional licensee-dealer relationship fits into an EV future is at the forefront of discussions between such licensees and dealers.[42] These discussions are of particular importance as, in the United

[33] S. 320.697, F.S.
[34] *Id.*
[35] An "injunction" is a court order requiring a person to do or cease doing a specific action. Legal Information Institute, *Injunction*, https://www.law.cornell.edu/wex/injunction (last visited March 27, 2023).
[36] S. 320.695, F.S.
[37] *Fla. Auto. Dealers Ass'n v. Hyundai Motor Am. Corp.*, 337 So. 3d 893, 894 (Fla. 1st DCA 2022), *reh'g denied* (May 3, 2022).
[38] *Id.*
[39] "Electric vehicle" means a motor vehicle that is powered by an electrical motor that draws current from rechargeable storage batteries. S. 320.01(36), F.S.
[40] Proponents of the direct-to-consumer sales model argue that it lowers end prices for consumers, increases consumer choice between industry brands, and gives manufacturers greater control over marketing and sales. Opponents of the model argue that it reduces price competition, lowers consumer safety, and reduces investments in local communities.
[41] The U.S Department of Justice, *Economic Effects of State Bans on Direct Manufacturer Sales to Car Buyers*, https://www.justice.gov/sites/default/files/atr/legacy/2009/05/28/246374.pdf (last visited March 27, 2023); Greg Rosalsky, *Inside the Rise of 'Stealerships' and the Shady Economics of Car Buying*, National Public Radio (NPR) (Aug. 30, 2022), https://www.npr.org/sections/money/2022/08/30/1119715886/inside-the-rise-of-stealerships-and-the-shady-economics-of-car-buying (last visited March 27, 2023).
[42] Michael Wayland, *Carmakers Face a Crossroads as they Work to Fit Auto Dealers into their EV Plans*, CNBC (Jan. 28, 2023), https://www.cnbc.com/2023/01/28/ev-sales-automakers-dealers.html?__source=sharebar|email&par=sharebar (last visited March 27, 2023).

States alone, revenue in the electric vehicles[43] ("EV") market is projected to reach approximately $61 billion in 2023, and will result in a market volume of $139 billion by 2027.[44]
According to the National Conference of State Legislatures ("NCSL"), a number of states have begun to address this issue by amending their dealer franchise laws to either explicitly prohibit or authorize the direct-to-consumer sales model.[45] Specifically, according to the NCSL:

- At least 17 states expressly prohibit the direct-to-consumer sales model;
- At least 18 states expressly authorize the direct-to-consumer model; and
- At least nine states prohibit all new direct-to-consumer sales arrangements, while authorizing manufacturers, distributors, and importers already engaged in direct-to-consumer sales in the state to maintain a certain number of sales locations.[46]

Further, according to the NCSL:

- Of the states authorizing direct sales, at least eight states tie their direct-to-consumer sales provisions to a requirement that the entity exclusively sell non-fossil-fuel, EVs, or other zero-emission vehicles.
- Most states authorizing the direct-to-consumer sales model still require an entity to obtain a dealer license before operating in the state.
- In some states, authorization for the direct-to-consumer sales model comes from favorable judicial or administrative rulings as to the applicability of state law.[47]

Recent Developments

Some licensees with established dealer franchises have indicated their intent to separate their EV and internal combustion vehicle lines with separate dealership agreements and to offer a sales model that is a hybrid between the manufacturer-dealership model and the direct-to-consumer model for both lines.[48] This stems in part from the fact that, recently, motor vehicle manufacturers and dealers have engaged in public disputes about how vehicles should be sold in the future, and about whether dealer franchise laws have contributed to dealers pricing new cars at an all-time high.[49] At least three major motor vehicle manufacturers recently asked their dealers to cut down on markups, additional waiting list fees, and deposits for EVs, and at least one notified its dealers that it would cut back on sending them the manufacturer's most popular vehicles if prices did not come down.[50] Dealers, in turn, suggest that such actions will not solve pricing issues and will interfere with market competition.

The Federal Trade Commission ("FTC") has advocated for the relaxation of state franchise laws so that manufacturers, distributors, and importers can utilize the lower cost direct-to-consumer business models and has stated that "[s]tates should allow consumers to choose not only the cars they buy, but also how they buy them."[51] The FTC has also proposed new rules aimed at combating rising consumer prices.[52] Such rules propose to ban deceptive advertising, in which dealerships market motor vehicles for lower prices than the dealership actually intends to sell them for; ban junk fees for fraudulent add-on

[43] "Electric vehicle" means a motor vehicle that is powered by an electrical motor that draws current from rechargeable storage batteries. S. 320.01(36), F.S.
[44] Statista, *Electric Vehicles – United States*, https://www.statista.com/outlook/mmo/electric-vehicles/united-states (last visited March 27, 2023).
[45] National Conference of State Legislatures, *State Laws on Direct Sales*, https://www.wispolitics.com/wp-content/uploads/2021/08/State-Laws-on-Direct-Sales.pdf (last visited March 27, 2023).
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Motor Biscuit, *Ford Threatens to Cut Dealer Inventories to Demolish Price Markups*, https://www.motorbiscuit.com/ford-threatens-cut-dealer-inventories-demolish-price-markups/?utm_source=npr_newsletter&utm_medium=email&utm_content=20220826&utm_term=7163011&utm_campaign=money&utm_id=4320608&orgid=&utm_att1= (last visited March 27, 2023); Motor1.com, Christopher Smith, *Dealership Profits Are At Record Levels Through Q1 2022: Report: The Average Profit for New-Car Dealerships is Estimated at $7.1 million*; https://www.motor1.com/news/589765/dealership-profits-at-record-levels-q1-2022/ (Last visited March 27, 2023) (Data from 2022 shows dealerships profits at record levels: The average gross profit per new vehicle is $6,244, which is a 180 percent increase from pre-pandemic levels in 2019.)
[50] *Id.*; Chris Bruce, *Hyundai is Latest Automaker Fed Up with Ridiculous Dealership Markups*, Motor1.com (Feb 23, 2022), https://www.motor1.com/news/569524/hyundai-genesis-avoid-dealer-markups/ (last visited March 27, 2023).
[51] Marina, et al., *Direct-to-Consumer Auto Sales: It's Not Just About Tesla*, Federal Trade Commission (May 11, 2015), https://www.ftc.gov/enforcement/competition-matters/2015/05/direct-consumer-auto-sales-its-not-just-about-tesla (last visited March 27, 2023).
[52] Federal Trade Commission, *FTC Proposes Rule to Ban Junk Fees, Bait-and-Switch Tactics Plaguing Car Buyers*, https://www.ftc.gov/news-events/news/press-releases/2022/06/ftc-proposes-rule-ban-junk-fees-bait-switch-tactics-plaguing-car-buyers (last visited March 27, 2023).

products and services that provide no benefit to the consumer; and require dealerships to disclose upfront all costs and conditions for buying their vehicles.[53] However, NADA opposes these proposed rules and has stated that such rules "would cause great harm to consumers by significantly extending transaction times, making the customer experience much more complex and inefficient, and increasing prices."[54]

Effect of Proposed Changes

Manufacturer, Distributor, and Importer Licenses

The bill expands the grounds for which an application for a manufacturer, distributor, or importer license may be denied, and such a license, once issued, may be suspended or revoked, to include:

- Establishing a system of motor vehicle allocation or distribution or implementing a system of allocation or distribution for motor vehicles to one or more of its franchised dealers which:
  - Conditionally or unconditionally reserves a specific motor vehicle identified by a vehicle identification number or other unique identifier for a specifically named person, except for purposes of replacing a consumer's vehicle pursuant to ch. 861, F.S.;
  - Requires or incentivizes a motor vehicle dealer to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by a vehicle identification number or other unique identifier to a specifically named person; and
  - Requires or incentivizes a motor vehicle dealer to sell or lease a motor vehicle at a specified price or profit margin, or restricts the price at which a motor vehicle dealer may sell or lease a motor vehicle.
- Engaging in any of the activities of a motor vehicle dealer as defined in the Act, except as prohibited by the Act and with respect to the electronic transmission of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade; and
- Selling or leasing, whether directly or through a common entity,[55] a motor vehicle of a line-make manufactured, distributed, or imported by the applicant or licensee to any retail consumer in Florida, or has for a motor vehicle of such line-make activated for a fee or sold any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade, to any retail consumer for a motor vehicle the consumer purchased from a motor vehicle dealer in Florida, except through a properly licensed motor vehicle dealer holding a franchise agreement for the line-make that includes the motor vehicle.

However, the bill specifies that an applicant or a licensee, or a common entity thereof, may sell or activate for a fee a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee and registered in Florida if and only if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the motor vehicle through remote electronic transmission. If such motor vehicle was sold or leased as new by a franchised dealer in the state within three years before such remote electronic transmission, the bill requires the applicant or licensee to pay the dealer a percentage of the gross sale price for the accessory, option, add-on, feature, improvement, or upgrade that is at least commensurate with the dealer margin structure established by the applicant or licensee for the sale of the vehicle to which the accessory, option, add-on, feature, improvement, or upgrade was remotely transmitted. To calculate the "dealer margin structure," the bill requires the applicant or licensee to subtract the invoiced vehicle wholesale price from the Manufacturer's Suggested Retail Price, then add to that figure all monetary per-vehicle incentives offered by the

[53] *Id.*

[54] Rosalsky, *supra* note 45.

[55] The bill redefines "common entity" to mean a person who is either directly or indirectly controlled, or has more than 30 percent of his or her equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, a licensee, or a distributor thereof; or by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 percent of the equity interests of a manufacturer, distributor, licensee, or an affiliate thereof. However, the bill provides that, notwithstanding the foregoing, an entity which would otherwise be considered a common entity of a distributor because of its relation to a distributor shall not be considered a common entity of that distributor if the distributor was licensed as a distributor as of March 1, 2023; the entity is not a common entity of a manufacturer or an importer; and the distributor is not, and has never been, a common entity or a manufacturer or importer.

applicant or licensee whether or not received by the motor vehicle dealer, and then divide that sum by the invoiced vehicle wholesale price.

The bill also expands the definition of:

- "Unfair" to include using the number of motor vehicles pre-ordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.
- "Sell," "selling," "sold," "exchange," "retail sales," and "leases," to include:
  - Accepting a deposit or receiving a payment for the purchase, lease, exchange, subscription, or use of a motor vehicle, except that this definition shall not include facilitating a motor vehicle dealer's acceptance of a deposit or receipt of a payment from a customer;
  - Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;
  - Setting the retail price for the purchase, lease, or other use of a motor vehicle;
  - Offering or negotiating with a retail consumer the terms for the purchase, lease, financing, or other use of a motor vehicle;
  - Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, provided that this definition shall not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer;
  - Offering or negotiating with a retail consumer any service contract, extended warranty, vehicle maintenance contract, guaranteed asset protection agreement, or any other vehicle-related products or services in connection with the purchase or lease of a motor vehicle;
  - Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; and
  - Any retail lease transaction where a retail consumer leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer.[56]

Restrictions on Owning or Operating Dealerships

The bill revises the restriction on owning or operating dealerships by:

- Adding "importer" to the list of entities the Act restricts from such ownership or operation;
- Prohibiting a manufacturer, importer, or distributor from directly or indirectly owning, operating, or controlling by contract, agreement, or otherwise a motor vehicle dealership for any line-make in Florida if such entity has manufactured, imported, or distributed motor vehicles of any line-make which have been offered for sale under a franchise agreement in this state with an independent person.[57]
- Specifying that a person prohibited from owning, operating, or controlling a motor vehicle dealership may not be issued a motor vehicle dealer license, but such a license may be issued to a person not so prohibited.

The bill also amends an exception to the restrictions on owning or operating dealerships if the DHSMV determines, after an administrative hearing on the matter, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. Specifically, the bill provides that:

- This exception only applies if the motor vehicle dealership sells motor vehicles of a line-make which, at the time of the hearing, are offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by the licensee; a licensee's officer or

[56] The bill also deletes a provision stating that establishing a price for sale pursuant to s. 320.64, F.S., does not constitute a sale or lease.
[57] The bill modifies the definition of "independent person" to mean a person who is not an agent, parent, subsidiary, common entity, officer, or employed representative of a licensee, manufacturer, importer, or distributor.

employed representative; a licensee's parent, subsidiary, or common entity; or a manufacturer, importer, or distributor.
- A motor vehicle dealer association[58] has standing to intervene in any hearing held on such exception.

Investigation and Inspection of Books or Other Documents of License

The bill requires that the DHSMV conduct an inquiry of a licensee relating to any written complaint alleging a violation of any provision of ss. 320.60-.70 against such licensee made by a motor vehicle dealer with a current franchise agreement issued by the licensee or motor vehicle dealer association with at least one member with a current franchise agreement issued by the licensee. The bill also provides, that:

- In the exercise of such duties, the DHSMV is granted and authorized to exercise the power of subpoena for the purposes of compelling production of and inspecting pertinent books, records, letters, and contracts of a licensee and compelling the attendance of witnesses at deposition.
- The inquiry required by this section must be commenced within 30 days of the date of the written complaint.
- The DHSMV must obtain a written response from the licensee to the allegations contained in the complaint within 60 days of the DHSMV inquiry and must respond to the inquiring party within 30 days of the response from the licensee.
- If any investigation or examination conducted pursuant to the DHSMV inquiry results in a determination that the licensee has committed a violation, the DHSMV must take appropriate action against the licensee, which may include license suspension or revocation; denial of a license renewal application; assessment, imposition, levy, and collection of an appropriate civil fine; or instituting a civil action for issuance of an injunction pursuant to s. 320.695, F.S.

However, the bill provides that nothing in this section alters or affects a motor vehicle dealer's right to bring a claim or action against a licensee pursuant to any other provisions of ss. 320.60-.70, F.S.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 320.60, F.S., relating to definitions for ss. 320.31-320.70.
Section 2: Amends s. 320.64, F.S., relating to denial, suspension, or revocation of license; grounds.
Section 3: Amends s. 320.645, F.S., relating to restriction upon ownership of dealership by licensee.
Section 4: Amends s. 320.67, F.S., relating to inspection of books or other documents of license.
Section 5: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[58] The bill defines "motor vehicle dealer association" to mean a not-for-profit entity organized under the laws of this state which is qualified for tax-exempt status under s. 501(c)(6) of the Internal Revenue Code, acts as a trade association that primarily represents the interests of franchised motor vehicle dealers, and has a membership of at least 500 franchised motor vehicle dealers.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on franchised dealers in the state as it protects their current business model even where the licensee with whom they have the agreement expands into EV production and sales. However, the bill may have a negative economic impact on consumers in the state to the extent that it prevents them from buying a vehicle using the potentially less-expensive direct-to-consumer sales model.

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:

Contracts Clause

Both the State and Federal Contracts Clauses prohibit states from passing any law which impairs the obligation of contracts but does not operate to obliterate a state's police powers.[59] Courts consider three factors when evaluating whether a particular law violates the Contracts Clauses:

- Whether the law substantially impairs a contractual relationship;
- Whether there is a significant and legitimate public purpose for the law; and
- Whether the adjustments of rights and responsibilities of the contracting parties are based upon reasonable conditions and are of an appropriate nature.[60]

All presently existing or future systems of motor vehicle distribution in Florida and all franchise agreements that are renewed, amended, or entered into after October 1, 1988, are governed by the Act and any amendments thereto, unless the amendment specifically provides otherwise and except to the extent that such application would impair valid contractual agreements in violation of the State and Federal Constitutions.

B. RULE-MAKING AUTHORITY:

The DHSMV is already vested with the necessary rulemaking authority to implement any changes made by the bill which impact the DHSMV. Thus, additional rulemaking authority is likely unnecessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[59] Art. 1, s. 10, Fla. Const.; U.S. Const. art. 1, s. 10; *Allied Structural Steel Co. v. Spannus*, 438 U.S. 234 (1978).
[60] *Vesta Fire Ins. Corp. v. State of Fla.,* 141 F.3d 1427, 1433 (11th Cir. 1998).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Modified the definitions of “common entity,” “independent person," and of "sell," "selling," "sold," "exchange," "retail sales," and "leases."
- Defined “reasonable terms and conditions” and “significant investments” as the terms relate to dealership ownership restrictions.
- Modified the grounds for which an application for a manufacturer, distributor, or importer license may be denied, and such a license, once issued, may be suspended or revoked.
- Deleted a provision amending s. 320.695, F.S., to authorize a motor vehicle dealer association to apply for an injunction under that section.
- Deleted a provision amending s. 320.699, F.S., to authorize a motor vehicle dealer association to seek a declaration and adjudication of its rights or the rights of its members by filing a request for an administrative hearing.
- Amended s. 320.67, F.S., to:
    - Provide that the DHSMV must conduct an inquiry of a licensee relating to a written complaint made against the licensee by a motor vehicle dealer or a motor vehicle dealer’s association alleging that the licensee violated any provision of ss. 320.60-.70, F.S.
    - Expand the DHSMV’s subpoena powers under this section.
    - Provide timelines applicable to the DHSMV’s inquiry.
    - Specify what action the DHSMV may take against the licensee if the DHSMV’s inquiry results in determination that the licensee committed a violation.
    - Provide that nothing in this section alters or affects a motor vehicle dealer’s right to bring a claim or action against a licensee under any other provision of ss. 320.60-.70, F.S.
- Made technical changes.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to motor vehicle dealers, manufacturers, importers, and distributors; amending s. 320.60, F.S.; revising and providing definitions; amending s. 320.64, F.S.; prohibiting a motor vehicle manufacturer, distributor, or importer from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; revising the definition of the term "unfair"; authorizing a motor vehicle manufacturer, distributor, or importer to sell or activate certain motor vehicle accessories or features through remote electronic transmission; providing for revenue-sharing after such a sale or activation; amending s. 320.645, F.S.; revising provisions prohibiting a motor vehicle manufacturer, distributor, or importer from owning, operating, or controlling a motor vehicle dealership in this state; providing for the application of provisions relating to certain hearings; revising the definition of the term "independent person"; amending s. 320.67, F.S.; authorizing a motor vehicle dealer or motor vehicle dealer association to file a written complaint with the Department of Highway Safety and Motor Vehicles alleging a motor vehicle dealer, manufacturer, importer, or distributor has violated a provision of

ss. 320.60-320.70, F.S.; requiring the department to review such a complaint and make a specified report to the complainant; providing that, if the department determines not to pursue action against a licensee as a result of a complaint filed by a motor vehicle dealer association, the motor vehicle dealer association may bring an administrative action challenging the actions of the licensee; providing an effective date.

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

Section 1. Subsections (2) and (15) of section 320.60, Florida Statutes, are amended, and subsection (17) is added to that section, to read:

320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(2)(a) "Common entity" means a person:

1.~~(a)~~ Who is directly or indirectly ~~either~~ controlled by or has more than 30 percent of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

2. Who has more than 30 percent of its equity interest

directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 ~~40~~ percent of the ~~voting~~ equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof~~; or~~

~~(b) Who shares directors or officers or partners with a manufacturer~~.

(b) Notwithstanding the foregoing, an entity which would otherwise be considered a common entity of a distributor pursuant to subparagraph (a)1. or subparagraph (a)2. because of its relation to a distributor shall not be considered a common entity of that distributor if:

1. The distributor to which the entity is related was a licensed distributor on March 1, 2023;

2. The entity is not a common entity of a manufacturer or importer; and

3. The distributor to which the entity is related is not, and has never been, a common entity of a manufacturer or importer.

(15) "Sell," "selling," "sold," "exchange," "retail sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the purchase, lease, or other use of a motor vehicle, except that this definition shall not include facilitating a motor vehicle

dealer's acceptance of a deposit or receipt of a payment from a customer;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or other use of a motor vehicle;

(d) Offering or negotiating with a retail consumer terms for the purchase, lease, financing, or other use of a motor vehicle;

(e) Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, provided that this definition shall not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer;

(f) Offering or negotiating with a retail consumer any service contract, extended warranty, vehicle maintenance contract, guaranteed asset protection agreement, or any other vehicle-related products or services in connection with the purchase or lease of a motor vehicle;

(g) Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; or~~,~~

~~and also~~

(h) Any retail lease transaction where a retail consumer ~~customer~~ leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer. ~~Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.~~

(17) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state and qualified as tax-exempt under s. 501(c)(6) of the Internal Revenue Code which acts as a trade association that primarily represents the interests of franchised motor vehicle dealers and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

Section 2. Subsections (18), (23), and (24) of section 320.64, Florida Statutes, are amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant

shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which:

(a) Reduces or alters allocations or supplies of new motor vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70;

(b) Conditionally or unconditionally reserves a specific motor vehicle identified by vehicle identification number or other unique identifier for a specifically named person, except for purposes of replacing a consumer's vehicle pursuant to chapter 681;

(c) Requires or incentivizes motor vehicle dealers to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by vehicle identification number or other unique identifier to a specifically named person;

(d) Requires or incentivizes motor vehicle dealers to sell or lease a motor vehicle at a specified price or profit margin, or restricts the price at which a motor vehicle dealer may sell or lease a motor vehicle; or

(e) Is~~, or which~~ otherwise ~~is~~ unfair, inequitable,

unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. As used in this paragraph, "unfair" includes, but is not limited to, refusing or failing to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color as the licensee offers or allocates to its other same line-make dealers in this state or using the number of motor vehicles pre-ordered or reserved by consumers as a factor in determining the allocation of motor vehicles to motor vehicle dealers.

An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. ~~As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.~~

(23) The applicant or licensee has engaged in any of the activities of a motor vehicle dealer as defined in s. 320.60(11)(a) or (15) or has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this

state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645 or in subsection (24) with respect to the remote electronic transmission of a motor vehicle accessory, option, add-on, feature, improvement, or upgrade.

(24) The applicant or licensee, or common entity thereof, has sold or leased a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee to any retail consumer in this state, or has for a motor vehicle of such line-make sold or activated for a fee any permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade, to any retail consumer for a motor vehicle ~~in~~ the consumer purchased from a motor vehicle dealer in this state, except through a motor vehicle dealer properly licensed pursuant to s. 320.27 and holding a franchise agreement for the line-make that includes the motor vehicle. Notwithstanding this subsection, an applicant, licensee, or their common entity may sell or activate for a fee a permanent or temporary motor vehicle accessory, option, add-on, feature, improvement, or upgrade for a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee and registered in Florida if and only if the accessory, option, add-on, feature, improvement, or upgrade is provided directly to the motor vehicle through remote electronic transmission, provided that if such motor vehicle was sold or

leased as new by a Florida franchised motor vehicle dealer within the 3-year period preceding such remote electronic transmission, then the applicant or licensee must pay such Florida franchised motor vehicle dealer a percentage of the gross sale price for the accessory, option, add-on, feature, improvement, or upgrade that is at least commensurate with the dealer margin structure established by the applicant or licensee for the sale of the vehicle to which the accessory, option, add-on, feature, improvement, or upgrade was remotely transmitted. To calculate the "dealer margin structure" as used in this subsection, the applicant or licensee must subtract the invoiced vehicle wholesale price from the Manufacturer's Suggested Retail Price, then add to that figure all monetary per-vehicle incentives offered by the applicant or licensee whether or not received by the motor vehicle dealer, and then divide that sum by the invoiced vehicle wholesale price. This section does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the federal government.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all

of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 3. Subsections (1) and (2) of section 320.645, Florida Statutes, are amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) No licensee, manufacturer, importer, or distributor, ~~manufacturer,~~ or agent of the licensee, ~~a~~ manufacturer, importer, or distributor, or ~~any~~ parent, subsidiary, common entity, ~~or~~ officer, or employed representative of the licensee, manufacturer, importer, or distributor shall directly or indirectly own, ~~or~~ operate, or control by contract, agreement, or otherwise ~~either directly or indirectly~~, a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has manufactured, imported, or distributed ~~for the sale or service of~~ motor vehicles of any line-make which have been or are offered for sale under a franchise agreement ~~with a motor vehicle dealer~~ in this state with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a license pursuant to s. 320.27. Any person prohibited by this section from owning, operating, or controlling a motor vehicle dealership~~. A licensee~~ may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, no ~~such~~ licensee subject

to the prohibition in this section will be deemed to be in violation of this section:

(a) When operating a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another;

(b) When operating a motor vehicle dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first year of operation and who can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(c) If the department determines, after a hearing on the matter, pursuant to chapter 120, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. This subsection shall only apply if the motor vehicle dealership at issue sells motor vehicles of a line-make which, at the time of the hearing,

are offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by the licensee, an officer or employed representative of the licensee, a parent, subsidiary, or common entity of the licensee, or a manufacturer, importer, or distributor. A motor vehicle dealer association shall have standing to intervene in any hearing held pursuant to this subsection.

In the ~~any such~~ case of a~~, the licensee must continue to make the motor vehicle~~ dealership owned or operated pursuant to paragraph (a), paragraph (b), or paragraph (c), the dealership must be continually made available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

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

(a) "Independent person" is a person who is not an agent, parent, subsidiary, common entity, officer, or employed representative of a licensee, manufacturer, importer, or distributor ~~director, or employee of the licensee~~.

(b) "Reasonable terms and conditions" requires that profits from the dealership are reasonably expected to be sufficient to allow full ownership of the dealership by the independent person within a reasonable time period not to exceed 10 years, which time period may be extended if there is a

reasonable basis to do so and is not being sought to evade the purpose of this section; that the independent person has sufficient control to permit acquisition of ownership; and that the relationship cannot be terminated solely to avoid full ownership. The terms and conditions are not reasonable if they preclude the independent person from an expedited purchase of the dealership using a monetary source other than profits from the dealership's operation; provided, however, that the independent person must pay or make an agreement to pay to the licensee any and all reasonable prepayment charges and costs, including all unrecouped restored losses, associated with the expedited purchase of the dealership. For the purpose of this section, unrecouped restored losses are moneys that the manufacturer has provided to the dealership to restore losses of the dealership that the manufacturer has not been paid back through profits of the dealership.

(c) "Significant investment" means a reasonable amount, considering the reasonable capital requirements of the dealership, acquired and obtained from sources other than the licensee or any of its affiliates and not encumbered by the person's interest in the dealership.

Section 4. Section 320.67, Florida Statutes, is amended to read:

320.67 Investigation and inspection of books or other documents of licensee.—

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

(1) The department shall conduct an inquiry ~~may inspect the pertinent books, records, letters, and contracts~~ of a licensee relating to any written complaint alleging a violation of any provision of ss. 320.60-320.70 ~~made to it~~ against such licensee made by a motor vehicle dealer with a current franchise agreement issued by the licensee or motor vehicle dealer association with at least one member with a current franchise agreement issued by the licensee.

(2) In the exercise of its duties under this section, the department is granted and authorized to exercise the power of subpoena for the purposes of compelling production of and inspecting pertinent books, records, letters, and contracts of a licensee and compelling the attendance of witnesses at deposition. The inquiry required by this section must be commenced within 30 days after the date of the written complaint and the department must obtain a written response from the licensee to the allegations contained in the complaint within 60 days after the department inquiry and must respond to the inquiring party within 30 days after the response from the licensee ~~and the production of any documentary evidence necessary to the disposition by it of any written complaint under this section~~. Any information obtained may not be used against the licensee as the basis for a criminal prosecution under the laws of this state.

(3) If any investigation or examination conducted pursuant

to this inquiry results in a determination that the licensee has violated any provision of ss. 320.60-320.70, the department shall take appropriate action against the licensee, which may include license suspension or revocation; denial of a license renewal application; assessment, imposition, levy, and collection of an appropriate civil fine; or instituting a civil action for issuance of an injunction pursuant to s. 320.695.

(4) Nothing in this section shall alter or affect the rights of a motor vehicle dealer to bring a claim or action against a licensee pursuant to any other provision of ss. 320.60-320.70.

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

COMMERCE COMMITTEE

CS/HB 637 by Rep. Shoaf
Motor Vehicle Dealers, Manufacturers, Importers, and Distributors

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Shoaf (strike-all):

- Broadens the definitions of "independent person," "sell," "feature or improvement," and related terms.
- Revises terms related to "accessories, option add-ons, features and upgrades" to instead be "permanent or temporary features or improvements of a motor vehicle."
- Requires licensees that sell or activate for a fee a feature through remote electronic transmission to pay dealers **8 percent** of the payment received, if:
    - The vehicle was **new** when leased or sold;
    - The vehicle has not been sold and has the same **original owner;** and
    - The transaction occurs within **2 years** of the original sale or lease.
- Requires payments for such remote electronic transmissions to be made to the dealer **within 60 days**.
- Adds to the legislative intent section that the Florida Automobile Dealers Act applies solely to the licensing of manufacturers, factory branches, distributors, and importers and does not apply to non-motor-vehicle-related businesses.
- Makes other technical and conforming changes.

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: Commerce Committee
Representative Shoaf offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (8), (9), (10), (11), (12), (13), (14), (15), and (16) of section 320.60, Florida Statutes, are redesignated as subsections (9), (11), (12), (13), (15), (18), (10), (16), and (17), respectively, new subsections (8) and (14) are added to that section, and subsection (2) and present subsection (15) of that section are amended, to read:

320.60 Definitions for ss. 320.61-320.70.—Whenever used in ss. 320.61-320.70, unless the context otherwise requires, the following words and terms have the following meanings:

(2) "Common entity" means a person:

(a) Who is directly or indirectly ~~either~~ controlled by or

has more than 30 percent of its equity interest directly or indirectly owned, beneficially or of record, through any form of ownership structure, by a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof; or

(b) Who has more than 30 percent of its equity interest directly or indirectly controlled or owned, beneficially or of record, through any form of ownership structure, by one or more persons who also directly or indirectly control or own, beneficially or of record, more than 30 ~~40~~ percent of the ~~voting~~ equity interests of a manufacturer, an importer, a distributor, or a licensee, or an affiliate thereof~~; or~~

~~(b) Who shares directors or officers or partners with a manufacturer~~.

(c) Notwithstanding paragraphs (a) and (b), an entity that would otherwise be considered a common entity of a distributor under paragraph (a) or paragraph (b) because of its relation to a distributor is not considered a common entity of that distributor if:

1. The distributor that the entity is related to was a licensed distributor on March 1, 2023;

2. The entity is not a common entity of a manufacturer or importer; and

3. The distributor that the entity is related to is not, and has never been, a common entity of a manufacturer or importer.

(8) "Independent person" means a person who is not an agent, a parent, a subsidiary, a common entity, an officer, a director, or an employed representative of a licensee, manufacturer, importer, or distributor.

(14) "Motor vehicle dealer association" means a not-for-profit entity organized under the laws of this state and qualified as tax-exempt under s. 501(c)(6) of the Internal Revenue Code which acts as a trade association that primarily represents the interests of franchised motor vehicle dealers and has a membership of at least 500 franchised motor vehicle dealers as defined in s. 320.27(1)(c)1.

(16) ~~(15)~~ "Sell," "selling," "sold," "exchange," "retail sales," and "leases" includes:

(a) Accepting a deposit or receiving a payment for the retail purchase, lease, or other use of a motor vehicle, but does not include facilitating a motor vehicle dealer's acceptance of a deposit or receipt of a payment from a consumer, and does not include receiving payment under a retail installment sale contract;

(b) Accepting a reservation from a retail consumer for a specific motor vehicle identified by a vehicle identification number or other product identifier;

(c) Setting the retail price for the purchase, lease, or other use of a motor vehicle, but does not include setting a manufacturer's suggested retail price;

(d) Offering or negotiating with a retail consumer terms for the purchase, lease, or other use of a motor vehicle;

(e) Offering or negotiating with a retail consumer a value for a motor vehicle being traded in as part of the purchase, lease, or other use of a motor vehicle, but does not include a website or other means of electronic communication that identifies to a consumer a conditional trade-in value and that contains language informing the consumer that the trade-in value is not binding on any motor vehicle dealer;

(f) Any transaction where the title of a motor vehicle or a used motor vehicle is transferred to a retail consumer; or~~,~~ ~~and also~~

(g) Any retail lease transaction where a retail consumer ~~customer~~ leases a vehicle for a period of at least 12 months, but does not include administering lease agreements, taking assignments of leases, performing required actions pursuant to such leases, or receiving payments under a lease agreement that was originated by a motor vehicle dealer. ~~Establishing a price for sale pursuant to s. 320.64(24) does not constitute a sale or lease.~~

Section 2. Section 320.605, Florida Statutes, is amended to read:

320.605 Legislative intent.—It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor

vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers. Sections 320.61-320.70 are intended to apply solely to the licensing of manufacturers, factory branches, distributors, and importers and do not apply to non-motor-vehicle-related businesses.

Section 3. Subsections (18), (23), and (24) of section 320.64, Florida Statutes, are amended to read:

320.64 Denial, suspension, or revocation of license; grounds.—A license of a licensee under s. 320.61 may be denied, suspended, or revoked within the entire state or at any specific location or locations within the state at which the applicant or licensee engages or proposes to engage in business, upon proof that the section was violated with sufficient frequency to establish a pattern of wrongdoing, and a licensee or applicant shall be liable for claims and remedies provided in ss. 320.695 and 320.697 for any violation of any of the following provisions. A licensee is prohibited from committing the following acts:

(18) The applicant or licensee has established a system of motor vehicle allocation or distribution or has implemented a system of allocation or distribution of motor vehicles to one or more of its franchised motor vehicle dealers which:

(a) Reduces or alters allocations or supplies of new motor

vehicles to the dealer to achieve, directly or indirectly, a purpose that is prohibited by ss. 320.60-320.70;

(b) Conditionally or unconditionally reserves a specific motor vehicle identified by vehicle identification number or other unique identifier for a specifically named person, except for purposes of replacing a consumer's vehicle pursuant to chapter 681;

(c) Requires or incentivizes motor vehicle dealers to sell or lease, or to negotiate the sale or lease of, a specific motor vehicle identified by vehicle identification number or other unique identifier to a specifically named person;

(d) Requires or incentivizes motor vehicle dealers to sell or lease a motor vehicle at a specified price or profit margin or restricts the price at which a motor vehicle dealer may sell or lease a motor vehicle; or

(e) Is~~, or which~~ otherwise ~~is~~ unfair, inequitable, unreasonably discriminatory, or not supportable by reason and good cause after considering the equities of the affected motor vehicles dealer or dealers. As used in this paragraph, the term "unfair" includes, but is not limited to, refusing or failing to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or color, as the licensee offers or allocates to its other same line-make dealers in this state or using the number of motor vehicles preordered or reserved by consumers as a factor in determining the allocation of motor

vehicles to motor vehicle dealers.

An applicant or licensee shall maintain for 3 years records that describe its methods or formula of allocation and distribution of its motor vehicles and records of its actual allocation and distribution of motor vehicles to its motor vehicle dealers in this state. ~~As used in this subsection, "unfair" includes, without limitation, the refusal or failure to offer to any dealer an equitable supply of new vehicles under its franchise, by model, mix, or colors as the licensee offers or allocates to its other same line-make dealers in the state.~~

(23) The applicant or licensee has engaged in any of the activities of a motor vehicle dealer as defined in s. 320.60(13)(a) or any activities described in s. 320.60(16) or has competed or is competing with respect to any activity covered by the franchise agreement with a motor vehicle dealer of the same line-make located in this state with whom the applicant or licensee has entered into a franchise agreement, except as permitted in s. 320.645 or in subsection (24) with respect to the remote electronic transmission of a permanent or temporary feature or improvement of a motor vehicle.

(24) The applicant or licensee, or common entity thereof, has sold or leased a motor vehicle to any retail consumer in this state, or has sold or activated for a fee to any retail consumer in the state any permanent or temporary motor vehicle

feature or improvement that functions through hardware or components installed on the motor vehicle, except through a motor vehicle dealer properly licensed pursuant to s. 320.27 and holding a franchise agreement for the line-make that includes the motor vehicle. Notwithstanding this subsection, an applicant, licensee, or their common entity may sell or activate for a fee a permanent or temporary motor vehicle feature or improvement for a motor vehicle of a line-make manufactured, imported, or distributed by the applicant or licensee and registered in Florida, if, and only if, the feature or improvement is provided directly to the motor vehicle through remote electronic transmission. However, if such motor vehicle was new when sold or leased by a Florida franchised motor vehicle dealer within the 2-year period preceding such remote electronic transmission, and the ownership of the vehicle has not changed, then the applicant or licensee must pay a percentage of the payment received for the feature or improvement to the Florida franchised motor vehicle dealer. Payment from the applicant or licensee to the Florida franchised motor vehicle dealer shall be at a minimum 8 percent of the payment received by the applicant, licensee, or common entity for the sale of the feature or improvement that was remotely transmitted. As used in this subsection, the term "feature or improvement" includes the activation or use of motor vehicle components or hardware, but does not include services that

require the transmission of data or information to or from the motor vehicle while the service is being used. Payments required under this subsection must be made within 60 days after the date of sale of the feature or improvement. This subsection ~~section~~ does not apply to sales by the applicant or licensee of motor vehicles to its current employees, employees of companies affiliated by common ownership, charitable not-for-profit organizations, and the Federal Government.

A motor vehicle dealer who can demonstrate that a violation of, or failure to comply with, any of the preceding provisions by an applicant or licensee will or may adversely and pecuniarily affect the complaining dealer, shall be entitled to pursue all of the remedies, procedures, and rights of recovery available under ss. 320.695 and 320.697.

Section 4. Subsection (6) of section 320.642, Florida Statutes, is amended to read:

320.642 Dealer licenses in areas previously served; procedure.—

(6) When a proposed addition or relocation concerns a dealership that performs or is to perform only service, as defined in s. 320.60 ~~s. 320.60(16)~~, and will not or does not sell or lease new motor vehicles, as defined in s. 320.60 ~~s. 320.60(15)~~, the proposal shall be subject to notice and protest pursuant to the provisions of this section.

(a) Standing to protest the addition or relocation of a service-only dealership shall be limited to those instances in which the applicable mileage requirement established in subparagraphs (3)(a)2. and (3)(b)1. is met.

(b) The addition or relocation of a service-only dealership shall not be subject to protest if:

1. The applicant for the service-only dealership location is an existing motor vehicle dealer of the same line-make as the proposed additional or relocated service-only dealership;

2. There is no existing dealer of the same line-make closer than the applicant to the proposed location of the additional or relocated service-only dealership; and

3. The proposed location of the additional or relocated service-only dealership is at least 7 miles from all existing motor vehicle dealerships of the same line-make, other than motor vehicle dealerships owned by the applicant.

(c) In determining whether existing franchised motor vehicle dealers are providing adequate representations in the community or territory for the line-make in question in a protest of the proposed addition or relocation of a service-only dealership, the department may consider the elements set forth in paragraph (2)(b), provided:

1. With respect to subparagraph (2)(b)1., only the impact as it relates to service may be considered;

2. Subparagraph (2)(b)3. shall not be considered;

3. With respect to subparagraph (2)(b)9., only service facilities shall be considered; and

4. With respect to subparagraph (2)(b)11., only the volume of service business transacted shall be considered.

(d) If an application for a service-only dealership is granted, the department must ~~shall~~ issue a license which permits only service, as defined in s. 320.60 ~~s. 320.60(16)~~, and does not permit the selling or leasing of new motor vehicles, as defined in s. 320.60 ~~s. 320.60(15)~~. If a service-only dealership subsequently seeks to sell new motor vehicles at its location, the notice and protest provisions of this section shall apply.

Section 5. Subsection (1), paragraph (a) of subsection (2), and subsection (4) of section 320.645, Florida Statutes, are amended to read:

320.645 Restriction upon ownership of dealership by licensee.—

(1) A ~~No~~ licensee, manufacturer, importer, or distributor, ~~manufacturer,~~ or agent of the licensee, ~~a~~ manufacturer, importer, or distributor, or ~~any~~ parent, subsidiary, common entity, ~~or~~ officer, or employed representative of the licensee, manufacturer, importer, or distributor, may not directly or indirectly ~~shall~~ own, ~~or~~ operate, or control, by contract, agreement, or otherwise ~~either directly or indirectly~~, a motor vehicle dealership for any line-make in this state if the licensee, manufacturer, importer, or distributor has

manufactured, imported, or distributed ~~for the sale or service of~~ motor vehicles of any line-make which have been or are offered for sale under a franchise agreement ~~with a motor vehicle dealer~~ in this state with an independent person. Any person who is not prohibited by this section from owning, operating, or controlling a motor vehicle dealership may be issued a license pursuant to s. 320.27. Any person prohibited by this section from owning, operating, or controlling a motor vehicle dealership~~. A licensee~~ may not be issued a motor vehicle dealer license pursuant to s. 320.27. However, a ~~no such~~ licensee subject to the prohibition in this section is not ~~will be~~ deemed to be in violation of this section:

(a) When operating a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the motor vehicle dealership to another;

(b) When operating a motor vehicle dealership temporarily for a reasonable period for the exclusive purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group that has historically been underrepresented in its dealer body, or for other qualified persons who the licensee deems lack the resources to purchase or capitalize the dealership outright, in a bona fide relationship with an independent person, other than a licensee or its agent or affiliate, who has made a significant investment that is subject to loss in the dealership within the dealership's first

year of operation and who can reasonably expect to acquire full ownership of the dealership on reasonable terms and conditions; or

(c) If the department determines, after a hearing on the matter, pursuant to chapter 120, at the request of any person, that there is no independent person available in the community or territory to own and operate the motor vehicle dealership in a manner consistent with the public interest. This paragraph applies only if the motor vehicle dealership at issue sells motor vehicles of a line-make that, at the time of the hearing, is offered for sale by at least one other existing motor vehicle dealership not owned, operated, or controlled by the licensee, an officer or employed representative of the licensee, a parent, subsidiary, or common entity of the licensee, or a manufacturer, importer, or distributor.

In the ~~any such~~ case of a~~, the licensee must continue to make the motor vehicle~~ dealership owned or operated pursuant to paragraph (a), paragraph (b), or paragraph (c), the dealership must be continually made available for sale to an independent person at a fair and reasonable price. Approval of the sale of such a motor vehicle dealership to a proposed motor vehicle dealer shall not be unreasonably withheld.

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

~~(a) "Independent person" is a person who is not an~~

~~officer, director, or employee of the licensee.~~

(4) Nothing in this chapter shall prohibit a distributor as defined in s. 320.60 ~~s. 320.60(5)~~ or an affiliate thereof which ~~common entity that~~ is not a manufacturer or importer, a division of a manufacturer or importer, an entity that is controlled by a manufacturer or importer, or a common entity of a manufacturer or importer, and that is not owned, in whole or in part, directly or indirectly, by a manufacturer or importer, as defined in s. 320.60 ~~s. 320.60(9)~~, from receiving a license or licenses as defined in s. 320.27 and owning and operating a motor vehicle dealership or dealerships that sell or service motor vehicles other than any line-make of motor vehicles distributed by the distributor. A distributor or an affiliate thereof may not receive a license pursuant to s. 320.27 for a motor vehicle dealership, or own or operate a motor vehicle dealership, that sells or services motor vehicles of the line-make of motor vehicles distributed by the distributor.

Section 6. Section 320.67, Florida Statutes, is amended to read:

320.67 Inquiry and inspection of books or other documents of licensee.—

(1) The department shall conduct an inquiry of a licensee ~~may inspect the pertinent books, records, letters, and contracts of a licensee~~ relating to any written complaint alleging a violation of ss. 320.61-320.70 ~~made to it~~ against such licensee

made by a motor vehicle dealer with a current franchise agreement issued by the licensee, or a motor vehicle dealer association with at least one member with a current franchise agreement issued by the licensee.

(2) In the exercise of its duties under this section, the department is granted and authorized to exercise the power of subpoena for the purposes of compelling production of and inspecting pertinent books, records, letters, and contracts of a licensee and compelling the attendance of witnesses at deposition ~~and the production of any documentary evidence necessary to the disposition by it of any written complaint under this section~~. The inquiry required by this section must be commenced within 30 days after receipt of the written complaint. The department may allow the licensee that is the subject of the complaint no more than 60 days after commencement of the inquiry to provide a written response. Within 30 days after the deadline for a written response by the licensee, the department shall provide a written response to the complainant stating whether the department intends to take action against the licensee under subsection (3) and, if so, what action the department intends to take. Any information obtained may not be used against the licensee as the basis for a criminal prosecution under the laws of this state.

(3) If, as the result of an inquiry conducted under this section, the department determines that a licensee has violated

ss. 320.61-320.70, the department must take appropriate action against the licensee, which may include license suspension or revocation; denial of a license renewal application; assessment, imposition, levy, and collection of an appropriate civil fine; or instituting a civil action for issuance of an injunction pursuant to s. 320.695.

(4) This section does not alter or affect the rights of a motor vehicle dealer to bring a claim or action against a licensee pursuant to any other provision of ss. 320.60-320.70.

Section 7. Subsection (13) of section 681.102, Florida Statutes, is amended to read:

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

(13) "Manufacturer" means any person, whether a resident or nonresident of this state, who manufactures or assembles motor vehicles, or who manufactures or assembles chassis for recreational vehicles, or who manufactures or installs on previously assembled truck or recreational vehicle chassis special bodies or equipment which, when installed, forms an integral part of the motor vehicle, or a distributor or an importer as those terms are defined in s. 320.60 ~~s. 320.60(5), or an importer as defined in s. 320.60(7)~~. A dealer as defined in s. 320.60 may not ~~s. 320.60(11)(a) shall not~~ be deemed to be a manufacturer, distributor, or importer as provided in this section.

Section 8. Section 681.113, Florida Statutes, is amended

to read:

681.113 Dealer liability.—Except as provided in ss. 681.103(3) and 681.114(2), nothing in this chapter imposes any liability on a dealer as defined in s. 320.60 ~~s. 320.60(11)(a)~~ or creates a cause of action by a consumer against a dealer, except for written express warranties made by the dealer apart from the manufacturer's warranties. A dealer may not be made a party defendant in any action involving or relating to this chapter, except as provided in this section. The manufacturer shall not charge back or require reimbursement by the dealer for any costs, including, but not limited to, any refunds or vehicle replacements, incurred by the manufacturer arising out of this chapter, in the absence of evidence that the related repairs had been carried out by the dealer in a manner substantially inconsistent with the manufacturer's published instructions.

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

Remove everything before the enacting clause and insert: An act relating to motor vehicle sales; amending s. 320.60, F.S.; revising and providing definitions; amending s. 320.605, F.S.; providing legislative intent; amending s. 320.64, F.S.; prohibiting an applicant or a licensee from certain actions in the allocation or distribution of motor vehicles to franchised motor vehicle dealers; revising the definition of the term

"unfair"; prohibiting applicants and licensees from engaging in certain activities; authorizing an applicant or a licensee, or a common entity thereof, to sell or activate certain motor vehicle features or improvements through remote electronic transmission; providing for a payment of the percentage of such sale or activation to a motor vehicle dealer; providing applicability; requiring certain payments to be made within a certain timeframe; amending s. 320.642, F.S.; conforming cross-references; amending s. 320.645, F.S.; revising provisions prohibiting a manufacturer, a distributor, or an importer from owning, operating, or controlling a motor vehicle dealership in this state; specifying when certain licenses may be and are prohibited from being issued; revising exceptions to certain prohibitions on licensees; providing applicability; making technical changes; deleting the definition of the term "independent person"; conforming cross-references; prohibiting a distributor or affiliate thereof from receiving a certain license under certain circumstances; amending s. 320.67, F.S.; requiring the Department of Highway Safety and Motor Vehicles to conduct an inquiry relating to certain written complaints; providing purposes of the department's use of a subpoena; authorizing the department to allow a written response to the complaint; requiring the department to commence the inquiry within a certain timeframe; requiring the department to provide a certain written response to the complainant by a certain date;

requiring the department to take certain action if the department determines that a licensee violated certain statutes; providing construction; amending ss. 681.102 and 681.113, F.S.; conforming cross-references; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 639 Issuance of Special Beverage Licenses
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Esposito
TIED BILLS: **IDEN./SIM. BILLS:** SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

In Florida, alcoholic beverages are regulated by the Beverage Law, which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Florida law limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses.

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special food service license" (SFS license), which applies to a food service establishment that:

- Has 2,500 square feet,
- Is equipped to serve 150 persons at one time, and
- Derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

The bill lowers requirements to qualify for an SFS license by reducing the minimum:

- Service area to **2,000** square feet, and
- Service capacity to **120** persons.

However, a food service establishment will still need to derive 51 percent or more gross sales from food and nonalcoholic beverage sales in order to qualify for an SFS license.

The bill does not have a fiscal impact on local governments and has an indeterminate fiscal impact on state government.

The bill becomes effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulation of Alcoholic Beverages

In Florida, alcoholic beverages are regulated by the Beverage Law,[1] which regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

Special Food Service License

Florida law limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.[4]

A "special license" is an exception to the quota licensing scheme, which allows certain entities to serve liquor without a quota license. One such special license is a "special food service license" (SFS license), which applies to a food service establishment that:[5]

- Has **2,500** square feet,[6]
- Is equipped to serve **150** persons at one time, and
- Derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

The required revenue percentage is computed as the sum of gross food and nonalcoholic beverage revenue divided by the sum of gross food, alcoholic beverage, and non-alcoholic beverage revenue.[7] Records of each purchase and each sale of food, alcoholic beverages, and nonalcoholic beverages must be maintained for a period of 3 years.[8]

SFS licensees must be audited by the division for compliance with the food and nonalcoholic beverage sales percentage requirements during the first 120-day operating period, and every one to four years thereafter, depending on beverage revenue. Failure by an SFS licensee to satisfy the requirements as to the percentages of food and nonalcoholic beverage sales results in revocation of the SFS license. An SFS licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation.[9]

SFS licensees may sell or deliver alcoholic beverages in a sealed container for off-premises consumption, including liquor-based beverages prepared by the licensee and packaged in a container sealed by the licensee. Such licensees may not sell a bottle of distilled spirits sealed by a manufacturer. The sale or delivery of such beverages must be accompanied by the sale of food.[10]

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[1] S. 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 561.20(1), F.S.
[5] S. 561.20(2)(a)4., F.S.
[6] The service area includes only the food service establishment's buildings and other contiguous outside areas which are under the management and control of the licensed food service establishment. Rule R. 61A-3.0141(1), F.A.C.
[7] R. 61A-3.0141(4), F.A.C.
[8] R. 61A-3.0141(3), F.A.C.
[9] *Id.*
[10] *Id.*

There are several exceptions to the Beverage Law created by special laws, which are applicable to specific local areas. Many reduce certain licensing requirements for special zones in local jurisdictions. For example, ch. 2022-259, L.O.F., allows DBPR to issue an SFS license to restaurants within the Kings Avenue Commercial Corridor in Jacksonville that:

- Have 1,000 square feet,
- Are equipped to serve 50 persons at one time, and
- Derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages.

Effect of the Bill

The bill lowers requirements to qualify for an SFS license by reducing the minimum:

- Service area requirement to **2,000** square feet, and
- Service capacity to **120** persons.

However, a food service establishment will still need to derive 51 percent or more gross sales from food and nonalcoholic beverage sales in order to qualify for an SFS license.

B. SECTION DIRECTORY:

Section 1: Amends s. 561.20, F.S., revising requirements for a special restaurant license.
Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may allow more restaurants to obtain an SFS license, which would increase fees to the state.

2. Expenditures:

   The bill may allow more restaurants to obtain an SFS license, which would require more regulatory actions, such as inspections and audits, by DBPR.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more restaurants to obtain an SFS license, which may make it less expensive to own and operate a restaurant that sells alcoholic beverages and could lead to more restaurants opening. It could also increase beverage service options for consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Reduced the service area size requirements from 2,500 square feet to 2,000 square feet, and
- Reduced the seating capacity requirements from 150 persons to 120 persons.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to the issuance of special beverage licenses; amending s. 561.20, F.S.; revising requirements for issuing special beverage licenses to certain food service establishments; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20), with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer

than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20), in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference

in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,000 ~~2,500~~ square feet of service area, is equipped to serve meals to 120 ~~150~~ persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day operating period and the first 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A licensee under this subparagraph may sell or deliver alcoholic beverages in a sealed container for off-premises consumption if the sale or delivery is accompanied by the sale of food within the same order. Such authorized sale or delivery includes wine-based and liquor-based beverages prepared by the licensee or its employee and packaged in a container sealed by the licensee or its employee. This subparagraph may not be construed to authorize public food service establishments licensed under this subparagraph to sell a bottle of distilled spirits sealed by a manufacturer. Any sale

or delivery of malt beverages must comply with the container size, labeling, and filling requirements imposed under s. 563.06. Any delivery of an alcoholic beverage under this subparagraph must comply with s. 561.57. An alcoholic beverage drink prepared by the vendor and sold or delivered for consumption off the premises must be placed in a container securely sealed by the licensee or its employees with an unbroken seal that prevents the beverage from being immediately consumed before removal from the premises. Such alcoholic beverage also must be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the alcoholic beverage and food must be provided by the licensee and attached to the bag or container. If transported in a motor vehicle, an alcoholic beverage that is not in a container sealed by the manufacturer must be placed in a locked compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle. It is a violation of the prohibition in s. 562.11 to allow any person under the age of 21 to deliver alcoholic beverages on behalf of a vendor. The vendor or the agent or employee of the vendor must verify the age of the person making the delivery of the alcoholic beverage before allowing any person to take possession of an alcoholic beverage for the purpose of making a delivery on behalf of a vendor under this section. A food service establishment granted a special

license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s. 381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered

event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure

under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This section does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and

consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated under s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to

demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. This subparagraph does not permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law may not be moved to a new

location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately before the effective date of this act, if construction of such restaurant has commenced before the effective date of this act and is completed within 30

days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 2. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 639 by Rep. Esposito
Issuance of Special Beverage Licenses

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Esposito (line 257):

- Expands ability to obtain a club license for certain beach or cabana clubs to include those with bathroom facilities for at least 100 persons.
- Replaces the requirement to have a restaurant with seats with tables for at least 100 persons to obtain a club license for certain beach or cabana clubs with the requirement to have any type of public food service establishment of any seating size.

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: Commerce Committee
Representative Esposito offered the following:

Amendment (with directory and title amendments)

Between lines 257 and 258, insert:

(7)

(d) Any corporation, partnership, or individual operating a club which owns or leases and which maintains any bona fide beach or cabana club consisting of beach facilities, swimming pool, locker rooms or bathroom ~~with~~ facilities for at least 100 persons, and a public food service establishment as defined in s. 509.013(5)(a) ~~restaurant with seats at tables for at least 100 persons~~, comprising in all an area of at least 5,000 square feet located on a contiguous tract of land of in excess of 1 acre may be issued a license under s. 565.02(4). The failure of

such club to maintain the facilities shall be a ground for revocation of the license.

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

Remove lines 10-11 and insert:

Section 1. Paragraph (a) of subsection (2) and paragraph (d) of subsection (7) of section 561.20, Florida Statutes, are amended to read:

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

Remove line 5 and insert:

certain food service establishments and certain clubs; providing an

CS/HB 715

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 715 Compensation of Lottery Ticket Retailers
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, Mooney
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 1 N	Thompson	Anstead
2) State Administration & Technology Appropriations Subcommittee	11 Y, 2 N, As CS	Helpling	Topp
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

Gambling is generally prohibited and illegal in Florida. However, in 1986, Florida voters adopted a constitutional amendment authorizing the creation of the Florida Lottery (Lottery). Since that time, the Lottery has grown into one of the largest state-run lotteries in the country, with annual sales exceeding $9 billion. Lottery tickets can be purchased at over 13,000 retail locations throughout the state.

The Department of the Lottery (Lottery) is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act. Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfers to the Educational Enhancement Trust Fund (EETF).

The Lottery contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets, and is authorized to adopt rules to establish the manner and amount of compensation of retailers. Prior to Fiscal Year 2022-2023, compensation for retailers was set at 5 percent commission for tickets sold and 1 percent commission for paying prizes up to $600. However, during the 2022 Legislative Session, the Legislature authorized, for the 2022-2023 fiscal year only, effective July 1, 2022, the commission for Florida Lottery ticket sales to be 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Prize payment commissions were excluded. Effective July 1, 2023, the compensation for retailers will return to 5 percent.

The bill establishes a permanent 6 percent commission to retailers for the purchase price of each ticket sold or issued as a prize by a retailer. The bill limits any additional compensation to funding provided in the General Appropriations Act.

The bill increases the estimated commission paid to Florida lottery retailers by $37.8 million, compared to the estimated 5 percent commission that would be provided in Fiscal Year 2023-2024. *See* Fiscal Analysis and Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General Overview of Lottery in Florida

In general, gambling is illegal in Florida.[1] Chapter 849, F.S., prohibits keeping a gambling house,[2] running a lottery,[3] or the manufacture, sale, lease, play, or possession of slot machines.[4] Certain exceptions have been authorized, with restrictions on permitted locations, operators, and prizes, including penny-ante games,[5] bingo,[6] cardrooms,[7] charitable drawings,[8] game promotions (sweepstakes),[9] and bowling tournaments.[10] In addition, Chapters 550 and 551, F.S., respectively, authorize pari-mutuel wagering at licensed facilities and slot machine gaming at specified locations.

Section 7 of Article X of the Florida Constitution provides, "Lotteries, other than the types of pari-mutuel pools authorized by law as of the effective date of this constitution, are hereby prohibited in this state."[11]

In 1986, Florida voters approved an amendment to the Florida Constitution to allow the state to operate a lottery. Section 15 of Article X of the Florida Constitution provides as follows:

> Lotteries may be operated by the state.... On the effective date of this amendment, the lotteries shall be known as the Florida Education Lotteries. Net proceeds derived from the lotteries shall be deposited to a state trust fund, to be designated The State Education Lotteries Trust Fund, to be appropriated by the Legislature. The schedule may be amended by general law.

In 1987, the Legislature created the Florida Public Education Lottery Act,[12] which established a state lottery system intended primarily to generate revenue for public education of the state.[13] The Department of the Lottery (Lottery) is charged with supervising and operating the lottery in accordance with the provisions of the Florida Public Education Lottery Act and rules adopted pursuant thereto.[14]

In 1988, the Lottery began offering lottery games with a $1 weekly drawing.[15] Since then, the Lottery has grown to include approximately 80 different scratch-off games available at over 13,000 retailer locations, with lottery ticket prices ranging from $1 to $50.[16]

Lottery Revenues

In sum, for Fiscal Year 2021-22, the Florida Lottery:

- Prizes totaled $6.245 billion;
- Retailer commissions totaled $523.1 million;

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[1] S. 849.08, F.S.
[2] S. 849.01, F.S.
[3] S. 849.09, F.S.
[4] S. 849.16, F.S.
[5] S. 849.085, F.S.
[6] S. 849.0931, F.S.
[7] S. 849.086, F.S.
[8] S. 849.0935, F.S.
[9] S. 849.094, F.S., authorizes game promotions in connection with the sale of consumer products or services.
[10] S. 546.10, F.S.
[11] The pari-mutuel pools that were authorized by law on the effective date of the Florida Constitution (Nov. 5, 1968) include horseracing, greyhound racing and jai alai games.
[12] Ss. 24.101 to 24.124, F.S.
[13] S. 24.102, F.S.
[14] S. 24.105(2), F.S.
[15] Florida Lottery, *History*, http://www.flalottery.com/history (last visited Feb. 24, 2023).
[16] Florida Lottery, *Scratch Offs*, http://www.flalottery.com/scratch-offs?amount=30 (last visited Feb. 24, 2023).

- Ticket sales totaled $9.325 billion;
- Transfers to the EETF totaled $2.33 billion; and
- Ranked the highest among U.S. lotteries in total sales and sixth highest among U.S. lotteries in per capita sales.[17]

Gross revenues from the sale of lottery products are distributed to prizes, Lottery expenses, and transfer to the Educational Enhancement Trust Fund (EETF).[18] The Lottery determines the variable percentage of the gross revenue from the sale of draw and scratch-off tickets that is returned to the public in the form of prizes in a manner designed to maximize the amount of revenue earned to enhance education. Gross sales revenue also is used to pay the expenses associated with running the Lottery, including the cost of its retailer network, draw and scratch-off game vendors, advertising vendors, and its in-house operation. The remainder of gross sales revenue is transferred to the EETF.[19]

Lottery Retailers

The Lottery contracts with retailers[20] (e.g., supermarkets, convenience stores, gas stations, and newsstands) to provide adequate and convenient availability of lottery tickets.[21] Lottery retailers receive support from the Lottery in the following ways, at no cost to the retailer:[22]

- In-store full service from a Lottery Sales Representative.
- Point-of-sale material.
- Ongoing training.
- In-store promotional opportunities.
- A dedicated Retailer Hotline for quick assistance.

The Lottery is authorized to adopt rules to establish the manner and amount of compensation of retailers.[23] A five percent sales commission was established in 1987[24] and remained until July 1, 2022. In addition, prior to Fiscal Year 2022-2023, retailers also received a separate one percent commission for paying prizes of less than $600.[25]

For the 2022-2023 fiscal year only, effective July 1, 2022, the Florida Legislature adopted a specific commission for Florida Lottery ticket sales of 5.75 percent of the purchase price of each ticket sold or issued as a prize by a retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated in Specific Appropriation 2759U of the 2022-2023 General Appropriations Act.[26] The commission does not include the one percent commission for paying prizes.

According to the Lottery, the 5.75 percent is a flat sales commission on both draw and scratch-off ticket sales. Lottery retailers sell scratch-off tickets on consignment. Retailers receive full books of scratch-off tickets at no cost, and after selling the tickets, receive a commission for selling those tickets to players. After tickets are sold, the retailer reconciles the book of tickets through the Lottery terminal, which then charges their account, less a 5.75 percent commission. Draw game ticket sales are automatically registered on the Lottery terminal and retailers are charged according to what they sell, less a 5.75

[17] Office of Program Policy Analysis and Gov't Accountability, *Review of the Florida Lottery, 2022*, Report No. 23-02, (Jan. 2023), https://oppaga.fl.gov/Documents/Reports/23-02.pdf at page 1, (last visited Feb. 24, 2023).
[18] S. 24.121(1), F.S.
[19] Office of Program Policy Analysis and Gov't Accountability, Government Program Summaries, *Department of the Lottery, 2022*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=2090 (last visited Feb. 27, 2023).
[20] S. 24.103(5), F.S., defines "retailer" as "a person who sells lottery tickets on behalf of the department pursuant to a contract."
[21] S. 24.105(16), F.S.
[22] Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 2 (Mar. 3, 2023).
[23] S. 24.105(9)(i), F.S.
[24] R. 53ER87-44, F.A.C.
[25] *Id.*
[26] *Id.*

percent commission. There is no cap on the amount of sales commissions a retailer can receive, the more a retailer sells, the more they receive in commissions.[27]

According to reports, the top 10 lottery-selling locations for the 2019 fiscal year, including total net sales, included the following:[28]

- State Line Gift Shop, McDavid: $5,505,257.50
- Fortune Liquors, Campbellton: $5,384,016.50
- Friendly Mini Mart, Bonifay: $4,577,112
- Mercado Miami, Miami: $4,289,590
- Flora Bama Liquor, Pensacola: $3,558,104.50
- Publix, Clearwater: $3,503,670
- Edgewood Shell, Jacksonville: $3,484,808
- Circle K, Pensacola: $3,445,720.50
- Publix, West Palm Beach: $3,403,995.50
- Publix, Loxahatchee: $3,367,386.50

Proposed Changes

The bill establishes a permanent 6 percent commission to retailers for the purchase price of each ticket sold or issued as a prize by a retailer. The bill limits any additional compensation to funding provided in the General Appropriations Act.

SECTION DIRECTORY:

Section 1: Amends s. 24.105, F.S., relating to powers and duties of the department.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

[27] Florida Department of the Lottery, Agency Analysis of House Bill 715, p. 2 (Mar. 3, 2023).
[28] Dan Sweeney, *Where do the most Florida Lottery tickets get sold? Bet you can't guess.*, (Mar. 13, 2020), https://www.sun-sentinel.com/news/sound-off-south-florida/fl-ne-sosf-florida-lottery-retail-sales-20200313-vm4qu7ovyne4vgunovkhl4cyji-story.html (last visited Mar. 26, 2023).

Lottery retailers would see an increase in commissions for lottery ticket sales.

D. FISCAL COMMENTS:

Based on the February 21, 2023, Lottery Revenue Estimating Conference's projected ticket sales, the bill would increase the commission paid to retailers by $37.8 million in Fiscal Year 2023-2024, $38.0 million in Fiscal Year 2024-2025, and $38.4 million in Fiscal Year 2025-2026. This is the estimated increase over the 5 percent ticket sale commission, including the one percent for cashing prizes, that was authorized in Fiscal Year 2021-2022.

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:

According to the Lottery, it would need to amend a current rule to account for the increased sales commissions. The Florida Public Education Lottery Act provides sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On April 12, 2023, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment limits any additional compensation for retailers to funding provided in the General Appropriations Act.

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to compensation of lottery ticket retailers; amending s. 24.105, F.S.; providing retailer compensation for lottery ticket sales by a specified date; providing a limitation on additional retailer compensation; providing an effective date.

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

Section 1. Paragraph (i) of subsection (9) of section 24.105, Florida Statutes, as amended by chapter 2022-157, Laws of Florida, is amended to read:

24.105 Powers and duties of department.—The department shall:

(9) Adopt rules governing the establishment and operation of the state lottery, including:

(i) The manner and amount of compensation of retailers. However, effective July 1, 2023, the commission for Florida Lottery ticket sales shall be 6 percent of the purchase price of each ticket sold or issued as a prize by the retailer. Any additional retailer compensation is limited to the Florida Lottery Retailer Bonus Commission program appropriated annually in the General Appropriations Act or any other specific compensation appropriated by the act.

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

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

CS/HB 807

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 807 License or Permit to Operate Vehicle for Hire
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Borrero
TIED BILLS: **IDEN./SIM. BILLS:** SB 1700

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Larkin	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 4 N	Burgess	Darden
3) Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Motor vehicles used for transporting persons or goods for compensation are called “vehicles for-hire” or “transportation for-hire.” The transport of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is also considered transportation “for hire.”

Some counties and municipalities require persons to obtain a permit or license to operate a vehicle for-hire within its jurisdiction. Counties are authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. Some municipalities currently license and regulate vehicles for-hire under their broad general powers because they are not currently prohibited from doing so in general law. Similarly, county airports and airport authorities are not restricted from licensing and regulating vehicles for-hire.

The bill:

- Prohibits a county or municipality from requiring a person to obtain an additional license from such county or municipality when that person holds a valid, active license or permit to operate a vehicle for-hire in any other county or municipality if the person:
  - Holds a valid, active license or permit to operate a vehicle for-hire in the county or municipality in which the person permanently resides.
  - Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.
- Prohibits an airport from requiring a person to obtain an additional license from such airport when a person holds a valid, active license or permit issued by another airport to operate a vehicle for-hire.
- Defines airport in this section as a commercial service airport.

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

The bill may have an insignificant indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

License or Permit to Operate a Vehicle for-Hire- Current Situation

Background

With certain exceptions[1], offering for lease or rent any motor vehicle or offering passengers transportation in exchange for compensation in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported for compensation in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire." In addition, the carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."[2]

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[3] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[4]

Vehicles for-hire are not the same as transportation network companies or TNC's, like Uber or Lyft. **The regulation and licensing of TNC's are expressly preempted to the state** and are regulated by the Department of Financial Services.[5]

The State imposes an annual license taxes on certain types of motor vehicles for-hire upon registration or renewal, including locally operated motor vehicles for-hire. These taxes range from: $17 flat plus $1.50 per cwt[6] to $3.50 flat plus $1.50 per cwt.[7] However, the state does not require special licenses for drivers for vehicles for-hire.

Counties

Counties are specifically authorized by general law to license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county.[8] The county may impose licensing fees in order to license these vehicles for-hire.

Municipalities

Municipalities have broad home rule powers authorizing them to enact legislation concerning any subject matter upon which the Legislature may act, except:

- The subjects of annexation, merger, and exercise of extraterritorial power, which require general or special law pursuant to s. 2(c), Art. VIII of the State Constitution;

[1] S. 320.01(15)(b), F.S.
[2] S. 320.01(15)(a), F.S.
[3] S. 324.032(1), F.S.
[4] S. 324.031, F.S.
[5] S. 627.748(17)(a), F.S.
[6] "Cwt" means the weight per hundred pounds, or major fraction thereof, of a motor vehicle. S. 320.01(8), F.S.
[7] S 320.08(6) and (14), F.S.
[8] S. 125.01(1)(n), F.S.; an incorporated area of the county means that the area is not located within the boundaries of an incorporated municipality.

- Any subject expressly prohibited by the constitution;
- Any subject expressly preempted to state or county government by the constitution or by general law; or
- Any subject preempted to a county pursuant to a county charter adopted under the authority of ss. 1(g), 3, and 6(e), Art. VIII of the State Constitution.[9]

A municipality is allowed to impose reasonable regulatory fees, proportionate with the cost of the regulatory activity.[10]

Currently, counties and municipalities differ on whether they require vehicles for-hire to be licensed and regulated. Some counties require licensure and some do not. Some cities require licensure for vehicles for-hire within the city and also at the airport, while others only require the license for the city but not the airport and vis-a-versa. Here are some examples of local requirements:[11]

- Miami-Dade County's Passenger Transportation Regulatory Division regulates for-hire chauffeurs and vehicles such as taxicabs, limousines, passenger motor carriers, including jitneys and tour vans. The county charges $70 for an initial inspection fee, quarterly, semi-annual and annual inspection fees of $38, depending on the type of service; $35 for re-inspection; and $20 for a replacement decal. The For-Hire application fees are non-refundable, and are separate from the annual license fee, inspection fees and Local Business Tax Receipt.[12]
- Hillsborough County requires any person engaged in the business of operating vehicles for-hire in the County to obtain a "public vehicle driver's license" (PVDL) from the Hillsborough County Tax Collector, in addition to a valid certificate for the operator and a valid permit for the vehicle after passing a safety and mechanical inspection. Vehicles 10 years of age or older must have additional inspections.[13] A PVDL initial application and renewal fee is $65 and requires fingerprinting.
- The City of Orlando's police department has a vehicle for-hire unit that requires applicants to show proof of payment of the business tax, to pass a vehicle inspection, to pass a national background check, and to obtain a vehicle permit and a driver permit. The application fee for the Vehicle For-hire permit is $250 and each permit is $200.[14]

Some cities and counties have made the decision to end their practice of specifically licensing vehicles for-hire.

- For example, Sarasota, Naples and Collier County made the decision in 2015 to stop licensing vehicles for-hire. "The decision will deregulate the industry once the county's ordinance is officially taken off the books in the coming weeks. Taxi companies will no longer have to buy commercial insurance and their drivers won't have to pass criminal background checks. Collier County will no longer issue licenses to taxi or limo companies. Essentially, anyone with a driver's license will be able to operate a car-for-hire in Collier County."[15]

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[9] S. 166.021(3), F.S.
[10] S. 166.221, F.S; *see also* s. 205.042, F.S. (municipalities may levy, by appropriate resolution or ordinance, business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction).
[11] Examples of other cities with vehicle for-hire requirements include: the City of Fort Lauderdale, and Town of Palm Beach. *See Vehicle For Hire*, City of Fort Lauderdale, https://www.fortlauderdale.gov/government/departments-i-z/transportation-and-mobility/vehicle-for-hire (last visited March 2, 2023); *see also*, The Town of Palm Beach requires taxicabs and limousines to obtain a vehicle for hire permit. *Vehicle for Hire Permits*, Town of Palm Beach, https://www.townofpalmbeach.com/610/Taxi-Permits (last visited March 2, 2023); *see also*, Palm Beach Ordinance Code 130-32 ("It is a requirement that all vehicles for hire are permitted in the Town of Palm Beach").
[12] Miami-Dade County, Transportation and Public Work, *For-Hire Transportation,* https://www.miamidade.gov/global/service.page?Mduid_service=ser1498077559199786 (last visited March 4, 2023.)
[13] Hillsborough County Tax Collectors Office, https://www.hillstax.org/other-services/vehicle-for-hire/ordinance-information/ (Last visited March 4, 2023).
[14] *Vehicle for Hire Permit Application*, City of Orlando Police Department, http://beta.orlando.gov/files/sharedassets/public/departments/edv/permitting-services-division/bld/vfhren-transferapplication.pdf (last visited March 2, 2023).
[15] Naples Daily News, Greg Stanley, *Collier tosses out regulations for cabs and ride-sharing, helping Uber and similar businesses*, https://archive.naplesnews.com/business/local/collier-tosses-out-regulations-for-cabs-and-ride-sharing-helping-uber-and-similar-businesses-2319126-337701871.html/#:~:text=Collier%20County%20will%20no%20longer,for%2Dhire%20in%20Collier%20County. (Last visited March 4, 2023.)

Special Districts

A special district is a unit of local government created for a special purpose, as opposed to a general purpose, which has jurisdiction to operate within a limited geographic boundary and is created by

- general law;
- special act;
- local ordinance; or
- rule of the Governor and Cabinet.[16]

A "dependent special district" is a special district meeting at least one of the following criteria:

- The membership of the district's governing body is identical to the governing body of a single county or municipality;
- All members of the district's governing body are appointed by the governing body of a single county or municipality;
- Members of the district's governing body are removable at will by the governing body of a single county or municipality; or
- The district's budget is subject to approval by the governing body of a single county or municipality.[17]

An "independent special district" is any district that is not a dependent special district or one that includes more than one county unless the district lies wholly within a single municipality.[18] Special districts do not possess "home rule" powers. The county or municipality who created the special district defines the powers of a special district.[19]

Special districts vary on their ability to issue licenses or permits to operate a vehicle for hire. Due to the fact that the county or municipality which created the special district defines its powers.

Preemption[20]

Generally, local governments are preempted from issuing occupational licenses that are not specifically authorized in general law. Local governments include counties, municipalities, and special districts.

In 2021, the Governor signed HB 735, Preemption of Local Occupational Licensing, which preempts occupational licensing to the state unless the local government has specific authority to license and regulate set out in general law. Because counties have specific authority in general law to license and regulate vehicles for-hire, HB 735 does not appear to affect a counties' ability to license vehicles for-hire. However, HB 735 may prevent municipalities from licensing and regulating vehicles for-hire after July 1, 2023, because they do not have specific authority to regulate. [21]

Commercial Service Airports

An airport is classified as a commercial service airport when the Secretary of U.S. Transportation determines that it has more than 10,000 passenger boardings each year.[22]

[16] S. 189.012(6), F.S.
[17] Section 189.012(2), F.S.
[18] Section 189.012(3), F.S. Independent special districts are created by the Legislature, unless another mechanism is authorized by general law. *See, e.g.* s. 190.005, F.S. (community development districts may be created by a county, municipality, or the Florida Land and Water Adjudicatory Commission, depending on the size and location of the district).
[19] "Administrative agencies, such as the airport authority, are creatures of statute and derive only the power specified therein." Fla. Att'y Gen. Op. 2012-24 (2012).
[20] S.163.211, F.S.
[21] *See* s. 163.211, F.S.; This may be preempted on July 1, 2023.
[22] 49 U.S.C.A. § 47102 (2018); *see also*, s. 332.0075 (1)(a), F.S.

In Florida, the Department of Transportation (DOT) is responsible for planning airport systems and overseeing the public airport system.[23] The owner or lessee of a proposed public airport[24] must receive DOT approval before site acquisition, construction, or establishment of a public airport facility.[25] DOT is also responsible for licensing public airport facilities prior to the operation of aircraft to or from the facility and must inspect such facilities prior to licensing or renewal.[26] Current law authorizes local governments to establish and operate airports.[27] Neither state law nor federal law establish requirements for airport governance or ownership. As such, Florida airports operate under either a government department model (where the airport operates as a department of the local government) or an airport authority model (where the airport authority is created as either an independent or a dependent special district). Because airports are generally governed and subsumed as part of local governments, state law provides for very little oversight and accountability.

With respect to county owned or operated airports, the board of county commissioners has the right, power, and authority to enter into contracts with one or more motor carriers for the transportation of passengers for-hire between airports and points within such county.[28] These contracts define the period of authorization to transport passengers.[29] The county is required to use the competitive bidding process[30] to grant an exclusive right to use certain parking areas at the county owned airport for motor carriers for the transportation of passengers such as a taxicab and limousine stand.[31] A county-owned airport, which is located within the jurisdictional boundaries of a municipality, is under the county's exclusive authority and the municipality does not have authority over such airport.[32]

Some airport authorities require vehicles for-hire to obtain a permit to operate from the local government and the airport. For example, Orlando International Airport requires vehicles for hire to have:[33]

- a valid, current driver's license issued by the City of Orlando,
- a vehicle permit (V-Permit) decal issued by the Orlando International Airport displayed on the vehicle at all times, and
- a vehicle for hire permit decal issued by the City of Orlando displayed on the vehicle at all times.

The Fort Lauderdale-Hollywood International Airport requires persons that operate a vehicle for hire to first register with and obtain a permit from the Environmental and Consumer Protection Division of Broward County. Then, persons with a permit to operate a vehicle for hire must apply for a decal permit from the Broward County Aviation Department.[34] The Jacksonville International Airport has a similar arrangement.[35]

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[23] S. 332.001, F.S.
[24] S. 330.27(6), F.S. For purposes of DOT approval and licensure, the term "public airport" means a publicly or privately-owned airport for public use.
[25] S. 330.30(1), F.S.
[26] S. 330.30(2), F.S.
[27] *See* ch.332, F.S.
[28] This does not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000. S. 331.15(2), F.S.
[29] S. 331.15(2), F.S.
[30] "Competitive bidding is a process of issuing a public bid with the intent that companies will put together their best proposal and compete for a specific project." *"Competitive Bidding: What Is Competitive Bidding?*, FindRFP Inc. https://www.findrfp.com/Government-Contracting/competitive-bidding.aspx (last visited Feb. 28, 2023); A county is required to use a competitive bidding procedure to lease county-owned property. *See* 1988 Op. Att'y Gen. Fla. 110 (1988).
[31] *Randall Indus., Inc. v. Lee Cnty*., 307 So. 2d 499, 501 (Fla. 2d DCA 1975).
[32] Fla. Att'y Gen. Op. 2009-46 (2009); s. 125.015, F.S.; *see also City of Dania v. Hertz Corp.*, 518 So. 2d 1387, 1388 (Fla. 4th DCA 1988).
[33] Greater Orlando Aviation Authority, Vehicle-For-Hire (VFH): V-Permit Holders and Drivers Handbook p. 5, Orlando International Airport, https://orlandoairports.net/site/uploads/VFH-Handbook.pdf (last visited March 1, 2023).
[34] *Operational Guidelines for Ground Transportation at Fort Lauderdale-Hollywood International Airport,* p. 5, Broward County Board of County Commissioners (Aug. 17, 2021), https://www.broward.org/Airport/Business/about/Documents/Operationalguidelinesforgroundtransportationservices01.pdf (last visited March 2, 2023).
[35] First a person must obtain a vehicle for hire permit issued from the City of Jacksonville. Then, the person must obtain an annual permit from the Jacksonville Aviation Authority. *Commercial Ground Transportation Policy* p. 7, Jacksonville International Airport, Jacksonville Aviation Authority, (Jan. 28, 2013), https://flyjacksonville.com/PDFs/AppndxG.pdf (last visited March 2, 2023).

On the other hand, some airport authorities issue a separate permit for vehicles for-hire for transporting passengers at the airport. For example, the Orlando Sanford International Airport requires a vehicle for hire to obtain a ground transportation prearranged permit which is issued by the airport.[36] This includes a ground transportation agreement which excludes taxicabs.[37]

License or Permit to Operate a Vehicle for-Hire- Effect of Bill

Counties and Municipalities

The bill provides an exception from certain local licensing requirements to a person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for-hire. Such person may operate a vehicle-for hire without being subject to additional licensing or permitting requirements and without paying additional fees if the person:

- Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled[38].
- Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

A county may still license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for-hire that operate in the unincorporated areas of the county. However, if the person is already licensed or permitted by the area[39] where they live and have a license or permit in good standing, the county will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

As for municipalities, if a person is licensed or permitted by the area where they live and has a license or permit in good standing, the municipality will not be able to enforce additional licensing or permitting requirements or impose additional fees upon that person.

A person who is an unlicensed or does not fall within the exception may be able to obtain a license or permit to operate a vehicle for hire in another county or municipality despite where he or she currently lives.

Overall, the bill allows persons who possess a license or permit in one jurisdiction to operate a vehicle for-hire in other jurisdictions without being subject to obtaining another license or permit.

Commercial Service Airports

The bill provides that a person who holds a valid, active license or permit issued by an airport to operate a vehicle for-hire may operate a vehicle for hire at any other airport without being subject to additional airport licensing or permitting requirements and without paying additional license or permit fees. Airport includes an airport, airport authority, aviation authority, or other entity that operates a commercial service airport.

The bill limits the airport's ability to issue permits or licenses to operate a for-hire vehicle if another airport has already issued a person a permit or license.

This potentially would affect county owned or operated airports.[40] The board of county commissioners could still enter contracts with motor carriers for the transportation of passengers for hire between such airport or airports and points within such county. However, persons who already obtained a permit or

[36] The fees to obtain a permit to operate vehicle for hire depend on the weight and length of the vehicle.
[37] *2023 Ground Transportation Pre-Arranged Permit,* Orlando Sanford International Airport, https://web1.osaa.net/GTX/docs/GT-Permit-2023-for-Website.pdf (last visited March 1, 2023).
[38] Domicile means someone's permanent residence or principal home. *Domicile Definition and Meaning*, Merriam-Webster (last visited March 1, 2023), https://www.merriam-webster.com/dictionary/domicile.
[39] Municipality or county.
[40] This would not apply to counties who own or operate an airport which is located on land that is separated from the mainland of the state by a body of water or the county has a population between 150,000 and 200,000.

license to operate a vehicle for hire would not be required to enter into a contract with the board of county commissioners to operate a vehicle for hire at the county owned or operated airport.

B. SECTION DIRECTORY:

Section 1. Creating s. 320.0603, F.S.; providing that a person who holds a license issued by a county, municipality, or airport to operate a vehicle for hire may operate a vehicle for hire in any other county, municipality, or airport without being subject to certain requirements or fees under certain circumstances; defining the term "airport".

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may potentially impact the revenues of municipalities who raise revenue from the licenses that they issue if such fees are not in proportion to the regulatory activity. However, municipalities are required to only impose regulatory fees that are proportionate to the cost of regulation in accordance with section 166.221, F.S. Since municipalities will no longer be issuing as many licenses or inspecting as many vehicles for hire, this loss of revenue should be offset by a decrease in expenditures.

As for counties, the negative impact on revenues is indeterminate.

As for airports in particular, the Florida Airports Council reports an overall estimated negative revenue impact of $14,293,111.00 on 18 of the commercial service airports.[41] These negative revenue impacts vary depending on the airport.[42]

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive economic impact on the vehicles for-hire industry. There would be a positive economic impact for persons who:

- hold a valid, active license or permit to operate a for hire vehicle in the municipality or county where they live and
- maintain their license or permit to operate in good standing for the preceding 5 years.

Such persons will not be subject to additional licensing or permitting requirements or fees in other municipalities, counties, or airports.

[41] E-mail from Lisa Waters, President/CEO, Florida Airports Council, FW: HB 807 follow-up (March 24, 2023).
[42] *Id*.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 9, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute clarifies that the bill does not grant specific authority to municipalities or special districts to regulate or license vehicles for hire as required by s. 163.211, F.S.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to a license or permit to operate a vehicle for hire; creating s. 320.0603, F.S.; providing that a person who holds a license issued by a county, municipality, or airport to operate a vehicle for hire may operate a vehicle for hire in any other county, municipality, or airport without being subject to certain requirements or fees under certain circumstances; defining the term "airport"; providing construction; providing an effective date.

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

Section 1. Section 320.0603, Florida Statutes, is created to read:

320.0603 Vehicle-for-hire license or permit; reciprocity.—

(1) A person who holds a valid, active license or permit issued by a county or municipality to operate a vehicle for hire may operate a vehicle for hire in any other county or municipality without being subject to additional licensing or permitting requirements and without paying additional license or permit fees if the person:

(a) Holds a valid, active license or permit to operate a vehicle for hire in the county or municipality in which the person is domiciled; and

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

(b) Has not had a license or permit to operate a vehicle for hire suspended or revoked within the preceding 5 years.

(2) A person who holds a valid, active license or permit issued by an airport to operate a vehicle for hire may operate a vehicle for hire at any other airport without being subject to additional airport licensing or permitting requirements and without paying additional license or permit fees. For purposes of this subsection, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a commercial service airport as defined in s. 332.0075(1).

(3) This section does not grant specific authority to municipalities or special districts to regulate or license vehicles for hire which is required by s. 163.211.

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

COMMERCE COMMITTEE

CS/HB 807 by Rep. Borrero
License or Permit to Operate Vehicle for Hire

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Borrero (lines 28-36):

- Provides that the bill does not apply to public-use airports.

Amendment 2 by Rep. Borrero (between lines 39-40):

- Provides that the bill does not apply to vehicles for hire who transport individuals while on stretchers or wheelchairs, or transport individuals with a handicap, illness, injury, or other incapacitation.

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: Commerce Committee

Representative Borrero offered the following:

Amendment

Remove lines 28-36 and insert:

(2) Notwithstanding subsections (1) or (3), this section does not apply to an airport. For purposes of this section, the term "airport" includes an airport, airport authority, aviation authority, or other entity that operates a public-use airport as defined in s. 332.004(14), including municipalities or special districts that operate airports defined in this subsection.

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Borrero offered the following:

Amendment

Between lines 39 and 40, insert:

(4) This section does not apply to a person who holds a valid, active license or permit to operate a vehicle-for-hire when such person provides transportation of persons while on stretchers or wheelchairs, or transportation of persons whose handicap, illness, injury, or other incapacitation makes it impractical to be transported by a regular common carrier such as a bus, taxi, non-taxi, limousine, or other vehicle-for-hire.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 833 Vacation Rentals
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Duggan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 3 N, As CS	Thompson	Anstead
2) Ways & Means Committee	13 Y, 10 N	LaTorre	Aldridge
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Division of Hotels and Restaurants (Division) in the Department of Business and Professional Regulation (DBPR) licenses and inspects vacation rentals within the state. A vacation rental is classified as any unit or group of units in a condominium or cooperative or any individually or collectively owned home, not a timeshare project, which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, or advertised to the public as a place regularly rented to guests. Local governments may not prohibit vacation rentals or regulate the duration or frequency of such rentals. Local regulations adopted before June 1, 2011, are not subject to this prohibition.

The bill:

- Adds to the scope of the state preemption of public lodging establishments and public food service establishments by preempting "licensing" regulations, and revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to amend local regulations to:
  - Be less restrictive; or
  - Comply with local registration requirements.
- Allows local governments to create a local vacation rental registration program.
- Allows local governments to charge a registration fee not to exceed $50 for processing an individual registration application, or $100 for processing a collective registration application.
- Requires local governments to waive fines for failure to register if the vacation rental becomes registered within 30 days.
- Preempts to the state the regulation of advertising platforms, requires users of advertising platforms to provide license and registration information in a vacation rental listing, requires advertising platforms to collect and remit certain taxes and adopt an antidiscrimination policy.
- Grants the Division certain enforcement mechanisms relating to unlicensed activities.
- Specifically, does not supersede the authority of condominiums, cooperatives, or homeowners' associations to restrict the use of their properties.
- Requires vacation rental operators to display license and registration information.
- Requires sexual offenders and sexual predators who stay in a vacation rental to register with the local sheriff's office under certain circumstances.

The Revenue Estimating Conference estimated that the bill would have a zero impact on state and local government revenues.

Except as otherwise provided, the bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vacation Rentals

The Division of Hotels and Restaurants (Division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the provisions of ch. 509, F.S., and all other applicable laws relating to the inspection and regulation of public lodging establishments and public food service establishments for the purpose of protecting the public health, safety, and welfare. DBPR licenses vacation rentals within the state and has the power to inspect a licensed vacation rental.[1]

Public lodging establishments are classified as a hotel, motel, vacation rental, nontransient apartment, transient apartment, bed and breakfast inn, or timeshare project.[2]

The term "public lodging establishments" includes transient and nontransient public lodging establishments.[3] The principal differences between transient and nontransient public lodging establishments are the number of times that the establishments are rented in a calendar year and the length of the rentals.

The term "transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings, which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.[4]

The term "vacation rental" means any unit or group of units in a condominium or cooperative or any individually or collectively owned single-family, two-family, three-family, or four-family house or dwelling unit that is also a transient public lodging establishment but that is not a timeshare project.[5]

Current law exempts from licensing requirements living or sleeping facilities that do not fit within the classification of a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment.[6] Currently, the classification for "vacation rental" only applies to situations where the entire unit or dwelling is offered for rent; therefore the rental of individual rooms within a condominium unit or house is excluded from the licensure and regulation of public lodging establishments by the Division.[7]

Licensure

The Division is authorized to issue vacation rental licenses as follows:

- Single license: issued to an individual person or entity, but not a licensed agent, and may include one single-family house or townhouse, or a unit or group of units within a single building that are owned and operated by the same individual person or entity.
- Group license: issued to a licensed agent to cover all units within a building or group of buildings in a single complex and only covers units held out to the public as a place regularly rented to guests.

[1] S. 509.241, F.S.
[2] S. 509.242(1), F.S.
[3] S. 509.013(4)(a), F.S.
[4] S. 509.013(4)(a)1., F.S.
[5] S. 509.242(1)(c), F.S.
[6] S. 509.013(4)(b)9., F.S.
[7] *See* 18-06 Fla. Op.Att'y Gen. (2018).

- Collective license: issued to a licensed agent who represents a collective group of houses or units found on separate locations not to exceed 75 houses per license.[8]

Applicants for licensure must submit the appropriate application and required fee to the Division. The license fees are based on the number of rental units in the establishment. A current license must be conspicuously displayed in the office or lobby of the licensed establishment.[9] If no office or lobby is present on the premises of the licensed establishment, the license must be readily available for inspection upon request.[10]

Currently, there are 63,690 public lodging establishments licensed by the Division. These licenses are distributed as follows:[11]

- Hotels: 2,308 licenses;
- Motels: 2,397 licenses;
- Non-transient apartments: 18,315 licenses;
- Transient apartments: 913 licenses;
- Bed and Breakfast Inns: 261 licenses;
- Vacation rental condominiums: 12,716 licenses;
- Vacation rental dwellings: 26733,306 licenses; and
- Vacation rental timeshare projects: 47 licenses.

License Fees

The Division provides the following fee schedule relating to vacation rentals:[12]

- Vacation rentals/collective license.

BASIC FEE	PER UNIT FEE	HEP FEE[13]	TOTAL FEE
$150	$10	$10	VARIES

- Vacation rentals/group and single license.

NUMBER OF UNITS	BASIC FEE	INCREMENTAL UNIT FEE	HEP FEE	TOTAL FEE
SINGLE UNIT	$150	$10	$10	$170
2-25	$150	$20	$10	$180
26-50	$150	$35	$10	$195
51-100	$150	$50	$10	$210
101-200	$150	$75	$10	$235
201-300	$150	$105	$10	$265
301-400	$150	$135	$10	$295
401-500	$150	$160	$10	$320
OVER 500	$150	$190	$10	$350

Applicants for initial licensure are required to pay the full license fee if the application is made during, or more than six months before, the annual renewal period. A half-year fee is authorized if such application is made 6 months or less before the renewal period. A $50 application fee is required when making the initial application or an application for change of ownership. Renewal fees are based upon the number of units under the license when the license was either issued or last renewed, whichever is

[8] S. 509.241, F.S.
[9] S. 509.241(3), F.S.
[10] R. 61C-1.002(1), F.A.C.
[11] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2021-2022*, p. 8, http://www.myfloridalicense.com/dbpr/hr/reports/annualreports/documents/ar2021_22.pdf (last visited Apr. 3, 2023).
[12] R. 61C-1.008, F.A.C.
[13] S. 509.302, F.S., establishes the Hospitality Education Program. All public lodging establishments and all public food service establishments licensed under ch. 509, F.S., are required to pay an annual fee of no more than $10, which shall be included in the annual license fee and used for the sole purpose of funding the Hospitality Education Program.

most recent. A $50 delinquency fee is required to renew a delinquent license filed with the Division after the expiration date.

Sanitation and Safety

Current law requires each public lodging establishment to meet requirements and standards relating to sanitation and safety.[14] These requirements and standards apply to the following:

- Water, plumbing and waste;
- Public bathrooms (vacation rentals are exempt from this requirement);
- Towels;
- Glassware, tableware, and utensils (vacation rentals are exempt from federal and state standards but must sanitize with household cleaning supplies and provide notice of such in guest rooms);
- Kitchens;
- Ice making machines;
- Locking devices;
- Vermin control;
- Storage and labeling of toxic items;
- Structural components, attachments, and fixtures; and
- Attics, basements, boiler rooms, meter rooms, laundry rooms, and storage rooms.

Ventilation and Fire Safety

Each bedroom in a public lodging establishment must be properly ventilated with windows or mechanical ventilation.[15] Specialized smoke detectors for the deaf and hearing-impaired must be made available upon request by guests in transient public lodging establishments without charge.[16]

In addition, smoke alarms must be installed in every living unit,[17] and automatic fire sprinklers may be required in public lodging establishments if the rental units are located within a building with three or more stories or greater than 75 feet in height.[18] All local fire authority requirements must be met. Electrical wiring must be in good repair.

Conduct on Premises

The operator of a public lodging establishment is authorized to refuse accommodations or service to undesirable guests.[19] Subject to proper notification, an operator may remove guests who:

- Illegally possess or deal controlled substances;
- Are intoxicated;
- Are profane, lewd, or brawling;
- Disturb the peace and comfort of other guests;
- Injure the reputation, dignity, or standing of the establishment;
- Fail to pay rent on time;
- Fail to check out on time;
- Are generally detrimental to the establishment.[20]

The admission to, or the removal from, a public lodging establishment cannot be based upon race, creed, color, sex, physical disability, or national origin.[21]

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[14] *See generally* s. 509.221, F.S., and R. 61C-1&3, F.A.C.
[15] S. 509.221(3), F.S.
[16] R. 61C-1.004, F.A.C.
[17] S. 509.215(1)(b), F.S.
[18] S. 509.215(1), F.S.
[19] S. 509.142, F.S.
[20] S. 509.141(1), F.S.
[21] S. 509.141(1), F.S.

Violations for remaining or attempting to remain in an establishment after being requested to leave are a second-degree misdemeanor, punishable as provided in ss. 775.082 or 775.083, F.S.[22]

In addition, an operator is authorized to take a person into custody and detain that person for disorderly conduct that creates a threat to the life or safety of the person or others.[23]

Inspections

The Division is required to inspect all public lodging establishments as often as necessary for the enforcement of the law and protection of the public health, safety and welfare. **Each licensed public lodging establishment must be inspected at least biannually (twice per year)**, except for transient and non-transient apartments, which must be inspected at least annually.[24]

Vacation rentals are not subject to this requirement, but must be available for inspection upon a request by the Division. For inspection purposes, the licensee or operator must, upon request, meet the inspector at the site of a specified establishment with keys to the licensed house or unit being inspected.[25]

Additionally, an applicant for a vacation rental license is required to submit with the license application a signed certificate evidencing the inspection of all balconies, platforms, stairways, railings, and railways from a person competent to conduct such inspections.[26]

The Division also may inspect a vacation rental in response to a consumer complaint related to sanitation issues or unlicensed activity. In Fiscal Year 2021-2022, the Division received 325 consumer complaints related to vacation rentals, of which 34 were confirmed as a violation by the Division.[27]

Registry

The licensee or operator of a vacation rental must notify the Division of any and all houses or units represented for inclusion in the license application. Anytime a change occurs in the street or unit address or number of houses or units included under the license, the licensee or operator must notify the Division of any and all houses or units included in the license at least 60 days prior to the expiration date of the license. In addition, a list of the included houses or units must be maintained in a written form for inspection by request.[28]

Each operator of a transient establishment must maintain a register showing the dates each rental unit was occupied by a guest as well the rates charged to the occupants. This register must be maintained in chronological order and available for inspection by the Division at any time. Operators must maintain two years of register data.[29]

Violations

Any public lodging establishment found to be in violation of ch. 509, F.S., or rules adopted by the Division, may be subject to administrative actions including the following penalties:

- Fines not to exceed $1,000 per offense; and
- Suspension, revocation, or refusal of a license.[30]

[22] S. 509.141(3), F.S.
[23] S. 509.143(1), F.S.
[24] *See generally* s. 509.032, F.S., r. 61C-1.002, F.A.C.
[25] *Id.*
[26] *See* ss. 509.211(3), 509.2112, F.S., and r. 61C-3.001, F.A.C.
[27] DBPR, *Division of Hotels and Restaurants Annual Report for FY 2021-2022*, at 21.
[28] R. 61C-1.002, F.A.C.
[29] S. 509.101(2), F.S.
[30] S. 509.261(1), F.S.

Preemption Authority

Prior to June 1, 2011, local governments regulated vacation rentals (also referred to as resort dwellings in many local ordinances). Local governments could restrict or prohibit vacation rentals up to, and including, banning the use of residential properties as vacation rentals.

Legislation in 2011 preempted the authority to regulate vacation rentals to the state.[31] The preemption prevented local governments from enacting any new law, ordinance, or regulation that:

- Restricted the use of vacation rentals;
- Prohibited vacation rentals; or
- Regulated vacation rentals based solely on their classification, use, or occupancy.

The 2011 preemption also "grandfathered" any local law, ordinance, or regulation of vacation rentals enacted on or prior to June 1, 2011.[32]

Prior to the 2011 preemption, several municipalities had created regulations specifically relating to vacation rentals.[33] As an example, one ordinance prohibited owners of single-family residences in residential zones from renting their properties for durations of less than 30 days, although it grandfathered certain vacation rentals that had already obtained all applicable state and local licenses and permits.[34] Subsequent to the enactment of the 2011 legislation, the vacation rental market experienced growth.[35]

In 2014, the Legislature narrowed the scope of the preemption to preempt only those local regulations that:

- Prohibit vacation rentals; or
- Regulate the duration or frequency of vacation rentals.

Thus, local governments can regulate vacation rentals to the extent those regulations do not prohibit vacation rentals, or restrict the duration or frequency of vacation rentals. The grandfather provision for regulations adopted on or before June 1, 2011, was retained.[36]

This preemption does not apply to local regulations exclusively relating to "property valuation as a criterion for vacation rental if the local regulation is required to be approved by the state land planning agency pursuant to an area of critical state concern."[37]

In addition, the regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, inspections, training and testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. However, local governments or local enforcement districts are still allowed to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code.[38]

Recent Activity

[31] Ch. 2011-119, Laws of Fla., codified in s. 509.032(7), F.S.
[32] *Id.*
[33] *See* City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also* Monroe County Code, No. 004-1997 (2013); Bal Harbour Village Code of Ordinances, s. 21-363.
[34] City of Venice Code of Ordinances, ch. 86, art. V, div. 9, s. 86-151. *See also City of Venice v. Gwynn*, 76 So. 3d 401, 403 (Fla. 2nd DCA 2011).
[35] Melissa Maynard, *As Short-Terms Rentals Boom, Regulation an Issue*, The Pew Charitable Trust (June, 6, 2013), http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2013/06/06/as-shortterms-rentals-boom-regulation-an-issue (last visited Apr. 3, 2023).
[36] Ch. 2014-71, Laws of Fla., codified in s. 509.032(7)(b), F.S.
[37] S. 509.032(7)(c), F.S.
[38] S. 509.032(7)(a), F.S.

Homeowners found to be in conflict with ordinances regulating vacation rentals have taken legal action against their respective local governments through the Bert J. Harris, Jr., Private Property Rights Protection Act.[39] The act provides a cause of action for private property owners whose real property has been inordinately burdened by a specific action of a governmental entity that may not rise to the level of a "taking" under the State or Federal Constitutions. The inordinate burden can apply to either an existing use of real property or a vested right to a specific use.[40]

In November 2015, the City of Anna Maria passed and adopted an ordinance that provides a general framework for the regulation of vacation rentals, including maximum occupancy requirements. According to the city's website, since April 2016, approximately 113 Bert Harris Act claims relating to the ordinance have been filed that could amount to approximately $38 million in damages.[41]

In March 2016, Miami Beach, which bans all short-term rentals, passed an ordinance making the fine for a first violation for a resident caught renting short-term $20,000. Each subsequent fine increases by $20,000 and can be as high as $100,000. Vacation/short-term rentals that are permitted in certain zoning districts of Miami Beach are required to provide and conspicuously display the city-issued business tax receipt number and the resort tax certificate number in every advertisement or listing of any type in connection with the rental of the residential property.[42]

In June 2018, it was reported that Miami Beach had issued $12.1 million in fines, only $174,000 of which had been paid. Some vacation rental owners were reported to have accumulated up to $60,000 in fines.[43] Since then, the Third District Court of Appeals invalidated the city's fine structure after determining the regulations conflict with state law that caps violation fines between $1,000 and $5,000.[44] As a result, the city has left the regulations in place and simply revised the fine structure. First-time offenders are fined $1,000 a day, and repeat offenders are fined $5,000 per day. According to a memo from the City Attorney, the new fine structure complies with the ruling against Miami Beach.[45]

Condominiums, Cooperatives, and Homeowners' Associations

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common elements.[46] A condominium is created by recording a declaration in the public records of the county in which the condominium will be located.[47] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws governing the administration of the association. The declaration as originally recorded or as amended may include covenants and restrictions concerning the use, occupancy, and transfer of the units in the association.

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[39] Kathy Prucnell, *2 more Holmes Beach Bert Harris claims proceed to courthouse*, The Islander (Feb. 20, 2018), https://www.islander.org/2018/02/2-more-holmes-beach-bert-harris-claims-proceed-to-courthouse/ (last visited Apr. 3, 2023).
[40] S. 70.001, F.S.
[41] City of Anna Maria, *Bert J. Harris, Jr., Private Property Rights Protection Act Claim Filings*, http://www.cityofannamaria.com/residents/bert_harris_claim.php (last visited Apr. 3, 2023).
[42] *See* Miami Beach City Code, Sec. 142-1111 and 142-905(b).
[43] Chabeli Herrera, *Miami Beach has the country's highest short-term rental fines. It just got sued*, Miami Herald (June 28, 2018), https://www.miamiherald.com/news/business/article213954174.html (last visited Apr. 3, 2023).
[44] Francisco Alvarado, *Miami-Dade judge strikes down Miami Beach short-term rental ban*, TheRealDeal South Florida Real Estate News (Oct. 8, 2019), https://therealdeal.com/miami/2019/10/08/miami-dade-judge-strikes-down-miami-beach-short-term-rental-ban/ (last visited Apr. 3, 2023).
[45] Francisco Alvarado, *Miami Beach slashes fines for illegal short-term rentals*, TheRealDeal South Florida Real Estate News (Oct. 14, 2019), https://therealdeal.com/miami/2020/10/14/miami-beach-slashes-fines-for-illegal-short-term-rentals/ (last visited Apr. 3, 2023).
[46] S. 718.103(11), F.S.
[47] S. 718.104(2), F.S.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S., where real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[48] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are similar in many ways. A cooperative is created using "cooperative documents" which include articles of incorporation of the association, bylaws, and the ground lease or other underlying lease, if any. The documents may include restrictions, which affect the use of the property.

A homeowners' association (HOA) is an association of residential property owners, created pursuant to ch. 720, F.S., where voting membership consists of parcel owners, membership is a mandatory condition of parcel ownership, and which may impose assessments that, if unpaid, can become a lien on the parcel.[49] Chapter 720, F.S., only regulates HOAs whose covenants and restrictions include mandatory assessments. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes those provided in ch. 720, F.S., and contained in the governing documents of the association. The governing documents include the recorded covenants and restrictions, bylaws, articles of incorporation, and duly adopted amendments to those documents. The documents may include restrictive covenants governing the use and occupancy of properties.

Based on these laws, condominium, cooperative, and homeowners' associations may enact provisions that restrict the ability of the property owners to rent their properties.[50] This includes actions such as prohibiting owners from renting their properties, restricting the duration of the rental term, or limiting the frequency owners are allowed to rent their properties.

Florida Sexual Predators Act

Current law requires all sexual offenders and sexual predators to comply with a number of statutory registration requirements. A sexual offender must report in-person to the sheriff's office to register within 48 hours of:

- Establishing permanent, temporary, or transient residence in Florida; or
- Being released from the custody, control, or supervision of the Department of Corrections (DOC) or from the custody of a private correctional facility.[51]

A sexual predator must register:

- With DOC if the sexual predator is in DOC's custody or control, under DOC's supervision, or in the custody of a private correctional facility; [52]
    - If the sexual predator is under DOC's supervision but not in custody, he or she must register within 3 days of the court designating him or her as a sexual predator;[53]
- With the custodian of the local jail, within 3 days of the court designating him or her as a sexual predator, if the sexual predator is in the custody of a local jail;[54]
- In-person at the sheriff's office in the county where:
    - The sexual predator establishes or maintains a residence within 48 hours of establishing or maintaining a residence in Florida;[55] or
    - The sexual predator was designated a sexual predator within 48 hours after such finding is made.[56]

Residence

[48] S. 719.103(2)(26), F.S.
[49] S. 720.301(9), F.S.
[50] Motley Fool, *Can an HOA Restrict Rentals? (Spoiler Alert: Yes)*, https://www.fool.com/millionacres/real-estate-investing/rental-properties/can-hoa-restrict-rentals-spoiler-alert-yes/# (last visited Apr. 3, 2022).
[51] S. 943.0435(2)(a)1., F.S.
[52] S. 775.21(6)(b), F.S.
[53] Id.
[54] S. 775.21(6)(c), F.S.
[55] S. 775.21(6)(e)a., F.S.
[56] S. 775.21(6)(2)b., F.S.

Residence, for the purposes of registration for both sexual offenders and sexual predators, is defined as follows:

- "Permanent residence" means a place where the person abides, lodges, or resides for 3 or more consecutive days.
- "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destination in or out of this state for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address. For a person whose permanent residence is not in this state, it means a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.
- "Transient residence" means a county where a person lives, remains, or is located for a period of 3 or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where the person sleeps or seeks shelter and a location that has no specific street address. [57]

Continuing Reporting Requirements

A sexual offender or sexual predator must report the following updates within 48 hours:

- Change in the offender's permanent, temporary, or transient residence;
- Change in the offender's name, by reason of marriage or other legal process;
- When the offender vacates a permanent, temporary, or transient residence, or when the offender remains in a permanent, temporary, or transient residence after reporting his or her intent to vacate such a residence;
- Use of a new electronic mail address or Internet identifier;
- Change in vehicles owned;
- Change to home or cellular telephone numbers;
- Change to employment information;
- Change in status related to enrollment, volunteering, or employment at institutions of higher education; and
- International and out-of-state travel information.[58]

Effect of the Bill

Preemptions

The bill adds to the scope of the state preemption of public lodging establishments and public food service establishments, by also preempting "licensing."

The bill revises the scope of the express state preemption on vacation rentals to allow local jurisdictions to adopt local regulations:

- As long as the regulation is less restrictive; or
- To comply with local registration requirements.

The bill also preempts the regulation of advertising platforms to the state.

The bill maintains the exemption to the preemption that allows only local ordinances adopted on or before June 1, 2011, to remain in effect. Additionally, the bill allows a local government to pass such regulations after June 1, 2011, if they are less restrictive than what was in effect on June 1, 2011.

The bill maintains the exemption to the preemption for areas of critical state concern so that these areas remain fully exempted from the preemption, and may have existing ordinances that were adopted after June 1, 2011.

[57] S. 775.21, F.S.
[58] Ss. 943.0435(4)(e)2. & 775.21(6)(a)1.a., F.S.

Local Vacation Rental Registration Program

The bill authorizes local laws, ordinances, or regulations to require the registration of vacation rentals with a local vacation rental registration program.

The bill authorizes local governments to adopt such a program and impose a fine for failure to register under the program. However, the bill requires a local government to waive the fine if the vacation rental is registered under a vacation rental registration program within 30 days after receiving notice of the fine and deficiency.

The bill allows local governments to charge a registration fee not to exceed $50 for processing an individual registration application, or $100 for processing a collective registration application.

The bill prohibits a local law, ordinance, or regulation from requiring the renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

The bill provides that as a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

- Submit identifying information about the owner or the owner's agents and the subject vacation rental property.
- Obtain a license as a transient public lodging establishment issued by the Division within 60 days after local registration.
- Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue (DOR), a county, or a municipal government.
- Update required information on a continuing basis to ensure it is current.
- Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.
- Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.
- Pay in full all recorded municipal or county code liens against the subject property.
    - The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

The bill requires that within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient, which may be provided by U.S. mail or electronically.

The bill provides that a vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes, particularly in the event of a force majeure or other extraordinary circumstance.

The bill requires a local government that denies an application for registration of a vacation rental to give written notice to the applicant as follows:

- The notice may be provided by United States mail or electronically.
- The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration.

The bill:

- Prohibits local governments from denying an applicant from reapplying if the applicant cures the identified deficiencies.
- Provides that if the local government fails to accept or deny the registration within the timeframes provided, the application is deemed accepted.

- Provides that upon an accepted registration of a vacation rental, a local government must assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.
- Authorizes local governments to terminate or refuse to issue or renew a vacation rental registration when:
  - The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or
  - The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

Vacation Rental Licenses

Effective January 1, 2024, the bill makes the following revisions to the license application process for vacation rentals:

- Requires all applications for a vacation rental license to, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation.
- Authorizes the Division upon receiving an application for a vacation rental license to grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c), F.S.
  - The temporary license automatically expires upon final agency action regarding the license application.
- Requires any license issued by the Division to be displayed conspicuously to the public inside the licensed establishment, instead of "in the office or lobby."
- Requires the owner or operator of a vacation rental offered for transient occupancy through an advertising platform to display the vacation rental license number and the applicable local registration number.

Advertising Platforms Definition

The bill defines the term "advertising platform" as a person as defined in s. 1.01, F.S.,[59] who:

- Provides an online application, software, a website, or a system: through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;
- Provides or maintains a marketplace: for the renting of a vacation rental for transient occupancy; and
- Provides a reservation or payment system: that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

Advertising Platform Requirements

Effective January 1, 2024, the bill provides that advertising platforms must:

- Require that a person who places an advertisement for the rental of a vacation rental to:
  - Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and
  - Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.
- Display the vacation rental license number and, if applicable, the local registration number.
- By July 1, 2024, check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division and applies to the subject

[59] S. 1.01(3), F.S., defines the word "person" to include individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

vacation rental before publishing the advertisement on its platform and again on a quarterly basis.
- Remove from public view an advertisement or listing from its online application, software, website, or system within 15 business days after being notified by the Division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the Division.
- Adopt an anti-discrimination plan to help prevent discrimination, and inform its users of the public lodging discrimination prohibition found in s. 509.092, F.S.

Advertising Platform Tax Requirements

The bill requires advertising platforms to collect and remit taxes due under certain provision of Florida's tax code resulting from the reservation and payment of a vacation rental property through an advertising platform.

The bill requires advertising platforms to collect and remit taxes due under ss. 125.0104,[60] 125.0108,[61] 212.03,[62] 212.0305,[63] and 212.055, F.S.,[64] resulting from the reservation of a vacation rental property and payment therefor through an advertising platform.

The bill also includes the tax collection and remittance requirements for advertising platforms within ch. 212, F.S., and to:
- Provide that the taxes an advertising platform must collect and remit are based on the total rental amount charged by the owner or operator for use of the vacation rental.
- Exclude service fees from the calculation of taxes remitted by an advertising platform to the DOR, unless the advertising platform owns, is related to, operates, or manages the vacation rental.
- Require the DOR and other jurisdictions to allow advertising platforms to register, collect, and remit such taxes.

The bill provides that advertising platforms that comply with the requirements are deemed to be in compliance. The bill also provides that it does not create and is not intended to create a private cause of action against advertising platforms, and an advertising platform may not be held liable for any action it takes voluntarily in good faith in relation to its users to comply with ch. 509, F.S., or the advertising platform's terms of service.

Division Requirements

By July 1, 2024, the bill requires the Division to maintain vacation rental license information in a readily accessible electronic format.

The bill provides enforcement processes for the Division to issue a cease and desist order for any person who violates ch. 509, F.S., the chapter of law governing "lodging and food service establishments." The bill authorizes the Division to seek an injunction or a writ of mandamus to enforce a cease and desist order. If the Division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, F.S., it is entitled to collect its attorney fees and costs, together with any cost of collection.

The bill:
- Authorizes the Division to fine an advertising platform up to $1,000 per offense for violations of its new requirements or of the rules of the Division.

[60] S. 125.0104, F.S., relates to the local option tourist development tax.
[61] S. 125.0108, F.S., relates to the tourist impact tax in areas within a county designated as an area of critical state concern.
[62] S. 212.03, F.S., relates to the transient rentals tax.
[63] S. 212.0305, F.S., relates to convention development taxes.
[64] S. 212.055, F.S., relates to discretionary sales taxes.

- Authorizes the Division to regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation.
- Requires the Division to issue a written warning or notice and provide the advertising platform 15 days to cure such violation before commencing any legal proceeding.

The bill authorizes the Division to revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

- The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chs. 718, 719, or 720, F.S., as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;
- The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;
- The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5., F.S.; or
- The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

The bill authorizes the Division to suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been cited for two or more code violations related to the vacation rental during a period of 90 days. The Division is required issue a written warning or notice and provide an opportunity to cure a violation before commencing a legal proceeding.

Condominiums, Cooperatives, and Homeowners' Associations

The bill specifies that the application of the provisions in the bill shall not supersede any current or future declaration or declaration of condominium adopted pursuant to ch. 718, F.S., cooperative documents adopted pursuant to ch. 719, F.S., or declaration or declaration of covenants adopted pursuant to ch. 720, F.S.

Department of Revenue Rulemaking

The bill grants DOR emergency rulemaking authority to implement the changes made by the bill relating to the collection of taxes, including establishing procedures to facilitate the remittance of taxes. The emergency rules will be effective for 6 months after adoption and may be renewed while DOR adopts permanent rules. The section of the bill authorizing the emergency rules will expire January 1, 2025.

Sexual Offenders and Predators

The bill amends s. 775.21, F.S., to require sexual offenders and sexual predators to register with the local sheriff's office if they stay in a vacation rental for 24 hours or more (currently set at stays of 3 days or more).

Effective Date

The bill becomes effective upon becoming law, except for the provisions otherwise expressly provided in the bill. The requirements for vacation rental owners or operators to display license and registration information become effective January 1, 2024. The bill requires the Division to maintain vacation rental license information in a readily accessible electronic format by July 1, 2024. The provisions governing advertising platforms become effective January 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.03, F.S., relating to transient rentals tax collection and remittance by advertising platforms.

Section 2: Amends s. 509.013, F.S., defining the term "advertising platform."

Section 3: Amends s. 509.032, F.S., revising preemption authority, making conforming changes.

Section 4: Amends s. 509.241, F.S., revising display of vacation rental license requirements.

Section 5: Creates s. 509.243, F.S., governing advertising platforms.

Section 6: Amends s. 509.261, F.S., relating to revocation or suspension of licenses, fines, procedure.

Section 7: Amends s. 775.21, F.S., revising “The Florida Sexual Predators Act.”

Section 8: Amends s. 159.27, F.S., conforming a cross reference.

Section 9: Amends s. 212.08, F.S., conforming a cross reference.

Section 10: Amends s. 316.1955, F.S., conforming a cross reference.

Section 11 Amends s. 404.056, F.S., conforming a cross reference.

Section 12: Amends s. 477.0135, F.S., conforming a cross reference.

Section 13: Amends s. 509.221, F.S., conforming a cross reference.

Section 14: Amends s. 553.5041, F.S., conforming a cross reference.

Section 15: Amends s. 559.955 conforming a cross reference.

Section 16: Amends s. 705.17, F.S., conforming a cross reference.

Section 17: Amends s. 705.185, F.S., conforming a cross reference.

Section 18: Amends s. 705.1355, F.S., conforming a cross reference.

Section 19: Amends s. 877.24, F.S., conforming a cross reference.

Section 20: Creates an unnumbered section providing for applicability.

Section 21: Creates an unnumbered section authorizing DOR emergency rulemaking authority.

Section 22: Provides for effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On March 3, 2023, the Revenue Estimating Conference estimated that the bill would have a zero impact on state government revenues.

2. Expenditures:

The Florida Department of Law Enforcement (FDLE) expects the bill will cost the department $731,633 in FY 2023-24, which includes the cost of implementing the new requirements.[65] Additionally, FDLE expects a recurring $314,105 in expenditures to cover four new positions needed to accommodate the increased workload.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On March 3, 2023, the Revenue Estimating Conference estimated that the bill would have a zero impact on local government revenues.

2. Expenditures:

   FDLE expects that the bill will lead to additional costs associated with an increase in workload at sheriff's offices around the state, as sexual predators and offenders go in to register in-person.[66]

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may provide a more predictable and uniform regulatory framework for vacation rentals in Florida.

C. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill provides emergency rulemaking authority for DOR to implement the bill's provisions.

The Division will need to update its rules based on the provision that authorizes the Division to fine an advertising platform. Current law appears to provide sufficient rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute made technical and conforming changes related to the advertising platform tax requirements.

[65] Florida Department of Law Enforcement, Agency Analysis of House Bill 833 (2023) dated March 7, 2023.
[66] *Id.*

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to vacation rentals; amending s. 212.03, F.S.; requiring advertising platforms to collect and remit taxes for certain transactions; reordering and amending s. 509.013, F.S.; defining the term "advertising platform"; amending s. 509.032, F.S.; revising the regulated activities of public lodging establishments and public food service establishments preempted to the state to include licensing; revising an exemption to the prohibition against certain local regulation of vacation rentals; expanding the authority of local laws, ordinances, or regulations to include requiring vacation rentals to register with local vacation rental registration programs; authorizing local governments to adopt vacation rental registration programs and impose fines for failure to register; authorizing local governments to charge fees for processing registration applications; specifying requirements, procedures, and limitations for local vacation rental registration programs; authorizing local governments to terminate or refuse to issue or renew vacation rental registrations under certain circumstances; preempting the regulation of advertising platforms to the state; conforming a cross-reference; amending s. 509.241,

F.S.; requiring applications for vacation rental licenses to include certain information; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue temporary licenses upon receipt of vacation rental license applications; providing for expiration of temporary vacation rental licenses; requiring licenses issued by the division to be displayed conspicuously to the public inside the licensed establishment; requiring the owner or operator of certain vacation rentals to also display its vacation rental license number and applicable local registration number; creating s. 509.243, F.S.; requiring advertising platforms to require that persons placing advertisements for vacation rentals include certain information in the advertisements and attest to certain information; requiring advertising platforms to display and check such information; requiring the division to maintain certain information in a readily accessible electronic format by a certain date; requiring advertising platforms to remove an advertisement or listing under certain conditions and within a specified timeframe; requiring advertising platforms to collect and remit taxes for certain transactions; authorizing the division to issue and

deliver a notice to cease and desist for certain violations; providing that such notice does not constitute agency action for which certain hearings may be sought; authorizing the division to file certain proceedings; authorizing the division to seek certain remedies for the purpose of enforcing a cease and desist notice; authorizing the division to collect attorney fees and costs under certain circumstances; authorizing the division to impose a fine on advertising platforms for certain violations; requiring the division to issue written warnings or notices before commencing certain legal proceedings; requiring advertising platforms to adopt an antidiscrimination policy and to inform their users of the policy's provisions; providing construction; amending s. 509.261, F.S.; authorizing the division to revoke, refuse to issue or renew, or suspend vacation rental licenses under certain circumstances; amending s. 775.21, F.S.; revising the definition of the term "temporary residence"; amending ss. 159.27, 212.08, 316.1955, 404.056, 477.0135, 509.221, 553.5041, 559.955, 705.17, 705.185, 717.1355, and 877.24, F.S.; conforming cross-references to changes made by the act; providing applicability; authorizing the Department of Revenue to adopt emergency rules;

providing requirements and an expiration for the emergency rules; providing for the expiration of such rulemaking authority; providing effective dates.

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

Section 1. Effective January 1, 2024, subsection (2) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(2)(a) The tax provided for herein shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent in and by said rental arrangement to the lessee or person paying the rental, and shall be due and payable at the time of the receipt of such rental payment by the lessor or person, as defined in this chapter, who receives said rental or payment. The owner, lessor, or person receiving the rent shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who

manage or operate hotels, apartment houses, roominghouses, tourist and trailer camps, and the rental of condominium units, and to all persons who collect or receive such rents on behalf of such owner or lessor taxable under this chapter.

(b) If a guest uses a payment system on or through an advertising platform, as defined in s. 509.013, to pay for the rental of a vacation rental located in this state, the advertising platform shall collect and remit taxes as provided in this paragraph.

1. An advertising platform, as defined in s. 509.013, which owns, operates, or manages a vacation rental or which is related within the meaning of ss. 267(b), 707(b), or 1504 of the Internal Revenue Code of 1986, as amended, to a person who owns, operates, or manages the vacation rental shall collect and remit all taxes due under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental.

2. An advertising platform to which subparagraph 1. does not apply shall collect and remit all taxes due from the owner, operator, or manager under this section and ss. 125.0104, 125.0108, 212.0305, and 212.055 which are related to the rental. Of the total amount paid by the lessee or rentee, the amount retained by the advertising platform for reservation or payment service is not taxable under this section or ss. 125.0104, 125.0108, 212.0305, and 212.055.

In order to facilitate the remittance of such taxes, the counties that have elected to self-administer the taxes imposed under chapter 125 must allow advertising platforms to register, collect, and remit such taxes.

Section 2. Section 509.013, Florida Statutes, is amended to read:

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

(1) "Advertising platform" means a person as defined in s. 1.01 who:

(a) Provides an online application, software, a website, or a system through which a vacation rental located in this state is advertised or held out to the public as available to rent for transient occupancy;

(b) Provides or maintains a marketplace for the renting of a vacation rental for transient occupancy; and

(c) Provides a reservation or payment system that facilitates a transaction for the renting of a vacation rental for transient occupancy and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment service provided for the rental transaction.

(2) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

(3) ~~(1)~~ "Division" means the Division of Hotels and

Restaurants of the Department of Business and Professional Regulation.

~~(2) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.~~

(4)~~(3)~~ "Guest" means any patron, customer, tenant, lodger, boarder, or occupant of a public lodging establishment or public food service establishment.

(5) "Nontransient" means a guest in nontransient occupancy.

(6) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.

(7) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.

(8) "Operator" means the owner, licensee, proprietor, lessee, manager, assistant manager, or appointed agent of a public lodging establishment or public food service establishment.

~~(4)(a) "Public lodging establishment" includes a transient~~

~~public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.~~

~~1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.~~

~~2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month. License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.~~

~~(b) The following are excluded from the definitions in paragraph (a):~~

~~1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.~~

~~2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.~~

~~3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.~~

~~4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.~~

~~5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.~~

~~6. Any establishment inspected by the Department of Health and regulated by chapter 513.~~

~~7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.~~

~~8. Any apartment building inspected by the United States~~

~~Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.~~

~~9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.~~

(9)(a) ~~(5)(a)~~ "Public food service establishment" means any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared before ~~prior to~~ being delivered to another location for consumption. The term includes a culinary education program, as defined in s. 381.0072(2), which offers, prepares, serves, or sells food to the general public, regardless of whether it is inspected by another state agency for compliance with sanitation standards.

(b) The following are excluded from the definition in paragraph (a):

1. Any place maintained and operated by a public or

private school, college, or university:

a. For the use of students and faculty; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, and athletic contests.

2. Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization:

a. For the use of members and associates; or

b. Temporarily to serve such events as fairs, carnivals, food contests, cook-offs, or athletic contests.

Upon request by the division, a church or a religious, nonprofit fraternal, or nonprofit civic organization claiming an exclusion under this subparagraph must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

3. Any eating place maintained and operated by an individual or entity at a food contest, cook-off, or a temporary event lasting from 1 to 3 days which is hosted by a church or a religious, nonprofit fraternal, or nonprofit civic organization. Upon request by the division, the event host must provide the division documentation of its status as a church or a religious, nonprofit fraternal, or nonprofit civic organization.

4. Any eating place located on an airplane, train, bus, or watercraft that ~~which~~ is a common carrier.

5. Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place that is regulated under s. 381.0072.

6. Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12.

7. Any place of business where the food available for consumption is limited to ice, beverages with or without garnishment, popcorn, or prepackaged items sold without additions or preparation.

8. Any theater, if the primary use is as a theater and if patron service is limited to food items customarily served to the admittees of theaters.

9. Any vending machine that dispenses any food or beverages other than potentially hazardous foods, as defined by division rule.

10. Any vending machine that dispenses potentially hazardous food and which is located in a facility regulated under s. 381.0072.

11. Any research and development test kitchen limited to the use of employees and which is not open to the general public.

~~(6) "Director" means the Director of the Division of Hotels and Restaurants of the Department of Business and~~

~~Professional Regulation.~~

(10)(a) "Public lodging establishment" includes a transient public lodging establishment as defined in subparagraph 1. and a nontransient public lodging establishment as defined in subparagraph 2.

1. "Transient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

2. "Nontransient public lodging establishment" means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

License classifications of public lodging establishments, and the definitions therefor, are set out in s. 509.242. For the purpose of licensure, the term does not include condominium common elements as defined in s. 718.103.

(b) The following are excluded from the definitions in

paragraph (a):

1. Any dormitory or other living or sleeping facility maintained by a public or private school, college, or university for the use of students, faculty, or visitors.

2. Any facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families or other similar place regulated under s. 381.0072.

3. Any place renting four rental units or less, unless the rental units are advertised or held out to the public to be places that are regularly rented to transients.

4. Any unit or group of units in a condominium, cooperative, or timeshare plan and any individually or collectively owned one-family, two-family, three-family, or four-family dwelling house or dwelling unit that is rented for periods of at least 30 days or 1 calendar month, whichever is less, and that is not advertised or held out to the public as a place regularly rented for periods of less than 1 calendar month, provided that no more than four rental units within a single complex of buildings are available for rent.

5. Any migrant labor camp or residential migrant housing permitted by the Department of Health under ss. 381.008-381.00895.

6. Any establishment inspected by the Department of Health and regulated by chapter 513.

7. Any nonprofit organization that operates a facility providing housing only to patients, patients' families, and patients' caregivers and not to the general public.

8. Any apartment building inspected by the United States Department of Housing and Urban Development or other entity acting on the department's behalf that is designated primarily as housing for persons at least 62 years of age. The division may require the operator of the apartment building to attest in writing that such building meets the criteria provided in this subparagraph. The division may adopt rules to implement this requirement.

9. Any roominghouse, boardinghouse, or other living or sleeping facility that may not be classified as a hotel, motel, timeshare project, vacation rental, nontransient apartment, bed and breakfast inn, or transient apartment under s. 509.242.

(11) ~~(7)~~ "Single complex of buildings" means all buildings or structures that are owned, managed, controlled, or operated under one business name and are situated on the same tract or plot of land that is not separated by a public street or highway.

(12) ~~(8)~~ "Temporary food service event" means any event of 30 days or less in duration where food is prepared, served, or sold to the general public.

(13) ~~(9)~~ "Theme park or entertainment complex" means a complex comprised of at least 25 contiguous acres owned and

controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

(14) ~~(10)~~ "Third-party provider" means, for purposes of s. 509.049, any provider of an approved food safety training program that provides training or such a training program to a public food service establishment that is not under common ownership or control with the provider.

(15) "Transient" means a guest in transient occupancy.

(16) ~~(11)~~ "Transient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that such guests' occupancy will be temporary.

(17) ~~(12)~~ "Transient occupancy" means occupancy when it is the intention of the parties that the occupancy will be temporary. There is a rebuttable presumption that, when the dwelling unit occupied is not the sole residence of the guest, the occupancy is transient.

~~(13) "Transient" means a guest in transient occupancy.~~

~~(14) "Nontransient establishment" means any public lodging establishment that is rented or leased to guests by an operator whose intention is that the dwelling unit occupied will be the sole residence of the guest.~~

~~(15) "Nontransient occupancy" means occupancy when it is the intention of the parties that the occupancy will not be~~

~~temporary. There is a rebuttable presumption that, when the dwelling unit occupied is the sole residence of the guest, the occupancy is nontransient.~~

~~(16) "Nontransient" means a guest in nontransient occupancy.~~

Section 3. Paragraph (c) of subsection (3) and paragraphs (a) and (b) of subsection (7) of section 509.032, Florida Statutes, are amended, and paragraph (d) is added to subsection (7) of that section, to read:

509.032 Duties.—

(3) SANITARY STANDARDS; EMERGENCIES; TEMPORARY FOOD SERVICE EVENTS.—The division shall:

(c) Administer a public notification process for temporary food service events and distribute educational materials that address safe food storage, preparation, and service procedures.

1. Sponsors of temporary food service events shall notify the division not less than 3 days before the scheduled event of the type of food service proposed, the time and location of the event, a complete list of food service vendors participating in the event, the number of individual food service facilities each vendor will operate at the event, and the identification number of each food service vendor's current license as a public food service establishment or temporary food service event licensee. Notification may be completed orally, by telephone, in person, or in writing. A public food service establishment or food

service vendor may not use this notification process to circumvent the license requirements of this chapter.

2. The division shall keep a record of all notifications received for proposed temporary food service events and shall provide appropriate educational materials to the event sponsors and notify the event sponsors of the availability of the food-recovery brochure developed under s. 595.420.

3.a. Unless excluded under s. 509.013 ~~s. 509.013(5)(b)~~, a public food service establishment or other food service vendor must obtain one of the following classes of license from the division: an individual license, for a fee of no more than $105, for each temporary food service event in which it participates; or an annual license, for a fee of no more than $1,000, that entitles the licensee to participate in an unlimited number of food service events during the license period. The division shall establish license fees, by rule, and may limit the number of food service facilities a licensee may operate at a particular temporary food service event under a single license.

b. Public food service establishments holding current licenses from the division may operate under the regulations of such a license at temporary food service events.

(7) PREEMPTION AUTHORITY.—

(a) The regulation of public lodging establishments and public food service establishments, including, but not limited to, sanitation standards, licensing, inspections, training and

testing of personnel, and matters related to the nutritional content and marketing of foods offered in such establishments, is preempted to the state. This paragraph does not preempt the authority of a local government or local enforcement district to conduct inspections of public lodging and public food service establishments for compliance with the Florida Building Code and the Florida Fire Prevention Code, pursuant to ss. 553.80 and 633.206.

(b)1. A local law, ordinance, or regulation may not prohibit vacation rentals or regulate the duration or frequency of rental of vacation rentals. This paragraph does not apply to any local law, ordinance, or regulation adopted on or before June 1, 2011, including when such law, ordinance, or regulation is amended to be less restrictive or to comply with the local registration requirements provided in this paragraph, or when a law, ordinance, or regulation adopted after June 1, 2011, regulates vacation rentals, if such law, ordinance, or regulation is less restrictive than a law, ordinance, or regulation that was in effect on June 1, 2011. Notwithstanding paragraph (a), a local law, ordinance, or regulation may require the registration of vacation rentals with a local vacation rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. and impose a fine for failure to register under the vacation rental registration program.

2. Local governments may charge a fee of no more than $50 for processing an individual registration application or $100 for processing a collective registration application. A local law, ordinance, or regulation may not require renewal of a registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate

problems related to the vacation rental, including being available by telephone at a listed phone number.

g. Pay in full all recorded municipal or county code liens against the subject property. The local government may withdraw its acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient. Such notice may be provided by United States mail or electronically.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes provided in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. When a local government denies an application for registration of a vacation rental, the local government must give written notice to the applicant. Such notice may be provided by United States mail or electronically. The notice must specify with particularity the factual reasons for the denial and include a citation to the applicable portions of an ordinance, a rule, a statute, or other legal authority for the denial of the registration. A local government may not deny any

applicant from reapplying if the applicant cures the identified deficiencies.

d. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

e. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

5. The local government may terminate or refuse to issue or renew a vacation rental registration when:

a. The operation of the subject premises violates a registration requirement authorized pursuant to this paragraph or a local law, ordinance, or regulation that does not apply solely to vacation rentals; or

b. The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(d) The regulation of advertising platforms is preempted to the state as provided in this chapter.

Section 4. Effective January 1, 2024, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license must, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license automatically expires upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and, if

applicable, the local registration number.

Section 5. Effective January 1, 2024, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and

2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and, if applicable, the local registration number. Effective July 1, 2024, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2024, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with

the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes due under ss. 125.0104, 125.0108, 205.044, 212.03, 212.0305, and 212.055 related to the rental as provided in s. 212.03(2)(b).

(4) If the division has probable cause to believe that a person not licensed by the division has violated this chapter or any rule adopted pursuant thereto, the division may issue and deliver to such person a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a

writ of mandamus against any person who violates any provision of the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.69, it is entitled to collect attorney fees and costs, together with any cost of collection.

(5) The division may fine an advertising platform an amount not to exceed $1,000 per offense for violations of this section or of the rules of the division. For the purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which an advertising platform is operated in violation of this section or rules of the division. The division shall issue a written warning or notice and provide the advertising platform 15 days to cure a violation before commencing any legal proceeding under subsection (4).

(6) Advertising platforms shall adopt an antidiscrimination policy to help prevent discrimination among their users and shall inform all users of their services that it is illegal to refuse accommodation to an individual based on race, creed, color, sex, pregnancy, physical disability, or national origin pursuant to s. 509.092.

(7) Advertising platforms that comply with the requirements of this section are deemed to be in compliance with the requirements of this chapter. This section does not create and is not intended to create a private cause of action against advertising platforms. An advertising platform may not be held

liable for any action it takes voluntarily in good faith in relation to its users to comply with this chapter or the advertising platform's terms of service.

Section 6. Subsections (10) and (11) are added to section 509.261, Florida Statutes, to read:

509.261 Revocation or suspension of licenses; fines; procedure.—

(10) The division may revoke, refuse to issue or renew, or suspend for a period of not more than 30 days a vacation rental license when:

(a) The operation of the subject premises violates the terms of an applicable lease or property restriction, including any property restriction adopted pursuant to chapter 718, chapter 719, or chapter 720, as determined by a final order of a court of competent jurisdiction or a written decision by an arbitrator authorized to arbitrate a dispute relating to the subject property and a lease or property restriction;

(b) The owner or operator fails to provide proof of registration, if required by local law, ordinance, or regulation;

(c) The registration of the vacation rental is terminated by a local government as provided in s. 509.032(7)(b)5.; or

(d) The premises and its owner are the subject of a final order or judgment lawfully directing the termination of the premises' use as a vacation rental.

(11) The division may suspend, for a period of not more than 30 days, a vacation rental license when the owner or operator has been found by the code enforcement board, pursuant to s. 162.06, to have two or more code violations related to the vacation rental during a period of 90 days. The division shall issue a written warning or notice and provide an opportunity to cure a violation before commencing any legal proceeding under this subsection.

Section 7. Paragraph (n) of subsection (2) of section 775.21, Florida Statutes, is amended to read:

775.21 The Florida Sexual Predators Act.—

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

(n) "Temporary residence" means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 or more days in the aggregate during any calendar year and which is not the person's permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state. The term also includes a vacation rental, as defined in s. 509.242(1)(c), where a person lodges for 24 hours or more.

Section 8. Subsection (12) of section 159.27, Florida Statutes, is amended to read:

159.27 Definitions.—The following words and terms, unless

the context clearly indicates a different meaning, shall have the following meanings:

(12) "Public lodging or restaurant facility" means property used for any public lodging establishment as defined in s. 509.242 or public food service establishment as defined in s. 509.013 ~~s. 509.013(5)~~ if it is part of the complex of, or necessary to, another facility qualifying under this part.

Section 9. Paragraph (jj) of subsection (7) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any entity by this chapter do not inure to any transaction that is otherwise taxable under this chapter when payment is made by a representative or employee of the entity by any means, including, but not limited to, cash, check, or credit card, even when that representative or employee is subsequently reimbursed by the entity. In addition, exemptions provided to any entity by this subsection do not inure to any transaction that is otherwise taxable under this chapter unless the entity has obtained a sales tax exemption certificate from the department

or the entity obtains or provides other documentation as required by the department. Eligible purchases or leases made with such a certificate must be in strict compliance with this subsection and departmental rules, and any person who makes an exempt purchase with a certificate that is not in strict compliance with this subsection and the rules is liable for and shall pay the tax. The department may adopt rules to administer this subsection.

(jj) *Complimentary meals.*—Also exempt from the tax imposed by this chapter are food or drinks that are furnished as part of a packaged room rate by any person offering for rent or lease any transient living accommodations as described in s. 509.013 ~~s. 509.013(4)(a)~~ which are licensed under part I of chapter 509 and which are subject to the tax under s. 212.03, if a separate charge or specific amount for the food or drinks is not shown. Such food or drinks are considered to be sold at retail as part of the total charge for the transient living accommodations. Moreover, the person offering the accommodations is not considered to be the consumer of items purchased in furnishing such food or drinks and may purchase those items under conditions of a sale for resale.

Section 10. Paragraph (b) of subsection (4) of section 316.1955, Florida Statutes, is amended to read:

316.1955 Enforcement of parking requirements for persons who have disabilities.—

(4)

(b) Notwithstanding paragraph (a), a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ which provides parking in designated areas for persons who have disabilities may allow any vehicle that is transporting a person who has a disability to remain parked in a space reserved for persons who have disabilities throughout the period the theme park is open to the public for that day.

Section 11. Subsection (5) of section 404.056, Florida Statutes, is amended to read:

404.056 Environmental radiation standards and projects; certification of persons performing measurement or mitigation services; mandatory testing; notification on real estate documents; rules.—

(5) NOTIFICATION ON REAL ESTATE DOCUMENTS.—Notification shall be provided on at least one document, form, or application executed at the time of, or before ~~prior to~~, contract for sale and purchase of any building or execution of a rental agreement for any building. Such notification must ~~shall~~ contain the following language:

"RADON GAS: Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state

guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county health department."

The requirements of this subsection do not apply to any residential transient occupancy, as described in s. 509.013 ~~s. 509.013(12)~~, provided that such occupancy is 45 days or less in duration.

Section 12. Subsection (6) of section 477.0135, Florida Statutes, is amended to read:

477.0135 Exemptions.—

(6) A license is not required of any individual providing makeup or special effects services in a theme park or entertainment complex to an actor, stunt person, musician, extra, or other talent, or providing makeup or special effects services to the general public. The term "theme park or entertainment complex" has the same meaning as in s. 509.013 ~~s. 509.013(9)~~.

Section 13. Paragraph (b) of subsection (2) of section 509.221, Florida Statutes, is amended to read:

509.221 Sanitary regulations.—

(2)

(b) Within a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~, the bathrooms are not required to be in the same building as the public food service

establishment, so long as they are reasonably accessible.

Section 14. Paragraph (b) of subsection (5) of section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ss. 502 and 503 of the standards.

(b) If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~ provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

Section 15. Paragraph (b) of subsection (5) of section 559.955, Florida Statutes, is amended to read:

559.955 Home-based businesses; local government restrictions.—

(5) The application of this section does not supersede:

(b) Local laws, ordinances, or regulations related to

transient public lodging establishments, as defined in s. 509.013 ~~s. 509.013(4)(a)1.~~, that are not otherwise preempted under chapter 509.

Section 16. Subsection (2) of section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—

(2) Sections 705.1015-705.106 do not apply to any personal property lost or abandoned on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with s. 705.185.

Section 17. Section 705.185, Florida Statutes, is amended to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—When any lost or abandoned personal property is found on premises located within a theme park or entertainment complex, as defined in s. 509.013 ~~s. 509.013(9)~~, or operated as a zoo, a museum, or an aquarium, or on the premises of a public food service establishment or a public lodging establishment licensed under part I of chapter 509, if the owner or operator of such premises elects to comply with this section, any lost or abandoned property must be

delivered to such owner or operator, who must take charge of the property and make a record of the date such property was found. If the property is not claimed by its owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises may not sell and must dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code for sale or other disposal as the charitable institution deems appropriate. The rightful owner of the property may reclaim the property from the owner or operator of the premises at any time before the disposal or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises. A charitable institution that accepts an electronic device, as defined in s. 815.03(9), access to which is not secured by a password or other personal identification technology, shall make a reasonable effort to delete all personal data from the electronic device before its sale or disposal.

Section 18. Section 717.1355, Florida Statutes, is amended to read:

717.1355 Theme park and entertainment complex tickets.—This chapter does not apply to any tickets for admission to a theme park or entertainment complex as defined in s. 509.013 ~~s.~~

~~509.013(9)~~, or to any tickets to a permanent exhibition or recreational activity within such theme park or entertainment complex.

Section 19. Subsection (8) of section 877.24, Florida Statutes, is amended to read:

877.24 Nonapplication of s. 877.22.—Section 877.22 does not apply to a minor who is:

(8) Attending an organized event held at and sponsored by a theme park or entertainment complex as defined in s. 509.013 ~~s. 509.013(9)~~.

Section 20. The application of this act does not supersede any current or future declaration or declaration of condominium adopted pursuant to chapter 718, Florida Statutes, cooperative document adopted pursuant to chapter 719, Florida Statutes, or declaration or declaration of covenant adopted pursuant to chapter 720, Florida Statutes.

Section 21. (1) The Department of Revenue is authorized, and all conditions are deemed to be met, to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing s. 212.03, Florida Statutes, including establishing procedures to facilitate the remittance of taxes.

(2) Notwithstanding any other law, emergency rules adopted pursuant to subsection (1) are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency

rules.

(3) This section expires January 1, 2026.

Section 22. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 833 by Rep. Duggan
Vacation Rentals

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Duggan (lines 472-614):

- Removes provisions authorizing local governments to impose a fine for failure to register under a vacation rental program.
- Removes provisions authorizing local governments to deny an application for registering a vacation rental.
- Removes provisions authorizing local governments to terminate or refuse to issue or renew a vacation rental registration.
- Removes provisions authorizing local governments to withdraw acceptance of a registration on the basis of an unsatisfied recorded municipal or county code lien.
- Allows local governments to restrict the maximum occupancy for residential properties that are rented if uniformly applied without regard to whether the residential property is used as a vacation rental.
- Increases vacation rental registration maximum fee amounts from $50 to $75 for individual registrations and from $100 to $150 for collective registrations.
- Makes a technical correction.

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: Commerce Committee

Representative Duggan offered the following:

Amendment (with title amendment)

Remove lines 472-614 and insert:

rental registration program. Local governments may adopt a vacation rental registration program pursuant to subparagraph 3. This paragraph does not prohibit a local law, ordinance, or regulation from restricting the maximum occupancy for residential properties that are rented if uniformly applied without regard to whether the residential property is used as a vacation rental.

2. Local governments may charge a fee of no more than $75 for processing an individual registration application or $150 for processing a collective registration application. A local law, ordinance, or regulation may not require renewal of a

registration more than once per year. However, if there is a change of ownership, the new owner may be required to submit a new application for registration.

3. As a condition of registration, the local law, ordinance, or regulation may only require the owner or operator of a vacation rental to:

a. Submit identifying information about the owner or the owner's agents and the subject vacation rental property.

b. Obtain a license as a transient public lodging establishment issued by the division within 60 days after local registration.

c. Obtain all required tax registrations, receipts, or certificates issued by the Department of Revenue, a county, or a municipal government.

d. Update required information on a continuing basis to ensure it is current.

e. Comply with parking standards and solid waste handling and containment requirements, so long as such standards and requirements are not imposed solely on vacation rentals.

f. Designate and maintain at all times a responsible party who is capable of responding to complaints and other immediate problems related to the vacation rental, including being available by telephone at a listed phone number.

g. State the maximum occupancy of the vacation rental based on the number of sleeping accommodations for persons staying overnight in the vacation rental.

4.a. Within 15 business days after receiving an application for registration of a vacation rental, the local government must review the application for completeness and accept the registration of the vacation rental or issue a written notice specifying with particularity any areas that are deficient. Such notice may be provided by United States mail or electronically.

b. The vacation rental owner or operator and the local government may agree to a reasonable request to extend the timeframes provided in this subparagraph, particularly in the event of a force majeure or other extraordinary circumstance.

c. If the local government fails to accept or deny the registration within the timeframes provided in this subparagraph, the application is deemed accepted.

d. Upon an accepted registration of a vacation rental, a local government shall assign a unique registration number to the vacation rental or other indicia of registration and provide the registration number or other indicia of registration to the owner or operator of the vacation rental in writing or electronically.

(d) The regulation of advertising platforms is preempted to the state as provided in this chapter.

Section 4. Effective January 1, 2024, subsections (2) and (3) of section 509.241, Florida Statutes, are amended to read:

509.241 Licenses required; exceptions.—

(2) APPLICATION FOR LICENSE.—Each person who plans to open a public lodging establishment or a public food service establishment shall apply for and receive a license from the division before ~~prior to~~ the commencement of operation. A condominium association, as defined in s. 718.103, which does not own any units classified as vacation rentals or timeshare projects under s. 509.242(1)(c) or (g) is not required to apply for or receive a public lodging establishment license. All applications for a vacation rental license must, if applicable, include the local registration number or other proof of registration required by local law, ordinance, or regulation. Upon receiving an application for a vacation rental license, the division may grant a temporary license that authorizes the vacation rental to begin operation while the application is pending and to post the information required under s. 509.243(1)(c). The temporary license automatically expires upon final agency action regarding the license application.

(3) DISPLAY OF LICENSE.—Any license issued by the division must ~~shall~~ be conspicuously displayed to the public inside ~~in~~ the ~~office or lobby of the~~ licensed establishment. Public food service establishments that ~~which~~ offer catering services must ~~shall~~ display their license number on all advertising for

catering services. The owner or operator of a vacation rental offered for transient occupancy through an advertising platform must also display the vacation rental license number and, if applicable, the local registration number.

Section 5. Effective January 1, 2024, section 509.243, Florida Statutes, is created to read:

509.243 Advertising platforms.—

(1)(a) An advertising platform must require that a person who places an advertisement for the rental of a vacation rental:

1. Include in the advertisement the vacation rental license number and, if applicable, the local registration number; and

2. Attest to the best of the person's knowledge that the license number for the vacation rental property and the local registration are current, valid, and accurately stated in the advertisement.

(b) An advertising platform must display the vacation rental license number and, if applicable, the local registration number. Effective July 1, 2024, the advertising platform must check that the vacation rental license number provided by the owner or operator appears as current in the information posted by the division pursuant to paragraph (c) and applies to the subject vacation rental before publishing the advertisement on its platform and again at the end of each calendar quarter that the advertisement remains on its platform.

(c) By July 1, 2024, the division shall maintain vacation rental license information in a readily accessible electronic format that is sufficient to facilitate prompt compliance with the requirements of this subsection by an advertising platform or a person placing an advertisement on an advertising platform for transient rental of a vacation rental.

(2) An advertising platform must remove from public view an advertisement or a listing from its online application, software, website, or system within 15 business days after being notified by the division in writing that the subject advertisement or listing for the rental of a vacation rental located in this state fails to display a valid license number issued by the division.

(3) If a guest uses a payment system on or through an advertising platform to pay for the rental of a vacation rental located in this state, the advertising platform must collect and remit all taxes due under ss. 125.0104, 125.0108,

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

Remove lines 21-23 and insert:

programs; allowing local laws, ordinances, or regulations to restrict maximum occupancy for all residential properties; preempting

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 869 Department of Business and Professional Regulation Licensing
SPONSOR(S): State Administration & Technology Appropriations Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 782

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 0 N	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	12 Y, 0 N, As CS	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Department of Business and Professional Regulation (DBPR) is responsible for licensing and regulating various businesses and professions throughout the state, including asbestos professionals, mold-related professionals, electrical contractors, public lodging establishments, and public food service establishments.

Related to mold-related and asbestos professional licensing regulations, the bill provides a pathway for a person who holds a license in another state to obtain a Florida license.

Related to electrical contractors licensing regulations, the bill allows certain local electrical and alarm contractors to be licensed statewide.

Related to pugilistic exhibitions, the bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants who are not in the same weight category.

Related to public lodging establishments and public food service establishments, the bill:

- requires licensees to submit certain documents, fees, and communications online;
- requires licensees to provide an email address for primary communication with DBPR;
- allows notices to be served to the operator of a licensed establishment via email, in addition to in-person service and by mail; and
- allows the guest registry at a transient public lodging establishment to be kept online, and guests are no longer required to sign the registry.

The bill has a positive fiscal impact on state government revenues. There is an indeterminate, but likely minimal negative fiscal impact on local governments and a positive fiscal impact on the private sector. *See* Fiscal Analysis & Economic Impact Statement.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Department of Business and Professional Regulation

The Florida Department of Business and Professional Regulation (DBPR) regulates and licenses various businesses and professionals in Florida through the following divisions:

- The Division of Administration,
- The Division of Alcoholic Beverages and Tobacco,
- The Division of Certified Public Accounting,
- The Division of Drugs, Devices, and Cosmetics,
- The Division of Florida Condominiums, Timeshares, and Mobile Homes,
- The Division of Hotels and Restaurants,
- The Division of Pari-mutuel Wagering,
- The Division of Professions,
- The Division of Real Estate,
- The Division of Regulation,
- The Division of Technology, and
- The Division of Service Operations.[1]

The Division of Professions licenses and regulates various professions through 12 professional boards, five programs, and one council, including the: [2]

- Asbestos Licensing Unit,
- Electrical Contractors' Licensing Board (ECLB), and
- Mold-Related Services Program.

The Division of Regulation is the enforcement authority for Labor Organizations and Business Agents, the Florida Athletic Commission (FAC), Farm Labor Program, Child Labor Program, and any professional boards and programs housed within the Division of Professions.[3]

The Division of Hotels and Restaurants (H&R) licenses, inspects, and regulates public lodging and food service establishments in Florida.[4]

Mold-Related Services

Background

Mold assessors and mold remediators are regulated by ch. 468, part XVI, F.S., and licensed by the Mold-Related Services Licensing Program[5] in DBPR.

"Mold assessment" means a process performed by a mold assessor that includes the physical sampling and detailed evaluation of data obtained from a building history and inspection to formulate an initial hypothesis about the origin, identity, location, and extent of amplification of mold growth of greater than ten square feet.[6]

[1] S. 20.165, F.S.
[2] Florida Department of Business and Professional Regulation, *Division of Professions*, http://www.myfloridalicense.com/DBPR/division-of-professions/ (last visited Feb. 24, 2023).
[3] Except the Board of Architecture and Interior Design, and the Florida Board of Professional Engineers. Florida Department of Business and Professional Regulation, *Division of Regulation*, http://www.myfloridalicense.com/DBPR/division-of-regulation/ (last visited Feb. 24, 2023).
[4] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Feb. 24, 2023).
[5] S. 468.84, F.S.
[6] S. 468.8411(3), F.S.

"Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter of greater than ten square feet that was not purposely grown at that location; however, it may not include work that requires a contractor license under ch. 489, F.S.[7]

In order to be licensed as a mold assessor or mold remediator, an applicant must:

- be of good moral character,
- pass the required DBPR-approved examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation,
- have required liability insurance, and
- complete either:
  - at least a two-year associate of arts degree with certain course requirements and a minimum of one year of experience; or
  - a high school diploma or the equivalent with a minimum of four years of experience.[8]

A person who is licensed in another state is eligible for a license by endorsement in Florida if they:[9]

- are of good moral character;
- hold required general liability insurance;
- hold a valid license to practice as a mold assessor or mold remediator in another state or territory of the United States whose educational requirements are substantially equivalent to Florida; and
- have passed a national, regional, state, or territorial licensing examination that is substantially equivalent to the required Florida examination.

Applicants for a mold-related license pay an initial licensure fee of $230. There are currently 3,252 licensed mold assessors and 3,208 licensed mold remediators in the state. In the most recent fiscal year, there were 25 applicants for a license by endorsement.[10]

Effect of the Bill

The bill allows applicants who hold a mold-related license in another state to obtain a license by endorsement in Florida, if they have held a valid license to practice in another state or territory of the United States for at least ten years before the date of application, without needing to take a Florida-specific examination or training.

Such applications for a Florida license by endorsement must be made either when the applicant's license in another state or territory is active or within two years of when such license was last active.

The bill clarifies the provision relating to licensure examination requirements.

Asbestos Consultants and Contractors

Background

Asbestos consultants and contractors are regulated by ch. 469, F.S., and licensed by the Asbestos Licensing Unit in DBPR. Florida licensing standards must also comply with the U.S. Environmental Protection Agency's Asbestos Model Accreditation Plan for States (MAP), which includes mandatory nationwide standards for testing and education.[11]

"Asbestos abatement" means the removal, encapsulation, enclosure, or disposal of asbestos.[12]

[7] S. 468.8411(5), F.S.
[8] S. 468.8413(2), F.S.
[9] S. 468.8414(3), (4), F.S.
[10] Email from Jonas Marquez, Legislative Affairs Director, Department of Business and Professional Regulation, RE: HB 869 (Feb. 28, 2023).
[11] 40 C.F.R. § 763 Appendix C to Subpart E.
[12] S. 469.001(1), F.S.

An asbestos consultant may:

- conduct an asbestos survey,
- develop an operation and maintenance plan,
- monitor and evaluate asbestos abatement, and
- prepare asbestos abatement specifications.[13]

An asbestos contractor may perform the work of an asbestos consultant and conduct asbestos abatement work.[14]

In order to be eligible to be licensed as an asbestos consultant or contractor, an applicant must meet one of the following criteria:[15]

- hold a current, valid, active license as an architect issued under ch. 481, F.S.;
- hold a current, valid, active license as a professional engineer issued under ch. 471, F.S.,
- hold a current, valid, active license as a professional geologist under ch. 492, F.S.;
- be a diplomat of the American Board of Industrial Hygiene; or
- have been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

An applicant for licensure as either an asbestos consultant or contractor also must:[16]

- if applying for an asbestos consultant license, complete DBPR-approved courses in the following topics:
  - building asbestos surveys and mechanical systems,
  - asbestos management planning,
  - respiratory protection, and
  - project designer.
- if applying for an asbestos contractor license, complete courses in the following topics:
  - asbestos contractor/supervisor, and
  - respiratory protection.
- provide evidence of satisfactory work on ten asbestos projects within the last five years,
- provide evidence of financial stability, and
- pass the DBPR-approved examination.

There is no provision which specifically allows or addresses licenses by endorsement for asbestos licensees of other states.

Applicants for an asbestos license pay an initial licensure fee of $555, and an examination fee of $316. There are currently 136 licensed asbestos contractors and 111 licensed asbestos consultants in the state. DBPR has received an average of 33 asbestos applications per year over the last three fiscal years. In the most recent fiscal year, there were 57 applicants for an asbestos professional license.[17]

Effect of the Bill

The bill allows applicants who hold an asbestos license in another state license to obtain a license by endorsement in Florida if they have:

- passed a written examination in any state that meets the requirements of MAP,
- held a license as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least ten years,

[13] S. 469.003, F.S.
[14] S. 469.003(3), F.S.
[15] S. 469.004(1), F.S.
[16] S. 469.005, F.S.
[17] DBPR, *supra* note 10.

- demonstrated financial stability, and
- completed the required DBPR-approved courses.

Such applicants must apply while they hold an active license in another state or territory or within 2 years after such license was last active.

Electrical Contractors

Background

Statewide electrical, alarm system, and specialty contractors are regulated by of ch. 489, part II, F.S., and licensed and regulated by the ECLB within DBPR.[18] An electrical contractor engages in business as a contractor or performs electrical or alarm work for compensation.[19]

Electrical contractors may work on electrical wiring, fixtures, appliances, apparatus, raceways, and conduits which generate, transmit, transform, or utilize electrical energy in any form. The scope of an electrical contractor's license includes alarm system work.[20]

Alarm system contractors may lay out, fabricate, install, maintain, alter, repair, monitor, inspect, replace, or service burglary, fire, robbery, or medical emergency alarm systems.[21]

In order to become a certified electrical, alarm system, or specialty contractor, an applicant must:[22]
- be at least 18 years of age;
- be of good moral character;
- pass the certification examination;
- have workers' compensation insurance or an exemption, and public liability and property damage insurance; and
- meet certain training and education criteria.

A registered contractor is an individual that has taken and passed a local competency examination and can practice the specific category of contracting for which they are approved, only in the local jurisdiction for which the license is issued.[23] Locally registered contractors that are required to hold a contracting license to practice their profession in accordance with state law must register with DBPR after obtaining a local license.[24]

Section 489.514, F.S., created a pathway that allowed registered local electrical and alarm contractors who met certain criteria to have their local registration converted into a certified statewide license by the ECLB. The provision required applicants to apply by November 1, 2021, and is thus is no longer available for use by local registered contractors. This provision is commonly referred to as the "grandfathering provision."

Any registered contractor wishing to have their license "grandfathered" into a certified license had to submit a completed application to the ECLB, pay an appropriate fee, and show evidence of the following criteria:
- currently holds a valid registered local license in the certification of electrical contractor, alarm system contractor, or electrical specialty contractor sought;
- has, for the certification category sought, passed a written, proctored examination that the ECLB finds to be substantially similar to the examination required to be licensed as a certified contractor;

[18] S. 489.507, F.S.
[19] S. 489.505(9), F.S.
[20] Ss. 489.505(12) & 489.537(7), F.S.
[21] S. 489.505(1)-(2), F.S.
[22] S. 489.511(1) & (4), F.S.
[23] S. 489.505(21)-(23), F.S.
[24] S. 489.513, F.S.

- has at least five years of experience as a contractor in the certification category sought, or as an inspector or building administrator with oversight over that category. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the required five years;
- has not had the contractor's license revoked at any time, suspended in the last five years, or assessed a fine in excess of $500 in the last five years; and
- has the required workers' compensation insurance or an exemption, and public liability and property damage insurance.[25]

DBPR received 766 applications from local electrical and alarm contractors for a statewide license during the last period of grandfathering, from July 1, 2019, through November 1, 2021.[26]

Effect of the Bill

The bill reopens the grandfathering provision for locally registered electrical, alarm system, and specialty contractors to obtain licensure as statewide certified contractors without an expiration date.

Pugilistic Exhibitions

Background

Chapter 548, F.S., governs the FAC under DBPR. The function of the FAC is to license and regulate pugilistic events and matches, including professional boxing, kickboxing, and mixed martial arts. The FAC ensures that all matches are conducted in accordance with provisions of state laws and rules.

A match participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician,[27] matchmaker, or promoter must be licensed by the FAC before directly or indirectly acting in such capacity in connection with any match. In order to obtain a license, an applicant must:[28]

- complete an application in a form prescribed by the FAC;
- be at least 18 years of age; and
- pay an application fee.

An "exhibition" is a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using strikes and blows to the head or other full-contact maneuvers.[29] Participants in an exhibition, except one held solely for training purposes, must weigh within 12 pounds of each other.[30]

Effect of the Bill

The bill removes the maximum participant weight differential requirement for all exhibition matches. This will allow any exhibition to include participants that weigh more or less than 12 pounds from their opponent.

Hotels and Restaurants

"Public lodging establishment" includes:[31]

[25] S. 489.514, F.S.
[26] DBPR, *supra* note 10.
[27] A physician must be licensed pursuant to chapter 458 or chapter 459, must maintain a license in good standing, and must demonstrate satisfactory medical training or experience in boxing. S. 548.017, F.S.
[28] S. 548.021, F.S.
[29] S. 548.002(8), F.S.
[30] S. 548.043(2), F.S.
[31] S. 509.013(4), F.S.

- "Transient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests; and
- "Nontransient public lodging establishments," which means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or 1 calendar month.

Classifications of public lodging establishments include hotels, motels, vacation rentals, apartments, bed and breakfast inns, and timeshare projects.[32]

"Public food service establishments" means any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption, with certain exceptions.[33]

Classifications of public food service establishments include permanent food service restaurants, catering services, mobile food dispensing vehicles, vending machines, theme park carts, culinary education programs, and temporary food service events.[34]

Electronic Communications - Background

While H&R has rulemaking authority to adopt rules to implement ch. 509, F.S., H&R does not have authority to adopt rules to require electronic submissions for any required document or fee from a licensee or for H&R to require online communications with a licensee.[35] There is also no statutory requirement that such documents, fees, or communications be transmitted online or for licensees to provide an email address to H&R.[36]

Notices that are served by H&R must be delivered to the operator of a licensed establishment by an H&R agent or by registered mail. If H&R is unable to effect service, the notice may be conspicuously posted at the licensee's establishment.[37] Inspection reports may be served via electronic means.

Each transient public lodging establishment is required to maintain a register of guests who occupy rental units in the establishment. The guests must also sign the registry. There is not a specific allowance that the registry may be kept in an electronic format.

Electronic Communications – Effect of the Bill

The bill requires all H&R licensees to provide an email address to function as the primary method of communication with H&R.

The bill allows H&R to serve notices or inspection reports to the operator of licensed establishments via email, in addition to in-person service and mail.

The bill requires each public lodging establishment or a public food service establishment, and any person who plans to open a licensed establishment, to create and maintain an online account and provide an e-mail address to function as the primary contact for all communication from H&R. Licensed establishments are responsible for maintaining accurate contact information on file.

[32] S. 509.242, F.S.
[33] S. 509.013(5), F.S.
[34] R. 61C-1.002, F.A.C.; Florida Department of Business and Professional Regulation, *Hotels and Restaurants – Licensing Guides*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/licensing-guides/ (last visited Feb. 24, 2023).
[35] S. 509.032, F.S.
[36] S. 509.091, F.S.
[37] S. 509.091(1), F.S.

Each vacation rental or timeshare project must submit any change in the street or unit address or number of houses or units included under the license within 30 days of the change. All changes must be filed through the H&R's online system

The bill allows the guest registry at a transient public lodging establishment to be kept online, and will no longer require guests to sign the registry.

The bill clarifies that all fees be must be paid by the applicant when the license application is submitted to H&R.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 468.8414, F.S., revising licensure requirements for mold assessors and remediators.
Section 2: Amends s. 469.004, F.S., revising licensure requirements for asbestos consultants and contractors.
Section 3: Amends s. 489.514, F.S., removing a deadline for an electrical contractor licensing provision.
Section 4: Amends s. 509.091, F.S, revising requirements for hotel and restaurant inspection reports.
Section 5: Amends s. 509.101, F.S., revising requirements for hotel guest registries.
Section 6: Amends s. 509.241, F.S., requiring certain persons, licensees, and licenses agents to create and maintain a division online account.
Section 7: Amends s. 548.043, F.S., revising participant weight differentials for certain pugilistic exhibitions.
Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DBPR expects the following fiscal impacts on revenues:[38]

Division of Professions

Indeterminate; An increase of up to $399,056 in revenue from the grandfathering fee over the next three years (*see* Fiscal Comments).

2. Expenditures:

DBPR does not anticipate a change in state expenditures as a result of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local governments could see an insignificant decrease in revenues associated with renewal and reciprocity fees if eligible registered contractors choose to apply for the grandfathering provision created in the bill for ECLB licensees.

2. Expenditures:

[38] Department of Business and Professional Regulation (DBPR), Agency Analysis of 2023 Senate Bill 782, p. 6 (Mar. 2, 2023)

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There may be a positive impact on the private sector by expanding the geographical scope of practice for those registered electrical contractors who choose to take advantage of the grandfathering provision. It would also allow more electrical contractors to work across the state.

D. FISCAL COMMENTS:

Revenue from additional licenses issues in accordance with the electrical contractor grandfathering provision is indeterminate because it is unknown how many eligible registered ECLB licensees will apply.[39] The total fee (application fee, initial licensing fee, and unlicensed activity fee) for licenses previously issued under a grandfathering provision was $196. There are 2,036 Registered Current Active/Inactive ECLB licensees who may be able to take advantage of the grandfathering provision. However, the department received only 766 applications during the last period of grandfathering, which was from July 1, 2019 to November 1, 2021.

Assuming total application/license fees of $196, the grandfathering fees received by DBPR over the next three fiscal years could range from $150,136.00 (if the department receives the same number of applications as the last grandfathering period) to a maximum of $399,056.00 if all 2,036 Registered Current Active/Inactive licensees apply over the next three fiscal years.[40]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

The bill will require DBPR to amend rules related to:

- Mold-related professional licensing standards,
- Asbestos professional licensing standards,
- Pugilistic exhibition requirements,
- Licensed establishment electronic communications, and
- Licensed establishment license issuance and renewal.

DBPR has current authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[39] *Id*. at 10.
[40] *Id.*

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the State Administration & Technology Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute removed all modifications to hotels and restaurants licensing including modified schedules and maximum fees.

This analysis is drafted to the committee substitute as passed by the State Administration & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 468.8414, F.S.; requiring the department to certify for licensure qualified individuals who practice mold assessment or mold remediation and hold certain licenses issued by other states or territories; amending s. 469.004, F.S.; revising requirements for the issuance of an asbestos consultant's license; requiring the department to certify for licensure by endorsement asbestos consultants and asbestos contractors who meet certain exam and other state licensure requirements; requiring asbestos consultants and asbestos contractors to complete certain courses; amending s. 489.514, F.S.; removing a time limitation for applying for certain contracting licenses under certain provisions; amending s. 509.091, F.S.; requiring licensees and licensed agents to provide the department's Division of Hotels and Restaurants with e-mail addresses at which they can be contacted; authorizing the division to deliver notices and inspection reports by e-mail; amending s. 509.101, F.S.; revising the guest register maintenance requirements that an operator of a transient establishment must meet; amending s. 509.241, F.S.;

requiring certain persons, licensees, and licensed agents to create and maintain a division online account and provide the division with specified information; amending s. 548.043, F.S.; deleting a requirement limiting the types of boxing exhibitions which require a specified maximum difference in participant weights; providing an effective date.

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

Section 1. Subsection (3) of section 468.8414, Florida Statutes, is amended to read:

468.8414 Licensure.—

(3) The department shall certify as qualified for a license by endorsement an applicant who is of good moral character, who has the insurance coverage required under s. 468.8421, and who meets at least one of the following requirements:

(a) Is qualified to take the examination as set forth in s. 468.8413 and has passed a certification examination offered by a nationally recognized organization that certifies persons in the specialty of mold assessment or mold remediation and that has been approved by the department as substantially equivalent to the requirements of this part and s. 455.217.~~; or~~

(b) Holds a valid license to practice mold assessment or

mold remediation issued by another state or territory of the United States if the criteria for issuance of the license were substantially the same as the licensure criteria ~~that is~~ established by this part as determined by the department.

(c) Has held a valid license to practice mold assessment or mold remediation issued by another state or territory of the United States for at least 10 years before the date of application. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active.

Section 2. Present subsection (3) of section 469.004, Florida Statutes, is redesignated as subsection (4), a new subsection (3) is added to that section, and subsection (1) of that section is amended, to read:

469.004 License; asbestos consultant; asbestos contractor.—

(1) All asbestos consultants must be licensed by the department. Except for an asbestos consultant's license issued by endorsement as provided under subsection (3) or otherwise expressly provided by law, an asbestos consultant's license may be issued only to an applicant who holds a current, valid, active license as an architect issued under chapter 481; holds a current, valid, active license as a professional engineer issued under chapter 471; holds a current, valid, active license as a professional geologist issued under chapter 492; is a diplomat

of the American Board of Industrial Hygiene; or has been awarded designation as a Certified Safety Professional by the Board of Certified Safety Professionals.

(3) The department shall certify as qualified for licensure by endorsement any individual applying for licensure who has passed a written examination that meets the requirements of the United States Environmental Protection Agency Asbestos Model Accreditation Plan, has held a valid license to practice as an asbestos consultant or asbestos contractor issued by another state or territory of the United States for at least 10 years before the date of application, and is applying for the same or similar license in this state, subject to ss. 469.005(5) and 469.006. The application for licensure must be made either when the license in the other state or territory is active or within 2 years after such license was last active. To qualify for licensure by endorsement, an asbestos consultant must complete the courses required by s. 469.005(2) and an asbestos contractor must complete the courses required by s. 469.005(3).

Section 3. Subsection (3) of section 489.514, Florida Statutes, is amended to read:

489.514 Certification for registered contractors; grandfathering provisions.—

~~(3) An applicant must make application by November 1, 2021, to be licensed pursuant to this section.~~

Section 4. Section 509.091, Florida Statutes, is amended

to read:

509.091 Notices; form and service.—

(1) All licensees and licensed agents must provide an e-mail address to the division to function as the primary method of contact for all communication with the division.

(2) Each notice or inspection report served by the division pursuant to this chapter must be in writing and must be delivered personally by an agent of the division, sent by e-mail, or mailed ~~by registered letter~~ to the operator of the public lodging establishment or public food service establishment. If the operator refuses to accept service or evades service or the agent is otherwise unable to effect service after due diligence, the division may post such notice or inspection report in a conspicuous place at the establishment.

~~(2) Notwithstanding subsection (1), the division may deliver lodging inspection reports and food service inspection reports to the operator of the public lodging establishment or public food service establishment by electronic means.~~

Section 5. Subsection (2) of section 509.101, Florida Statutes, is amended to read:

509.101 Establishment rules; posting of notice; food service inspection report; maintenance of guest register; mobile food dispensing vehicle registry.—

(2) It is the duty of each operator of a transient

establishment to maintain at all times a register of~~, signed by or for~~ guests who occupy rental units within the establishment, showing the dates upon which the rental units were occupied by such guests and the rates charged for their occupancy. Each operator shall maintain this register ~~shall be maintained~~ in chronological order, shall make the register ~~and~~ available for inspection by the division at any time, and may keep the register in an electronic format. Operators need not make available registers that ~~which~~ are more than 2 years old.

Section 6. Subsection (4) is added to section 509.241, Florida Statutes to read:

509.241 Licenses required; exceptions.—

(4) ONLINE ACCOUNT AND TRANSACTIONS.—Each person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent must create and maintain a division online account and provide an e-mail address to the division to function as the primary contact for all communication from the division.

(a) Licensees and licensed agents are responsible for maintaining accurate contact information on file with the division.

(b) Each licensee issued a license or licensed agent managing a license classified as a vacation rental or timeshare project, as those terms are defined in s. 509.242(1)(c) and (g), respectively, must submit any change in the street or unit

address or number of houses or units included under the license within 30 days after the change. All changes must be filed with the division through the division's online system.

Section 7. Subsection (2) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(2) The commission shall establish by rule the acceptable difference in weight between participants; however, the maximum difference in weight in boxing matches shall not exceed 12 pounds, except matches in the cruiserweight and heavyweight classes and exhibitions ~~held solely for training purposes~~.

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

COMMERCE COMMITTEE

CS/HB 869 by Rep. McClain
Department of Business and Professional Regulation

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. McClain (line 153):

- Requires the Division of Hotels and Restaurants to adopt rules relating to online account requirements for licensees.
- Requires such rules to specify circumstances when a person who plans to open a public lodging establishment or a public food service establishment may opt out of the requirement to create and maintain an online account.

Amendment 2 by Rep. McClain (line 161):

- Allows the Florida Building Commission (commission) to delay the effective date of the energy provisions of the Florida Building Code (Building Code) for up to 3 months if energy code compliance software is not approved by the commission at least 3 months before the effective date of the updated Building Code.

Amendment 3 by Rep. McClain (line 161):

- Allows package stores to sell nicotine products.

Amendment 4 by Rep. McClain (line 161):

- Eliminates certain requirements for the offering of incidental benefits in the sale of a timeshare plan.
- Allows a timeshare purchaser to assign incidental benefits without the approval of the provider.
- Removes the requirement that an acknowledgement and disclosure statement indicate the source of the services, points, or other products that constitute the incidental benefit.
- Removes the requirement that the developer promptly notify the Division of Condominiums, Timeshares, and Mobile Homes upon learning of the unavailability of any incidental benefit.
- Extends the period for voiding a contract for which the closing unlawfully occurred before the cancellation period's expiration from one year to five years.
- Allows the description of each component site in each filed public offering statement for a multisite timeshare plan to be provided to the purchaser electronically.
- Provides that a developer is not required to file a separate public offering statement for any component site located within or outside Florida in order to include the component site in the multistate timeshare plan.

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: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Between lines 153 and 154, insert:

(c) The division shall adopt rules to implement this subsection. The rules must specify circumstances under which a person who plans to open a public lodging establishment or a public food service establishment and each licensee or licensed agent may opt out of the requirement to create and maintain a division online account.

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

Remove line 29 and insert:

information; requiring the division to adopt rules; providing requirements for such rules; amending s. 548.043, F.S.; deleting a

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: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Between lines 161 and 162, insert:

Section 8. Paragraph (e) of subsection (7) of section 553.73, Florida Statutes, is amended to read:

553.73 Florida Building Code.—

(7)

(e) A rule updating the Florida Building Code in accordance with this subsection shall take effect no sooner than 6 months after publication of the updated code. Any amendment to the Florida Building Code which is adopted upon a finding by the commission that the amendment is necessary to protect the public from immediate threat of harm takes effect immediately. If energy code compliance software is not approved by the

commission at least 3 months before the effective date of the updated Florida Building Code, the commission may delay the effective date of the energy provisions of the Florida Building Code for up to 3 additional months.

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

Remove line 32 and insert:

participant weights; amending s. 553.73, F.S.; authorizing the Florida Building Commission to delay the effective date of the energy provisions of the Florida Energy Code for a specified timeframe under certain circumstances; providing an effective date.

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: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Between lines 161 and 162, insert:

Section 8. Subsection (1) of section 565.04, Florida Statutes, is amended to read:

565.04 Package store restrictions.—

(1) Vendors licensed under s. 565.02(1)(a) shall not in said place of business sell, offer, or expose for sale any merchandise other than such beverages, and such places of business shall be devoted exclusively to such sales; provided, however, that such vendors shall be permitted to sell bitters, grenadine, nonalcoholic mixer-type beverages (not to include fruit juices produced outside this state), fruit juices produced in this state, home bar, and party supplies and equipment

(including but not limited to glassware and party-type foods), miniatures of no alcoholic content, nicotine products, and tobacco products. Such places of business shall have no openings permitting direct access to any other building or room, except to a private office or storage room of the place of business from which patrons are excluded.

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

Remove line 32 and insert:

participant weights; amending s. 565.04, F.S.; allowing package stores to sell nicotine products; providing an effective date.

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: Commerce Committee
Representative McClain offered the following:

Amendment (with title amendment)

Between lines 161 and 162, insert:

Section 8. Section 721.075, Florida Statutes, is amended to read:

721.075 Incidental benefits.—Incidental benefits shall be offered only as provided in this section.

(1) Accommodations, facilities, products, services, discounts, or other benefits which satisfy the requirements of this subsection are ~~shall be~~ subject to ~~the provisions of~~ this section and exempt from the other provisions of this chapter which would otherwise apply to such accommodations or facilities if and only if:

(a) The use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation.

(b) The ~~No~~ costs of acquisition, operation, maintenance, or repair of the incidental benefit may not be ~~are~~ passed on to purchasers of the timeshare plan as common expenses of the timeshare plan or as common expenses of a component site of a multisite timeshare plan.

(c) The continued availability of the incidental benefit is not necessary in order for any accommodation or facility of the timeshare plan to be available for use by purchasers of the timeshare plan in a manner consistent in all material respects with the manner portrayed by any promotional material, advertising, or purchaser public offering statement.

(d) The continued availability to purchasers of timeshare plan accommodations on no greater than a one-to-one use right to use night requirement ratio is not dependent upon continued availability of the incidental benefit.

(e) The incidental benefit will continue to be available in the manner represented to prospective purchasers for up to 3 years ~~or less~~ after the first date that the timeshare plan is available for use by the purchaser. Nothing herein prevents ~~shall prevent~~ the renewal or extension of the availability of an incidental benefit.

~~(f) The aggregate represented value of all incidental benefits offered by a developer to a purchaser may not exceed 15 percent of the purchase price paid by the purchaser for his or her timeshare interest.~~

(f)~~(g)~~ The incidental benefit is filed with the division for review in conjunction with the filing of a timeshare plan or in connection with a previously filed timeshare plan.

(2) Each purchaser shall execute a separate acknowledgment and disclosure statement with respect to all incidental benefits, which statement must ~~shall~~ include the following information:

(a) A fair description of the incidental benefit, including, but not limited to, any user fees or costs associated therewith and any restrictions upon use or availability.

(b) A statement that use of or participation in the incidental benefit by the prospective purchaser is completely voluntary, and that payment of any fee or other cost associated with the incidental benefit is required only upon such use or participation.

(c) A statement that the incidental benefit is not assignable or otherwise transferable by the prospective purchaser or purchaser without the approval of the provider of the incidental benefit.

(d) The following disclosure in conspicuous type immediately above the space for the purchaser's signature:

The incidental benefit[s] described in this statement is [are] offered to prospective purchasers of the timeshare plan [or other permitted reference under ~~pursuant to~~ s. 721.11(5)(a)]. This [These] benefit[s] is [are] available for your use for [some period up to 3 years ~~or less~~] after the first date that the timeshare plan is available for your use. The availability of the incidental benefit[s] may or may not be renewed or extended. You should not purchase an interest in the timeshare plan in reliance upon the continued availability or renewal or extension of this [these] benefit[s].

~~(c) A statement indicating the source of the services, points, or other products that constitute the incidental benefit.~~

The acknowledgment and disclosure statement for any incidental benefit shall be filed with the division before ~~prior to~~ use. Each purchaser must ~~shall~~ receive a copy of his or her executed acknowledgment and disclosure statement as a document required to be provided to him or her under ~~pursuant to~~ s. 721.10(1)(b).

(3)(a) In the event that an incidental benefit becomes unavailable to purchasers in the manner represented by the developer in the acknowledgment and disclosure statement, the developer shall pay the purchaser the greater of twice the verifiable retail value or twice the represented value of the

unavailable incidental benefit in cash within 30 days after ~~of~~ the date that the unavailability of the incidental benefit was made known to the developer, unless the developer has reserved a substitution right under ~~pursuant to~~ paragraph (b) and timely makes the substitution as required by paragraph (b). ~~The developer shall promptly notify the division upon learning of the unavailability of any incidental benefit.~~

(b) If an incidental benefit becomes unavailable as a result of events beyond the control of the developer, the developer may reserve the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit. If the developer reserves the right to substitute, the acknowledgment and disclosure statement required under ~~pursuant to~~ paragraph (2)(a) must ~~shall~~ contain the following conspicuous disclosure:

In the event any incidental benefit described in this statement becomes unavailable as a result of events beyond the control of the developer, the developer reserves the right to substitute a replacement incidental benefit of a type, quality, value, and term reasonably similar to the unavailable incidental benefit.

The substituted incidental benefit must ~~shall~~ be made available ~~delivered~~ to the purchaser within 30 days after the date that

the unavailability of the incidental benefit was made known to the developer.

(4) All purchaser remedies under ~~pursuant to~~ s. 721.21 are ~~shall be~~ available for any violation of ~~the provisions of~~ this section.

Section 9. Subsections (2) and (3) of section 721.10, Florida Statutes, are renumbered as subsections (3) and (4), respectively, subsection (1) is amended, and a new subsection (2) is added to that section, to read:

721.10 Cancellation.—

(1) A purchaser has the right to cancel the contract until midnight on ~~of~~ the 10th calendar day after the later of ~~following whichever of the following days occurs later~~:

(a) The execution date of the contract; or

(b) The day on which the purchaser received the last of all documents required to be provided to him or her, including the notice required by s. 721.07(2)(d)2., if applicable.

(2) This right of cancellation may not be waived by any purchaser or by any other person on behalf of the purchaser, and any attempt to obtain a waiver of the cancellation right of the purchaser is unlawful. If a purchaser waives, knowingly or unknowingly, his or her right of cancellation and a closing occurs, such closing is voidable at the option of the purchaser for up to 1 year after the date that would have been the expiration of the cancellation period under subsection (1).

Furthermore, a ~~no~~ closing may not occur until the cancellation period of the ~~timeshare~~ purchaser has expired, and if a closing occurs before the expiration of the cancellation period, ~~. Any attempt to obtain a waiver of the cancellation right of the timeshare purchaser, or to hold a closing prior to the expiration of the cancellation period, is unlawful and~~ such closing is voidable at the option of the purchaser for up to 5 years after such closing ~~a period of 1 year after the expiration of the cancellation period~~. However, nothing in this section precludes the execution of documents in advance of closing for delivery after expiration of the cancellation period.

Section 10. Paragraphs (b) and (e) of subsection (6) of section 721.11, Florida Statutes, are amended to read:

721.11 Advertising materials; oral statements.—

(6) Failure to provide cancellation rights or disclosures as required by this subsection in connection with the sale of a regulated short-term product constitutes misrepresentation in accordance with paragraph (4)(a). Any agreement relating to the sale of a regulated short-term product must be regulated as advertising material and is subject to the following:

(b) A purchaser of a regulated short-term product has the right to cancel the agreement until midnight of the 10th calendar day following the execution date of the agreement. The right of cancellation may not be waived by the prospective purchaser or by any other person on behalf of the prospective

purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation under s. 721.10(3) ~~s. 721.10(2)~~. If the prospective purchaser gives a valid notice of cancellation or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the prospective purchaser, or the proceeds thereof, must be returned to the prospective purchaser. Such refund must be made in the same manner prescribed for refunds under s. 721.10.

(e) If the seller provides the purchaser with the right to cancel the purchase of a regulated short-term product at any time up to 7 days prior to the purchaser's reserved use of the accommodations, but in no event less than 10 days, and if the seller refunds the total amount of all payments made by the purchaser reduced by the proportion of any benefits the purchaser has actually received prior to the effective date of the cancellation, the specific value of which has been agreed to between the purchaser and the seller, the short-term product offer shall be exempt from the requirements of paragraphs (b), (c), and (d). An agreement relating to the sale of the regulated short-term product made pursuant to this paragraph must contain a statement setting forth the cancellation and refund rights of the prospective purchaser in a manner that is consistent with this section and s. 721.10, including a description of the length of the cancellation right, a statement that the purchaser's intent to cancel must be in writing and sent to the

seller at a specified address, a statement that the notice of cancellation is effective upon the date sent, and a statement that any attempt to waive the cancellation right is unlawful. The right of cancellation provided to the purchaser pursuant to this paragraph may not be waived by the prospective purchaser or by any other person on behalf of the prospective purchaser. Notice of cancellation must be given in the same manner prescribed for giving notice of cancellation pursuant to s. 721.10(3) ~~s. 721.10(2)~~. If the prospective purchaser gives a valid notice of cancellation, or is otherwise entitled to cancel the sale, the funds or other property received from or on behalf of the prospective purchaser, or the proceeds thereof, shall be returned to the prospective purchaser. Such refund shall be made in the manner prescribed for refunds under s. 721.10.

Section 11. Paragraph (l) of subsection (4) and paragraph (l) of subsection (7) of section 721.55, Florida Statutes, are amended to read:

721.55 Multisite timeshare plan public offering statement.—Each filed public offering statement for a multisite timeshare plan shall contain the information required by this section and shall comply with the provisions of s. 721.07, except as otherwise provided therein. The division is authorized to provide by rule the method by which a developer must provide such information to the division. Each multisite timeshare plan

filed public offering statement shall contain the following information and disclosures:

(4) A text, which shall include, where applicable, the information and disclosures set forth in paragraphs (a)-(l).

(l) A description of each component site, which description may be disclosed in a written, graphic, tabular, or other form approved by the division or provided to the purchaser electronically, including, but not limited to, through a website or other Internet-based access. The description of each component site must ~~shall~~ include all of the following information:

1. The name and address of each component site.

2. The number of accommodations, timeshare interests, and timeshare periods, expressed in periods of 7-day use availability, committed to the multisite timeshare plan and available for use by purchasers.

3. Each type of accommodation in terms of the number of bedrooms, bathrooms, sleeping capacity, and whether or not the accommodation contains a full kitchen. As used in ~~For purposes of~~ this subparagraph ~~description~~, the term "full kitchen" means ~~a full kitchen shall mean~~ a kitchen with at least ~~having a minimum of~~ a dishwasher, range, sink, oven, and refrigerator.

4. A description of facilities available for use by the purchaser at each component site, including the following:

a. The intended use of the facility, if not apparent from the description.

b. Any user fees associated with a purchaser's use of the facility.

5. A cross-reference to the location in the public offering statement of the description of any priority reservation features which may affect a purchaser's ability to obtain a reservation in the component site.

(7) The following documents shall be included as exhibits to the filed public offering statement, if applicable:

(l)1. If the multisite timeshare plan contains any component sites located in the ~~this~~ state, the information required by s. 721.07(5) pertaining to each such component site, unless exempt under ~~pursuant to~~ s. 721.03.

2. If the purchaser will receive an interest in a specific multisite timeshare plan component site located outside of the ~~this~~ state but which is offered in the ~~this~~ state, the information required by s. 721.07(5) pertaining to that component site.~~, provided,~~ However, for purposes of this paragraph, ~~that the provisions of~~ s. 721.07(5)(t) ~~shall~~ only requires ~~require~~ disclosure of information related to the estimated budget for the timeshare plan and purchaser's expenses as required by the jurisdiction in which the component site is located.

A developer is not required to file a separate public offering statement for any component site located within or outside the state in order to include the component site in the multisite timeshare plan.

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

Remove line 32 and insert:

participant weights; amending s. 721.075, F.S.; revising language with respect to incidental benefits; amending s. 721.10, F.S.; revising language with respect to cancellations; amending s. 721.11, F.S.; conforming cross-references; amending s. 721.55, F.S.; revising disclosure requirements for a multisite timeshare plan public offering statement; providing an effective date.

HB 917

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 917 State Minimum Wage
SPONSOR(S): Yeager
TIED BILLS: **IDEN./SIM. BILLS:** SB 892

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	9 Y, 2 N	Thompson	Anstead
2) Appropriations Committee	25 Y, 2 N	Guy-Hudson	Pridgeon
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The federal Fair Labor Standards Act (FLSA) provides workers with minimum wage, overtime pay, and child labor protections. The FLSA authorizes the U.S. Secretary of Labor to administer the FLSA provisions, including workplace inspections, investigations, and enforcement of violations. The current federal minimum wage rate under the FLSA is $7.25 an hour. Most wage and salary workers are covered by the FLSA. The FLSA exempts certain employers and employees from the federal minimum wage and overtime requirements, including minor league baseball players.

Pursuant to the State Constitution, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase by $1 until the minimum wage reaches $15 per hour on September 30, 2026. Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had from 2005 - 2021.

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution. The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements and establishes procedures with respect to enforcement of violations. The Act specifies that:

- Only those individuals entitled to receive the federal minimum wage under the FSLA, and its implementing regulations, are eligible to receive the state minimum wage.
- Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated into the Act.

The bill amends the Act to clarify that amendments to the FLSA are incorporated into the Act, aligning Florida's minimum wage exemptions with recent amendments to federal exemptions.

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

The bill becomes effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Fair Labor Standards Act

The federal Fair Labor Standards Act (FLSA), enacted in 1938, provides covered workers with minimum wage, overtime pay, and child labor protections.[1] In 1938, the FLSA established a minimum wage of $.25 an hour. The current federal minimum wage rate is $7.25 an hour, which went into effect July 24, 2009.[2] The FLSA applies to employment within any state in the U.S., the District of Columbia or any territory or possession of the U.S.[3]

The FLSA covers most private and public sector employees. However, certain employers and employees are exempt from coverage, including: individuals with disabilities, youth workers, tipped workers and executive, administrative and professional workers. The FLSA covers businesses if the business has annual sales of at least $500,000.[4] It also covers certain individual employees if such employee is engaged in interstate commerce.

Regardless of the dollar amount of revenues of a business, the FLSA applies to:[5]

- **Governments**: Federal, state, or local government agencies.
- **Hospitals**: Hospitals, or institutions primarily engaged in the care of the sick, the aged, or the mentally ill or disabled who live on the premises. (It does not matter if the hospital or institution is public or private or is operated for profit or not-for-profit.)
- **Schools**: Pre-schools, elementary or secondary schools or institutions of higher learning (e.g., college), or a school for mentally or physically handicapped or gifted children. (It does not matter if the school or institution is public or private or operated for profit or not-for-profit.)

The FLSA includes several exemptions from the federal minimum wage provisions, including:[6]

- Executive, administrative and professional employees;
  - Teachers and academic administrative personnel in elementary and secondary schools, outside sales employees, and employees in certain computer-related occupations.
- Employees in certain seasonal amusement or recreational establishments, employees in certain small newspapers, seamen employed on foreign vessels, employees engaged in fishing operations, and employees engaged in newspaper delivery;
- Farm workers employed by certain employers;
- Causal babysitters and persons employed as companions for the elderly or infirm;
- Border patrol agents[7]; and

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[1] 29 U.S.C. § 201-219 and 29 C.F.R. ch. V.

[2] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023). (The main FLSA provisions and accompanying Department of Labor (DOL) regulations constitute what is commonly known as federal wage and hour laws and federal child labor law.).

[3] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023). (The FLSA does not apply to employees working in a foreign country even if the employer has its main office in the U.S.).

[4] The size of an enterprise is measured by its "annual sales or business done." Annual sales or business done includes all business activities that can be measured in dollars. Thus, retailers are covered by the FLSA if their annual sales are at least $500,000. Owners of rental properties are covered if they collect at least $500,000 annually in rent. 29 C.F.R.§§779.258-779.259.

[5] U.S. Department of Labor, Fair Labor Standards Act Advisor, https://webapps.dol.gov/elaws/whd/flsa/scope/screen10.asp, (last visited Mar. 15, 2023).

[6] 29 U.S.C. § 213. (It also includes separate exemptions from overtime pay.)

[7] Border Patrol Agent Pay Reform Act of 2014, S.1691, 113th Cong, (2014).

- Baseball players who are compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season at a rate that is not less than a weekly salary equal to the minimum wage.

The FLSA was amended in 2014, related to border patrol agents, and again in 2018, to exempt minor league baseball players who are paid at least $290 per week during the 2018 championship season from the federal minimum wage rate and overtime pay.[8] These two amendments were the only amendments made to the minimum wage exemptions provisions of the FLSA since Florida passed its minimum wage law in 2005.[9]

The FLSA provides that if states enact worker protections, including minimum wage rates, that are more protective of employees than what is provided by the FLSA, the state law applies.[10] Consequently, no state law may weaken the worker protections in the FLSA. However, state laws that impose greater worker protections will supersede those in the FLSA.[11]

Thirty states plus Washington DC, Guam, Puerto Rico, and the Virgin Islands provide a minimum wage greater than the federal minimum wage. Thirteen states provide a minimum wage that is equal to the federal minimum wage. Five states have not adopted a minimum wage and two states have a minimum wage that is below the federal minimum wage.[12] For those seven states, the federal minimum wage applies, but only to those workers covered by the FLSA.

Article X, Section 24 of the Florida Constitution

On November 2, 2004, Floridians voted to amend the Florida Constitution by adding a minimum wage provision (Section 24) that established the state minimum wage.[13] Prior to this date Florida did not have a law on minimum wage so the FLSA applied for covered workers. Section 24 provides the amount of the minimum wage and the procedure for calculating increases in the minimum wage.[14]

Florida voters again on November 3, 2020, voted to approve a constitutional amendment related to the state's minimum wage, Amendment 2, to gradually increase the state's minimum wage to $15 an hour by the year 2026.[15] Pursuant to the passage of Amendment 2, on September 30, 2021, Florida's minimum wage increased to $10 per hour. Each year, thereafter, Florida's minimum wage will increase

[8] *See* Levi Weaver, On Minor-League Pay, *MLB's Stance Doesn't Line Up with the Facts*, ATHLETIC (Apr. 4, 2018), https://www.theathletic.com/293189/%202018/04/04/on-minor-league-pay-mlbs-stance-doesnt-line-up-with-the-facts// (last visited March 1, 2023). (When recounting salary scale per level of minor league baseball, the article notes "federally-recognized poverty line is $12,140 per year for single-individual households." According to the article, a not-insignificant percentage of minor league players are able to subsidize their relatively meager monthly salaries by drawing upon the signing bonuses they received from their MLB clubs when first entering the professional ranks. These bonuses can range anywhere from $10,000 to several million dollars. "The top 64 picks [in the MLB draft] last year all received a bonus of over $1,000,000 before taxes, but roughly 40% of players signed for one-time bonuses of $10,000 or less."

[9] S. 448.110, F.S., expressly references ss. 213 and 214 of the FLSA, which address minimum wage exemptions and employment under special certificates, respectively. However, s. 214 has not been amended since 1989. (*See* Pub. L. 101–157, § 4(d), Nov. 17, 1989, 103 Stat. 941.)

[10] 29 U.S.C. §218.

[11] Congressional Research Service, CRS Report R42713, *The Fair Labor Standards Act (FLSA): An Overview, Updated March 2, 2023*, https://crsreports.congress.gov/product/pdf/R/R42713#:~:text=The%20Fair%20Labor%20Standards%20Act%20(FLSA)%20provides%20workers%20with%20minimum,employees%20are%20exempt%20from%20coverage, (last visited Mar. 14, 2023).

[12] U.S. Department of Labor, Consolidated Minimum Wage Table, https://www.dol.gov/agencies/whd/mw-consolidated (last visited Mar. 15, 2023).

[13] Art. X, s. 24., Fla. Const.

[14] Art. X, s. 24 (c), Fla. Const.

[15] U.S. Department of State, *Notice of Increase to State of Florida's Minimum Wage*, https://www.state.gov/wp-content/uploads/2021/01/2021-01-29-Notice-FL-Minimum-Wage-Increase.pdf (last visited Mar. 3, 2023).

by $1 until the minimum wage reaches $15 per hour on September 30, 2026.[16] Beginning in 2027, the minimum wage will be adjusted annually for inflation, as it had been done from 2004 - 2021.

Related to minimum wage, the Florida Constitution states, "All working Floridians are entitled to be paid a minimum wage sufficient to provide a decent and healthy life, that protects their employers from unfair low wage competition, and that does not force them to rely on taxpayer-funded public services."[17]

The Florida Constitution references the FLSA and specifically ties the meaning[18] of certain terms, "Employer," "Employee" and "Wage," to have the meanings established under the FLSA and its implementing regulations.[19] It also indicates that that case law, administrative interpretations, and other guiding standards developed under the federal FLSA must guide the construction of Florida's Constitution related to Section 24 and any implementing statutes or regulations.[20]

Florida Minimum Wage Act

The Florida Minimum Wage Act (Act) was enacted in 2005 to implement the minimum wage provisions in the State Constitution.[21] The Act designates the Department of Economic Opportunity (DEO) as the state agency that implements the minimum wage requirements, establishes procedures with respect to civil actions alleging violations, and provides that it is the exclusive remedy under state law for violations of Section 24.[22]

The Act provides that effective May 2, 2005, employers are required to pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the FSLA and its implementing regulations are eligible to receive the state minimum wage pursuant to the State Constitution and this statute. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated by reference.[23]

The Act requires DEO to calculate an adjusted state minimum wage rate and requires the Department of Revenue (DOR) and DEO to annually publish the amount of the adjusted state minimum wage and the effective date on their websites. The Act authorizes persons to file a complaint or inform any person of his or her potential rights pursuant to Section 24 regarding unpaid wages.[24] The Act also authorizes the Attorney General (AG) to bring a civil action to enforce these provisions. The AG may seek injunctive relief, and for willful violations, may seek to impose a fine of $1,000 per violation, payable to the state.[25]

As it relates to the federal minimum wage and the FLSA, the Act specifies that:[26]

- Only those individuals entitled to receive the federal minimum wage under the FSLA, and its implementing regulations, are eligible to receive the state minimum wage; and
- Provisions related to federal minimum wage exemptions in the FLSA are considered incorporated in the Act.

[16] Department of Economic Opportunity, *Florida's Minimum Wage*, https://floridajobs.org/docs/default-source/business-growth-and-partnerships/for-employers/posters-and-required-notices/2022-minimum-wage/2022-florida-minimum-wage-announcement.pdf?sfvrsn=961754b0_2 (last visited Mar. 3, 2023).
[17] Art. X, s. 24 (a), Fla. Const.
[18] *In re Advisory Opinion to the Atty. Gen. re Fla. Minimum Wage Amend.*, 880 So. 2d 636, 641–42 (Fla. 2004). ("The proposed amendment does not state that it is adopting the FLSA's *definition* of the term "employee," but provides that it is adopting the *meaning* of the term "employee," which is a much broader concept.")
[19] Art. X, s. 24(b), Fla. Const.
[20] Art. X, s. 24(f), Fla. Const.
[21] Ch. 2005-353, Laws of Fla., codified in s. 448.110, F.S.
[22] S. 448.110(10), F.S.
[23] S. 448.110(3), F.S.
[24] S. 448.110(6), F.S.
[25] S. 448.110(7), F.S.
[26] S. 448.110(3), F.S.

Professional Baseball in Florida

Currently, there are 12 minor league baseball teams that are affiliated with Major League Baseball (MLB) in Florida. There are approximately 500 players currently rostered, employed, and being paid by the 12 Florida Minor League Baseball teams.[27] Additionally, 15 MLB teams conduct major and minor league spring training in Florida at thirteen different spring training facilities, a decrease from 18 teams in 2008 and 16 teams in 2009. The Cleveland Indians (previously playing at Winter Haven), Los Angeles Dodgers (Vero Beach) and Cincinnati Reds (Sarasota) have all moved to Arizona in recent years.[28] Two teams that play in the MLB, the Miami Marlins and the Tampa Bay Rays, are permanently located in Florida.

The main baseball season runs from early April to early October with teams typically playing six days a week. There are also play-offs which take place at the end of the normal season for the top-ranking teams. The main season is preceded by spring training which typically starts around the middle of February. Many of Florida's baseball parks host other MLB teams every Spring as part of the Grapefruit League Spring Training season. According to a 2018 economic impact study, the 2018 Florida Grapefruit League generated an economic impact of approximately $687 million, $348 million in direct spending, 7,152 jobs, and $253 million in earned wages, for the State of Florida.[29]

According to the industry, baseball players hours vary widely based on a number of factors, which can vary. Players often perform extra activities, work longer hours than regularly scheduled, and perform different activities than their teammates.[30] As a result, the MLB has argued that the nature of the sport stymies conventional attempts at categorizing "work hours."[31]

Recently, MLB agreed to pay $185 million to current and former minor league baseball players to settle a federal class action lawsuit in California alleging violations of minimum wage laws.[32] In the lawsuit, the players sued MLB and the MLB Clubs claiming they failed to pay the players minimum wage and overtime pay in violation of the FLSA and state wage-and-hour laws in California, Arizona, and Florida.

MLB also agreed to rescind any prohibitions against teams paying wages to minor league players outside of the season.The MLB also committed to issuing a memorandum advising their clubs to compensate minor leaguers in compliance with wage-and-hour laws in effect in Arizona and Florida during spring training, extended spring training, instructional leagues, and the championship season in those states, including any minimum wage laws that apply.[33]

The Court held the final approval hearing related to the settlement on February 17, 2023. A late filed motion to object to the settlement was filed and the Court has taken the motion under consideration. A ruling is not expected until late March 2023.[34]

Effect of Proposed Changes

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[27] *See* Michael Avallone, *Then and now: Florida State League*, MiLB.com, https://www.milb.com/news/florida-state-league-overview (last visited Mar. 3, 2023).
[28] FloridaReview.co.uk, *FLORIDA SPRING TRAINING 2023*, https://floridareview.co.uk/florida-events/florida-spring-training (last visited Mar. 15, 2023).
[29] Florida Sports Foundation, *2018 MLB SPRING TRAINING ECONOMIC IMPACT STUDY*, http://playinflorida.com/wp-content/uploads/2018/08/GFL-IS-Page-by-Page-Booklet-spread.pdf (last visited Mar. 15, 2023).
[30] Bleacher Report, Pregame Routines: *A Typical Day in the Life of a Professional Baseball Player*, https://bleacherreport.com/articles/1061824-pregame-routines-a-typical-day-in-the-life-of-a-professional-baseball-player (last visited Mar. 15, 2023).
[31] Pew Trusts, Baseball Players Press Lawmakers for Minor League Labor Standards, https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/03/30/baseball-players-press-lawmakers-for-minor-league-labor-standards (last visited Mar. 19, 2023).
[32] *Aaron Senne et al vs. Office of the Commissioner of Baseball et al*., Civil Case No. 14-cv-00608.
[33] NBC News, MLB settles minor league players' wage-and-hour class action suit for $185 million, https://www.nbcnews.com/news/us-news/mlb-settles-minor-league-players-wage-hour-class-action-suit-185-milli-rcna38554 (last visited Mar. 15, 2023).
[34] JND Legal Administration, *WELCOME TO THE SENNE V. OFFICE OF THE COMMISSIONER OF BASEBALL SETTLEMENT WEBSITE*, https://www.baseballplayerwagecase.com/ (last visited Mar. 15, 2023).

The bill amends the Act to incorporate amendments to the FLSA into the Act, aligning Florida's minimum wage exemptions with federal exemptions.

Specifically, the bill:

- Deletes an unnecessary date;
- Adds "as amended" to the reference to the FLSA; and
- Provides that this specific amendment to the Act is intended to "clarify existing law."

B. SECTION DIRECTORY:

Section 1: Amends s. 448.110, F.S., relating to state minimum wage; annual wage adjustment; enforcement.

Section 2: Provides applicability.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an effect on salaries paid to minor league baseball players.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to the state minimum wage; amending s. 448.110, F.S.; providing that the state minimum wage only applies to individuals who are entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended; providing applicability; providing an effective date.

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

Section 1. Subsection (3) of section 448.110, Florida Statutes, is amended to read:

448.110 State minimum wage; annual wage adjustment; enforcement.—

(3) ~~Effective May 2, 2005,~~ Employers shall pay employees a minimum wage at an hourly rate of $6.15 for all hours worked in Florida. Only those individuals entitled to receive the federal minimum wage under the federal Fair Labor Standards Act, as amended, and its implementing regulations shall be eligible to receive the state minimum wage pursuant to s. 24, Art. X of the State Constitution and this section. The provisions of ss. 213 and 214 of the federal Fair Labor Standards Act, as interpreted by applicable federal regulations and implemented by the Secretary of Labor, are incorporated herein.

Section 2. The amendments to s. 448.110, Florida Statutes,

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

in this act are intended to clarify existing law.

Section 3. This act shall take effect upon becoming a law.

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

COMMERCE COMMITTEE

HB 917 by Rep. Yeager
State Minimum Wage

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Giallombardo (line 10):

- Prohibits political subdivisions through their purchasing or contracting procedures from seeking to control or affect the wages or employment benefits provided by their vendors, contractors, service providers, or other parties doing business with the political subdivision.
- Prohibits political subdivisions through the use of evaluation factors, qualification of bidders, or otherwise from awarding preferences on the basis of wages or employment benefits provided by their vendors, contractors, service providers, or other parties doing business with the political subdivision.
- Removes the authority for political subdivisions to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law for the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision.
- The amendment changes the relating-to clause in the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Giallombardo offered the following:

Amendment (with title amendment)

Between lines 10 and 11, insert:

Section 1. Subsection (2) and paragraph (a) of subsection (3) of section 218.077, Florida Statutes, are amended to read:

218.077 Wage and employment benefits requirements by political subdivisions; restrictions.—

(2) Except as otherwise provided in subsection (3), a political subdivision may not establish, mandate, maintain, or otherwise require an employer to pay a minimum wage, other than a state or federal minimum wage, to apply a state or federal minimum wage to wages exempt from a state or federal minimum wage, or to provide employment benefits not otherwise required by state or federal law. No political subdivision may through

its purchasing or contracting procedures seek to control or affect the wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision. A political subdivision shall not through the use of evaluation factors, qualification of bidders, or otherwise award preferences on the basis of wages or employment benefits provided by its vendors, contractors, service providers, or other parties doing business with the political subdivision.

(3) This section does not:

(a) Limit the authority of a political subdivision to establish a minimum wage other than a state or federal minimum wage or to provide employment benefits not otherwise required under state or federal law:

1. For the employees of the political subdivision; or

2. ~~For the employees of an employer contracting to provide goods or services for the political subdivision, or for the employees of a subcontractor of such an employer, under the terms of a contract with the political subdivision; or~~

~~3.~~ For the employees of an employer receiving a direct tax abatement or subsidy from the political subdivision, as a condition of the direct tax abatement or subsidy.

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

Remove lines 2-3 and insert:
An act relating to wage and employment benefits; amending s. 218.077, F.S.; prohibiting political subdivisions from controlling, affecting, or awarding preferences, related to wages or employment benefits of entities contracting with the political subdivision; amending s. 448.110, F.S.; providing that the state minimum wage

CS/HB 919

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 919 Homeowners' Associations
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Porras and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1114

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 1 N, As CS	Wright	Anstead
2) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel. HOAs may levy fines against or suspend certain access rights of a parcel owner for failing to comply with the HOA's governing documents. In addition, Florida law requires officers and directors of an HOA to comply with certain requirements and may be removed from office under certain circumstances.

Related to HOA officers and directors, the bill:

- Provides that an officer or a director must be removed from office if charged with the following crimes:
  - Forgery of a ballot envelope or voting certificate used in a homeowners' association election.
  - Theft or embezzlement of funds of an HOA.
  - Destruction of refusing to allow inspection of certain HOA records in furtherance of any crime.
  - Obstruction of justice.
- Provides criminal penalties for accepting kickbacks and certain actions of fraudulent voting activities.
- Provides additional requirements for disclosing officer or director conflicts of interest.

Related to HOA fines and suspensions, the bill:

- Provides that fines may not create a lien against a parcel.
- Provides that a fine or suspension levied for a violation by the HOA board of administration may not be imposed unless the board first provides at least 30 days' notice to the parcel owner of a hearing before a committee. If the committee determines that a violation does not exist, then no other action may be taken related to that alleged violation.
- Allows a member to cure a violation. If a violation is cured before the hearing, a fine or suspension may not be imposed. If the violation is cured within 30 days after the notice of imposed fine or suspension, the fine is reduced by 50 percent and any applicable suspensions must be lifted.

Related to HOA funds, the bill:

- Requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must not be comingled with any other HOA funds.
  - The member may request an accounting of such funds and the HOA must remit payment of unused funds within 30 days after completion.

Related to HOA official records, the bill requires an HOA to allow a member to keep an address different than the property address to be used for all required notices.

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners and membership is a mandatory condition of parcel ownership. HOAs are authorized to impose assessments that, if unpaid, may become a lien on the parcel.[1]

Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S., the Homeowners' Association Act (HOA Act). Like a condominium, an HOA is administered by an elected board of directors. The powers and duties of an HOA include the powers and duties provided in the HOA Act, and in the association's governing documents, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents.[2]

An HOA must be a Florida corporation and the initial governing documents must be recorded in the official records of the county in which the community is located. The powers and duties of an association include those set forth in the HOA Act and in the governing documents, except as expressly limited or restricted in the HOA Act.

After control of the HOA is obtained by members other than the developer, the HOA may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members. The HOA may defend actions in eminent domain or bring inverse condemnation actions. Any individual member or class of members may bring any action without participation by the HOA, but member does not have authority to act for the HOA by virtue of being a member.[3]

No state agency has direct oversight over HOAs. However, Florida law provides for a limited mandatory binding arbitration program, administered by the Division of Condominiums, Timeshares and Mobile Homes, within the Department of Business and Professional Regulation, for certain election and recall disputes.[4]

Powers and Duties of Officers and Directors – Current Situation

The officers and directors of an HOA have a fiduciary relationship to the members who are served by the HOA.[5]

A director or officer charged by information or indictment with felony theft or embezzlement involving the HOA's funds or property is removed from office. The board must fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer must be reinstated for any remainder of term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer.[6]

[1] S. 720.301(9), F.S.
[2] *See generally* ch. 720, F.S.
[3] S. 720.303(1), F.S.
[4] S. 720.311, F.S.
[5] S. 720.303(1), F.S.
[6] S. 720.3033(4), F.S.

An officer, director, or manager may not solicit, offer to accept, or accept any good or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the HOA.[7] If the board finds that an officer or director has violated this condition, the board must immediately remove the officer or director from office. The vacancy must be filled according to law until the end of the director's term of office. However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.[8]

If the HOA enters into a contract or other transaction with any of its directors or a corporation, firm, association that is not an affiliated HOA, or other entity in which a director is also a director or officer or is financially interested, the board must:[9]

- Comply with the requirements for conflicts of interest in a corporation not for profit.[10]
- Enter certain disclosure requirements into the written minutes of the meeting.
- Approve the contract or other transaction by an affirmative vote of two-thirds of the directors present.
- At the next regular or special meeting of the members, disclose the existence of the contract or other transaction to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the members cancel the contract, the HOA is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other penalty for such cancellation.

Powers and Duties of Officers and Directors – Effect of the Bill

In addition to current requirements, the bill provides that an officer or a director charged by information or indictment with one of the following crimes must be removed from office, and the vacancy must be filled as provided by the HOA Act until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

- Forgery of a ballot envelope or voting certificate used in a homeowners' association election under s. 831.01, F.S.
- Theft or embezzlement of funds of a homeowners' association under s. 812.014, F.S.
- Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime as tampering with physical evidence under s. 918.13, F.S.
- Obstruction of justice under ch. 843, F.S.

If such a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any HOA and may not have access to the official records of any HOA, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

The bill provides that an officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback commits a misdemeanor of the first degree, , for amounts less than $1,000, and a felony of the third degree, for amounts $1,000 or more, and is subject to a civil penalty. Such person may be removed from office.

[7] However, an officer, director, or manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs. S. 720.303(3), F.S.

[8] S. 720.3033(3), F.S.

[9] S. 720.3033(2), F.S.

[10] A contract or transaction with a conflict of interest is not voidable if the relationship or interest is disclosed or known to the board; the board authorized, approved, or ratified it by vote or written consent; or the contract or transaction is fair and reasonable at the time it is authorized. Such contract or transaction must be authorized, approved, or ratified by a majority of the directors on the board who have no relationship or interest in such transaction. S. 617.0832, F.S.

The bill requires directors and officers of an HOA to disclose to the HOA any activity that may reasonably be construed to be a conflict of interest at least 14 days prior to voting on the subject of such conflict or entering into such contract. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior disclosure to the association:

- A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the HOA.
- A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the HOA or proposes to enter into a contract or other transaction with the HOA.

Criminal Violations for Fraudulent Voting Activities

The bill provides that the following actions relating to HOA elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

Fines and Suspension – Current Situation

Owners, tenants, and guests must comply with an HOA's declaration, bylaws, and rules. HOAs may levy fines against or suspend the right of a parcel owner, occupant, or a guest of an owner or occupant, to use the common areas[11] or any other association property for failing to comply with any provision in the HOA's governing documents. A suspension for failing to comply with an HOA's declaration, bylaws, or rules may not be for an unreasonable amount of time.[12]

No fine may exceed $100 per violation, although a fine may be levied on the basis of each day of a continuing violation provided that fine does not exceed **$1,000** in the aggregate. However, a fine may exceed $1,000 if the HOA's governing documents authorize it. Fines may not become a lien on the property unless the fines exceed **$1,000**.[13]

Before an HOA levies a fine or a suspension, it must give the person receiving the fine or suspension at least **14 days' notice of an opportunity for a hearing**. A fine and suspension committee of at least three members selected by the board must hold a hearing to reject or approve the fine or suspension.

[11] This does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. S. 720.305(2)(a), F.S.

[12] S. 720.305, F.S.

[13] S. 720.305(2), F.S.

Board directors, officers, and employees of the HOA and family of such people may not serve on the committee. The committee must approve the fine or suspension by majority vote otherwise the proposed fine or suspension may not be imposed.[14]

A fine is due five days after written notice of the approved fine is provided to the parcel owner, occupant, or guest. Written notice of the fine or suspension must be provided to the person by mail or hand delivery.[15]

If a member is more than 90 days delinquent in paying any fee, fine, or other monetary obligation due to the HOA, the HOA may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities[16] until it is paid in full.[17]

An HOA may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the HOA that is more than 90 days delinquent. The suspension ends upon full payment of all obligations currently due or overdue to the HOA.[18]

The notice and hearing requirements for levying fines do not apply to a suspension imposed for delinquent payment.[19]

All suspensions imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA must be approved at a properly noticed board meeting. Upon approval, the HOA must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.[20]

Fines and Suspension – Effect of the Bill

The bill limits when an HOA may levy a fine to violations of the declaration, association's bylaws, or reasonable rules of the association.

The bill provides that a fine may not create a lien against a parcel and that governing documents may not provide that fines may not exceed $1,000 in the aggregate.

The bill provides **new hearing procedures and notice requirements** for when an HOA wishes to impose a fine or suspension, as described below.

The bill provides that a fine or suspension levied for a violation by the board of administration may not be imposed unless the board first provides at least 30 days' notice to the parcel owner at the designated mailing or e-mail address in the HOA's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

If the committee, by majority vote, determines that a violation does not exist, then no other action may be taken related to that alleged violation. The role of the committee is limited to determining whether a violation exists and whether to approve or reject the fine or suspension levied by the board.

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[14] *Id.*

[15] *Id.*

[16] A suspension may not prohibit an owner or tenant of a parcel from having access a portion of common areas used to provide access or utility services to the parcel, or from having vehicular and pedestrian ingress to and egress from the parcel. S. 720.305(4), F.S.

[17] S. 720.305(3), F.S.

[18] S. 720.305(4), F.S.

[19] S. 720.305(3), (4), F.S.

[20] S. 720.305(5), F.S.

The bill requires the committee to provide written notice to the parcel owner at the designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation after the hearing.

The bill requires fines, suspensions, attorney fees, and costs to be imposed as follows:

- If a violation is found by the committee, but is cured before the hearing, a fine or suspension may not be imposed and attorney fees and costs may not be awarded.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, the committee must decide, by majority vote, a date that the fine payment is due, which date must be at least 30 days after delivery of the required written notice.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, but the violation is cured within 30 days after delivery of the required written notice, the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded.
- If a violation is found and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid within 30 days after delivery of the required written notice, reasonable attorney fees and costs may be awarded to the association.

The bill allows a parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, to make a written request for a detailed accounting of any amounts he or she owes to the association and the board must provide such information within 10 days after receipt of the written request. Failure by the board to respond to a written request for a detailed accounting constitutes a complete waiver of the violation.

The bill requires that, upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the HOA. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine.

The bill allows a parcel owner or any occupant, licensee, or invitee of the parcel owner to request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the HOA.

The bill removes the option for an HOA to provide written notice of a fine by hand delivery.

The bill requires the board to send written notice to the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records for any suspension imposed for delinquent payment of any fee, fine, or other monetary obligation due to the HOA.

The bill provides that the failure of the HOA or committee to comply with these procedural requirements constitutes a waiver of all fines or suspensions imposed or proposed for a violation. Any fines, fees, or other costs incurred by a parcel owner or any occupant, licensee, or invitee of the parcel owner which is related to a fine that is waived must also be waived or paid by the HOA if such fine, fee, or other cost is not waivable.

Official Records – Current Situation

An HOA's governing documents include the:

- Recorded declaration of covenants for a community and all duly adopted amendments thereto;
- HOA's articles of incorporation and bylaws and any duly adopted amendments thereto; and

- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and any duly adopted amendments thereto.[21]

The declaration of covenants, much like a constitution, establishes the community's basic covenants and restrictions.[22] The articles of incorporation establish the HOA's existence, basic structure, and governance.[23] The bylaws govern the HOA's operation and administration, while the rules and regulations typically supplement the other documents, addressing matters of everyday policy.[24]

Unless otherwise provided in the governing documents or required by law, an HOA's governing documents may be amended by the affirmative vote of two-thirds of the HOA's voting interests.[25] Within 30 days after recording a governing document amendment, the HOA must give its members copies thereof unless a copy was provided to the members before the vote on the amendment, in which case the HOA must only provide the members with notice of the amendment's adoption.[26]

An HOA must maintain each of the following items, when applicable, which constitute the official records of the HOA:[27]

- A copy of the HOA's governing documents:
  - declaration of covenants and each amendment,
  - bylaws and each amendment,
  - articles of incorporation and each amendment, and
  - current rules.
- Copies of any plans, specifications, permits, and warranties related to improvements constructed on the common areas or other property that the HOA is obligated to maintain, repair, or replace.
- The minutes of all meetings of the board of directors and of the members, which minutes must be retained for at least 7 years.
- A **current roster** of all members and their mailing addresses and parcel identifications. The HOA must maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission must be removed from HOA records when consent to receive notice by electronic transmission is revoked. However, the HOA is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.
- All of the HOA's insurance policies, which must be retained for at least 7 years.
- A current copy of all contracts to which the HOA is a party, including, without limitation, any management agreement, lease, or other contract under which the HOA has any obligation or responsibility. Bids received by the HOA for work to be performed must also be considered official records and must be kept for a period of 1 year.
- The financial and accounting records of the HOA, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:
  - Accurate, itemized, and detailed records of all receipts and expenditures.
  - A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.
  - All tax returns, financial statements, and financial reports of the HOA.
  - Any other records that identify, measure, record, or communicate financial information.

[21] S. 720.301(8), F.S.
[22] Joseph Adams, *HOA Governing Documents Explained* (July 1, 2018), https://www.floridacondohoalawblog.com/2018/07/01/hoa-governing-documents-explained/ (last visited Mar. 25, 2023).
[23] *Id.*
[24] *Id.*
[25] S. 720.306(1), F.S.
[26] *Id.*
[27] S. 720.303(4), F.S.

- A copy of the disclosure summary.
- Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.
- All affirmative acknowledgments made pursuant to s. 720.3085(3)(c)3, F.S.
- All other written records of the HOA which are related to the operation of the HOA.

Official Records – Effect of the Bill

The bill amends what information must be kept as part of the **current roster** in the official records. The bill requires an HOA to keep a designated mailing address, which is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices.

The bill provides that the HOA must also maintain facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission, unless the member has sent written notice to the HOA requesting that a different e-mail address be used for all required notices.

Commingling of HOA Funds – Current Situation

All HOA funds held by a developer must be maintained separately in the HOA's name. HOA reserve and operating funds must not be commingled prior to turnover except the HOA may jointly invest reserve funds if the funds are accounted for separately.[28]

A developer in control of an HOA may not commingle any HOA funds with the developer's funds or with the funds of any other HOA or community association.[29]

HOA funds may not be used by a developer to defend a civil or criminal action, administrative proceeding, or arbitration proceeding that has been filed against the developer or directors appointed to the HOA board by the developer, even when the subject of the action or proceeding concerns the operation of the developer-controlled HOA.[30]

Commingling of HOA Funds – Effect of the Bill

In addition to current requirements regarding commingling funds, the bill requires that if an HOA collects a deposit from a member to pay for expenses that may be incurred as a result of construction on a member's parcel, or other reason for such deposit, such funds must be maintained separately and may not be comingled with any other association funds. Upon completion of the member's construction project, or any other reason for such deposit, the member may request an accounting from the association of such funds that were deposited and the association must provide an accounting to the member within 7 days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or any other reason for which a deposit was collected, is complete.

The bill provides a short title, the "Homeowners' Associations Bill of Rights."

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

B. SECTION DIRECTORY:

Section 1: Provides a short title.
Section 2: Amends s. 720.303, F.S.; relating to requirements for HOA officers and directors.

[28] S. 720.303(8)(a), F.S.
[29] S. 720.303(8)(b), F.S.
[30] S. 720.303(8)(c), F.S.

Section 3: Amends s. 720.3033, F.S.; relating to criminal violations for kickbacks.
Section 4: Amends s. 720.305, F.S.; relating to procedures for HOA fines and appeals.
Section 5: Creates s. 720.3065, F.S.; relating to criminal violations for certain HOA voting activities.
Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may reduce fines paid by members to the HOA and provide greater fiscal responsibility of the officers and directors.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted a proposed committee substitute (PCS) with one amendment and reported the bill favorably as a committee substitute. The PCS differed from the underlying bill in the following ways:

- Removed all provisions relating to:
    - Condominium associations,
    - Designated recordkeepers,
    - Division responsibilities related to alleged criminal violations, and
    - Priority of payments due to an HOA.
- Provided certain requirements and criminal violations for officers and directors.
- Provided certain requirements for deposits to an HOA.
- Provided an expanded procedure for levying HOA fines and suspensions.

The amendment to the PCS:

- Clarified that the maximum fine amount for a violation is $100, and fines may not exceed $1,000 in the aggregate.
- Provided that a fine may not become a lien.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to homeowners' associations; providing a short title; amending s. 720.303, F.S.; requiring certain officers or directors of an association be removed from office under certain circumstances; specifying how a vacancy on the board must be filled; providing restrictions on certain officers and directors; specifying when an officer or director may be reinstated; requiring an association to maintain designated addresses as official records; specifying what constitutes a designated address; making conforming changes; prohibiting certain funds from being comingled with other association funds; authorizing a member to request an accounting from an association under certain circumstances; requiring an association to provide such accounting and remit unused funds to the member within specified timeframes; amending s. 720.3033, F.S.; providing criminal and civil penalties for certain actions by officers, directors, or managers of an association; requiring directors and officers of the association to disclose certain activity to the association within a specified time frame; creating a rebuttable presumption of a conflict of interest if certain acts occur; amending s. 720.305, F.S.; restricting certain

attorney fees and fines; specifying the types of violations for which an association may levy fines; providing a maximum aggregate fine amount; prohibiting a fine from becoming a lien on a parcel; revising amount of notice the board of administration must give a parcel owner before imposing a fine or suspension; specifying where such notice must be delivered; providing requirements for such notice; authorizing parcel owners to attend certain hearings by telephone or other electronic means; expanding duties of a specified committee; requiring a specified notice after a hearing; specifying how fines, suspensions, attorney fees, and costs are determined; requiring a detailed accounting of amounts due to the association be given to certain persons within a certain timeframe upon written request; providing for a complete waiver of a violation under certain circumstances; specifying the priority of payments made by a parcel owner to an association; prohibiting the accrual of attorney fees and costs after a specified time; authorizing certain persons to request a hearing to dispute certain fees and costs; providing for the waiver of certain fines or suspensions; requiring certain fines, fees, or other costs be paid by an association; conforming provisions to changes made by the act; creating s.

720.3065, F.S.; providing criminal penalties for certain fraudulent voting activities; providing an effective date.

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

Section 1. This act may be cited as the "Homeowners' Associations Bill of Rights."

Section 2. Subsection (1) and paragraph (g) of subsection (4) of section 720.303, Florida Statutes, are amended, and paragraph (d) is added to subsection (8) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(1) POWERS AND DUTIES.—

(a) An association which operates a community as defined in s. 720.301, must be operated by an association that is a Florida corporation. After October 1, 1995, the association must be incorporated and the initial governing documents must be recorded in the official records of the county in which the community is located. An association may operate more than one community.

(b)1. The officers and directors of an association have a fiduciary relationship to the members who are served by the

association.

2. An officer or a director charged by information or indictment with one of the following crimes must be removed from office, and the vacancy must be filled as provided in s. 720.306(9) until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first:

a. Forgery of a ballot envelope or voting certificate used in a homeowners' association election as provided in s. 831.01.

b. Theft or embezzlement of funds of a homeowners' association as provided in s. 812.014.

c. Destruction of or the refusal to allow inspection or copying of an official record of a homeowners' association that is accessible to parcel owners within the time periods required by general law in furtherance of any crime is tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

3. If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

(c) The powers and duties of an association include those set forth in this chapter and, except as expressly limited or restricted in this chapter, those set forth in the governing documents.

(d) After control of the association is obtained by members other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all members concerning matters of common interest to the members, including, but not limited to, the common areas; roof or structural components of a building, or other improvements for which the association is responsible; mechanical, electrical, or plumbing elements serving an improvement or building for which the association is responsible; representations of the developer pertaining to any existing or proposed commonly used facility; and protesting ad valorem taxes on commonly used facilities. The association may defend actions in eminent domain or bring inverse condemnation actions. Before commencing litigation against any party in the name of the association involving amounts in controversy in excess of $100,000, the association must obtain the affirmative approval of a majority of the voting interests at a meeting of the membership at which a quorum has been attained. This paragraph ~~subsection~~ does not limit any statutory or common-law right of any individual member or class of members to bring any action without participation by the association.

(e) A member does not have authority to act for the association by virtue of being a member. An association may have more than one class of members and may issue membership certificates.

(f) An association of 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner or owners.

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(g) A current roster of all members and their designated mailing addresses and parcel identifications. A member's designated mailing address is the member's property address, unless the member has sent written notice to the association requesting that a different mailing address be used for all required notices. The association shall also maintain the e-mail ~~electronic mailing~~ addresses and the facsimile numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. A member's e-mail address is the e-mail address the member provided when consenting in writing to receiving notice by electronic transmission unless the member has sent written notice to the association requesting that a different e-mail address be used for all required notices. The

e-mail ~~electronic mailing~~ addresses and facsimile numbers provided by members ~~unit owners~~ to receive notice by electronic transmission must ~~shall~~ be removed from association records when the member revokes consent to receive notice by electronic transmission ~~is revoked~~. However, the association is not liable for an erroneous disclosure of the e-mail ~~electronic mail~~ address or the facsimile number for receiving electronic transmission of notices.

(8) ASSOCIATION FUNDS; COMMINGLING.—

(d) If an association collects a deposit from a member for any reason, including to pay for expenses that may be incurred as a result of construction on a member's parcel, such funds must be maintained separately and may not be comingled with any other association funds. Upon completion of the member's construction project, or other reason for which the deposit was collected, the member may request an accounting from the association of his or her funds that were deposited and the association must provide such accounting to the member within 7 days after the member's request. An association must remit payment of any and all unused funds to the member within 30 days after receiving notice that the member's construction project, or other reason for which the deposit was collected, is complete.

Section 3. Subsection (3) of section 720.3033, Florida Statutes, is amended, and subsection (6) is added to that

section, to read:

720.3033 Officers and directors.—

(3) An officer, a director, or a manager may not solicit, offer to accept, or accept any thing ~~good~~ or service of value for which consideration has not been provided for his or her benefit or for the benefit of a member of his or her immediate family from any person providing or proposing to provide goods or services to the association. An officer, a director, or a manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback in an amount less than $1,000 commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, or if such value or kickback is $1,000 or more the officer, director, or manager commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil penalty under s. 718.501(1)(d). If the board finds that an officer or a director has violated this subsection, the board shall immediately remove the officer or director from office. The vacancy shall be filled according to law until the end of the officer's or director's term of office. However, an officer, a director, or a manager may accept food to be consumed at a business meeting with a value of less than $25 per individual or a service or good received in connection with trade fairs or education programs.

(6) Directors and officers of an association must disclose

to the association any activity that may reasonably be construed to be a conflict of interest at least 14 days before voting on an issue or entering into a contract that is the subject of the conflict. A rebuttable presumption of a conflict of interest exists if any of the following acts occur without prior disclosure to the association:

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Section 4. Subsections (1), (2), and (5) of section 720.305, Florida Statutes, are amended, and subsection (7) is added to that section to read:

720.305 Obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with

these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs as provided in paragraph (2)(e). A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An association may levy reasonable fines for violations of the declaration, association's bylaws, or reasonable rules of the association. A fine may not exceed $100 per violation against any member or any member's tenant, guest,

or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate ~~unless otherwise provided in the governing documents~~. A fine ~~of less than $1,000~~ may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as provided in paragraph (e) ~~determined by the court~~.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied for a violation by the

board of administration may not be imposed unless the board first provides at least 30 ~~14~~ days' notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and ~~an opportunity for~~ a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The notice must include a description of the alleged violation, the specific action required to cure such violation, and the date and location of the hearing. A parcel owner has the right to attend a hearing by telephone or other electronic means.

(c) If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. If the committee, by majority vote, determines that a violation does not exist then no other action may be taken related to that alleged violation. The role of the committee is limited to determining whether a violation exists and whether to approve ~~confirm~~ or reject the fine or suspension levied by the board.

(d) After the hearing, the committee shall provide written notice to the parcel owner at his or her designated mailing or e-mail address in the association's official records and, if

applicable, any occupant, licensee, or invitee of the parcel owner, of the committee's findings related to the violation, including any applicable fines or suspensions that the committee approved or rejected, and how the parcel owner or any occupant, licensee, or invitee of the parcel owner may cure the violation.

(e) Fines, suspensions, attorney fees, and costs are imposed as follows:

1. If a violation is found by the committee, but is cured before the hearing, a fine or suspension may not be imposed and attorney fees and costs may not be awarded.

2. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, the committee must decide, by majority vote, a date that the fine payment is due, which date must be at least 30 days after delivery of the written notice required in paragraph (d).

3. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee, but the violation is cured within 30 days after delivery of the written notice required in paragraph (d), the fine must be reduced by 50 percent, any applicable suspensions must be lifted, and attorney fees and costs may not be awarded.

4. If a violation is found and the proposed fine or suspension levied by the board is approved by the committee and the violation is not cured or the fine is not paid within 30 days after delivery of the written notice required in paragraph

(d), reasonable attorney fees and costs may be awarded to the association.

(f) A parcel owner or any occupant, licensee, or invitee of the parcel owner may, at any time, make a written request for a detailed accounting of any amounts he or she owes to the association and the board shall provide such information within 10 days after receipt of the written request. Failure by the board to respond to a written request for a detailed accounting constitutes a complete waiver of the violation.

(g) Upon receipt of a payment for any outstanding fines from a parcel owner or any occupant, licensee, or invitee of the parcel owner, the board must apply the payment first to the fine before satisfying any other amounts due to the association. Attorney fees and costs may not continue to accrue after a parcel owner or any occupant, licensee, or invitee of the parcel owner pays the fine.

(h) A parcel owner or any occupant, licensee, or invitee of the parcel owner may request a hearing before the board to dispute the reasonableness of the attorney fees and costs awarded to the association ~~5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel~~

~~owner~~.

(5) All suspensions imposed under ~~pursuant to~~ subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the board ~~association~~ must send written notice to ~~notify~~ the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery to the parcel owner's designated mailing or e-mail address in the association's official records.

(7) The failure of the association or committee to comply with this section constitutes a waiver of all fines or suspensions imposed or proposed for a violation. Any fines, fees, or other costs incurred by a parcel owner or any occupant, licensee, or invitee of the parcel owner which is related to a fine that is waived under this subsection must also be waived or paid by the association if such fine, fee, or other cost is not waivable.

Section 5. Section 720.3065, Florida Statutes, is created to read:

720.3065 Fraudulent voting activities relating to association elections; penalties.—Each of the following acts is a fraudulent voting activity relating to association elections and constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

(1) Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely

swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

(2) Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

(3) Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

(4) Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.

(5) Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This paragraph does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

(6) Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

Section 6. This act shall take effect October 1, 2023.

COMMERCE COMMITTEE

CS/HB 919 by Rep. Porras
Homeowners' Associations

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Porras (line 191):

- Clarifies what qualifies as a “kickback” to an officer, director, or manager of an homeowners’ association.

Amendment 2 by Rep. Porras (line 212):

- Makes a technical change.

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: Commerce Committee

Representative Porras offered the following:

Amendment (with title amendment)

Remove line 191 and insert:

penalty under s. 718.501(1)(d). For purposes of this subsection, the term "kickback" means remuneration, whether in cash or in kind, paid by or on behalf of a person providing or offering to provide goods or services to an association, the purpose of which is to influence the performance of an act or omission by such association, when the remuneration is not tax deductible as an ordinary business expense or not supported by consideration of like value. If the board finds that an

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

Between lines 20 and 21, insert:

defining the term "kickback";

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee

Representative Porras offered the following:

Amendment

Remove line 212 and insert:

liability company, partnership, limited liability

CS/HB 959

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 959 Dosage Form Animal Health Products
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Tuck
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Thompson	Anstead
2) Agriculture & Natural Resources Appropriations Subcommittee	14 Y, 0 N	Byrd	Pigott
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Florida Commercial Feed Law (Commercial Feed Law) authorizes the Department of Agriculture and Consumer Services (DACS) to regulate the distribution of commercial feed and feedstuff in Florida to ensure these products are safe for human consumption. The DACS Division of Animal Industry (Division) is responsible for enforcing the state's animal industry law, which provides animal health regulations and protects the state from animal pests and diseases.

Dosage form animal health supplements are animal health supplements that are similar to dietary supplements for humans. According to the National Library of Medicine (NLM), such supplements are widely used but have limited oversight and regulation. According to DACS, manufacturers and distributors of dosage form animal products in Florida are currently governed by the state Commercial Feed Law due to the non-nutritional character of these products. As a result, these entities are "required to comply with the registration, labeling, and sampling requirements followed by distributors of other no- or low-nutritive value products allowed for use as, or for mixing in, animal feed."

Under federal law, the Dietary Supplement and Health Education Act (DSHEA) affects the way the Food and Drug Administration (FDA) Center for Veterinary Medicine (CVM) regulates "food for humans." Among other things, it restricts substances from being food additives or drugs if the product meets the definition of a dietary supplement. However, FDA's assessment of DSHEA is that it was not intended to, and does not, apply to animal feed, including pet food. Thus, products marketed as dietary supplements or "feed supplements" for animals fall under Title 21, the Federal Food, Drug, & Cosmetics Act. These items are considered "foods" or "drugs" depending on the intended use, or in some instances the articles may be, simultaneously, a food and a drug.

The bill:

- Includes dosage form animal products as a regulated feedstuff under the Commercial Feed Law, thus requiring such products to be subject to regulation by DACS.
- Clarifies that such products do not include certain drugs, biologics, parasiticides, medical devices, or diagnostics used to treat or administered to animals under federal law.
- Exempts products sold solely as a dosage form animal product and guaranteed as specified in the Commercial Feed Law from showing a guaranteed analysis.
- Provides specific product labeling requirements.

The bill may have a positive and negative fiscal impact on state government. The bill may also have a negative fiscal impact on the private sector.

The effective date of the bill is October 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Commercial Feed and Feedstuff

The Florida Commercial Feed Law (Commercial Feed Law)[1] authorizes the Department of Agriculture and Consumer Services (DACS) to regulate commercial feed and feedstuff for quality, safety, labeling requirements, and standards.[2] A distributor of commercial feed is required to obtain a master registration[3] and place on file a copy of the label for each brand of feed to be distributed in Florida.[4]

Distributors are required to pay a licensing fee that is based on the weight of feed distributed in the state.[5] The Commercial Feed Law preempts to DACS all authority in the state to regulate, inspect, sample, and analyze any commercial feed or feedstuff, including assessment of penalties for violations.[6]

Samples of feed distributed in Florida must be periodically tested by a certified laboratory to determine compliance with state standards.[7] The minimum standards for feed and feedstuff are those set forth in the "Official Publication 2001" published by the Association of American Feed Control Officials.[8]

Any commercial feed distributed in this state, except a customer-formula feed and feed distributed through an integrated poultry operation or by a cooperative to its members, must be accompanied by a legible label bearing all information required by the federal Food and Drug Administration (FDA) and the following information:[9]

- An accurate statement of the net weight.
- The name and principal address of the registrant.
- The brand name and product name, if any, under which the commercial feed is distributed. The word "medicated" must be incorporated as part of the brand or product name if the commercial feed contains a drug.

DACS is authorized to require feeding directions and precautionary statements to be placed on the label for the safe and effective use of medicated and other feed as deemed necessary.[10]

Labels on medicated feed must include all of the following:

- Any feeding directions prescribed by DACS to ensure safe usage.
- The stated purpose of the medication contained in the feed as stated in the claim statement.
- The established name of each active drug ingredient.
- The level of each drug used in the final mixture expressed in metric units as well as the required avoirdupois.

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[1] *See* ch. 580, F.S.
[2] S. 580.036, F.S.
[3] S. 580.041, F.S.
[4] S. 580.051, F.S.
[5] S. 580.041, F.S.
[6] S. 580.0365, F.S.
[7] S. 580.091, F.S.
[8] R. 5E-3.013, F.A.C. The Association of American Feed Control Officials (AAFCO) is an independent organization that has been guiding state, federal and international feed regulators with ingredient definitions, label standards and laboratory standards for more than 110 years, while supporting the health and safety of people and animals. AAFCO members are charged by their local, state or federal laws to regulate the sale and distribution of animal feeds and animal drug remedies.
[9] S. 580.051(1), F.S.
[10] *Id.*

Commercial feed labels must also include a guaranteed analysis stated in terms that advise the consumer of the composition of the feed or feedstuff or support claims made in the labeling. In all cases, the elements or compounds listed in the analysis must be determinable by laboratory methods approved by DACS.[11]

DACS is authorized to adopt rules to enforce the Commercial Feed Law, which must be consistent with the rules and standards of the United States Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). The rules must include:

- Establishing definitions and reasonable standards for commercial feed or feedstuff and permissible tolerances for pesticide chemicals, chemical additives, nonnutritive ingredients, or drugs in or on commercial feed or feedstuff in such amounts as will ensure the safety of livestock and poultry and the products thereof used for human consumption.
- Adopting standards for the manufacture and distribution of medicated feed.
- Establishing definitions and reasonable standards for the certification of laboratories for the conduct of testing and analyses as required.
- Establishing product labeling requirements for distributors.
- Limiting the use of drugs in commercial feed and prescribing feeding directions to be used to ensure safe usage of medicated feed.
- Establishing standards for evaluating quality-assurance/quality-control plans, including testing protocols, for exemptions to certified laboratory testing requirements.
- Establishing standards for the sale, use, and distribution of commercial feed or feedstuff to ensure usage that is consistent with animal safety and well-being and, to the extent that meat, poultry, and other animal products for human consumption may be affected by commercial feed or feedstuff, to ensure that these products are safe for human consumption.
    - Such standards must be developed in consultation with the Agricultural Feed, Seed, and Fertilizer Advisory Council created under s. 570.451, F.S.

DACS is required to establish the standards that a laboratory must meet to become certified in any of the following areas of testing:[12]

- Nutrient.
- Mycotoxins.
- Microbiological organisms.
- Pesticide residues.
- Drugs.

DACS is guided by the methods published by the Association of Official Analytical Chemists, the United States Environmental Protection Agency (EPA), the FDA, or other generally recognized authorities in developing the standards for the laboratory certifications.[13]

The Commercial Feed Law prohibits distribution of an adulterated commercial feed or feedstuff. Commercial feed or feedstuff is deemed adulterated if it includes any of the following:[14]

- Any poisonous, deleterious, or nonnutritive substance that may render it injurious to animal or human health.
    - However, if the substance is not an additive, the feed shall not be considered adulterated if the quantity of the substance does not ordinarily render it injurious to animal or human health.
- Any food additive or added poisonous, deleterious, or nonnutritive substance that is unsafe within the meaning of s. 406 of the Federal Food, Drug, and Cosmetic Act, other than a pesticide chemical in or on a raw agricultural commodity.
- Any food additive or color additive that is unsafe within the meaning of s. 409 or s. 512 of the Federal Food, Drug, and Cosmetic Act.

[11] *Id*.
[12] S. 580.065, F.S.
[13] *Id*.
[14] S. 580.071, F.S.

- A raw agricultural commodity that bears or contains a pesticide chemical that is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
    - However, where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under s. 408 of the Federal Food, Drug, and Cosmetic Act and that raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the processed feed will result, or is likely to result, in pesticide residue in the edible product of the animal which is unsafe within the meaning of s. 408(a) of the Federal Food, Drug, and Cosmetic Act.
- Any new animal drug that is unsafe within the meaning of s. 512 of the Federal Food, Drug, and Cosmetic Act.
- Any filthy, putrid, or decomposed substance or is otherwise unfit for feed.
- If it is prepared, packaged, or held under unsanitary conditions in which it may have become contaminated with filth or rendered injurious to health.
- If it is the product of a diseased animal or of an animal that has died by a means other than slaughter which is unsafe within the meaning of s. 402(a)(1) or (2) of the Federal Food, Drug, and Cosmetic Act.

The Commercial Feed Law prohibits misbranded commercial feed or feedstuff. A commercial feed or feedstuff is deemed misbranded, as follows:[15]

- If its labeling is false or misleading in any particular.
- If it is distributed under the name of another commercial feed or feedstuff.
- If it is not labeled as required by this chapter or the rules promulgated hereunder.
- If it does not conform to the definition of identity and standard of quality as prescribed by rule.
- If any word, statement, or other information required by this chapter to appear on the label or labeling is not prominently and conspicuously placed thereon in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- If it is not appropriate for its intended or purported use.
- If a nutrient test, conducted by a laboratory certified in nutrient testing, shows the presence of any ingredient not listed on the label or the absence of any ingredient shown on the label.

The following acts are prohibited by the Commercial Feed Law:[16]

- Distribution of any commercial feed or feedstuff that is adulterated or misbranded.
- Adulteration or misbranding of any commercial feed or feedstuff.
- Distribution of commercial feed or feedstuff that has not been sampled or analyzed by a department-certified laboratory.
- Distribution of agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls which are adulterated.
- Dissemination of any false advertisement with reference to the distribution of any commercial feed or feedstuff.
- Refusal to permit entry, inspection, or collection of samples of commercial feed or feedstuff by authorized department personnel.
- Removal or disposal of a lot of commercial feed or feedstuff that has had a stop-sale, stop-use, removal, or hold order issued, prior to release by the department or the court.
- Use of any label that does not comply with the provisions of this chapter.
- Forging, counterfeiting, simulating, or false representing of any label.
- Placing or permitting to be placed any false advertisement or misleading statement on a label.
- Redistribution of a customer-formula commercial feed.
- Using or placing of fasteners that may be injurious to animals on any commercial feed or feedstuff or bags of any commercial feed or feedstuff, except those distributed exclusively for poultry.

[15] S. 580.081, F.S.
[16] S. 580.112, F.S.

- Failure or refusal to register, pay inspection fees, or file reports, or perform any other affirmative act required by this chapter or rule promulgated hereunder.
- Distribution of a feed or feedstuff which is prohibited by federal law or regulation.

DACS is authorized to impose one or more of the following penalties against any person who violates the Commercial Feed Law:[17]

- Issuance of a warning letter.
- A Class I fine for each occurrence.[18]
- Revocation or suspension of the master registration, laboratory certification, or quality-assurance/quality-control plan approval.
- Probation for up to six months.

The severity of the penalty imposed must be commensurate with the degree of risk to human or animal safety or the level of financial harm to the consumer that is created by the violation.[19]

Violations of the Commercial Feed Law are a second-degree misdemeanor, punishable by a 60 day term in prison and a $500 fine.[20]

The Commercial Feed Law defines "**commercial feed**" as all materials or combinations of materials that are distributed or intended to be distributed for use as feed or for mixing in a **feed for animals other than humans**, except:[21]

- Unmixed whole seeds, including physically altered entire unmixed seeds, when such seeds are not chemically changed or are not adulterated;
- Unground hay, straw, stover, silage, cobs, husks, and hulls, and individual chemical compounds or substances, when such commodities, compounds, or substances are unmixed with other substances and are not adulterated; and
- Feed mixed by the consumer for the consumer's own use made entirely or in part from products raised on the consumer's farm.

"**Feedstuff**" is defined as edible materials, other than commercial feed, that are distributed **for animal consumption** and that contribute energy or nutrients, or both, to an animal diet.[22]

Dosage Form Animal Products

The humanization of certain species, including horses, dogs, and cats, has resulted in the emergence of animal health supplements, referred to as "dosage form supplements." These supplements are similar to dietary supplements for humans.[23] In dogs and cats, the most popular supplements include joint and digestive health supplements, followed by supplements to aid with cognition, skin/coat and heart health. For horses, owners can use supplements to treat or prevent osteoarthritis, joint disease, digestion, hoof growth, coat, and behavior.[24]

According to the National Library of Medicine (NLM), such pet supplements and nutraceuticals are widely used and generate millions of dollars in revenue for manufacturers. Despite the widespread use of these veterinary products, oversight and regulation remain limited as compared to human dietary supplement regulations. The NLM also provides that scientific information on veterinary pet supplements and nutraceuticals is increasing; however, there is a lack of quality control, safety and

[17] S. 580.121, F.S.
[18] S. 570.971, F.S., provides that for each violation in the Class I category, a fine not to exceed $1,000 may be imposed.
[19] S. 580.121, F.S.
[20] Ss. 775.082, and 775.083, F.S.
[21] S. 580.031(2), F.S.
[22] S. 580.031(10), F.S.
[23] State of Wisconsin Department of Agriculture, Trade and Consumer Protection, *Labeling of Dosage Form Animal Health Supplements for Non-human Food Producing Animals*, https://datcp.wi.gov/Documents/Feed-DosageFormAnimalHealthSuppPolicy.pdf (last visited Mar. 25, 2023).
[24] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).

efficacy data for the majority of the substances marketed in pet supplements and the resulting products for purchase currently available. Despite this lack of evidence, the use of veterinary supplements and nutraceuticals continues to increase."[25]

Food and Drug Administration

The U.S. Food and Drug Administration (FDA) Center for Food Safety and Applied Nutrition (CFSAN)[26] regulates the safety of dietary supplements in humans. The term "dietary supplement" is defined in the Dietary Supplement Health and Education Act (DSHEA) of 1994,[27] as a product taken by mouth in humans that contains a "dietary ingredient" intended to supplement the diet. A "dietary ingredient" can include vitamins, minerals, herbs or other botanicals, amino acids and substances such as enzymes, organ tissues and metabolites. The definition of "dietary supplement" does not explicitly state whether it includes or excludes products intended for use in animals other than man.[28]

The FDA Center for Veterinary Medicine (CVM)[29] is responsible for the regulation of animal food products. The CVM has mechanisms for food additive approval, which apply to any product unless it is generally recognized as safe for that intended use (i.e. forages, grains and most mineral and vitamins). This regulation applies to animal food additives that could affect the target animal's safety.

Under Section 201(s) of the Federal Food, Drug, and Cosmetic Act (FD&C Act),[30] the definition of a food additive does not include any ingredient in or intended for use in a dietary supplement. Although the dietary ingredient used in the dietary supplement must not adulterate the supplement, it does not have to be Generally Recognized As Safe (GRAS) for its intended use in the supplement. However, non-dietary ingredients (binders, fillers, etc.) are not exempt from the food additive definition. If any product claims to cure, treat, prevent or mitigate disease, the product should be considered a "new animal drug."

Pet food, including pet treats but not pet supplements, falls under the Association of American Feed Control Officials (AAFCO) and is regulated on a federal and state level. For now, AAFCO only regulates labeling of "food-type" supplements, although it will monitor for any ingredient misrepresentation of all animal supplements. Seven states, including Texas, Oregon, Michigan, North Dakota, South Dakota, Virginia and Wyoming have enacted "remedy laws" to regulate pet supplements that do not qualify as "foods" according to the AAFCO definition.[31]

The DSHEA controls the way the FDA regulates "food for humans." Among other things, it restricts substances from being food additives or drugs if the product meets the definition of a dietary supplement. Supplements intended for companion animals (i.e. not food animals for human consumption) do not fall under the DSHEA and therefore undergo less regulatory oversight than human dietary supplements.[32]

According to the FDA, the DSHEA does not apply to animal products.[33] Thus, products marketed as dietary supplements or "feed supplements" for animals still fall under the FD&C Act. These items are considered "foods" or "drugs" depending on the intended use, or in some instances the articles may be,

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[25] *Id.*

[26] U.S. Food and Drug Administration, *Center for Food Safety and Applied Nutrition*, https://www.fda.gov/about-fda/fda-organization/center-food-safety-and-applied-nutrition-cfsan (last visited Mar. 25, 2023).

[27] Pub. L. No. 103-417.

[28] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).

[29] U.S. Food and Drug Administration, *Center for Veterinary Medicine*, https://www.fda.gov/about-fda/fda-organization/center-veterinary-medicine (last visited Mar. 25, 2023).

[30] 21 U.S.C. § 301-399.

[31] National Library of Medicine, *Veterinary Pet Supplements and Nutraceuticals*, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7802882/ (last visited Mar. 25, 2023).

[32] State of Wisconsin Department of Agriculture, Trade and Consumer Protection, *Labeling of Dosage Form Animal Health Supplements for Non-human Food Producing Animals*, https://datcp.wi.gov/Documents/Feed-DosageFormAnimalHealthSuppPolicy.pdf (last visited Mar. 25, 2023).

[33] 61 C.F.R. § 17706.

simultaneously, a food and a drug. The FD&C Act defines the term "food" as an article used for food or drink for man or other animals including components of such articles. Thus, any nutrient ingredient (e.g., vitamins, minerals, and amino acids) which is added to a food is also a food by definition. The FD&C Act also defines the term "drug" as including any article intended for use as a component of a drug. A nutrient ingredient used as a component of a dosage form drug must meet the requirements for a drug. A nutrient ingredient used as a component of all other medicated products must meet the requirements for a food. While a nutrient ingredient of a non-dosage form product is also a drug when it is intended for use as a component of a drug, the nutrient will be primarily regulated as a food and need not be shown to serve an active drug purpose provided no drug claims are made or implied for the nutrient.[34]

The regulatory status of an article is determined by CVM on a case-by-case basis. Under the FD&C Act, "animal feeds/foods" refers to feed for livestock, poultry, or other animals, and pet food. These articles may ordinarily be thought of as foods under the Act, and also, in some cases, as food additives. However, based upon the claims made for these articles, their intended uses may bring them within the definition of a drug under the Act. In such instances, the articles may, as a matter of law, be both a food and a drug simultaneously.[35]

According to DACS, manufacturers and distributors of dosage form animal products in Florida are currently being regulated under the Commercial Feed Law due to the products' non-nutritional character. As a result, marketers of "dosage form animal health products" are required to comply with the registration, labeling, and sampling requirements followed by distributors of other no- or low-nutritive value products allowed for use as, or for mixing in, animal feed.[36]

Proposed Changes

The bill includes "dosage form animal products" as a regulated feedstuff under the Commercial Feed Law, thus requiring such products to be subject to related fees, and quality, safety, and labeling requirements, which are governed by DACS.

Specifically, the bill:

- Defines "dosage form animal product" as a feedstuff that includes any product intended to affect the structure or function of the animal's body other than by providing nutrition to the animal. The term includes oils, tinctures, capsules, tablets, liquids, and chewables.
- Specifies that the term does not include:
  - A mineral or vitamin, a product represented as a primary meal for the intended animal species, any other product intended as a treat, or a dental product providing mechanical or abrasive action or both.
  - Drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals:
    - Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), as amended,
    - By the United States Department of Agriculture under the federal Virus-Serum-Toxin Act (21 U.S.C. Sec. 151 et seq.), as amended; or
    - By the U.S. Environmental Protection Agency under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136 et seq.), as amended.
- Exempts dosage form animal products that are sold solely as a dosage form animal product and guaranteed as specified in the Commercial Feed Law from showing a guaranteed analysis.
- Requires the label on a dosage form animal product to contain the following:
  - An accurate statement of the net weight.

[34] U.S. Food and Drug Administration, Nutritional Ingredients in Animal Drugs and Feeds, https://fda.report/media/70108/Guide-1240.3420-Nutritional-Ingredients-in-Animal-Drugs-and-Feeds.pdf (last visited Mar. 25, 2023).
[35] U.S. Food and Drug Administration, *FDA/CVM Program Policy and Procedures Manual Guide 1240.3605*, https://www.fda.gov/media/69982/download (last visited Mar. 25, 2023).
[36] Florida Department of Agriculture and Consumer Services, Agency Analysis of House Bill 959, pgs. 1 and 2 (Mar. 9, 2023).

- The name and principal address of the registrant.
- The brand name and product name, if any, under which the dosage form animal product is distributed.
- The date of manufacture or expiration date of the dosage form animal product sold at retail as the department may by rule require.
- The amount of each active ingredient per serving.
- The common or usual name of each inactive ingredient contained in the dosage form animal product.
- A statement that identifies how the product supports the structure or function of the animal.
- Precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal product.
- Recommended dosage by animal weight.
- The statement "Not for human consumption."

The effective date of the bill is October 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 580.031, F.S.; creating a definition for the term “dosage form animal product.”

Section 2: Amends s. 580.051, F.S.; relating to labels; requirements; penalties.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The DACS may receive additional revenue through fee payments and enforcement of penalties. The amount is indeterminate.

2. Expenditures:

   The bill may have a negative fiscal impact on DACS due to increased costs associated with the enforcement and inspection of dosage form animal products. DACS estimates year one recurring expenditures of $262,147 and nonrecurring expenditures of $14,046 to support three (3) full time equivalent positions for additional workload. A review of the department’s budget reversions and vacant positions shows there are sufficient existing resources that can be redirected to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will require distributors of dosage form animal products to comply with Commercial Feed Law regulatory requirements governed by DACS, including the payment of fees and enforcement of penalties.

Dosage form animal health products currently sold may need to be recalled to be accurately labelled, which may have a negative fiscal impact to the distributors and business owners of those products.

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:

Article VII, Section 19 of the Florida Constitution requires a supermajority vote to impose or raise a tax or fee. Under this provision, "Raise" means:

a. "To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
b. To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
c. To decrease or eliminate a state tax or fee exemption or credit."

The bill will require distributors of dosage form animal products to comply with the regulatory requirements under the Commercial Feed Law, including the payment of fees. It is unclear if they would be subject to existing fees under the law or if DACS would need to create a fee for the newly regulated entities. However, it is unclear as to whether either of these scenarios would constitute the "raising" of a fee as defined in Art. VII s. 19.

B. RULE-MAKING AUTHORITY:

The bill authorizes DACS to require by rule, the date of manufacture or expiration date of the dosage form animal product sold at retail. The Commercial Feed Law appears to provide sufficient rulemaking authority.[37]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 28, 2023, the Regulatory Reform & Economic Development Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removed the requirement that manufacturers and distributors of dosage form animal health products register with DACS under the Florida animal industry law.
- Included dosage form animal products as a regulated feedstuff under the Commercial Feed Law.

[37] S. 580.036(2), F.S.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to dosage form animal health products; amending s. 580.031, F.S.; providing a definition; amending s. 580.051, F.S.; providing an exception from guaranteed analysis requirements for products sold solely as dosage form animal products; providing labeling requirements for dosage form animal products; providing an effective date.

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

Section 1. Subsections (9) through (24) of section 580.031, Florida Statutes, are renumbered as subsections (10) through (25), respectively, and a new subsection (9) is added to that section to read:

580.031 Definitions of words and terms.—As used in this chapter, the term:

(9) "Dosage form animal product" means a feedstuff that includes any product intended to affect the structure or function of the animal's body other than by providing nutrition to the animal.

(a) The term includes oils, tinctures, capsules, tablets, liquids, and chewables.

(b) The term does not include:

1. Minerals or vitamins;

2. Products represented as a primary meal for the intended animal species;

3. Products intended as a treat;

4. Dental products providing mechanical or abrasive action or both; or

5. Drugs, biologics, parasiticides, medical devices, or diagnostics used to treat, or administered to, animals pursuant to:

a. The United States Food and Drug Administration Federal Food, Drug, and Cosmetic Act, 21 U.S.C. ss. 301 et seq., as amended;

b. The United States Department of Agriculture federal Virus-Serum-Toxin Act, 21 U.S.C. ss. 151 et seq., as amended; or

c. The United States Environmental Protection Agency Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. ss. 136 et seq., as amended.

Except as provided by law or rule, all terms used in connection with commercial feed or feedstuff have the meanings ascribed to them by the Association of American Feed Control Officials.

Section 2. Subsection (1) of section 580.051, Florida Statutes, is amended to read:

580.051 Labels; requirements; penalty.—

(1) Any commercial feed or feedstuff distributed in this state, except a customer-formula feed and feed distributed

through an integrated poultry operation or by a cooperative to its members, shall be accompanied by a legible label bearing all information required by the federal Food and Drug Administration and the following information:

(a) An accurate statement of the net weight.

(b) The name and principal address of the registrant.

(c) The brand name and product name, if any, under which the commercial feed is distributed. The word "medicated" shall be incorporated as part of the brand or product name if the commercial feed contains a drug.

1. The department may require feeding directions and precautionary statements to be placed on the label for the safe and effective use of medicated and other feed as deemed necessary.

2. Labels on medicated feed shall include all of the following:

a. Any feeding directions prescribed by the department to ensure safe usage.

b. The stated purpose of the medication contained in the feed as stated in the claim statement.

c. The established name of each active drug ingredient.

d. The level of each drug used in the final mixture expressed in metric units as well as the required avoirdupois.

(d) The date of manufacture or expiration date of commercial feed sold at retail as the department may by rule require.

(e) The guaranteed analysis stated in terms that advise the consumer of the composition of the feed or feedstuff or support claims made in the labeling. In all cases, the elements or compounds listed in the analysis must be determinable by laboratory methods approved by the department. However, products sold solely as dosage form animal products and guaranteed as specified in this section need not show a guaranteed analysis.

1. The guaranteed analysis, listing the minimum percentage of crude protein, minimum percentage of crude fat, and maximum percentage of crude fiber and, when more than 10 percent mineral ingredients are present, the minimum or maximum percentages of mineral elements or compounds as provided by rule.

2. Vitamin ingredients, when guaranteed, shall be shown in amounts and terms provided by rule. For mineral feed, the list shall include the following: maximum or minimum percentages of calcium (Ca), phosphorus (P), salt (NaCl), iron (Fe), copper (Cu), cobalt (Co), magnesium (Mg), manganese (Mn), potassium (K), selenium (Se), zinc (Zn), and fluorine (F) if ingredients used as sources of any of these constituents are declared. All mixtures that contain mineral or vitamin ingredients generally regarded as dietary factors essential for the normal nutrition of animals and that are sold or represented for the primary

purpose of supplying these minerals or vitamins as additions to rations in which these same mineral or vitamin factors may be deficient shall be classified as mineral or vitamin supplements. Products sold solely as mineral or vitamin supplements and guaranteed as specified in this section need not show guarantees for protein, fat, and fiber.

3. Other nutritional substances or elements determinable by laboratory methods may be guaranteed by permission of, or shall be guaranteed at the request of, the department as may be provided by rule.

(f) The common or usual name of each ingredient used in the manufacture of the commercial feed; however, for all commercial feed except horse feed, the department by rule may permit the use of collective terms for a group of ingredients which perform a similar nutritional function.

(g) A label on a dosage form animal product must contain all of the following:

1. An accurate statement of the net weight.

2. The name and principal address of the registrant.

3. The brand name and product name, if any, under which the dosage form animal product is distributed.

4. The date of manufacture or expiration date of the dosage form animal product sold at retail as the department may by rule require.

5. The amount of each active ingredient per serving.

6. The common or usual name of each inactive ingredient contained in the dosage form animal product.

7. A statement that identifies how the dosage form animal product supports the structure or function of the animal.

8. Precautionary statements and warnings required to ensure the safe and effective use of the dosage form animal product.

9. Recommended dosage by animal weight.

10. The statement "Not for human consumption."

Section 3. This act shall take effect October 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 5 N	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee	11 Y, 4 N	Perez	Topp
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

Unless exempted by law, state and local governments are required to deposit public funds in a qualified public depository (QPD) pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act). The Act is administered by the Chief Financial Officer (CFO) and the Department of Financial Services (DFS).

Before a QPD accepts or retains a public deposit, it must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD. Currently, banks, savings banks, and savings associations are the only types of financial institutions eligible to be a QPD or a custodian for another QPD's pledged collateral.

The bill:

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

The bill has a significant fiscal impact. See *Fiscal Impact on State Government* section. Further, the bill does not include an appropriation to fund DFS's implementation and ongoing maintenance of credit unions as QPDs. The bill has an indeterminate fiscal impact on local governments and private sector.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Depositories

Pursuant to the Florida Security for Public Deposits Act, ch. 280, F.S. (Act), and unless exempted therein, state and local governments are required to deposit public funds in a qualified public depository (QPD).[1] A QPD is any bank, savings bank, or savings association that:

- is organized and exists under the laws of the United States, the laws of this state, or any other state or territory of the United States (i.e., state or federally chartered);
- has its principal place of business in this state or has a branch office in this state which is authorized under Florida or federal laws to receive deposits in this state;
- has deposit insurance under the provision of the Federal Deposit Insurance Act, as amended[2];
- has procedures and practices for accurate identification, classification, reporting, and collateralization of public deposits;
- meets all the requirements of the Act; and
- has been designated by the Chief Financial Officer (CFO) as a QPD.[3]

Upon approval from the CFO, these banks, savings banks, and savings associations may accept "public deposits" from state and local governments. The Act does not permit credit unions to become QPDs, due to their absence from the definition of "qualified public depository." As of May 20, 2022, there are 118 active QPDs in this state.[4]

Before a QPD can accept or retain a public deposit, the QPD must deposit collateral with an approved custodian in an amount commensurate with the amount of public deposits held and the financial stability of the QPD.[5] The Act's collateral requirements protect public deposits against loss in the event of certain triggering events, most notably, a QPD's insolvency or default.[6] Losses are satisfied first through the standard maximum federal deposit insurance of $250,000,[7] and then through the CFO's demand for payment under letters of credit or the sale of collateral pledged or deposited by the defaulting QPD. Any shortfall would then be covered by the CFO's authority to impose assessments against the other solvent QPDs, who must agree to share mutual responsibility and contingent liability as a condition of acting as a QPD.[8]

A "custodian" can be the CFO or any state or federally chartered bank, savings association, or trust company approved by the CFO to hold collateral pledged by QPDs to secure public deposits.[9] Collateral may be pledged, deposited or issued using the following collateral agreements as approved the CFO to meet the requisite collateral:

- regular custody arrangement for collateral pledged to the CFO, subject to certain requirements;[10]
- Federal Reserve Bank custody arrangement for collateral pledged to the CFO, subject to certain requirements;[11]

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[1] S. 280.03(1)(b), F.S.
[2] 12 U.S.C. ss. 1811 *et seq.*
[3] S. 280.02(26), F.S.
[4] Florida Department of Financial Services, *List of Active QPDs*, https://myfloridacfo.com/docs-sf/treasury-libraries/treasury-documents/listofactiveqpds.pdf (last visited Mar. 9, 2023).
[5] S. 280.04, F.S. *See also* ch. 69C-2, F.A.C.
[6] S. 280.041(6), F.S.
[7] 12 U.S.C. § 1821(a)(1)(E).
[8] S. 280.07, F.S.
[9] Ss. 280.02(10) and 280.041(1)(a), F.S.
[10] S. 280.041(1)(a), F.S.
[11] S. 280.041(1)(b), F.S.

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

DFS oversees the Act's reporting and collateral pledging requirements through its public deposits program and Bureau of Collateral Management.[14] The CFO has authority to act against noncompliant QPDs, as well as financial institutions that accept public deposits without a certificate of qualification from the CFO.[15] In the event of loss to public depositors, the CFO has the authority to oversee the payment of losses.[16]

Regulation of Credit Unions

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

- State-chartered credit unions may be formed under the Florida Credit Union Act (FCUA), which became law in 1980.[17] The FCUA provides that "[a] credit union is a cooperative, nonprofit association, organized . . . for the purposes of encouraging thrift among its members, creating sources of credit at fair and reasonable rates of interest, and providing an opportunity for its members to use and control their resources on a democratic basis in order to improve their economic and social condition."[18] State-chartered credit unions have both a state regulator, the Office of Financial Regulation, and a federal regulator, the National Credit Union Association (NCUA).
- Federally-chartered credit unions are chartered under the Federal Credit Union Act of 1934[19] and are regulated by the NCUA.

In addition to regulating both state-chartered and federally-chartered credit unions, the NCUA also operates and manages the National Credit Union Share Insurance Fund (NCUSIF), which insures share (deposit) accounts for members of all federally-chartered credit unions and most state-chartered credit unions.[20] All state-chartered credit unions operating in Florida must carry NCUSIF insurance.[21] The standard maximum share insurance amount is $250,000.[22]

Effect of the Bill

The bill makes state-chartered and federally-chartered credit unions eligible to become QPDs and custodian for another QPD's pledged collateral. Specifically, the bill creates s. 280.042, F.S., which provides criteria that a credit union must meet before the CFO can designate a credit union as a QPD. These criteria are designed to protect public deposits.

Collateral Agreements

The bill requires a credit union QPD to submit its agreement of contingent liability and its collateral agreement to the CFO and meet the following requirements:

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[12] S. 280.041(1)(c), F.S.
[13] S. 280.041(1)(d), F.S.
[14] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[15] S. 280.05, F.S.
[16] *Id.* at (10).
[17] Ch. 80-258, Laws of Fla.; codified at ch. 657, F.S.
[18] S. 657.003, F.S.
[19] Public Law 73-467, codified at 12 U.S.C. § 1751 *et seq*.
[20] Federally-chartered credit unions must be insured through NCUSIF, and state-chartered credit unions may be insured through NCUSIF, though some state-chartered credit unions may be insured by private insurance or guaranty corporations. See NCUA, How Your Accounts Are Federally Insured, available at https://www.ncua.gov/files/publications/guides-manuals/NCUAHowYourAcctInsured.pdf (last visited Mar. 10, 2023).
[21] Ss. 657.005(7), 657.008(5)(a)2., and 657.033(9), F.S.
[22] NCUA, *supra* note 21.

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

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

Shared Contingent Liability

In order to prevent credit unions from sharing contingent liability with banks, and vice versa, the bill creates separate mutual responsibility and contingent liability provisions for credit unions. Any credit union that is designated as a QPD and that is not insolvent must guarantee public depositors against loss caused by the default or insolvency of *other credit unions* that are designated as QPDs.

In the event of a default or insolvency of a credit union QPD, any loss to public depositors would be satisfied through any applicable share insurance and then through demanding payment under letters of credit or the sale of collateral pledged or deposited by the defaulting depository. The CFO may assess QPDs, subject to the segregation of contingent liability provided in s. 280.07, F.S., for the total loss if the demand for payment or sale of collateral cannot be accomplished within 7 business days.

Segregation of Penalties; Public Deposit Program

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

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

B. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to DFS, allowing credit unions to be QPDs will require $269,828 for workload and programming costs:[23]

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[23] Email from Austin Stowers, Director of Legislative Affairs, Florida Department of Financial Services, RE: HB 987 – Public Deposits (Mar. 23, 2023).

1. Revenues:

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

   > Federal and state tax differences between credit unions and banks may allow credit unions a competitive advantage when bidding for local government public deposits. Credit unions may also benefit from lower overhead costs since these institutions may use office space belonging to a sponsoring organization. The combined effect of lower taxes and overhead may allow credit unions to pay higher interest rates for public deposits and to provide other business services to local governments at a lower cost than banks.[24]

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[24] Office of Program Policy Analysis and Government Accountability, *Issues Related to Credit Unions Operating as Qualified Public Depositories*, Nov. 13, 2014, at 5.

A bill to be entitled

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

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

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

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

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

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

17.68 Financial Literacy Program for Individuals with Developmental Disabilities.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Meets all the requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

a. Apply to be designated as qualified public depositories.

b. Meet the requirements in paragraph (a).

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

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

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

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

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

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

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

public depositors not covered by deposit or share insurance.

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

280.052 Order of suspension or disqualification; procedure.—

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

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

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

(1)

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

(2)

(c) Upon expiration of the disqualification period, the

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

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

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

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

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

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

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

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

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

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

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

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

280.07 Mutual responsibility and contingent liability.—

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

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

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

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

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

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

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

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

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

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

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

280.085 Notice to claimants.—

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

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

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

280.09 Public Deposits Trust Fund.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

280.13 Eligible collateral.—

(1) Securities eligible to be pledged as collateral by

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

(a) Direct obligations of the United States Government.

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

(c) Obligations of the following federal agencies:

1. Farm credit banks.

2. Federal land banks.

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

4. Federal intermediate credit banks.

5. The Federal Home Loan Mortgage Corporation.

6. The Federal National Mortgage Association.

7. Obligations guaranteed by the Government National Mortgage Association.

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

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

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

(g) Public housing authority obligations.

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

States or of a political subdivision or municipality thereof.

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

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

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

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

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

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

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

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

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

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

17.57 Deposits and investments of state money.—

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

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

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

24.114 Bank deposits and control of lottery transactions.—

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

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

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

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

(3)

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

so authorized by the council.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190.007 Board of supervisors; general duties.—

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

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

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

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

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

215.34 State funds; noncollectible items; procedure.—

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

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

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

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

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

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

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

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

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

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

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

its control or possession in accordance with the following conditions:

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

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

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

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

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

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

Section 30. For the purpose of incorporating the amendment

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

331.309 Treasurer; depositories; fiscal agent.—

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

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

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

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

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

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

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

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

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

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

723.06115 Florida Mobile Home Relocation Trust Fund.—

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

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1185 Consumer Protection
SPONSOR(S): Insurance & Banking Subcommittee, Giallombardo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1398

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N, As CS	Fortenberry	Lloyd
2) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes changes related to consumer protection, including:

- **Mortgage lender locations:** allows loan originators to work from a remote location if certain criteria are met.
- **Crowd-funding campaigns:** identifies unlawful acts and practices regarding online crowd-funding campaigns related to disasters.
- **Distributed energy generation system (DEGS) disclosures:** adds to the information and disclosures that must be provided to customers when they purchase or lease DEGS.
- **Check-cashing businesses:** prohibits licensed check-cashing businesses from cashing corporate checks when the total amount of all checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage; makes it a third-degree felony for someone to knowingly cash such checks.
- **Insurance agent address changes:** requires a licensed insurance agent to notify DFS of changes to his or her contact information within five days after the change, rather than within the 30-day period currently specified in law.
- **Insurance agency and adjusting firm names:** Department of Financial Services may disapprove adjusting firm names on the same grounds under which it can disapprove of insurance agency names
- **Public adjusters:** significantly alters the requirements for contracts between public adjusters and insureds or claimants; provides for additional disclosures to accompany such contracts; provides for recordkeeping requirements for public adjusters.
- **Insurer advertisements:** establishes it is an unfair method of competition, or an unfair or deceptive act or practice, if an insurer fails to disclose a third party that it receives royalties, referral fees, or other money for sponsorship, marketing, or use of third-party branding for a health insurance contract.
- **Insurance coverage for hurricanes:** reduces the statutory duration that a hurricane deductible applies; defines hurricane deductible as the deductible applicable to loss caused by a hurricane.
- **Insurer underwriting timeframes:** reduces the time that an insurer has to cancel a policy for reasons other than material misstatement, nonpayment of premium, or failure to comply with underwriting requirements from 90 days to 60 days.
- **Annuities:** revises the law to reflect the most recent changes to the National Association of Insurance Commissioners' Annuity Transactions Model Regulation.
- **Service agreements and manufacturer warranties:** provides an additional exception to unearned premium reserve requirements for service agreement companies; revises solvency requirements for manufacturers who sell service warranties.

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

Except as otherwise expressly provided, the bill is effective on July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Mortgage Lender Locations

Background

The Office of Financial Regulation (OFR) is responsible for the regulation of banks, credit unions, and other financial institutions, finance companies, and the security industry.[1] OFR is responsible for the administration and enforcement of ch. 494, F.S., relating to loan originators and mortgage brokers. OFR licenses and regulates the practice of these individuals.

A loan originator is an individual who, directly or indirectly:[2]

- Solicits or offers to solicit a mortgage loan;
- Accepts or offers to accept an application for a mortgage loan;
- Negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender; or
- Negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain.

The term loan originator does not include an employee of a mortgage broker or lender who only handles a completed application form or transmits a completed application form to a lender on behalf of a prospective borrower.[3]

A mortgage broker conducts loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.[4] In contrast, a mortgage lender makes a mortgage loan or services a mortgage loan for others or, for compensation or gain, directly or indirectly, sells or offers to sell a mortgage loan to a noninstitutional investor.[5] A mortgage lender may act as a mortgage broker.[6]

Each mortgage broker and lender must maintain, and transact business from, a principal place of business,[7] which is a primary office with a street address or physical location designated on a licensure application.[8] A mortgage broker or lender may also operate out of a branch office,[9] but each branch office must be separately licensed[10] and operated by a branch manager[11] who must be licensed as a loan originator. Currently, mortgage brokers and lenders are not legally authorized to work from remote locations and doing so may result in administrative action by OFR.

[1] S. 20.121(3)(a)2., F.S.
[2] S. 494.001(18), F.S.
[3] *Id.*
[4] S. 494.001(23), F.S.
[5] S. 494.001(24), F.S.
[6] *See* s. 494.0073, F.S.
[7] Ss. 494.0039, and 494.0073, F.S.
[8] S. 494.001(31), F.S.
[9] *See* s. 494.001(3), F.S.
[10] Ss. 494.0036(1) and 494.0066(1), F.S.
[11] Ss. 494.0035(2) and 494.00665(2), F.S.

Effect of the Bill

The bill adds a remote location to the definition of a mortgage broker's or lender's branch office. It defines a remote location as:

- A location, other than a principal place of business or a branch office;
- At which a loan originator of a licensee may conduct business.

Licensees may allow loan originators to work from a remote location if:

- The licensee has written policies and procedures for supervision of loan originators working from a remote location;
- Access to company platforms and customer information meets the licensee's comprehensive written information security plan;
- An in-person customer interaction does not occur at a loan originator's residence, unless the residence is a licensed location;
- Physical records are not maintained at a remote location;
- Customer interactions and conversations about consumers comply with federal and state information security requirements;
- Loan originators working at a remote location access the company's secure systems via a virtual private network or comparable system;
- The licensee ensures that appropriate security updates, patches, or other security alterations used at remote locations are installed and maintained;
- The licensee has the ability to remotely lock or erase company-related contents of any device or remotely limit access to secure systems; and
- The Nationwide Multistate Licensing System and Registry's[12] record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location or the loan originator has elected a licensed branch office as a registered location.

The bill changes the locations where a mortgage lender may lawfully conduct business to include a branch office or remote location in addition to a principal place of business.

Crowd-funding Campaigns

Background

Responses to natural disasters, including hurricanes, often include crowd-funding campaigns to raise money to help those who have been affected.[13] Unfortunately, some of these campaigns are scams that prey on people's willingness to help disaster victims.[14] Online crowd-funding platforms receive donations and distribute them without oversight and may be unable to determine whether the funds received were used appropriately.[15]

Effect of the Bill

The bill creates a statutory framework for unlawful acts and practices regarding online crowd-funding campaigns. It provides relevant definitions for crowd-funding campaign, crowd-funding platform, disaster, and organizer. The bill defines crowd-funding campaign as an online fundraising initiative that is:

- Intended to receive monetary donations; and
- Created by an organizer in the interest of a beneficiary.

[12] The Nationwide Multistate Licensing System is centralized online database that is used by mortgage and finance regulatory agencies to maintain state licensing programs. Rocket Mortgage, *What is NMLS?*, https://www.rocketmortgage.com/learn/what-is-nmls (last visited Mar. 19, 2023).
[13] Florida Department of Financial Services (DFS), Agency Analysis of 2023 House Bill 1185, p. 2 (Feb. 27, 2023).
[14] *Id.*
[15] *Id.* at p. 3.

A disaster must satisfy all of the following criteria to meet the statutory definition of disaster set forth in the bill:

- Natural, technological, or civil emergency;
- Occurs in Florida; and
- Causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States.

The bill requires that, when an organizer arranges a crowd-funding campaign related to a disaster, the organizer must produce to the crowd-funding platform a complete and accurate accounting of all the donations received and expended by the campaign. The crowd-funding platform must publish all of these accountings on its website.

Distributed Energy Generation System Disclosures

Background

Under current law, when a customer purchases or leases a distributed energy generation system (DEGS), including solar panels, certain information and disclosures must be provided to the customer, including contact information for the installer, cost and rebate information, and financial considerations.[16] However, contact information for the regulator of the system installer is not included.[17] Disclosures about how these DEGS may impact a customer's homeowners' insurance premiums and coverage or the life of their roof is also not provided.[18]

Effect of the Bill

The bill adds to the information and disclosures that must be provided to customers when they purchase or lease DEGS. The customer must be given phone number for the Department of Business and Professional Regulation's customer contact center.

Customers must be informed that they should consider the age and remaining life of their roofs before installing DEGS and that replacement of their roofs may require reinstallation of the DEGS. The bill also requires that customers be given a statement informing them that:

- Placing DEGS on their roof may impact their future insurance premiums; and
- Customers are responsible for contacting their insurers prior to entering a purchase or lease agreement for the DEGS to determine whether their current policy or coverage needs modification upon installing the DEGS onto their dwelling.

Check Cashing

Background

The Office of Financial Regulation (OFR) licenses and regulates check cashers pursuant to ch. 560, F.S. Florida law imposes various requirements on check cashers, including requiring the licensee to maintain copies of each payment instrument cashed.[19] If the payment instrument exceeds $1,000, the following additional information must be maintained:

- Customer files, as prescribed by rule,[20] on all customers who cash corporate payment instruments that exceed $1,000;
- A copy of the personal identification that bears a photograph of the customer used as identification and presented by the customer; and
- A thumbprint of the customer taken by the licensee when the payment instrument is presented for negotiation or payment.[21]

[16] S. 520.23, F.S.
[17] DFS, *supra,* note 13 at p. 3.
[18] *Id.*
[19] S. 560.310(1), F.S.
[20] R. 69V-560.704, F.A.C.

In addition to the information that a licensee must maintain, the following information must be entered into the check cashing database operated by OFR before entering into each check cashing transaction for each payment instrument being cashed if the payment exceeds $1,000:

- Transaction date;
- Payor name as displayed on the payment instrument;
- Payee name as displayed on the payment instrument;
- Conductor[22] name, if different from the payee name;
- Amount of the payment instrument;
- Amount of currency provided;
- Type of payment instrument, which may include personal, payroll, government, corporate, third-party, or another type of instrument;
- Amount of the fee charged for cashing of the payment instrument;
- Branch or location where the payment instrument was accepted;
- The type of identification and the identification number presented by the payee or conductor;
- Payee's workers' compensation insurance policy number or exemption certificate number, if the payee is a business; and
- Such additional information as required by rule.[23]

OFR must ensure that the check cashing database provides an interface with the Secretary of State's database for purposes of verifying corporate registration and articles of incorporation and with the Department of Financial Services' (DFS) database for purposes of determining proof of coverage for workers' compensation.[24]

Effect of the Bill

The bill prohibits licensed check cashing businesses from cashing corporate checks when the total amount of all checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage. This change is meant to prevent an employer committing workers' compensation fraud by:

- Making a corporate check out to itself or to "cash";
- Cashing the check at a check cashing business; and
- Using the cash to pay employees "off the books" or "under the table".

By paying employees in cash, the employer would show a smaller amount of payroll and be charged a lesser premium by its workers' compensation insurer for coverage for its employees.

The bill also makes it a third-degree felony for someone to knowingly cash checks in excess of the above amount.

Insurance Agent Address Changes

Background

Insurance agents are currently required to notify the Department of Financial Services (DFS), in writing, of changes to their name, residential address, principal business street address, mailing address, contact telephone numbers, and email address within 30 days of a change.[25]

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[21] S. 560.310(2)(a)-(c), F.S.

[22] The term "conductor" is defined as "a natural person who presents himself or herself to a [check casher] for purposes of cashing a payment instrument." S. 560.103(9), F.S. The term is used in the context of the cashing of a corporate payment instrument, which is a payment instrument on which the payee is not a natural person (i.e., the payee is a corporate entity). S. 560.103(10), F.S. A check casher may accept or cash a corporate payment instrument from a conductor who is an authorized officer of the corporate payee named on the instrument's face. S. 560.309(4), F.S.

[23] S. 560.310(1)(d), F.S.

[24] S. 560.310(5), F.S.

[25] S. 626.551, F.S.

Effect of the Bill

The bill requires that a licensed insurance agent notify DFS of changes to his or her name, address, telephone number, or other contact information within five days after the change, rather than within the 30-day period currently specified in law.

Insurance Agency and Adjusting Firm Names

Background

DFS recently began licensing adjusting firms.[26] However, unlike the authority to disapprove names of insurance agencies, DFS does not have the authority to disapprove misleading names of adjusting firms.[27] If the adjusting firm name contains certain words, such as a city, county, or government name, that could lead customers to believe they are doing business with a governmental entity.[28]

Current law allows insurance agencies to use the words "Medicare" and "Medicaid" in their names.[29] However, the provision of law allowing the use of those words is set to expire on June 30, 2023.[30]

Effect of the Bill

The bill establishes that DFS may disapprove the use of adjusting firm names on the same grounds under which it can disapprove of insurance agency names. As of July 1, 2023, the bill also repeals the statutory provision that allows an insurance agency to use the word "Medicare" or "Medicaid" in its name, because the provision allowing the use of those words is set to expire.

Public Adjusters

Background

Public adjusters are regulated under ch. 626, part VI, F.S. Florida law defines a public adjuster as someone who, for something of value, directly or indirectly, prepares, completes, or files an insurance claim for an insured or third-party claimant, or who, for something of value, acts on behalf of, or aids, an insured or third-party claimant in settling a claim for loss or damage covered by an insurance contract, or who advertises for employment as an adjuster of such claims.[31] In general, a claimant executes a contract for the public adjuster to provide claims adjusting services.[32] At present, such a contract may only be canceled within ten days after the date the contract was executed.[33]

Public adjusters who have contracted with claimants must also provide to the claimant a written estimate of loss to assist the claimant with obtaining a claim payment from the insurance company. According to information received from DFS, following the hurricanes that have affected Florida in recent years, consumers have complained about claims resolution delays due to the lack of responsiveness of public adjusters they hired and the inability to cancel contracts they have executed with these adjusters.[34]

Effect of the Bill

The bill clarifies that certain actions constitute the practice of public adjusting regardless of how a public adjuster describes or presents his or her services. The bill establishes that, after July 1, 2023, whether

[26] DFS, *supra,* note 13 at p. 3.
[27] *See* s. 626.602, F.S.
[28] DFS, *supra,* note 13 at p. 3.
[29] S. 626.602(4)(b), F.S.
[30] *Id.*
[31] S. 626.854, F.S.
[32] *See id.*
[33] *Id.*
[34] DFS, Agency Analysis of 2021 House Bill 717, p. 3 (Feb. 25, 2021).

or not a public adjuster enters a contract to provide public adjusting services, the public adjuster is prohibited from contracting with anyone other than a named insured unless the named insured provides written consent. If a public adjuster contracts with a third party in settling the named insured's claim, without first obtaining the insured's written consent, the third party must be paid from the public adjuster's fees.

The bill allows an insured or claimant to cancel a contract with a public adjuster without penalty or obligation within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is later, if the insured or claimant signed the contract based on events that were the subject of an emergency declaration by the Governor. The public adjuster's contract must contain information regarding the cancellation period and must also notify the insured or claimant that he or she may cancel the contract if the public adjuster fails to provide the insured or claimant and the insurer a copy of a written estimate of damages within 60 days of the execution of the contract.

The bill changes many of the requirements for the contracts for services between public adjusters and insureds or claimants, including the following:

- The contract must be titled "Public Adjuster Contract" in at least 12-point font.
- The anti-fraud statement required in the contract must be in at least 18-point bold font and placed in the space above the insured or claimant's signature.
- A copy of the executed contract must be provided to the insured or claimant at the time of execution and to the insurer within ten days thereafter.
- The public adjuster shall not provide services until both the insured and insurer have been provided with unaltered copies of the executed contract.
- Before signing the contract, the public adjuster must provide the insured with a separate disclosure that the insured must sign that does the following:
    - Defines the types of adjusters who may be involved in the claims process, including company adjuster, independent adjuster, and public adjuster.
    - Explains that the public adjuster is not a representative or employee of the insurer.
    - Explains that the insured is not required to hire a public adjuster.
    - Explains that the insured has the right to communicate directly with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the claim.
    - Explains that public adjuster's salary, fee, commission, or other consideration to be paid to the public adjuster is the insured's responsibility.

Any public adjuster contract that does not comply with these requirements is invalid and unenforceable.

Under the bill, if the insurer, no later than 14 days after the date on which the loss is reported to the insurer, pays or commits in writing to pay the insured the policy limit of the insurance policy, the public adjuster shall:

- Inform the insured that, due to the insurer's payment or commitment to pay the policy limit, the loss recovery amount might not be increased by the insurer.
- Not receive a commission consisting of a percentage of the total amount that the insurer paid to resolve the claim.
- Be entitled only to $1,000 from the insured for the time spent and expenses that the public adjuster incurred on the claim until the claim is paid or the insurer provided a written agreement to pay.

The bill establishes that if a public adjuster enters into a contract with an insured or claimant after the insured or claimant unsuccessfully negotiates an insurance claim payment and the public adjuster successfully obtains a higher insurance claim payment, the public adjuster shall receive a commission consisting of 10 percent of:

- the difference between the initial insurance claim payment offer made to the insured; and
- the final insurance claim payment obtained through the public adjuster's work after the insured or claimant signed the public adjuster's contract.

The bill clarifies that the statutory exemption that allows attorneys at law to adjust claims without being licensed as adjusters does not extend to the employees, interns, volunteers, or contractors of an attorney or law firm.

The bill states that appointed independent adjusters and licensed public adjusters must post their licenses in a conspicuous place in their principal places of business or have the licenses in their possession if they are conducting business away from the principal places of business. It mandates that adjusters have their records available for inspection by DFS at all times.

The bill also requires that adjusters maintain the following records for at least five years:

- The name, address, phone number, and email address of the insured, and name of the insured's attorney if applicable.
- The date, location, and amount of the loss.
- An unaltered copy of the signed document containing the disclosures that the public adjuster is required to give the insured.
- A copy of the estimate of damages provided to the insurer.
- Name of the insurer, claims representative, amount, expiration date, and number of each policy under which the loss is covered.
- An itemized statement of all compensation received by the public adjuster in connection with the loss.
- A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfer, and disbursements in connection with the loss.

Insurer Advertisements

Background

The Unfair Insurance Trade Practices Act (Act),[35] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.[36] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain advertisements, inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. An insurer is prohibited from knowingly making, issuing, circulating any estimate, illustration, circular, statement, sales presentation, omission, comparison, or altered property or casualty insurance certificate that falsely advertises insurance policies.[37]

Effect of the Bill

The bill establishes that it is an unfair method of competition, or an unfair or deceptive act or practice, by misrepresentation or false advertising of an insurance policy, if an insurer fails to disclose a third party that receives royalties, referral fees, or other money for sponsorship, marketing, or use of third-party branding for a health insurance contract.[38]

Insurance Coverage for Hurricanes

Background

Property insurance policies in Florida typically include a separate deductible applicable to hurricane losses.[39] Hurricane deductibles are often higher than the deductibles applicable to all other covered

[35] Ch. 626, F.S., part IX.
[36] S. 626.9541, F.S.
[37] S. 626.9541(1)(a), F.S.
[38] The health insurance contract is defined in s. 624.603, F.S., as "insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto." It does not include workers' compensation insurance.
[39] *See* s. 627.701, F.S.

losses. Current law provides a broad timeframe under which a hurricane is considered to be affecting the state.[40] A hurricane deductible can be applied during this timeframe, which may lead to significant out-of-pocket expenditures by policyholders.

The timeframe for a hurricane begins when a hurricane watch or warning is issued anywhere in Florida and ends 72 hours after the termination of the last hurricane watch or warning.[41] A hurricane watch may be issued up to 48 hours before the anticipated onset of tropical-storm-force winds in an area.[42]

Effect of the Bill

The bill reduces the statutory timeframe for the duration of a hurricane as follows:

- It excludes a hurricane watch.
- It deletes the provision that a hurricane continues for the time period during which hurricane conditions exist anywhere in Florida.
- It reduces the timeframe during which a hurricane exists to 24 hours following the termination of the last hurricane watch or warning issued for any part of Florida.

Based upon these changes, a hurricane deductible would apply from the issuance of a hurricane warning until 24 hours past the issuance of the last hurricane warning issued for the state.
The bill also defines hurricane deductible as the deductible applicable to loss caused by a hurricane.

Insurer Underwriting Timeframes

Background

Once coverage has been bound[43] and a premium is quoted and paid, an insurer issuing property or casualty insurance has 90 days to complete its underwriting process to determine whether an applicant meets its guidelines.[44] Coverage is extended to the policyholder during the underwriting period and the insurer has earned the premium for the number of days that the coverage was available during that period.[45] Once the underwriting period is complete, the insurer will either accept or decline the risk.[46]

After the conclusion of the underwriting period, an insurer may only cancel the policy for the following reasons:[47]

- Material misstatement.
- Nonpayment of premium.
- Failure to comply with underwriting requirements established within 90 days of the effective date of coverage.
- Substantial change in the risk covered by the policy.
- When the cancellation is for all insureds in a given class.[48]

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[40] *See* s. 627.4025(2), F.S.
[41] S. 627.4025(2), F.S.; DFS, *supra*, note 13 at p. 3.
[42] National Ocean Service, *What is the Difference Between a Hurricane Watch and Hurricane Warning?*, https://oceanservice.noaa.gov/facts/watch-warning.html#:~:text=A%20hurricane%20watch%20is%20issued,to%20instructions%20from%20local%20officials (last visited Mar. 20, 2023). A hurricane watch means that hurricane conditions (sustained winds of 74 miles per hour or greater) are *possible* within a specified area. A hurricane warning means that hurricane conditions are *expected* somewhere within the specified area.
[43] The term bound refers to confirmation that coverage is in place.
[44] DFS, *supra*, note 13 at p. 3.
[45] *Id.*
[46] *Id.*
[47] S. 627.4133, F.S.
[48] A class is a group of insureds with similar exposures and experience that are grouped together for rating purposes. IRMI, *Class*, https://www.irmi.com/term/insurance-definitions/class#:~:text=A%20class%20is%20a%20group,grouped%20together%20for%20rating%20purposes (last visited Mar. 20, 2023).

Of the 50 states: 38 have a homeowners' insurance underwriting period of 60 days; five have less than 60-day periods; one has a 70-day period; five states, including Florida, have 90-day periods; and one state has a period greater than 90 days.[49]

Effect of the Bill

The bill reduces the time that an insurer has to cancel a property or casualty policy for reasons other than those detailed immediately above from 90 days to 60 days.

Motor Vehicle Service Agreements

Background

Warranty associations and companies in Florida, including those associations selling home and service warranties, and those companies selling motor vehicle service agreements, are regulated by the Office of Insurance Regulation (OIR).[50] Motor vehicle service agreements provide vehicle owners with protection when a manufacturer's warranty has run out. Companies that sell such agreements are regulated by the OIR, and must currently establish and maintain an unearned premium reserve equal to a minimum of 50 percent of the unearned gross written premium on each service agreement.[51] These companies must maintain net assets of at least $500,000.[52] In lieu of maintaining an unearned premium reserve, the company may secure and maintain a contractual liability insurance policy (CLIP),[53] which protects business owners against the financial consequences of liabilities assumed from entering a contract.[54]

Effect of the Bill

The bill establishes that a service agreement policy that maintains a CLIP in lieu of maintaining unearned premium reserve may either pay 100 percent of claims as they are incurred or 100 percent of claims due in the event of the failure of the service agreement company to pay claims when due.

Manufacturer Warranties

Background

[49] DFS, *supra,* note 13 at p. 4.
[50] *See* ch. 634, F.S.
[51] S. 634.041, F.S.
[52] *Id.*
[53] *Id.*
[54] The Hartford, *Contractual Liability Insurance*, https://www.thehartford.com/general-liability-insurance/contractual-liability-insurance#:~:text=Contractual%20liability%20insurance%20helps%20cover,with%20contracts%2C%20such%20as%20contractors (last visited Mar. 20, 2023).

A service warranty is a contract that generally covers the repair, replacement, or maintenance of a consumer product.[55] While warranties are not considered traditional insurance products, OIR regulates warranty associations and companies similarly to the way in which it regulates insurers.[56] Service warranty associations must be licensed by OIR[57] and must maintain certain minimum financial standards in order to do warranty business in Florida.[58]

Licensed service warranty sellers may include the manufacturers of the products on which warranties are offered. The Florida Insurance Code (Code) defines a manufacturer as any entity or its affiliate which:[59]

- Derives a majority of its revenues from products manufactured, built, assembled, constructed or produced under a product name controlled by the entity or the affiliate;
- Issues service warranties only for consumer products manufactured, built, assembled, constructed or produced under a product name controlled by the entity or the affiliate;
- Is listed and traded on a stock exchange, National Association of Security Dealers Automated Quotation system and publicly traded in the over-the-counter-securities markets, is required to file certain forms with the U.S. Securities and Exchange Commission, or whose American Depository Receipts are listed on a recognized stock exchange and publicly traded;
- Maintains outstanding debts obligations, if any, rated in the top four rating categories by a recognized rating service;[60]
- Has and maintains a minimum net worth of at least $10 million as evidenced by certified financial statements; and
- Is authorized to do business in Florida.

Effect of the Bill

The bill revises solvency requirements for manufacturers who sell service warranties. It removes the requirement that a manufacturer maintain outstanding debt obligations in the top four rating categories by a recognized rating service. However, it also increases the minimum net worth requirement for a manufacturer from $10 million to $100 million.

Annuities

Background[61]

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals and are long-term contracts that typically restrict an investor's ability to access his/her money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser. Another product, equity indexed annuities, is considered a hybrid of both fixed and variable annuities.

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[55] S. 634.402, F.S.
[56] *See* ch. 634, F.S.
[57] S. 634.403, F.S.
[58] S. 634.406, F.S.
[59] S. 634.401(17), F.S.
[60] *See* U.S. Securities and Exchange Commission, *Updated Investor Bulletin: The ABCs of Credit Ratings*, https://www.sec.gov/oiea/investor-alerts-and-bulletins/ib_creditratings (last visited Mar. 23, 2023).
[61] *See Annuities a Guide for Consumers*, https://www.myfloridacfo.com/docs-sf/consumer-services-libraries/consumerservices-documents/understanding-coverage/consumer-guides/annuities-guide.pdf?sfvrsn=93cf03d5_2 (last visited Mar. 20, 2023); *See also* National Association of Insurance Commissioners (NAIC), *Annuities,* https://content.naic.org/cipr-topics/annuities#:~:text=The%20NAIC%20Suitability%20in%20Annuity,the%20time%20of%20the%20transaction. (last visited Mar. 20, 2023).

Annuities can be either immediate or deferred. With immediate annuities, the premium is paid in a single lump sum, and the purchaser receives an immediate and regular stream of payments for a period of time. By contrast, purchasers of deferred annuities pay one or more premiums over time (the accumulation period) and begin to receive annuity payments at a future point in time (the payout period or annuitization phase).

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).[62] Variable annuities generally involve an accumulation phase and a payout phase.

Equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

In 2003, the National Association of Insurance Commissioners (NAIC) adopted "Senior Protection in Annuity Transactions Model Regulation" (Senior Protection Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Senior Protection Model Regulation in s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions, requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending the annuity protections to consumers of any age.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Senior Protection Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an "objectively" reasonable basis for recommending a particular annuity product.
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy.
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services' (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer.
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information on a DFS form concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced.
- Increasing the "free look" refund period.
- Authorizing the OIR to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information,

[62] The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.[63]

In March 2010, the NAIC revised its Senior Protection Model Regulation to clarify that insurers are responsible for compliance with the model's requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents. The Legislature incorporated these changes to the Senior Protection Model Regulation in 2013.

In 2020, the NAIC issued the Suitability in Annuity Transactions Model Regulation (Suitability Model Regulation), to set forth standards and procedures for recommendations to consumers that result in an annuity transaction.[64]

Effect of the Bill

Effective January 1, 2024, the bill revises the statutory framework for the issuance of annuities in Florida, based upon the Suitability Model Regulation. It requires that agents act in consumers' best interests when recommending an annuity to a consumer and that insurers establish and maintain a system of supervision over agents to make sure that the consumers' insurance needs and financial objectives are effectively addressed.

The bill defines an agent as a person or entity required to be licensed under Florida law to sell, solicit, or negotiate insurance, including annuities. It defines cash compensation as any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit that an agent receives in connection with the recommendation or sale of an annuity from an insurer, intermediary, or directly from a consumer. The bill defines consumer profile information, which includes various information about the consumer's financial needs, net worth and financial resources, and risk tolerance.

The bill defines intermediary as an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents. It defines material conflict of interest as financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation, but it does not include cash or noncash compensation.

Under the bill nonguaranteed elements means the premiums, credited interest rates, including any bonus, benefits, values, dividends, noninterest based credits, charges, or elements of formulas used to determine any of these. Such nonguaranteed elements are subject to company discretion and are not guaranteed at issue.

The bill revises the statutory definition of recommendation so that it refers to advice provided by an agent to an individual consumer that was intended to result, or does result, in a purchase, an exchange, or a replacement of an annuity. Recommendation does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material. The bill also provides additional definitions, clarification of existing definitions, and deletes unnecessary definitions, related to annuities.

The bill requires that, when recommending an annuity, an agent must act in the best interests of the consumer under the circumstances known at the time the recommendation is made, without placing the agent's or insurer's financial interest ahead of the consumer's interest. The bill considers an agent to have acted in the consumer's best interest if the agent has met the following obligations and documentation requirements:

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[63] Section 626.99, F.S.

[64] NAIC, *Annuities*, https://content.naic.org/cipr-topics/annuities#:~:text=The%20NAIC%20Suitability%20in%20Annuity,the%20time%20of%20the%20transaction (last visited Mar. 20, 2023); NAIC, *Suitability in Annuity Transactions Model Regulation*, https://content.naic.org/sites/default/files/inline-files/MDL-275.pdf (last visited Mar. 20, 2023).

- The agent exercised reasonable diligence, care, and skill to:
    - Know the consumer's financial situation, insurance needs, and financial objectives.
    - Understand the available options after making a reasonable inquiry into the options available to the agent.
    - Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product.
    - Communicate the reasons for the recommendation.
- The agent must also:
    - Make reasonable efforts to obtain consumer profile information from the consumer before recommending an annuity.
    - Consider the types of products the agent may recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.
    - Have a reasonable basis to believe the consumer would benefit from certain features of the annuity recommended.
- If an annuity is being exchanged or replaced, the agent must consider whether:
    - The consumer will incur a surrender charge; be subject to a new surrender period; lose existing benefits; or be subject to increased fees or charges.
    - The replacement annuity would substantially benefit the consumer in comparison to the replaced product.
    - The consumer has had another annuity exchange or replacement, including one within the preceding 60 months.
- Before the recommendation or sale of an annuity, the agent must disclose the following:
    - A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction.
    - A statement regarding the types of annuities and other products that the agent is licensed and authorized to sell.
    - A statement describing the insurers for which the agent is authorized, contracted or appointed, or otherwise able to sell insurance products.
    - A description of the sources and types of cash and noncash compensation the agent will receive.
    - A notice of the consumer's right to request additional information regarding the cash compensation to be received by the agent.

The bill requires that an agent identify and avoid or reasonably manage and disclose material conflicts of interest, including those related to an ownership interest. At the time of recommendation or sale, an agent shall:

- Make a written record of any recommendation and the basis for it.
- Obtain a statement signed by a consumer documenting the following, as applicable:
    - A consumer's refusal to provide consumer profile information; and
    - A consumer's understanding of the ramifications of not providing sufficient consumer profile information.
    - If an annuity transaction is not based on the agent's recommendation, a consumer's acknowledgment that the annuity transaction is not recommended.

The bill obligates an insurer to establish and maintain reasonable procedures to:

- Assess, prior to, or upon issuance and delivery of, an annuity, whether the agent provided the required information to the consumer.
- Identify and address suspicious consumer refusals to provide consumer profile information.
- Identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation based on the sales of specific annuities within a limited time period.

While an insurer is required to have a system to supervise agents, the system is not required to include consideration of, or comparison to, options available to the agent or other products offered by the insurer. However, an insurer's supervision system must include supervision of contractual performance.

The bill provides a safe harbor for recommendations made by an agent in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue. However, OIR or DFS can still investigate potential violations of the statutes relating to the sales of annuities.

The bill defines comparable standards as:

- With respect to broker-dealers and registered representatives of broker-dealers, applicable Securities and Exchange Commission and FINRA rules related to best interest obligations and supervision of annuity recommendations;
- With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment adviser representatives; and
- With respect to plan fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA,[65] or the Internal Revenue Code.

Under the bill, the insurer is responsible for monitoring registered financial professionals and providing the information gathered to others who are responsible for supervising financial professionals. Financial professional is defined as an agent that is regulated and acting as:

- A broker dealer registered under federal or state securities laws or a registered representative of a broker dealer;
- An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the registered adviser;
- A plan fiduciary under ERISA or fiduciary under the Internal Revenue Code.

The bill establishes detailed training requirements for agents who sell annuities. An agent is prohibited from selling an annuity product unless the agent has adequate knowledge of the produce to recommend the annuity and the agent is compliant with the insurer's product knowledge training standards.

Additionally, the bill requires that an agent who sells annuity products must complete a one-time four-hour training course separate from an agent's continuing education requirements. Under the bill, agents who hold life insurance sales authority, and who wish to sell annuities, must complete the annuity training course, as well. Agents who completed an OIR-approved training course prior to the four-hour course requirement set forth in the bill must either complete a new four-hour training course approved by OIR, or an additional one-time one-credit course approved by OIR.

The required training course must include information on the following topics:

- Types and classifications of annuities.
- Identification of the parties to an annuity.
- How product-specific annuity contract features affect consumers.
- The application of income taxation of qualified and nonqualified annuities.
- The primary use of annuities.
- Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

Providers of the annuity training course must register with the state as a continuing education provider and comply with the applicable rules and guidelines set forth for continuing education providers in the Code. Annuity training courses may be completed in a classroom or by self-study. Other courses, including those from other states, that are substantially similar to the four-hour training course described in the bill may satisfy the training requirements established by the bill.

[65] ERISA is the Employee Retirement Income Security Act of 1974, but is commonly referred to by its acronym. It sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans. United States Department of Labor, *Employee Retirement Income Security Act (ERISA)*, https://www.dol.gov/general/topic/retirement/erisa#:~:text=The%20Employee%20Retirement%20Income%20Security,for%20individuals%20in%20these%20plans (last visited Mar. 19, 2023).

The bill requires that the insurer verify that an agent has completed the required annuity training course before allowing the agent to sell an annuity product for that insurer. An insurer may satisfy this requirement by obtaining certificates of completion of the training course by an agent or by obtaining reports provided by approved continuing education providers.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.001, F.S. relating to definitions.

Section 2. Amends s. 494.0067, F.S., relating to requirements of mortgage lenders.

Section 3. Creates s. 501.2042, F.S., relating to unlawful acts and practices by online crowd-funding campaigns.

Section 4. Amends s. 520.23, F.S., relating to disclosures required.

Section 5. Amends s 560.111, F.S., relating to prohibited acts.

Section 6. Amends s. 560.309, F.S., relating to conduct of business.

Section 7. Amends s. 626.551, F.S., relating to notice of change of address, name.

Section 8. Amends s. 626.602, F.S., relating to insurance agency and adjusting firm names; disapproval.

Section 9. Amends s. 626.854, F.S., relating to “public adjuster” defined; prohibitions.

Section 10. Amends s. 626.860, F.S., relating to attorneys at law; exemption.

Section 11. Amends s. 626.875, F.S. relating to office and records.

Section 12. Amends s. 626.8796, F.S. relating to public adjuster contracts; disclosure statement; fraud statement.

Section 13. Amends s. 626.8797, F.S. relating to proof of loss; fraud statement.

Section 14. Amends s. 626.9541, F.S. relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 15. Amends s. 627.4025, F.S. relating to residential coverage and hurricane coverage defined.

Section 16. Amends s. 627.4133, F.S. relating to notice of cancellation, nonrenewal, or renewal premium.

Section 17. Amends s. 627.4554, F.S. relating to suitability in annuity transactions.

Section 18. Amends s. 634.041, F.S. relating to qualifications for license.

Section 19. Amends s. 634.401, F.S., relating to definitions.

Section 20. Provides uncoded directory language.

Section 21. Provides an effective date of July 1, 2023, unless otherwise expressly provided.

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 positive and negative direct economic impact on the private sector. As a result of the public adjuster provisions set forth in the bill, public adjusters may receive less compensation for their services. As such, consumers who use the services of public adjusters may save money on those services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DFS with the authority necessary to implement rules to administer the portions of the bill where rulemaking is required, including the changes to the requirements for a public adjuster's contract with an insured.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 21, 2023, the Insurance & Banking Subcommittee considered the bill, adopted a strike-all amendment, and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Prohibited certain acts by check-cashing businesses.
- Changed the timeframes for cancellation of public adjuster contracts that consumers entered into based on events that were the subject of a declared state of emergency.
- Changed the commission that a public adjuster can collect for services rendered when an insurer agrees to pay policy limits to an insured to a flat fee of $1,000, rather than "reasonable compensation," because "reasonable" is an undefined term.
- Increased the proposed number of days that a public adjuster has to provide an estimate to an insured and an insurer from 45 days to 60 days to conform with other statutory provisions regarding public adjusters.
- Removed a proposed prohibition on the issuance of a public adjuster license to someone who has pleaded guilty or nolo contendere to a crime involving theft or dishonesty within the ten years preceding application. Current prohibitions are retained.
- Deleted the proposed requirement that an applicant for a public adjuster's license provide proof of an errors and omissions policy in the amount of $500,000 at the time of application.
- Removed the proposed requirement that an insurer issue separate checks to an insured and a public adjuster when a public adjuster is involved in the resolution of a claim.
- Increased the proposed number of days that a public adjuster has to provide an executed contract to an insurer from three days to ten days.
- Changed solvency requirements for manufacturers who sell service warranties.
- Established that the annuity-related portions of the bill are effective January 1, 2024.
- Changed the bill from being effective upon becoming law to being effective July 1, 2023, except as otherwise provided.
- Made other clarifying changes and technical changes to conform with bill drafting conventions.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

A bill to be entitled

An act relating to consumer protection; amending s. 494.001, F.S.; revising the definition of the term "branch office"; defining the term "remote location"; authorizing a licensee under ch. 494, F.S., to allow loan originators to work from remote locations if specified conditions are met; amending s. 494.0067, F.S.; specifying that mortgage lenders may transact business from branch offices and remote locations; providing a requirement for operating remote locations; creating s. 501.2042, F.S.; providing definitions; providing requirements for organizers of crowd-funding campaigns relating to disasters and crowd-funding platforms; amending s. 520.23, F.S.; revising disclosure requirements for agreements governing the sale and lease of a distributed energy generation system; amending s. 560.111, F.S.; providing criminal penalties for certain check cashing violations by money services businesses; amending s. 560.309, F.S.; prohibiting a money services business from cashing corporate checks for a payee in excess of certain workers' compensation policy coverage amounts; amending s. 626.551, F.S.; revising the timeframe in which an insurance representative must notify the Department of Financial Services of certain changes in

information; amending s. 626.602, F.S.; providing applicability of provisions relating to the disapproval of insurance agency names to adjusting firms; revising grounds on which such names may be disapproved by the department; providing for future repeal; amending s. 626.854, F.S.; revising the definition of "public adjuster"; prohibiting public adjusters from contracting with any person other than the named insured without the insured's written consent; specifying a penalty for noncompliance; specifying timeframes in which an insured or a claimant may cancel a public adjuster's contract without penalty or contract under certain circumstances; revising requirements for public adjuster's contracts; specifying requirements for public adjusters if the insurer, within a certain timeframe, pays or commits in writing to pay to the insured the policy limit of the policy; specifying the commission a public adjuster receives under certain circumstances; amending s. 626.860, F.S.; providing that an attorney's exemption from public adjuster licensure requirements do not apply to certain persons; amending s. 626.875, F.S.; revising recordkeeping requirements for appointed independent adjusters and licensed public adjusters; amending s.

626.8796, F.S.; revising requirements for public adjuster contracts; specifying requirements for and prohibitions on public adjusters relating to such contracts; providing construction; authorizing the department to adopt rules; amending s. 626.8797, F.S.; revising a fraud statement requirement in proof-of-loss statements; amending s. 626.9541, F.S.; adding an unfair or deceptive insurance act relating to health insurance contracts; amending s. 627.4025, F.S.; revising the definition of the term "hurricane," and defining the term "hurricane deductible," for residential coverage policies; amending s. 627.4133, F.S.; revising the timeframe after which certain insurers may not cancel policies except for specified reasons; amending s. 627.4554, F.S.; revising legislative purpose; revising applicability; revising and defining terms; revising and specifying duties of insurers and agents relating to the recommendation and sale of annuity investments; specifying comparable standards that comply with such requirements; specifying agent training requirements; providing and revising construction; authorizing the adoption of specified forms; amending s. 634.401, F.S.; revising the definition of the term "manufacturer"; providing a directive to the Division of Law Revision; providing

effective dates.

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

Section 1. Subsections (35) through (38) of section 494.001, Florida Statutes, are renumbered as subsections (36) through (39), respectively, subsection (3) is amended, and a new subsection (35) is added to that section, to read:

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

(3) "Branch office" means a location, other than a mortgage broker's or mortgage lender's principal place of business or a remote location:

(a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection with business conducted under this chapter;

(b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or serviced; or

(c) At which mortgage loans are originated, negotiated, funded, or serviced by a licensee.

(35) "Remote location" means a location, other than a principal place of business or a branch office, at which a loan originator of a licensee may conduct business. Licensees may allow loan originators to work from remote locations if:

(a) The licensee has written policies and procedures for

the supervision of loan originators working from remote locations.

(b) Access to company platforms and customer information is in accordance with the licensee's comprehensive written information security plan.

(c) An in-person customer interaction does not occur at a loan originator's residence, unless such residence is a licensed location.

(d) Physical records are not maintained at a remote location.

(e) Customer interactions and conversations about consumers will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 CFR Part 314, as such requirements may be amended from time to time.

(f) Loan originators working at remote locations access the company's secure systems, including a cloud-based system, directly from any out-of-office device such employee uses, including a laptop, telephones desktop computer, and tablet, via a virtual private network or comparable system that ensures secure connectivity and requires passwords or other forms of authentication to access.

(g) Licensee ensures that appropriate security updates,

patches, or other alterations to the security of all devices used at remote locations are installed and maintained.

(h) Licensee has an ability to remotely lock or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems.

(i) The Nationwide Multistate Licensing System and Registry's record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location or the loan originator has elected a licensed branch office as a registered location.

Section 2. Subsection (1) of section 494.0067, Florida Statutes, is amended to read:

494.0067 Requirements of mortgage lenders.—

(1) A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business, branch office, or remote location. Each principal place of business, ~~and~~ each branch office, and remote location shall be operated under the full charge, control, and supervision of the licensee pursuant to this part.

Section 3. Section 501.2042, Florida Statutes, is created to read:

501.2042 Unlawful acts and practices by online crowd-funding campaigns.—

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

(a) "Crowd-funding campaign" means an online fundraising

initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.

(b) "Crowd-funding platform" means an entity doing business in this state and that provides an online medium for the creation and facilitation of a crowd-funding campaign.

(c) "Disaster" means any natural, technological, or civil emergency that occurs in this state and that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a county, the Governor, or the President of the United States.

(d) "Organizer" means a person who:

1. Resides or is domiciled in this state.

2. Has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary who resides in the state, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

(2) When an organizer arranges a crowd-funding campaign related to a disaster, the organizer must produce to the crowd-funding platform a complete and accurate accounting of all donations received and expended by the crowd-funding campaign for the benefit of state residents. The crowd-funding platform must publish all received accountings on its website.

Section 4. Section 520.23, Florida Statutes, is amended to

read:

520.23 Disclosures required.—Each agreement governing the sale or lease of a distributed energy generation system shall, at a minimum, include a written statement printed in at least 12-point type that is separate from the agreement, is separately acknowledged by the buyer or lessee, and includes the following information and disclosures, if applicable:

(1) The name, address, telephone number, and e-mail address of the buyer or lessee.

(2) The name, address, telephone number, e-mail address, and valid state contractor license number of the person responsible for installing the distributed energy generation system.

(3) The name, address, telephone number, e-mail address, and valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the distributed energy generation system.

(4) The customer contact center phone number for the Department of Business and Professional Regulation.

(5) ~~(4)~~ A written statement indicating whether the distributed energy generation system is being purchased or leased.

(a) If the distributed energy generation system will be leased, the written statement must include a disclosure in

substantially the following form: "You are entering into an agreement to lease a distributed energy generation system. You will lease (not own) the system installed on your property."

(b) If the distributed energy generation system will be purchased, the written statement must include a disclosure in substantially the following form: "You are entering into an agreement to purchase a distributed energy generation system. You will own (not lease) the system installed on your property."

(6) ~~(5)~~ The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.

(7) ~~(6)~~ A payment schedule, including any amounts owed at contract signing, at the commencement of installation, at the completion of installation, and any final payments. If the distributed energy generation system is being leased, the written statement must include the frequency and amount of each payment due under the lease and the total estimated lease payments over the term of the lease.

(8) ~~(7)~~ Each state or federal tax incentive or rebate, if any, relied upon by the seller in determining the price of the distributed energy generation system.

(9) ~~(8)~~ A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: "It is important to understand that future

electric utility rates are estimates only. Your future electric utility rates may vary."

(10) ~~(9)~~ A description of any one-time or recurring fees, including, but not limited to, estimated system removal fees, maintenance fees, Internet connection fees, and automated clearinghouse fees. If late fees may apply, the description must describe the circumstances triggering such late fees.

(11) ~~(10)~~ A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(12) ~~(11)~~ A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(13) ~~(12)~~ A provision notifying the buyer or lessee of the

right to rescind the agreement for a period of at least 3 business days after the agreement is signed. This subsection does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. 553.73.

(14) ~~(13)~~ A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.

(15) ~~(14)~~ A description of any performance or production guarantees.

(16) ~~(15)~~ A description of the ownership and transferability of any tax credits, rebates, incentives, or

renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.

(17) ~~(16)~~ A statement in substantially the following form: "You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system."

(18) ~~(17)~~ The approximate start and completion dates for the installation of the distributed energy generation system.

(19) ~~(18)~~ A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the purchase price.

(20) ~~(19)~~ A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: "Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests."

(21) ~~(20)~~ If the distributed energy generation system will be purchased, a disclosure notifying the buyer of the

requirements for interconnecting the system to the utility system.

(22) ~~(21)~~ A disclosure notifying the buyer or lessee of the party responsible for obtaining interconnection approval.

(23) ~~(22)~~ A description of any roof warranties.

(24) A statement in substantially the following form: "You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require reinstallation of the distributed energy generation system."

(25) ~~(23)~~ A disclosure notifying the lessee whether the seller will insure a leased distributed energy generation system against damage or loss and, if applicable, the circumstances under which the seller will not insure the system against damage or loss.

(26) ~~(24)~~ A statement~~, if applicable,~~ in substantially the following form: "You are responsible for obtaining insurance policies or coverage for any loss of or damage to the system. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system."

(27) A statement in substantially the following form: "Placing a distributed energy generation system on your roof may impact your future insurance premiums. You are responsible for contacting your insurance carrier, prior to entering into a purchase or lease agreement, to confirm whether your current

policy or coverage will need to be modified upon installing the distributed energy generation system onto your dwelling."

(28) ~~(25)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will place a lien on the buyer's or lessee's home or other property as a result of entering into a purchase or lease agreement for the distributed energy generation system.

(29) ~~(26)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will file a fixture filing or a State of Florida Uniform Commercial Code Financing Statement Form (UCC-1) on the distributed energy generation system.

(30) ~~(27)~~ A disclosure identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.

(31) ~~(28)~~ A disclosure as to whether the lease agreement may be transferred to a purchaser upon sale of the home or real property to which the system is affixed, and any conditions for such transfer.

(32) ~~(29)~~ A blank section that allows the seller to provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

The requirement to provide a written statement under this

section may be satisfied by the electronic delivery of a document within 24 hours after execution of the written statement containing the required statement if the intended recipient of the electronic document affirmatively acknowledges its receipt. An electronic document satisfies the font and other formatting standards required for the written statement if the format and the relative size of characters of the electronic document are reasonably similar to those required in the written document or if the information is otherwise displayed in a reasonably conspicuous manner.

Section 5. Subsection (6) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.309(11) or s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (11) is added to section 560.309, Florida Statutes to read:

560.309 Conduct of business.—

(11) A licensee shall not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy coverage amount during the same dates as the workers' compensation policy coverage period.

Section 7. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—A licensee must notify the department, in writing, within 5 ~~30~~ days after a change of name, residence address, principal business street address, mailing address, contact telephone numbers, including a business telephone number, or e-mail address. A licensee who has moved his or her principal place of residence and principal place of business from this state shall have his or her license and all appointments immediately terminated by the department. Failure to notify the department within the required time shall result in a fine not to exceed $250 for the first offense and a fine of at least $500 or suspension or revocation of the license pursuant to s. 626.611, s. 626.6115, s. 626.621, or s. 626.6215 for a subsequent offense. The department may adopt rules to administer and enforce this section.

Section 8. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency and adjusting firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency or adjusting firm on any of the following grounds:

(1) The name interferes with or is too similar to a name already filed and in use by another agency, or adjusting firm,

or insurer.

(2) The use of the name may mislead the public in any respect.

(3) The name states or implies that the agency or adjusting firm is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, settles claims, or is entitled to engage in insurance activities not permitted under licenses held or applied for. This provision does not prohibit the use of the word "state" or "states" in the name of the agency. The use of the word "state" or "states" in the name of an agency or adjusting firm does not in and of itself imply that the agency or adjusting firm is a state agency.

(4)(a) The name contains the word "Medicare" or "Medicaid."

(b) An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name. Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name. This paragraph is repealed July 1, 2023.

Section 9. Section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant, regardless of how that person describes or presents his or her services, or who, for money, commission, or any other thing of value, acts on behalf of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, regardless of how that person describes or presents his or her services, or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such

person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

(2) This definition does not apply to:

(a) A licensed health care provider or employee thereof who prepares or files a health insurance claim form on behalf of a patient.

(b) A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claims filing process, or filing a claim, as such assistance relates to coverage under a health insurance policy.

(c) A person who files a health claim on behalf of another and does so without compensation.

(3) A public adjuster may not give legal advice or act on behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.

(4) For purposes of this section, the term "insured" includes only the policyholder and any beneficiaries named or similarly identified in the policy.

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6)(a) When entering a contract for adjuster services

after July 1, 2023, a public adjuster is prohibited from contracting with any person other than the named insured unless the named insured provides written consent, subsequent to entering a contract for public adjusting services.

(b) In the event a public adjuster contracts with a third party in settling the named insured's claim, without first obtaining the insured's written consent, payment of the third party's fees shall be made from the public adjuster's fee.

(7)~~(6)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 days after the date on which the contract is executed. If the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is later. The public adjuster's contract must contain the following language in minimum 18-point bold type immediately before the space reserved in the contract for the signature of the insured or claimant: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract. If this contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, you may

cancel this contract for any reason without penalty or obligation to you within 30 days after the date of the event, or 10 days after the date on which the contract is executed, whichever is later. You may also cancel the contract without penalty or obligation to you if I, as your public adjuster, fail to provide you and your insurer a copy of a written estimate within 60 days of the execution of the contract in accordance with s. 626.854(14)(b), Florida Statutes." The ~~by providing~~ notice of cancellation shall be provided to ...(name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.

(8) ~~(7)~~ It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured

policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(9) ~~(8)~~ A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a monetary loan or advance to a client or prospective client.

(10) ~~(9)~~ A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of $25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

(11) If the insurer, not later than 14 days after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

(a) Inform the insured that, due to the insurer's payment or commitment to pay the policy limit, the loss recovery amount might not be increased by the insurer.

(b) Not receive a commission consisting of a percentage of the total amount of the paid by an insurer to resolve the claim.

(c) Be entitled only to $1,000 from the insured for the time spent and expenses incurred on the claim by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

(12) If the public adjuster enters into a contract with an insured or claimant after the insured or claimant unsuccessfully negotiates an insurance claim payment and the public adjuster is successful in obtaining a higher insurance claim payment, the public adjuster shall receive a commission consisting of 10

percent of the difference between the last insurance claim payment offer made to the insured before the insured signed a contract with the public adjuster and the final insurance claim payment obtained through the work of the public adjuster after entering into the contract with the insured or claimant.

(13) ~~(10)~~ (a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster rate of compensation may not be

increased based solely on the fact that the claim is litigated.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

(14)(a) ~~(11)~~ Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(b) An insured may cancel the contract with no additional penalties or fees charged by the public adjuster if such an estimate is not provided within 60 days after executing the contract, subject to the cancellation notice requirement in this section.

(15) ~~(12)~~ A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or

manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

(16) ~~(13)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

(17) ~~(14)~~ The public adjuster must ensure that prompt notice is given of the claim to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet

or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. The public adjuster shall meet or communicate with the insurer in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to any insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insureds may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insureds must allow the insurer to have access to the property without the participation or presence of the public adjuster or insureds in order to facilitate the insurer's prompt inspection of the loss or damage.

(18) ~~(15)~~ A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in subsection (1) unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy, except as it relates to solicitation prohibited in s. 489.147. In addition, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(19) ~~(16)~~ A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

(20) ~~(17)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the

effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

(21) ~~(18)~~ Subsections (5)-(20) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(22) ~~(19)~~ Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license as a public adjuster; or

(e) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(23) ~~(20)~~ The department may take administrative actions

and impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section without the licensure required under this section or s. 626.112.

(24) ~~(21)~~ A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant pursuant to paragraph (13)(a) ~~(10)(a)~~ may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

(25) ~~(22)~~(a) Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any

compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 10. Section 626.860, Florida Statutes, is amended to read:

626.860 Attorneys at law; exemption.—Attorneys at law duly

licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under ~~the provisions of~~ this code to authorize them to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance. This exemption does not extend to the employees, interns, volunteers, or contractors of an attorney or of a law firm.

Section 11. Section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(1)(a) Each appointed independent adjuster and licensed public adjuster must maintain a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of such an office in the home of the licensee.

(b) A license issued under this chapter must at all times be posted in a conspicuous place in the principal place of business of the license holder. If the licensee is conducting business away from the place of business such that the license cannot be posted, the licensee shall have such license in his or her actual possession at the time of carrying on such business.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 years after completion

of the adjustment and shall be available for inspection by the department at all times. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto. At a minimum, the following records must be maintained for a period of not less than 5 years:

(a) Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable.

(b) The date, location, and amount of the loss.

(c) An unaltered copy of the executed disclosure document required by s. 626.8796.

(d) An unaltered copy of the executed public adjuster contract required by s. 626.8796.

(e) A copy of the estimate of damages provided to the insurer.

(f) The name of the insurer; the name of the claims representative of the insurer; and the amount, expiration date, and number of each policy under which the loss is covered.

(g) An itemized statement of the recoveries by the insured from the sources known to the adjuster.

(h) An itemized statement of all compensation received by the public adjuster from any source, in connection with the loss.

(i) A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Section 12. Section 626.8796, Florida Statutes, is amended to read:

626.8796 Public adjuster contracts; disclosure statement; fraud statement.—

(1) All contracts for public adjuster services must be in writing in at least 12-point font, titled "Public Adjuster Contract" and prominently display the following statement on the contract in minimum 18-point bold type before the space reserved for in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business

address, phone number, e-mail address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name, ~~and~~ street address, phone number, and e-mail address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services in minimum 18-point bold type before the space reserved for in the contract for the signature of the insured; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the initials of the named insured on each page that does not contain the insured's signature; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insured at the time of execution and to the insurer within 10 ~~30~~ days after execution. A public adjusting firm that adjusts claims primarily for commercial entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners is deemed to comply with the requirements of this subsection if, at the time a proof of loss is submitted, the public adjusting firm remits to the insurer an affidavit signed by the public adjuster or

public adjuster apprentice that identifies:

(a) The full name, permanent business address, phone number, e-mail address, and license number of the public adjuster or public adjuster apprentice.

(b) The full name of the public adjusting firm.

(c) The insured's full name, ~~and~~ street address, phone number, and e-mail address, together with a brief description of the loss.

(d) An attestation that the compensation for public adjusting services will not exceed the limitations provided by law.

(e) The type of claim, including an emergency claim, nonemergency claim, or supplemental claim.

(3) The public adjuster shall not provide services until both the insured and insurer have been provided with unaltered copies of the executed contract.

(4) The insured may rescind the contract for public adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 days of executing the contract.

(5) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document to be signed by the insured, on a form adopted by the department, regarding the claim process that accomplishes the following:

(a) Defines the following types of adjusters who may be involved in the claim process: company adjuster, independent adjuster, and public adjuster.

(b) Explains that the public adjuster is not a representative or employee of the insurer.

(c) Explains that the insured is not required to hire a public adjuster, but has a right to do so.

(d) Explains that an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim.

(e) Explains that the public adjuster's salary, fee, commission, or other consideration to be paid to a public adjuster is the insured's responsibility.

(f) Explains that the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution.

(g) Explains that if the contract was entered based on events that are the subject of a declaration of a state of emergency by the Governor, the insured has a right to rescind the contract within 30 days.

(6) A contract that does not comply with this section is invalid and unenforceable.

(7) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including rules

to adopt forms required by this section.

Section 13. Section 626.8797, Florida Statutes, is amended to read:

626.8797 Proof of loss; fraud statement.—All proof-of-loss statements must prominently display the following statement in minimum 18-point bold type before the space reserved in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

Section 14. Paragraph (a) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

(a) Misrepresentations and false advertising of insurance

policies.—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which:

1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

2. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

3. Makes any false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.

4. Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

5. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

7. Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.

8. Misrepresents any insurance policy as being shares of stock or misrepresents ownership interest in the company.

9. Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person's credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

10. Fails to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health insurance as defined in s. 624.603.

Section 15. Paragraph (c) of subsection (2) of section 627.4025, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

627.4025 Residential coverage and hurricane coverage defined.—

(2) As used in policies providing residential coverage:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

1. Beginning at the time a ~~hurricane watch or~~ hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; and

~~2. Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and~~

~~3.~~ Ending 24 ~~72~~ hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

(d) "Hurricane deductible" means the deductible applicable to loss caused by a hurricane.

Section 16. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal premium.—

(1) Except as provided in subsection (2):

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the

reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of

cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 60 ~~90~~ days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 90 days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less than 90 days.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination. The notice must include the reason for the

nonrenewal, cancellation, or termination, except that:

1. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2. If cancellation or termination occurs during the first 90 days the insurance is in force and the insurance is canceled

or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 60 ~~90~~ days, the policy may not be canceled by the insurer unless there has been a material misstatement; a nonpayment of premium; a failure to comply, within 90 days after the date of effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 90 days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

5. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the

notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

6. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 17. Effective January 1, 2024, section 627.4554, Florida Statutes, is amended to read:

627.4554 Suitability in annuity transactions ~~investments~~.—

(1) PURPOSE.—The purpose of this section is to require agents to act in the best interest of the consumer when making

a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so ~~set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure~~ that the insurance needs and financial objectives of consumers are effectively ~~appropriately~~ addressed at the time of the transaction.

(2) SCOPE.—This section applies to any sale or recommendation of ~~made to a consumer to purchase, exchange, or replace~~ an annuity ~~by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended~~.

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

(a) "Agent" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the term includes an insurer where no agent is involved ~~has the same meaning as provided in s. 626.015~~.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent in connection with the recommendation or sale of an annuity from an insurer,

intermediary, or directly from the consumer.

(d) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs and financial objectives, including, at a minimum, the following:

1. Age.

2. Annual income.

3. Financial situation and needs, including debts and other obligations.

4. Financial experience.

5. Insurance needs.

6. Financial objectives.

7. Intended use of the annuity.

8. Financial time horizon.

9. Existing assets or financial products, including investment, annuity, and insurance holdings.

10. Liquidity needs.

11. Liquid net worth.

12. Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity.

13. Financial resources used to fund the annuity.

14. Tax status.

(e) ~~(c)~~ "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(f) ~~(d)~~ "Insurer" has the same meaning as provided in s. 624.03.

(g) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

(h) "Material conflict of interest" means a financial interest of the agent in the sale of an annuity that a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or noncash compensation.

(i) "Noncash compensation" means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

(j) "Nonguaranteed elements" means the premiums, credited interest rates, including any bonus; benefits; values; dividends; noninterest based credits; charges; or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(k) ~~(e)~~ "Recommendation" means advice provided by an ~~insurer or its~~ agent to an individual ~~a~~ consumer that was intended to result or does result ~~which would result~~ in a ~~the~~

purchase, an exchange, or a replacement of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(l) ~~(f)~~ "Replacement" means a transaction in which a new annuity ~~policy or contract~~ is to be purchased and it is known or should be known to the proposing ~~insurer or its~~ agent, or to the proposing insurer whether or not an agent is involved, that by reason of such transaction an existing annuity or other insurance policy has been or is to be any of the following ~~or contract will be~~:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(m) "SEC" means the United States Securities and Exchange

Commission.

~~(g) "Suitability information" means information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:~~

~~1. Age;~~

~~2. Annual income;~~

~~3. Financial situation and needs, including the financial resources used for funding the annuity;~~

~~4. Financial experience;~~

~~5. Financial objectives;~~

~~6. Intended use of the annuity;~~

~~7. Financial time horizon;~~

~~8. Existing assets, including investment and life insurance holdings;~~

~~9. Liquidity needs;~~

~~10. Liquid net worth;~~

~~11. Risk tolerance; and~~

~~12. Tax status.~~

(4) EXEMPTIONS.—Unless otherwise specifically included, this section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(c) ~~5.~~ Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or

(d) ~~6.~~ Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) An agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the financial interest of the agent or insurer ahead of the consumer's interest. An agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflict of

interest, and documentation:

1.a. The agent, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(I) Know the financial situation, insurance needs, and financial objectives of the consumer.

(II) Understand the available options after making a reasonable inquiry into options available to the agent.

(III) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(IV) Communicate the reason or reasons for the recommendation.

b. The requirements of subparagraph a. include:

(I) Making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity.

(II) Requiring an agent to consider the types of products the agent is authorized and licensed to recommend or sell address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the

recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

(III) Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit or other insurance-related features.

c. The requirements of this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as provided in this section.

d. The consumer profile information, characteristics of the insurer and product costs, rates, benefits and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

e. The requirements under subparagraph a. apply to the particular annuity as a whole and the underlying subaccounts to which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

f. Subparagraph a. does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure shall necessarily be

recommended.

g. Subparagraph a. does not require the agent to have ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and the agent.

h. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(I) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

(II) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

(III) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

i. This section does not require an agent to obtain any license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, in order to fulfill the duties and obligations contained in this

section; provided, the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2.a. Before the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer on a form substantially similar to that posted on the office website as Appendix A:

(I) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction.

(II) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(III) An affirmative statement describing the insurers for which the agent is authorized, contracted or appointed, or otherwise able to sell insurance products, using the following descriptions:

(A) From one insurer;

(B) From two or more insurers; or

(C) From two or more insurers, although primarily contracted with one insurer.

(IV) A description of the sources and types of cash compensation and noncash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary or other agent, or by fee as a result of a contract for advice or consulting services; and

(V) A notice of the consumer's right to request additional information regarding cash compensation described in subparagraph b.

b. Upon request of the consumer or the consumer's designated representative, the agent shall disclose:

(I) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages.

(II) Whether the cash compensation is a one-time or multiple occurrence amount, and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages; and ~~When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is~~

~~suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

c.1. Before or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been ~~reasonably~~ informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; any annual fees; investment advisory fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.

3. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. An agent shall at the time of the recommendation or sale:

a. Make a written record of any recommendation and the basis for the recommendation, subject to this section.

b. Obtain a consumer signed statement on a form

substantially similar to that posted on the office website as Appendix B, documenting:

(I) A consumer's refusal to provide the consumer profile information, if any.

(II) A consumer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

c. Obtain a consumer signed statement on a form substantially similar to that posted on the office website as Appendix C, acknowledging the annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Application of the best interest obligation. Any requirement applicable to an agent under this subsection shall apply to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or education materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase~~

~~or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.~~

~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:~~

~~a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

~~b. Would benefit from product enhancements and improvements; and~~

~~c. Has had another annuity exchange or replacement, including an exchange or replacement within the preceding 36 months.~~

~~(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-~~

~~point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.~~

~~(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

(b)~~(d)~~ 1. Except as provided under subparagraph 2, ~~An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However,~~ an ~~insurer or its~~ agent shall not have ~~does not have~~ an obligation to a consumer related to an annuity transaction under paragraph (a)1.~~(a) or paragraph (c)~~ if:

a.~~1.~~ A recommendation has not been made;

b.~~2.~~ A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

c.~~3.~~ A consumer refuses to provide relevant consumer profile ~~suitability~~ information and the annuity transaction is

not recommended; or

d.~~4.~~ A consumer decides to enter into an annuity transaction that is not based on a recommendation of an insurer or its agent.

2. An insurer's issuance of an annuity subject to subparagraph 1. shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c)1. Except as permitted under paragraph (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

~~(c) At the time of sale, the agent or the agent's representative must:~~

~~1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);~~

~~2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and~~

~~3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.~~

~~(f) Before executing a replacement or exchange of an~~

~~annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.~~

2.~~(g)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section including, but not limited to, the following:~~.~~

~~1. Such system must include, but is not limited to:~~

a. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals.~~;~~

b. The insurer shall establish and maintain ~~Establishing~~ standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply with the requirements of subsection (6).~~;~~

c. The insurer shall provide ~~Providing~~ product-specific training and training materials that explain all material features of its annuity products to its agents.~~;~~

d. The insurer shall establish and maintain ~~Maintaining~~ procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives ~~for determining that a recommendation is suitable~~. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria.~~;~~

e. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e). This may include, but is not limited to ~~suitable, such as~~ confirmation of consumer profile ~~suitability~~ information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from

using sampling procedures or from confirming the consumer profile ~~suitability~~ information after the issuance or delivery of the annuity.~~; and~~

f. The insurer shall establish and maintain reasonable procedures to assess, prior to, or upon issuance or delivery of, an annuity, whether an agent has provided to the consumer the information required to be provided under this subsection.

g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this subparagraph are not intended to prohibit the receipt of health insurance, office rents, office support, retirement benefits, or other employee benefits by employees as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

i.~~f.~~ The insurer shall annually provide ~~providing~~ a written report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if

any.

3.~~2.~~ An insurer is not required to include in its supervision system:

a. Agent recommendations to consumers of products other than the annuities offered by the insurer;

b. Consideration of or comparison to options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

4.~~3.~~ An insurer may contract for performance of a function, including maintenance of procedures, required under subparagraph 1.

a. An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection ~~If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1~~. These include, but are not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does not represent ~~for representing~~ that the function is being properly performed.

b. An insurer is responsible for taking appropriate

corrective action and may be subject to sanctions and penalties pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(d) ~~(h)~~ Neither an agent nor an insurer shall ~~may not~~ dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of consumer profile ~~suitability~~ information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(e)1. ~~(i)~~ Recommendations and sales made in compliance with comparable standards shall ~~FINRA requirements pertaining to the suitability and supervision of annuity transactions~~ satisfy the requirements of this section. This applies to all recommendations and ~~FINRA broker-dealer~~ sales of ~~variable~~ annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue ~~and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales.~~ However, this paragraph does not limit the ability of the office or the department to investigate and enforce~~, including investigate, the provisions of~~ this section.

2. Subparagraph 1. shall not limit the insurer's

obligation to comply with subsection (5)(c)1., although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial professional.

3. For this paragraph to apply, an insurer shall ~~must~~:

a.~~1.~~ Monitor relevant conduct of the financial professional seeking to rely on subparagraph 1. or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities law, ~~the FINRA member broker-dealer~~ using information collected in the normal course of an insurer's business; and

b.~~2.~~ Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph 1., such as the financial professional's broker dealer or investment adviser registered under federal or state securities laws, ~~FINRA member broker-dealer~~ information and reports that are reasonably appropriate to assist such entity ~~the FINRA member broker-dealer~~ in maintaining its supervision system.

4. For purposes of this paragraph, the term:

a. "Comparable standards" means:

(I) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales including, but not limited to,

Regulation Best Interest, 17 C.F.R. s. 240.15l-1, and any amendments or successor regulations thereto;

(II) With respect to investment advisers registered under federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities laws, including, but not limited to, Form ADV and interpretations; and

(III) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions and all other requirements attendant to such status under ERISA, or the IRC and any amendments or successor statutes thereto.

b. "Financial professional" means an agent that is regulated and acting as:

(I) A broker dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(II) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(III) A plan fiduciary under Section 3(21) of the Employee Retirement Income Security Act of 1974 (ERISA) or fiduciary under Section 4975(e)(3) of the Internal Revenue Code (IRC) or

any amendments or successor statutes thereto.

(6) AGENT TRAINING.—

(a) An agent shall not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided product-specific training standards and materials to comply with this subsection.

(b)1.a. An agent who engages in the sale of annuity products shall complete a one-time 4 hour training course. This requirement is not part of an agent's continuing education requirement in s. 626.2815; however, if a course provider submits and receives approval from the Department of Financial Services, then the course could also be eligible for continuing education credit pursuant to s. 626.2815.

b. Agents who hold a life insurance line of authority on the effective date of this act and who desire to sell annuities shall complete the requirements of this subsection within 6 months after the effective date of this act. Individuals who obtain a life insurance line of authority after the effective date of this act may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

2. The minimum length of the training required under this subsection is 4 hours.

3. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How product-specific annuity contract features affect consumers.

d. The application of income taxation of qualified and nonqualified annuities.

e. The primary uses of annuities.

f. Appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

4. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

5. An agent who has completed an annuity training course prior to the effective date of this act shall, within 6 months after the effective date of this act, complete either:

a. A new 4-hour training course; or

b. An additional one-hour training course on appropriate sales practices, replacement, and disclosure requirements under

this section.

6. Annuity training courses may be conducted and completed by classroom or self-study methods.

7. Providers of annuity training shall issue certificates of completion.

8. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

9. The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

(7)~~(6)~~ RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(8) ~~(7)~~ COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent which results in harm to a consumer, the office may order the insurer to take reasonably appropriate corrective action for the consumer and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An ~~insurance~~ agent to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent, including monetary restitution of penalties or fees incurred by the consumer, and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an ~~insurance~~ agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by

the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(9)~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(10) ~~(9)~~ RULES.—The department and the commission may adopt rules to administer this section.

(11) The department may adopt by rulemaking the three forms prescribed in Appendices A through C of the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation entitled:

(a) Insurance Agent (Producer) Disclosure For Annuities.

(b) Consumer Refusal To Provide Information.

(c) Consumer Decision to Purchase an Annuity NOT Based on a Recommendation.

Section 18. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the office, which holds a

certificate of authority under s. 624.401 to do business within this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least $15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation,

termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this subparagraph may either pay 100 percent of claims as they are incurred, or 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 19. Paragraphs (d), (e), and (f) of subsection (17) of section 634.401, Florida Statutes, are amended to read:

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

(17) "Manufacturer" means any entity or its affiliate which:

~~(d) Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

(d)~~(e)~~ Has and maintains at all times, a minimum net worth of at least $100 ~~$10~~ million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(e)~~(f)~~ Is authorized to do business in this state.

Section 20. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date this act becomes a law.

Section 21. Except as otherwise expressly provided, this act shall take effect July 1, 2023.

COMMERCE COMMITTEE

CS/HB 1185 by Rep. Giallombardo
Relating to Consumer Protection

AMENDMENT SUMMARY
April 17, 2023

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

- Establishes that crowd-funding platforms that are administering disaster-related donation campaigns must meet certain legal requirements.
- Removes a provision related to insurance agents notifying the Department of Financial Services (DFS) of a change in their names or addresses and retains current law.
- Provides clarification regarding the public adjusters' duties when executing contracts to provide services to policyholders.
- Changes the compensation paid to public adjusters for providing services to policyholders.
- Provides limitations on the timeframes during which adjusters must make their records available for inspection by DFS.
- Preserves the 90-day underwriting period for policies written by Citizens Property Insurance where the risks covered by the policies were most recently covered by a property insurer placed into receivership, rather than applying the 60-day period proposed by the bill.
- Provides a three-year time-frame for providing notice of a condominium-related loss assessment claim to an insurer where no specific limit currently applies.
- Makes technical and grammatical changes to conform the bill to the Senate.

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: Commerce Committee

Representative Giallombardo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (35) through (38) of section 494.001, Florida Statutes, are redesignated as subsections (36) through (39), respectively, a new subsection (35) is added to that section, and subsection (3) of that section is amended, to read:

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

(3) "Branch office" means a location, other than a mortgage broker's or mortgage lender's principal place of business or remote location:

(a) The address of which appears on business cards, stationery, or advertising used by the licensee in connection

with business conducted under this chapter;

(b) At which the licensee's name, advertising or promotional materials, or signage suggests that mortgage loans are originated, negotiated, funded, or serviced; or

(c) At which mortgage loans are originated, negotiated, funded, or serviced by a licensee.

(35) "Remote location" means a location, other than a principal place of business or a branch office, at which a loan originator of a licensee may conduct business. A licensee may allow loan originators to work from remote locations if:

(a) The licensee has written policies and procedures for supervision of loan originators working from remote locations.

(b) Access to company platforms and customer information is in accordance with the licensee's comprehensive written information security plan.

(c) An in-person customer interaction does not occur at a loan originator's residence unless such residence is a licensed location.

(d) Physical records are not maintained at a remote location.

(e) Customer interactions and conversations about consumers will be in compliance with federal and state information security requirements, including applicable provisions under the Gramm-Leach-Bliley Act and the Safeguards Rule established by the Federal Trade Commission, set forth at 16 C.F.R. part 314, as such requirements may be amended from time to time.

(f) A loan originator working at a remote location accesses the company's secure systems or documents, including a cloud-based system, directly from any out-of-office device such as a laptop, phone, desktop computer, or tablet, through a virtual private network or system that ensures secure connectivity and that requires passwords or other forms of authentication to access.

(g) The licensee ensures that appropriate security updates, patches, or other alterations to the security of all devices used at remote locations are installed and maintained.

(h) The licensee is able to remotely lock or erase company-related contents of any device or otherwise remotely limit all access to a company's secure systems.

(i) The registry's record of a loan originator who works from a remote location designates the principal place of business as the loan originator's registered location, or the loan originator has elected a licensed branch office as a registered location.

Section 2. Subsection (1) of section 494.0067, Florida Statutes, is amended to read:

494.0067 Requirements of mortgage lenders.—

(1) A mortgage lender that makes mortgage loans on real estate in this state shall transact business from a principal place of business, branch office, or remote location. Each principal place of business, ~~and each~~ branch office, and remote location shall be operated under the full charge, control, and

supervision of the licensee pursuant to this part.

Section 3. Section 501.2042, Florida Statutes, is created to read:

501.2042 Unlawful acts and practices by online crowd-funding campaigns.—

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

(a) "Crowd-funding campaign" means an online fundraising initiative that is intended to receive monetary donations from donors and is created by an organizer in the interest of a beneficiary.

(b) "Crowd-funding platform" means an entity doing business in this state which provides an online medium for the creation and facilitation of a crowd-funding campaign.

(c) "Disaster" has the same meaning as 252.34 (2)

(d) "Organizer" means a person who:

1. Resides or is domiciled in this state; and

2. Has an account on a crowd-funding platform and has created a crowd-funding campaign either as a beneficiary or on behalf of a beneficiary, regardless of whether the beneficiary or the crowd-funding campaign has received donations.

(1) For crowd-funding campaigns related to and arising out of a declared disaster, a crowd-funding platform must:

(a) Collect and retain, for one year after the date of the declared disaster, the name, e-mail address, phone number, and state of residence of the organizer.

(b) Require the organizer to indicate, on the crowd-

funding campaign, the state in which they are located.

(c) Cooperate with any investigation by or in partnership with law enforcement.

(d) Clearly display and direct donors to fundraisers that comply with the crowd-funding platform's terms of service.

(2) When an organizer arranges a crowd-funding campaign related to and arising out of a declared disaster, the organizer must attest that:

(a) All information provided in connection with a crowd-funding campaign is accurate, complete and not likely to deceive users.

(b) All donations contributed to the crowd-funding campaign will be used solely as described in the materials the organizer posts or provides on the crowd-funding platform.

Section 4. Section 520.23, Florida Statutes, is amended to read:

520.23 Disclosures required.—Each agreement governing the sale or lease of a distributed energy generation system shall, at a minimum, include a written statement printed in at least 12-point type that is separate from the agreement, is separately acknowledged by the buyer or lessee, and includes the following information and disclosures, if applicable:

(1) The name, address, telephone number, and e-mail address of the buyer or lessee.

(2) The name, address, telephone number, e-mail address, and valid state contractor license number of the person

responsible for installing the distributed energy generation system.

(3) The name, address, telephone number, e-mail address, and valid state contractor license number of the distributed energy generation system maintenance provider, if different from the person responsible for installing the distributed energy generation system.

(4) The customer contact center phone number for the Department of Business and Professional Regulation.

(5) ~~(4)~~ A written statement indicating whether the distributed energy generation system is being purchased or leased.

(a) If the distributed energy generation system will be leased, the written statement must include a disclosure in substantially the following form: "You are entering into an agreement to lease a distributed energy generation system. You will lease (not own) the system installed on your property."

(b) If the distributed energy generation system will be purchased, the written statement must include a disclosure in substantially the following form: "You are entering into an agreement to purchase a distributed energy generation system. You will own (not lease) the system installed on your property."

(6) ~~(5)~~ The total cost to be paid by the buyer or lessee, including any interest, installation fees, document preparation fees, service fees, or other fees.

(7) ~~(6)~~ A payment schedule, including any amounts owed at

contract signing, at the commencement of installation, at the completion of installation, and any final payments. If the distributed energy generation system is being leased, the written statement must include the frequency and amount of each payment due under the lease and the total estimated lease payments over the term of the lease.

(8) ~~(7)~~ Each state or federal tax incentive or rebate, if any, relied upon by the seller in determining the price of the distributed energy generation system.

(9) ~~(8)~~ A description of the assumptions used to calculate any savings estimates provided to the buyer or lessee, and if such estimates are provided, a statement in substantially the following form: "It is important to understand that future electric utility rates are estimates only. Your future electric utility rates may vary."

(10) ~~(9)~~ A description of any one-time or recurring fees, including, but not limited to, estimated system removal fees, maintenance fees, Internet connection fees, and automated clearinghouse fees. If late fees may apply, the description must describe the circumstances triggering such late fees.

(11) ~~(10)~~ A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have

any questions about your financing agreement, contact your finance provider before signing a contract."

(12) ~~(11)~~ A statement notifying the buyer whether the seller is assisting in arranging financing of the distributed energy generation system and, if so, a statement in substantially the following form: "If your system is financed, carefully read any agreements and/or disclosure forms provided by your lender. This statement does not contain the terms of your financing agreement. If you have any questions about your financing agreement, contact your finance provider before signing a contract."

(13) ~~(12)~~ A provision notifying the buyer or lessee of the right to rescind the agreement for a period of at least 3 business days after the agreement is signed. This subsection does not apply to a contract to sell or lease a distributed energy generation system in a solar community in which the entire community has been marketed as a solar community and all of the homes in the community are intended to have a distributed energy generation system, or a solar community in which the developer has incorporated solar technology for purposes of meeting the Florida Building Code in s. 553.73.

(14) ~~(13)~~ A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated

life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.

(15) ~~(14)~~ A description of any performance or production guarantees.

(16) ~~(15)~~ A description of the ownership and transferability of any tax credits, rebates, incentives, or renewable energy certificates associated with the distributed energy generation system, including a disclosure as to whether the seller will assign or sell any associated renewable energy certificates to a third party.

(17) ~~(16)~~ A statement in substantially the following form: "You are responsible for property taxes on property you own. Consult a tax professional to understand any tax liability or eligibility for any tax credits that may result from the purchase of your distributed energy generation system."

(18) ~~(17)~~ The approximate start and completion dates for the installation of the distributed energy generation system.

(19) ~~(18)~~ A disclosure as to whether maintenance and repairs of the distributed energy generation system are included in the purchase price.

(20) ~~(19)~~ A disclosure as to whether any warranty or

maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: "Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests."

(21) ~~(20)~~ If the distributed energy generation system will be purchased, a disclosure notifying the buyer of the requirements for interconnecting the system to the utility system.

(22) ~~(21)~~ A disclosure notifying the buyer or lessee of the party responsible for obtaining interconnection approval.

(23) ~~(22)~~ A description of any roof warranties.

(24) A statement in substantially the following form: "You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require reinstallment of the distributed energy generation system."

(25) ~~(23)~~ A disclosure notifying the lessee whether the seller will insure a leased distributed energy generation system against damage or loss and, if applicable, the circumstances under which the seller will not insure the system against damage or loss.

(26) ~~(24)~~ A statement~~, if applicable,~~ in substantially the

following form: "You are responsible for obtaining insurance policies or coverage for any loss of or damage to the system. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system."

(27) A statement in substantially the following form: "Placing a distributed energy generation system on your roof may impact your future insurance premiums. You are responsible for contacting your insurance carrier, prior to entering into a purchase or lease agreement, to confirm whether your current policy or coverage will need to be modified upon installing the distributed energy generation system onto your dwelling."

(28) ~~(25)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will place a lien on the buyer's or lessee's home or other property as a result of entering into a purchase or lease agreement for the distributed energy generation system.

(29) ~~(26)~~ A disclosure notifying the buyer or lessee whether the seller or lessor will file a fixture filing or a State of Florida Uniform Commercial Code Financing Statement Form (UCC-1) on the distributed energy generation system.

(30) ~~(27)~~ A disclosure identifying whether the agreement contains any restrictions on the buyer's or lessee's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party.

(31) ~~(28)~~ A disclosure as to whether the lease agreement may

be transferred to a purchaser upon sale of the home or real property to which the system is affixed, and any conditions for such transfer.

(32) ~~(29)~~ A blank section that allows the seller to provide additional relevant disclosures or explain disclosures made elsewhere in the disclosure form.

The requirement to provide a written statement under this section may be satisfied by the electronic delivery of a document within 24 hours after execution of the written statement containing the required statement if the intended recipient of the electronic document affirmatively acknowledges its receipt. An electronic document satisfies the font and other formatting standards required for the written statement if the format and the relative size of characters of the electronic document are reasonably similar to those required in the written document or if the information is otherwise displayed in a reasonably conspicuous manner.

Section 5. Subsection (6) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.309(11) or s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (11) is added to section 560.309,

Florida Statutes, to read:

560.309 Conduct of business.—

(11) A licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy payroll amount during the same dates as the workers' compensation policy coverage period.

Section 7. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency and adjusting firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency or adjusting firm on any of the following grounds:

(1) The name interferes with or is too similar to a name already filed and in use by another agency, adjusting firm, or insurer.

(2)The use of the name may mislead the public in any respect.

(3) The name states or implies that the agency or adjusting firm is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, settles claims, or is entitled to engage in insurance activities not permitted under licenses held or applied for. This provision does not prohibit the use of the

word "state" or "states" in the name of the agency. The use of the word "state" or "states" in the name of an agency or adjusting firm does not in and of itself imply that the agency or adjusting firm is a state agency.

(4) The name contains the word "Medicare" or "Medicaid." ~~An insurance agency whose name contains the word "Medicare" or "Medicaid" but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency's license remains valid. If the agency's license expires or is suspended or revoked, the agency may not be relicensed using that name.~~ Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 8. Section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(1) A "public adjuster" is any person, except a duly licensed attorney at law as exempted under s. 626.860, who, for money, commission, or any other thing of value, directly or indirectly prepares, completes, or files an insurance claim for an insured or third-party claimant, regardless of how that person describes or presents his or her services, or who, for money, commission, or any other thing of value, acts on behalf

of, or aids an insured or third-party claimant in negotiating for or effecting the settlement of a claim or claims for loss or damage covered by an insurance contract, regardless of how that person describes or presents his or her services, or who advertises for employment as an adjuster of such claims. The term also includes any person who, for money, commission, or any other thing of value, directly or indirectly solicits, investigates, or adjusts such claims on behalf of a public adjuster, an insured, or a third-party claimant. The term does not include a person who photographs or inventories damaged personal property or business personal property or a person performing duties under another professional license, if such person does not otherwise solicit, adjust, investigate, or negotiate for or attempt to effect the settlement of a claim.

(2) This definition does not apply to:

(a) A licensed health care provider or employee thereof who prepares or files a health insurance claim form on behalf of a patient.

(b) A licensed health insurance agent who assists an insured with coverage questions, medical procedure coding issues, balance billing issues, understanding the claims filing process, or filing a claim, as such assistance relates to coverage under a health insurance policy.

(c) A person who files a health claim on behalf of another and does so without compensation.

(3) A public adjuster may not give legal advice or act on

behalf of or aid any person in negotiating or settling a claim relating to bodily injury, death, or noneconomic damages.

(4) For purposes of this section, the term "insured" includes only the policyholder and any beneficiaries named or similarly identified in the policy.

(5) A public adjuster may not directly or indirectly through any other person or entity solicit an insured or claimant by any means except on Monday through Saturday of each week and only between the hours of 8 a.m. and 8 p.m. on those days.

(6) When entering a contract for adjuster services after July 1, 2023, a public adjuster:

(a) may not collect a fee for services on payments made to a named insured unless they have a written contract with the named insured, or the named insured's legal representative.

(b) May not contract for services to be provided by a third party on behalf of the named insured or in pursuit of settlement of the named insureds claim, if the cost of those services is to be borne by the named insured, unless the named insured agrees in writing to procure these services and such agreement is entered into subsequent to the date of the contract for public adjusting services.

(c) If a public adjuster contracts with a third-party service provider to assist with the settlement of the named insured's claim, without first obtaining the insured's written consent, payment of the third party's fees must be made by the

public adjuster and may not be charged back to the named insured.

(d) If a public adjuster represents anyone other than the named insured in a claim, the public adjuster fees shall be paid by the third party and may not be charged back to the named insured.

(7) ~~(6)~~ An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 days after the date on which the contract is executed. If the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer. The public adjuster's contract must contain the following language in minimum 18-point bold type immediately before the space reserved in the contract for the signature of the insured or claimant: "You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract. If this contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, you may cancel this contract for any reason without penalty or obligation to you within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever

is longer. You may also cancel the contract without penalty or obligation to you if I, as your public adjuster, fail to provide you and your insurer a copy of a written estimate within 60 days of the execution of the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond my control, in accordance with s. 626.854(14)(b), Florida Statutes. The 60-day cancellation period for failure to provide a written estimate shall cease on the date I have provided you with the written estimate." The ~~by providing~~ notice of cancellation shall be provided to ...(name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.

(8) ~~(7)~~ It is an unfair and deceptive insurance trade practice pursuant to s. 626.9541 for a public adjuster or any other person to circulate or disseminate any advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance which is untrue, deceptive, or misleading.

(a) The following statements, made in any public adjuster's advertisement or solicitation, are considered deceptive or misleading:

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.

2. A statement or representation that invites an insured

policyholder to submit a claim by offering monetary or other valuable inducement.

3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

4. A statement or representation, or use of a logo or shield, that implies or could mistakenly be construed to imply that the solicitation was issued or distributed by a governmental agency or is sanctioned or endorsed by a governmental agency.

(b) For purposes of this paragraph, the term "written advertisement" includes only newspapers, magazines, flyers, and bulk mailers. The following disclaimer, which is not required to be printed on standard size business cards, must be added in bold print and capital letters in typeface no smaller than the typeface of the body of the text to all written advertisements by a public adjuster:

"THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT."

(9) ~~(8)~~ A public adjuster, a public adjuster apprentice, or any person or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give a

monetary loan or advance to a client or prospective client.

(10) ~~(9)~~ A public adjuster, public adjuster apprentice, or any individual or entity acting on behalf of a public adjuster or public adjuster apprentice may not give or offer to give, directly or indirectly, any article of merchandise having a value in excess of $25 to any individual for the purpose of advertising or as an inducement to entering into a contract with a public adjuster.

~~(10)~~ (11)(a) If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

(b) A public adjuster may not charge, agree to, or accept

from any source compensation, payment, commission, fee, or any other thing of value in excess of:

1. Ten percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims based on events that are the subject of a declaration of a state of emergency by the Governor. This provision applies to claims made during the year after the declaration of emergency. After that year, the limitations in subparagraph 2. apply.

2. Twenty percent of the amount of insurance claim payments or settlements, exclusive of attorney fees and costs, paid to the insured by the insurer for claims that are not based on events that are the subject of a declaration of a state of emergency by the Governor.

3. One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the public adjusting contract is executed, whichever is later.

4. Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which

the public adjusting contract is executed.

(c) Insurance claim payments made by the insurer do not include policy deductibles, and public adjuster compensation may not be based on the deductible portion of a claim.

(d) Public adjuster compensation may not be based on amounts attributable to additional living expenses, unless such compensation is affirmatively agreed to in a separate agreement that includes a disclosure in substantially the following form: "I agree to retain and compensate the public adjuster for adjusting my additional living expenses and securing payment from my insurer for amounts attributable to additional living expenses payable under the policy issued on my (home/mobile home/condominium unit)."

(e) Public adjuster rate of compensation may not be increased based solely on the fact that the claim is litigated.

(f) Any maneuver, shift, or device through which the limits on compensation set forth in this subsection are exceeded is a violation of this chapter punishable as provided under s. 626.8698.

(12)(a) ~~(11)~~ Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment, materials, labor, and supplies, in accordance with

accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(b) An insured may cancel the contract with no additional penalties or fees charged by the public adjuster if such an estimate is not provided within 60 days after executing the contract, subject to the cancellation notice requirement in this section, unless the failure to provide the estimate within 60 days is caused by factors beyond the control of the public adjuster. The cancellation period shall cease on the date the public adjuster provides the written estimate to the insured.

(13) ~~(12)~~ A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

(14) ~~(13)~~ A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public

adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

(15) ~~(14)~~ The public adjuster must ensure that prompt notice is given of the claim to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

(a) The insurer may not exclude the public adjuster from its in-person meetings with the insured. The insurer shall meet or communicate with the public adjuster in an effort to reach agreement as to the scope of the covered loss under the insurance policy. The public adjuster shall meet or communicate with the insurer in an effort to reach agreement as to the scope of the covered loss under the insurance policy. This section does not impair the terms and conditions of the insurance policy in effect at the time the claim is filed.

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at reasonable times to any

insured or claimant or to the insured property that is the subject of a claim.

(c) A public adjuster may not act or fail to reasonably act in any manner that obstructs or prevents an insurer or insurer's adjuster from timely conducting an inspection of any part of the insured property for which there is a claim for loss or damage. The public adjuster representing the insureds may be present for the insurer's inspection, but if the unavailability of the public adjuster otherwise delays the insurer's timely inspection of the property, the public adjuster or the insureds must allow the insurer to have access to the property without the participation or presence of the public adjuster or insureds in order to facilitate the insurer's prompt inspection of the loss or damage.

(16) ~~(15)~~ A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in subsection (1) unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy, except as it relates to solicitation prohibited in s. 489.147. In addition, the contractor may discuss or explain a bid for construction or repair of covered property with the residential

property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

(17) ~~(16)~~ A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

(18) ~~(17)~~ A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

(19) ~~(18)~~ Subsections (5)-(18) ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

(20) ~~(19)~~ Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license as a public adjuster; or

(e) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

(21) ~~(20)~~ The department may take administrative actions and impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section without the licensure required under this section or s. 626.112.

(22) ~~(21)~~ A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant pursuant to paragraph (11)(a) ~~(10)(a)~~ may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

(23)(a) ~~(22)(a)~~ Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

1. Offering to a residential property owner a rebate, gift, gift card, cash, coupon, waiver of any insurance deductible, or any other thing of value in exchange for:

a. Allowing a contractor, a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice to conduct an inspection of the residential property owner's roof; or

b. Making an insurance claim for damage to the residential property owner's roof.

2. Offering, delivering, receiving, or accepting any compensation, inducement, or reward for the referral of any services for which property insurance proceeds would be used for roofing repairs or replacement.

(b) Notwithstanding the fine set forth in s. 626.8698, a public adjuster or public adjuster apprentice may be subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

(c) A person who engages in an act prohibited by this subsection and who is not a public adjuster or a public adjuster apprentice, or is not otherwise exempt from licensure, is guilty of the unlicensed practice of public adjusting and may be:

1. Subject to all applicable penalties set forth in this part.

2. Notwithstanding subparagraph 1., subject to a fine not to exceed $10,000 per act for a violation of this subsection and a fine not to exceed $20,000 per act for a violation of this subsection that occurs during a state of emergency declared by executive order or proclamation of the Governor pursuant to s. 252.36.

Section 9. Section 626.860, Florida Statutes, is amended to read:

626.860 Attorneys at law; exemption.—Attorneys at law duly licensed to practice law in the courts of this state, and in good standing with The Florida Bar, shall not be required to be licensed under ~~the provisions of~~ this code to authorize them to adjust or participate in the adjustment of any claim, loss, or damage arising under policies or contracts of insurance. This exemption does not extend to the employees, interns, volunteers, or contractors of an attorney or of a law firm.

Section 10. Section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

(1)(a) Each appointed independent adjuster and licensed public adjuster must maintain a place of business in this state which is accessible to the public and keep therein the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of such an office in the home of the licensee.

(b) A license issued under this chapter must at all times

be posted in a conspicuous place in the principal place of business of the license holder. If the licensee is conducting business away from the place of business such that the license cannot be posted, the licensee shall have such license in his or her actual possession at the time of carrying on such business.

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 years after completion of the adjustment and shall be available for inspection by the department between the hours of 8 a.m. and 5 p.m., Monday through Friday, excluding state holidays. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto. At a minimum, the following records must be maintained for a period of not less than 5 years:

(a) Name, address, telephone number, and e-mail address of the insured, and the name of the attorney representing the insured, if applicable.

(b) The date, location, and amount of the loss.

(c) An unaltered copy of the executed disclosure document required by s. 626.8796.

(d) An unaltered copy of the executed public adjuster contract required by s. 626.8796.

(e) A copy of the estimate of damages provided to the insurer.

(f) The name of the insurer; the name of the claims representative of the insurer; and the amount, expiration date, and number of each policy under which the loss is covered.

(g) An itemized statement of the recoveries by the insured from the sources known to the adjuster.

(h) An itemized statement of all compensation received by the public adjuster from any source in connection with the loss.

(i) A register of all money received, deposited, disbursed, and withdrawn in connection with a transaction with the insured, including fees, transfers, and disbursements in connection with the loss.

Section 11. Section 626.8796, Florida Statutes, is amended to read:

626.8796 Public adjuster contracts; disclosure statement; fraud statement.—

(1) All contracts for public adjuster services must be in writing in at least 12-point type, be titled "Public Adjuster Contract," and prominently display the following statement on the contract in minimum 18-point bold type before the space reserved in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive an insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains false, incomplete, or

misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business address, phone number, e-mail address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured's full name, ~~and~~ street address, phone number, and e-mail address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster's services in minimum 18-point bold type before the space reserved in the contract for the signature of the insured; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the initials of the named insured on each page that does not contain the insured's signature; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds' signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insured at the time of execution and to the insurer, or the insurer's representative within 7 ~~30~~ days after execution. A public adjusting firm that adjusts claims primarily for commercial

entities with operations in more than one state and that does not directly or indirectly perform adjusting services for insurers or individual homeowners is deemed to comply with the requirements of this subsection if, at the time a proof of loss is submitted, the public adjusting firm remits to the insurer an affidavit signed by the public adjuster or public adjuster apprentice that identifies:

(a) The full name, permanent business address, phone number, e-mail address, and license number of the public adjuster or public adjuster apprentice.

(b) The full name of the public adjusting firm.

(c) The insured's full name, ~~and~~ street address, phone number, and e-mail address, together with a brief description of the loss.

(d) An attestation that the compensation for public adjusting services will not exceed the limitations provided by law.

(e) The type of claim, including an emergency claim, nonemergency claim, or supplemental claim.

(3) The public adjuster shall not receive compensation for services provided prior to the date the insured receives an unaltered copies~~y~~ of the executed contract or the date executed contract is submitted to the insurer. Proof of receipt by the insured and proof of submission to the insurer must be maintained by the public adjuster for not less than five years.

(4) The insured may rescind the contract for public

adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 days after executing the contract, unless the failure to provide the written estimate within 60 days is caused by factors beyond the public adjuster's control.

(5) The cancellation period for failure to provide a written estimate terminates on the date the estimate is provided.

(6) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document to be signed by the insured, on a form adopted by the department, regarding the claim process which accomplishes the following:

(a) Defines the following types of adjusters who may be involved in the claim process: company adjuster, independent adjuster, and public adjuster.

(b) Explains that the public adjuster is not a representative or employee of the insurer.

(c) Explains that the insured is not required to hire a public adjuster, but has a right to do so.

(d) Explains that an insured has a right to initiate direct communications with the insured's attorney, the insurer, the company adjuster, the insurer's attorney, or any person regarding the settlement of the insured's claim.

(e) Explains that the public adjuster's salary, fee, commission, or other consideration to be paid to a public adjuster is the insured's responsibility.

(f) Explains that the public adjuster is required to provide the insured an unaltered copy of the executed contract at the time of execution.

(g) Explains that if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or a claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer.

(h) The public adjuster shall provide an unaltered copy of the executed disclosure document to the insured at the time of execution.

(7) A contract that does not comply with this section is invalid and unenforceable.

(8) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement this section, including rules to adopt forms required by this section.

Section 12. Section 626.8797, Florida Statutes, is amended to read:

626.8797 Proof of loss; fraud statement.—All proof-of-loss statements must prominently display the following statement in minimum 18-point bold type before the space reserved in the contract for the signature of the insured: "Pursuant to s. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares,

presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes."

Section 13. Paragraph (a) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

(a) *Misrepresentations and false advertising of insurance policies.*—Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, comparison, or property and casualty certificate of insurance altered after being issued, which:

1. Misrepresents the benefits, advantages, conditions, or terms of any insurance policy.

2. Misrepresents the dividends or share of the surplus to be received on any insurance policy.

3. Makes any false or misleading statements as to the

dividends or share of surplus previously paid on any insurance policy.

4. Is misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

5. Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.

6. Is a misrepresentation for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.

7. Is a misrepresentation for the purpose of effecting a pledge or assignment of, or effecting a loan against, any insurance policy.

8. Misrepresents any insurance policy as being shares of stock or misrepresents ownership interest in the company.

9. Uses any advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person's credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

10. Fails to disclose a third party that receives royalties, referral fees, or other remuneration for sponsorship, marketing, or use of third-party branding for a policy of health insurance as defined in s. 624.603.

Section 14. Paragraph (c) of subsection (2) of section 627.4025, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

627.4025 Residential coverage and hurricane coverage defined.—

(2) As used in policies providing residential coverage:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

1. Beginning at the time a ~~hurricane watch or~~ hurricane warning is issued for any part of Florida by the National Hurricane Center of the National Weather Service; and

2. ~~Continuing for the time period during which the hurricane conditions exist anywhere in Florida; and~~

~~3.~~ Ending 72 hours following the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the National Hurricane Center of the National Weather Service.

(d) "Hurricane deductible" means the deductible applicable to loss caused by a hurricane.

Section 15. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended to read:

627.4133 Notice of cancellation, nonrenewal, or renewal

premium.—

(1) Except as provided in subsection (2):

(b) An insurer issuing a policy providing coverage for property, casualty, except mortgage guaranty, surety, or marine insurance, other than motor vehicle insurance subject to s. 627.728 or s. 627.7281, shall give the first-named insured written notice of cancellation or termination other than nonrenewal at least 45 days prior to the effective date of the cancellation or termination, including in the written notice the reason or reasons for the cancellation or termination, except that:

1. When cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term "nonpayment of premium" means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. "Nonpayment of premium" also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to

the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first 60 ~~90~~ days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

After the policy has been in effect for 60 ~~90~~ days, no such policy shall be canceled by the insurer except when there has been a material misstatement, a nonpayment of premium, a failure to comply with underwriting requirements established by the insurer within 60 ~~90~~ days of the date of effectuation of coverage, or a substantial change in the risk covered by the policy or when the cancellation is for all insureds under such policies for a given class of insureds. This subsection does not apply to individually rated risks having a policy term of less

than 90 days.

(d) Notwithstanding subparagraph (b), Citizens Property Insurance Corporation in underwriting risks that, prior to the date of the application, were most recently insured by an insurer that has been placed in receivership under ch. 631, may immediately cancel a policy insuring such risk that is in effect for 90 days or less for material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

(2) With respect to any personal lines or commercial residential property insurance policy, including, but not limited to, any homeowner, mobile home owner, farmowner, condominium association, condominium unit owner, apartment building, or other policy covering a residential structure or its contents:

(b) The insurer shall give the first-named insured written notice of nonrenewal, cancellation, or termination at least 120 days before the effective date of the nonrenewal, cancellation, or termination. The notice must include the reason for the nonrenewal, cancellation, or termination, except that:

1. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether

the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2. If cancellation or termination occurs during the first 60 ~~90~~ days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

3. After the policy has been in effect for 60 ~~90~~ days, the policy may not be canceled by the insurer unless there has been

a material misstatement; a nonpayment of premium; a failure to comply, within 60 ~~90~~ days after the date of effectuation of coverage, with underwriting requirements established by the insurer before the date of effectuation of coverage; or a substantial change in the risk covered by the policy or unless the cancellation is for all insureds under such policies for a given class of insureds. This subparagraph does not apply to individually rated risks that have a policy term of less than 90 days.

4. After a policy or contract has been in effect for more than 60 ~~90~~ days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

5. A policy that is nonrenewed by Citizens Property Insurance Corporation, pursuant to s. 627.351(6), for a policy that has been assumed by an authorized insurer offering replacement coverage to the policyholder is exempt from the notice requirements of paragraph (a) and this paragraph. In such cases, the corporation must give the named insured written notice of nonrenewal at least 45 days before the effective date of the nonrenewal.

6. Notwithstanding any other provision of law, an insurer may cancel or nonrenew a property insurance policy after at least 45 days' notice if the office finds that the early cancellation of some or all of the insurer's policies is necessary to protect the best interests of the public or

policyholders and the office approves the insurer's plan for early cancellation or nonrenewal of some or all of its policies. The office may base such finding upon the financial condition of the insurer, lack of adequate reinsurance coverage for hurricane risk, or other relevant factors. The office may condition its finding on the consent of the insurer to be placed under administrative supervision pursuant to s. 624.81 or to the appointment of a receiver under chapter 631.

7. A policy covering both a home and a motor vehicle may be nonrenewed for any reason applicable to the property or motor vehicle insurance after providing 90 days' notice.

Section 16. Effective January 1, 2024, section 627.4554, Florida Statutes, is amended to read:

627.4554 Suitability in annuity transactions ~~investments~~.—

(1) PURPOSE.—The purpose of this section is to require agents to act in the best interest of the consumer when making a recommendation of an annuity and to require insurers to establish and maintain a system to supervise so ~~set forth standards and procedures for making recommendations to consumers which result in transactions involving annuity products, and to establish a system for supervising such recommendations in order to ensure~~ that the insurance needs and financial objectives of consumers are effectively ~~appropriately~~ addressed at the time of the transaction.

(2) SCOPE.—This section applies to any sale or recommendation of ~~made to a consumer to purchase, exchange, or~~

~~replace~~ an annuity ~~by an insurer or its agent, and which results in the purchase, exchange, or replacement recommended~~.

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

(a) "Agent" means a person or entity required to be licensed under the laws of this state to sell, solicit, or negotiate insurance, including annuities. For purposes of this section, the term includes an insurer when no agent is involved ~~has the same meaning as provided in s. 626.015~~.

(b) "Annuity" means an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.

(c) "Cash compensation" means any discount, concession, fee, service fee, commission, sales charge, loan, override, or cash benefit received by an agent from an insurer or intermediary or directly from the consumer in connection with the recommendation or sale of an annuity.

(d) "Consumer profile information" means information that is reasonably appropriate to determine whether a recommendation addresses the consumer's financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

1. Age.

2. Annual income.

3. Financial situation and needs, including debts and other obligations.

4. Financial experience.

5. Insurance needs.

6. Financial objectives.

7. Intended use of the annuity.

8. Financial time horizon.

9. Existing assets or financial products, including investment, annuity, and insurance holdings.

10. Liquidity needs.

11. Liquid net worth.

12. Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity.

13. Financial resources used to fund the annuity.

14. Tax status.

(e) ~~(c)~~ "FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

(f) ~~(d)~~ "Insurer" has the same meaning as provided in s. 624.03.

(g) "Intermediary" means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer's annuities by agents.

(h) "Material conflict of interest" means a financial interest of the agent in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or noncash compensation.

(i) "Noncash compensation" means any form of compensation that is not cash compensation, including, but not limited to,

health insurance, office rent, office support, and retirement benefits.

(j) "Nonguaranteed elements" means the premiums; credited interest rates, including any bonus; benefits; values; dividends; noninterest-based credits; charges; or elements of formulas used to determine any of these, which are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

(k)~~(c)~~ "Recommendation" means advice provided by an ~~insurer or its~~ agent to an individual ~~a~~ consumer which was intended to result or does result ~~which would result~~ in a ~~the~~ purchase, an exchange, or a replacement of an annuity in accordance with that advice. The term does not include general communication to the public, generalized customer services, assistance or administrative support, general educational information and tools, prospectuses, or other product and sales material.

(l)~~(f)~~ "Replacement" means a transaction in which a new annuity ~~policy or contract~~ is to be purchased and it is known or should be known to the proposing ~~insurer or its~~ agent, or to the proposing insurer whether or not an agent is involved, that by reason of such transaction an existing annuity or other insurance policy has been or is to be any of the following ~~or contract will be~~:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;

3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

(m) "SEC" means the United States Securities and Exchange Commission.

~~(g) "Suitability information" means information related to the consumer which is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the following:~~

~~1. Age;~~

~~2. Annual income;~~

~~3. Financial situation and needs, including the financial resources used for funding the annuity;~~

~~4. Financial experience;~~

~~5. Financial objectives;~~

~~6. Intended use of the annuity;~~

~~7. Financial time horizon;~~

~~8. Existing assets, including investment and life insurance holdings;~~

~~9. Liquidity needs;~~

~~10. Liquid net worth;~~

~~11. Risk tolerance; and~~

~~12. Tax status.~~

(4) EXEMPTIONS.—Unless otherwise specifically included, this section does not apply to transactions involving:

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

1. An employee pension or welfare benefit plan that is covered by the federal Employee Retirement and Income Security Act;

2. A plan described by s. 401(a), s. 401(k), s. 403(b), s. 408(k), or s. 408(p) of the Internal Revenue Code, if established or maintained by an employer;

3. A government or church plan defined in s. 414 of the Internal Revenue Code, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax-exempt organization under s. 457 of the Internal Revenue Code; or

4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

(c)~~5.~~ Settlements or assumptions of liabilities associated with personal injury litigation or a dispute or claim-resolution process; or

(d)~~6.~~ Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) An agent, when making a recommendation of an annuity, shall act in the best interest of the consumer under the circumstances known at the time the recommendation is made, without placing the financial interest of the agent or insurer ahead of the consumer's interest. An agent has acted in the best interest of the consumer if the agent has satisfied the following obligations regarding care, disclosure, conflict of interest, and documentation:

1.a. The agent, in making a recommendation, shall exercise reasonable diligence, care, and skill to:

(I) Know the financial situation, insurance needs, and financial objectives of the customer.

(II) Understand the available options after making a reasonable inquiry into options available to the agent.

(III) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information.

(IV) Communicate the reason or reasons for the recommendation.

b. The requirements of sub-subparagraph a. include:

(I) Making reasonable efforts to obtain consumer profile information from the consumer before the recommendation of an annuity.

(II) Requiring an agent to consider the types of products

the agent is authorized and licensed to recommend or sell which address the consumer's financial situation, insurance needs, and financial objectives. This does not require analysis or consideration of any products outside the authority and license of the agent or other possible alternative products or strategies available in the market at the time of the recommendation. Agents shall be held to standards applicable to agents with similar authority and licensure.

(III) Having a reasonable basis to believe the consumer would benefit from certain features of the annuity, such as annuitization, death or living benefit, or other insurance-related features.

c. The requirements of this subsection do not create a fiduciary obligation or relationship and only create a regulatory obligation as provided in this section.

d. The consumer profile information, characteristics of the insurer, and product costs, rates, benefits, and features are those factors generally relevant in making a determination whether an annuity effectively addresses the consumer's financial situation, insurance needs, and financial objectives, but the level of importance of each factor under the care obligation of this paragraph may vary depending on the facts and circumstances of a particular case. However, each factor may not be considered in isolation.

e. The requirements under sub-subparagraph a. apply to the particular annuity as a whole and the underlying subaccounts to

which funds are allocated at the time of purchase or exchange of an annuity, and riders and similar product enhancements, if any.

f. Sub-subparagraph a. does not require that the annuity with the lowest one-time occurrence compensation structure or multiple occurrence compensation structure shall necessarily be recommended.

g. Sub-subparagraph a. does not require the agent to have ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and the agent.

h. In the case of an exchange or replacement of an annuity, the agent shall consider the whole transaction, which includes taking into consideration whether:

(I) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements.

(II) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product.

(III) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 60 months.

i. This section does not require an agent to obtain any

license other than an agent license with the appropriate line of authority to sell, solicit, or negotiate insurance in this state, including, but not limited to, any securities license, in order to fulfill the duties and obligations contained in this section; provided, the agent does not give advice or provide services that are otherwise subject to securities laws or engage in any other activity requiring other professional licenses.

2.a. Before the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer, on a form substantially similar to that posted on the office website as Appendix A, related to an insurance agent disclosure for annuities:

(I) A description of the scope and terms of the relationship with the consumer and the role of the agent in the transaction.

(II) An affirmative statement on whether the agent is licensed and authorized to sell the following products:

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(III) An affirmative statement describing the insurers for which the agent is authorized, contracted, or appointed, or

otherwise able to sell insurance products, using the following descriptions:

(A) From one insurer;

(B) From two or more insurers; or

(C) From two or more insurers, although primarily contracted with one insurer.

(IV) A description of the sources and types of cash compensation and noncash compensation to be received by the agent, including whether the agent is to be compensated for the sale of a recommended annuity by commission as part of premium or other remuneration received from the insurer, intermediary, or other agent, or by fee as a result of a contract for advice or consulting services.

(V) A notice of the consumer's right to request additional information regarding cash compensation described in sub-subparagraph b.

b. Upon request of the consumer or the consumer's designated representative, the agent shall disclose:

(I) A reasonable estimate of the amount of cash compensation to be received by the agent, which may be stated as a range of amounts or percentages.

(II) Whether the cash compensation is a one-time or multiple occurrence amount; and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages. ~~When recommending the purchase or exchange of an annuity to a consumer which results~~

~~in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:~~

c.~~1.~~ Before or at the time of the recommendation or sale of an annuity, the agent shall have a reasonable basis to believe the consumer has been ~~reasonably~~ informed of various features of the annuity, such as the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders, or annuitizes the annuity; mortality and expense fees; any annual fees; investment advisory fees; potential charges for and features of riders or other options of the annuity; limitations on interest returns; potential changes in nonguaranteed elements of the annuity; insurance and investment components; and market risk.

~~2. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, or the death or living benefit.~~

3. An agent shall identify and avoid or reasonably manage and disclose material conflicts of interest, including material conflicts of interest related to an ownership interest.

4. An agent shall at the time of the recommendation or sale:

a. Make a written record of any recommendation and the

basis for the recommendation, subject to this section.

b. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as Appendix B, related to a consumer's refusal to provide information, documenting:

(I) A customer's refusal to provide the consumer profile information, if any.

(II) A customer's understanding of the ramifications of not providing his or her consumer profile information or providing insufficient consumer profile information.

c. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as Appendix C, related to a consumer's decision to purchase an annuity not based on a recommendation, acknowledging the annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the agent's recommendation.

5. Any requirement applicable to an agent under this subsection applies to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or education materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material

control or influence.

~~3. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable; and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer based on his or her suitability information.~~

~~4. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable after considering whether the consumer:~~

~~a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

~~b. Would benefit from product enhancements and improvements; and~~

~~c. Has had another annuity exchange or replacement, including an exchange or replacement within the preceding 36 months.~~

~~(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and~~

~~completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.~~

~~(c) Except as provided under paragraph (d), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.~~

(b)1.~~(d)~~ Except as provided under subparagraph 2., ~~An insurer's issuance of an annuity must be reasonable based on all the circumstances actually known to the insurer at the time the annuity is issued. However,~~ an ~~insurer or its~~ agent does not have ~~does not have~~ an obligation to a consumer related to an annuity transaction under subparagraph (a)1. ~~paragraph (a) or paragraph (c)~~ if:

a.~~1.~~ A recommendation has not been made;

b.~~2.~~ A recommendation was made and is later found to have been based on materially inaccurate information provided by the consumer;

c.~~3.~~ A consumer refuses to provide relevant consumer

profile ~~suitability~~ information and the annuity transaction is not recommended; or

d.~~4.~~ A consumer decides to enter into an annuity transaction that is not based on a recommendation of the ~~an insurer or its~~ agent.

2. An insurer's issuance of an annuity subject to subparagraph 1. must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

(c)1. Except as permitted under paragraph (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

~~(c) At the time of sale, the agent or the agent's representative must:~~

~~1. Make a record of any recommendation made to the consumer pursuant to paragraph (a);~~

~~2. Obtain the consumer's signed statement documenting his or her refusal to provide suitability information, if applicable; and~~

~~3. Obtain the consumer's signed statement acknowledging that an annuity transaction is not recommended if he or she decides to enter into an annuity transaction that is not based on the insurer's or its agent's recommendation, if applicable.~~

~~(f) Before executing a replacement or exchange of an~~

~~annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form, and must be provided to the consumer no later than the date of delivery of the contract or contracts.~~

2.~~(g)~~ An insurer shall establish and maintain a supervision system that is reasonably designed to achieve the insurer's and its agent's compliance with this section, including, but not limited to, the following:~~.~~

~~1. Such system must include, but is not limited to:~~

a. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to inform its agents of the requirements of this section and incorporating those requirements into relevant agent training manuals.~~;~~

b. The insurer shall establish and maintain ~~Establishing~~ standards for agent product training and shall establish and maintain reasonable procedures to require its agents to comply with the requirements of subsection (6).~~;~~

c. The insurer shall provide ~~Providing~~ product-specific

training and training materials that explain all material features of its annuity products to its agents.~~;~~

d. The insurer shall establish and maintain ~~Maintaining~~ procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine the recommended annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives ~~for determining that a recommendation is suitable~~. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria.~~;~~

e. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e). This may include, but is not limited to, ~~suitable, such as~~ confirmation of consumer profile ~~suitability~~ information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming the consumer profile ~~suitability~~ information after the issuance or delivery

of the annuity.~~; and~~

f. The insurer shall establish and maintain reasonable procedures to assess, prior to or upon issuance or delivery of an annuity, whether an agent has provided to the consumer the information required to be provided under this subsection.

g. The insurer shall establish and maintain reasonable procedures to identify and address suspicious consumer refusals to provide consumer profile information.

h. The insurer shall establish and maintain reasonable procedures to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sales of specific annuities within a limited period of time. The requirements of this sub-subparagraph are not intended to prohibit the receipt of health insurance, office rents, office support, retirement benefits, or other employee benefits by employees, as long as those benefits are not based upon the volume of sales of a specific annuity within a limited period of time.

i.~~f.~~ The insurer shall annually provide ~~providing~~ a written report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

3.~~2.~~ An insurer is not required to include in its

supervision system:

a. Agent recommendations to consumers of products other than the annuities offered by the insurer; or

b. Consideration of or comparison to options available to the agent or compensation relating to those options other than annuities or other products offered by the insurer.

4.~~3.~~ An insurer may contract for performance of a function, including maintenance of procedures, required under subparagraph 1.

a. An insurer's supervision system under this subsection shall include supervision of contractual performance under this subsection, which includes, but is ~~If an insurer contracts for the performance of a function, the insurer must include the supervision of contractual performance as part of those procedures listed in subparagraph 1. These include, but are~~ not limited to:

(I) Monitoring and, as appropriate, conducting audits to ensure that the contracted function is properly performed; and

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, ~~for representing~~ that the function is being properly performed.

b. An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer

contracts for performance of a function and regardless of the insurer's compliance with sub-subparagraph a.

(d) ~~(h)~~ Neither an agent nor an insurer shall ~~may not~~ dissuade, or attempt to dissuade, a consumer from:

1. Truthfully responding to an insurer's request for confirmation of consumer profile ~~suitability~~ information;

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

(e)1. ~~(i)~~ Recommendations and sales made in compliance with comparable standards shall ~~FINRA requirements pertaining to the suitability and supervision of annuity transactions~~ satisfy the requirements of this section. This applies to all recommendations and ~~FINRA broker-dealer~~ sales of ~~variable~~ annuities made by financial professionals in compliance with business rules, controls, and procedures that satisfy a comparable standard even if such standard would not otherwise apply to the product or recommendation at issue ~~and fixed annuities if the suitability and supervision is similar to those applied to variable annuity sales~~. However, this paragraph does not limit the ability of the office or the department to investigate and enforce~~, including investigate, the provisions of~~ this section.

2. Subparagraph 1. does not limit the insurer's obligation to comply with subparagraph (c)1., although the insurer may base its analysis on information received from either the financial professional or the entity supervising the financial

professional.

3. For subparagraph 1. ~~this paragraph~~ to apply, an insurer must:

a.~~1.~~ Monitor relevant conduct of the financial professional seeking to rely on subparagraph 1. or the entity responsible for supervising the financial professional, such as the financial professional's broker-dealer or an investment adviser registered under federal or state securities law, ~~the FINRA member broker-dealer~~ using information collected in the normal course of an insurer's business; and

b.~~2.~~ Provide to the entity responsible for supervising the financial professional seeking to rely on subparagraph 1., such as the financial professional's broker-dealer or investment adviser registered under federal or state securities laws, ~~FINRA member broker-dealer~~ information and reports that are reasonably appropriate to assist such entity ~~the FINRA member broker-dealer~~ in maintaining its supervision system.

4. For purposes of this paragraph, the term:

a. "Comparable standards" means:

(I) With respect to broker-dealers and registered representatives of broker-dealers, applicable SEC and FINRA rules pertaining to best interest obligations and supervision of annuity recommendations and sales, including, but not limited to, Regulation Best Interest, 17 C.F.R. s. 240.15l-1, and any amendments or successor regulations thereto;

(II) With respect to investment advisers registered under

federal or state securities laws or investment adviser representatives, the fiduciary duties and all other requirements imposed on such investment advisers or investment adviser representatives by contract or under the Investment Advisers Act of 1940 or applicable state securities laws, including, but not limited to, Form ADV and interpretations; and

(III) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code and any amendments or successor statutes thereto.

b. "Financial professional" means an agent that is regulated and acting as:

(I) A broker-dealer registered under federal or state securities laws or a registered representative of a broker-dealer;

(II) An investment adviser registered under federal or state securities laws or an investment adviser representative associated with the federal or state registered investment adviser; or

(III) A plan fiduciary under s. 3(21) of the Employee Retirement Income Security Act of 1974 or fiduciary under s. 4975(e)(3) of the Internal Revenue Code or any amendments or successor statutes thereto.

(6) AGENT TRAINING.—

(a) An agent shall not solicit the sale of an annuity

product unless the agent has adequate knowledge of the product to recommend the annuity and the agent is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

(b)1.a. An agent who engages in the sale of annuity products shall complete a one-time 4-hour training course. This requirement is not part of an agent's continuing education requirement in s. 626.2815; however, if a course provider submits and receives approval from the department, the course is eligible for continuing education credit pursuant to s. 626.2815.

b. Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities shall complete the requirements of this subsection by July 1, 2024. Individuals who obtain a life insurance line of authority after January 1, 2024, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

2. The minimum length of the training required under this subsection is 4 hours.

3. The training required under this subsection shall include information on the following topics:

a. The types of annuities and various classifications of annuities.

b. Identification of the parties to an annuity.

c. How product-specific annuity contract features affect consumers.

d. The application of income taxation of qualified and nonqualified annuities.

e. The primary uses of annuities.

f. The appropriate standard of conduct, sales practices, replacement, and disclosure requirements.

4. Providers of courses intended to comply with this subsection shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

5. An agent who has completed an annuity training course before January 1, 2024, shall, by July 1, 2024, complete either:

a. A new 4-hour training course; or

b. An additional 1-hour training course on appropriate sales practices, replacement, and disclosure requirements under this section.

6. Annuity training courses may be conducted and completed by classroom or self-study methods.

7. Providers of annuity training shall issue certificates of completion.

8. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this

subsection shall be deemed to satisfy the training requirements of this subsection in this state.

9. The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

(7)~~(6)~~ RECORDKEEPING.—

(a) Insurers and agents must maintain or be able to make available to the office or department records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer may maintain the documentation on behalf of its agent.

(b) Records required to be maintained under this subsection may be maintained in paper, photographic, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces the actual document.

(8)~~(7)~~ COMPLIANCE MITIGATION; PENALTIES.—

(a) An insurer is responsible for compliance with this section. If a violation occurs because of the action or inaction of the insurer or its agent which results in harm to a consumer, the office may order the insurer to take reasonably appropriate

corrective action for the consumer and may impose appropriate penalties and sanctions.

(b) The department may order:

1. An ~~insurance~~ agent to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent, including monetary restitution of penalties or fees incurred by the consumer, and impose appropriate penalties and sanctions.

2. A managing general agency or insurance agency that employs or contracts with an ~~insurance~~ agent to sell or solicit the sale of annuities to consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent’s misappropriation, conversion, or unlawful withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person’s right to seek other remedies as provided by law.

(d) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department,

as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

(e) A violation of this section does not create or imply a private cause of action.

(9) ~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

(10) ~~(9)~~ RULES.—The department and the commission may adopt rules to administer this section. The department may adopt by rule the forms prescribed in the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation Appendix A - Insurance Agent (Producer) Disclosure for Annuities, Appendix B - Consumer Refusal to Provide Information, and Appendix C - Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

Section 17. Subsection (5) is added to section 627.70132, Florida Statutes, to read:

627.70132 Notice of property insurance claim.—

(5) For loss assessment claims made under s. 627.714, the notice of claim must be given to the insurer in accordance with the terms of the policy within 3 years of the date of loss.

Section 18. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is amended to read:

634.041 Qualifications for license.—To qualify for and hold a license to issue service agreements in this state, a service agreement company must be in compliance with this part, with applicable rules of the commission, with related sections of the Florida Insurance Code, and with its charter powers and must comply with the following:

(8)

(b) A service agreement company does not have to establish and maintain an unearned premium reserve if it secures and maintains contractual liability insurance in accordance with the following:

1. Coverage of 100 percent of the claim exposure is obtained from an insurer approved by the office, which holds a certificate of authority under s. 624.401 to do business within this state, or secured through a risk retention group, which is authorized to do business within this state under s. 627.943 or s. 627.944. Such insurer or risk retention group must maintain a surplus as regards policyholders of at least $15 million.

2. If the service agreement company does not meet its contractual obligations, the contractual liability insurance policy binds its issuer to pay or cause to be paid to the

service agreement holder all legitimate claims and cancellation refunds for all service agreements issued by the service agreement company while the policy was in effect. This requirement also applies to those service agreements for which no premium has been remitted to the insurer.

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

4. The policy may not be canceled, terminated, or nonrenewed by the insurer or the service agreement company unless a 90-day written notice thereof has been given to the office by the insurer before the date of the cancellation, termination, or nonrenewal.

5. The service agreement company must provide the office with the claims statistics.

6. A policy issued in compliance with this paragraph may either pay 100 percent of claims as they are incurred, or 100 percent of claims due in the event of the failure of the service agreement company to pay such claims when due.

All funds or premiums remitted to an insurer by a motor vehicle

service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

Section 19. Paragraphs (d), (e), and (f) of subsection (17) of section 634.401, Florida Statutes, are amended to read:

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

(17) "Manufacturer" means any entity or its affiliate which:

~~(d) Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

(d)~~(e)~~ Has and maintains at all times, a minimum net worth of at least $100 ~~$10~~ million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

(e)~~(f)~~ Is authorized to do business in this state.

Section 20. Paragraph (a) of subsection (7) of section

634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(7) An association licensed under this part and holding no other license under part I or part II of this chapter is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation of this section if the association complies with the following:

(a) The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum net worth of at least $100 million and provides the office with the following:

1. A copy of the association’s annual audited financial statements or the audited consolidated financial statements of the association’s parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, which clearly demonstrate the net worth of the association or its parent corporation to be $100 million and a quarterly written certification to the office that such entity continues to maintain the net worth required under this paragraph.

2. The association’s, or its parent corporation’s, Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission or such other documents required to be filed with a recognized stock exchange, which

shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the Securities and Exchange Commission, the National Association of Security Dealers Automated Quotation system, or other recognized stock exchange.

Failure to timely file the documents required under this paragraph may, at the discretion of the office, subject the association to suspension or revocation of its license under this part. ~~An association or parent corporation demonstrating compliance with subparagraphs 1. and 2. must maintain outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.~~

Section 21. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2023.

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

Remove everything before the enacting clause and insert: An act relating to consumer protection; amending s. 494.001, F.S.; revising the definition of the term "branch office"; defining the term "remote location"; authorizing a licensee under ch. 494, F.S., to allow loan originators to work from remote locations if specified conditions are met; amending s. 494.0067, F.S.; specifying that mortgage lenders may transact business from branch offices and remote locations; providing a

requirement for operating remote locations; creating s. 501.2042, F.S.; defining terms; providing requirements for organizers of crowd-funding campaigns related to disasters and for crowd-funding platforms; amending s. 520.23, F.S.; revising disclosure requirements for agreements governing the sale or lease of a distributed energy generation system; amending s. 560.111, F.S.; providing a criminal penalty; amending s. 560.309, F.S.; prohibiting a licensee under ch. 560, F.S., from cashing corporate checks for certain payees where the aggregate face amount exceeds a specified amount; amending s. 626.551, F.S.; revising the timeframe in which an insurance representative must notify the Department of Financial Services of certain changes in information; amending s. 626.602, F.S.; providing applicability of provisions relating to the disapproval of insurance agency names to adjusting firm names; revising grounds on which such names may be disapproved by the department; deleting an obsolete provision; amending s. 626.854, F.S.; revising the definition of the term "public adjuster"; prohibiting public adjusters from contracting with anyone other than the named insured without the insured's written consent; specifying a penalty for noncompliance; specifying timeframes in which an insured or a claimant may cancel a public adjuster's contract without penalty or contract under certain circumstances; revising requirements for public adjusters' contracts; specifying requirements for public adjusters if the

insurer, within a certain timeframe, pays or commits in writing to pay to the insured the policy limit of the policy; specifying limitations on commissions received by public adjusters; amending s. 626.860, F.S.; providing that an attorney's exemption from public adjuster licensure requirements does not apply to certain persons; amending s. 626.875, F.S.; revising recordkeeping requirements for appointed independent adjusters and licensed public adjusters; amending s. 626.8796, F.S.; revising requirements for public adjuster contracts; specifying requirements for and prohibitions on public adjusters relating to such contracts; providing construction; authorizing the department to adopt rules; amending s. 626.8797, F.S.; revising a fraud statement requirement in proof-of-loss statements; amending s. 626.9541, F.S.; adding an unfair or deceptive insurance act relating to health insurance policies; amending s. 627.4025, F.S.; revising the definition of the term "hurricane," and defining the term "hurricane deductible," as used in policies providing residential coverage; amending s. 627.4133, F.S.; revising conditions that apply to a specified notice requirement for, and a limitation on, the cancellation or termination of certain insurance policies; amending s. 627.4554, F.S.; revising legislative purpose; revising applicability; revising and defining terms; revising and specifying duties of insurers and agents relating to the recommendation and sale of annuity investments; specifying comparable standards that comply

with such requirements; specifying agent training requirements; providing and revising construction; authorizing the department to adopt certain forms by rule; amending s. 634.041, F.S.; specifying authorized methods of paying claims for motor vehicle service agreements; amending s. 634.401, F.S.; revising the definition of the term "manufacturer" for purposes of part III of ch. 634, F.S.; amending s. 634.406, F.S.; deleting a debt obligation rating requirement for certain service warranty associations or parent corporations; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1209 Rural Economic Development
SPONSOR(S): Ways & Means Committee, Regulatory Reform & Economic Development Subcommittee, Shoaf and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	15 Y, 0 N, As CS	Walsh	Anstead
2) Ways & Means Committee	22 Y, 0 N, As CS	Berg	Aldridge
3) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

Related to the Regional Rural Development Grants Program, the bill:

- Removes the match requirements.
- Removes the requirement for local governments and private businesses to make financial or in-kind commitments to the regional organization.

Related to the Rural Infrastructure Fund, the bill:

- Allows DEO to award grants for up to 75 percent of the total infrastructure project cost, an increase from 50 percent.
- Allows DEO to award grants for up to 100 percent of the total infrastructure project cost for a project located in a rural community or a rural area of opportunity, if the county is also fiscally constrained.
- Removes the requirement related to infrastructure feasibility studies and other infrastructure planning activities that grants awarded be limited to 30 percent of the total project cost.

Related to the Florida Development Finance Corporation, the bill:

- Removes the repeal of the corporation in current law.
- Provides that after July 1, 2023, the corporation may not establish any new residential Property Assessed Clean Energy (PACE) agreements.

Related to Triumph Gulf Coast, Inc., the bill:

- Specifies that awards for public infrastructure projects may include projects for workforce housing. The recipient of an award for workforce housing must be a local government in a disproportionately affected county.
- Defines workforce housing as housing that is affordable to natural persons or families whose total annual household income does not exceed 80 percent of the median annual adjusted gross income for households.

Related to the Everglades Restoration Agricultural Community Employment Training Program, the bill:

- Specifies definitions and changes the phrase “areas of high agricultural unemployment” to “Everglades Agricultural Area and rural areas of opportunity.”
- Specifies that DEO, in cooperation with CareerSource Florida, Inc., must prioritize grants under the Everglades Restoration Agricultural Community Employment Training Program that assist training programs located in Rural Areas of Opportunity.

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

The bill does not impact state or local government revenues or expenditures.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Regional Rural Development Grants Program

The Regional Rural Development Grants Program was established to provide funding, through matching grants, to build the professional capacity of regionally based economic development organizations located in rural communities. The concept of building the "professional capacity" of an economic development organization includes hiring professional staff to develop, deliver, and provide economic development professional services. Professional services include technical assistance, education and leadership development, marketing, and project recruitment.[1]

Applications submitted to the Department of Economic Opportunity (DEO) for funding through this program must provide proof:[2]

- Of official commitments of support from each of the units of local government represented by the regional organization;
- That each local government has made financial or in-kind commitments to the regional organization;
- That the private sector has made financial or in-kind commitment to the regional organization;
- That the regional organization is in existence and actively involved in economic development activities serving the region; and
- Of the manner in which the organization coordinates its efforts with those other local and state organizations.

An organization may receive up to $50,000 a year or $250,000 if located in an RAO.[3] Grants must be matched by an amount of non-state resources equal to 25 percent of the state contribution. DEO is authorized to spend up to $750,000 each fiscal year from funds appropriated to the Rural Community Development Revolving Loan Fund to carry out this program.[4]

Rural Infrastructure Fund

The Rural Infrastructure Fund is a grant program created to facilitate the planning, preparing, and financing of infrastructure projects in rural communities.[5] The program provides access to federal and state infrastructure funding programs, including, but not limited to, those offered by the United States Departments of Agriculture and Commerce.[6] The program funds total infrastructure project grants, infrastructure feasibility grants, and preclearance review grants.

DEO may award grants for up to 50 percent of the total infrastructure project cost.[7] Projects must be related to specific job-creation or job-retention opportunities. Additionally, projects may include improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth or reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, and improving the access availability of broadband Internet service.

[1] S. 288.018(1)(b), F.S.
[2] S. 288.018(2), F.S.
[3] S. 288.018(1)(c), F.S.
[4] S. 288.018(4), F.S.
[5] *See* s. 288.0655, F.S.
[6] S. 288.0655(2)(b), F.S.
[7] *Id.*

Eligible uses of funds include improvements to public infrastructure for industrial or commercial sites, upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities.[8] Infrastructure can include public or public-private partnership facilities, like storm water systems, telecommunication, broadband, roads, and nature-based tourism.[9]

The infrastructure feasibility grant provides awards of up to 30 percent of the total project costs for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities.[10] Maximum awards are dependent on the number of jobs that a business commits to create and may be up to $300,000 if the project is located in a RAO. The total project participation grant may be used in conjunction with the infrastructure feasibility grant.

The preclearance review grant provides awards to help a local government participate in expedited permitting processes through technical assistance in preparing permit applications and local comprehensive plan amendments.[11] Grants may be used for surveys, feasibility studies, and other activities related to the identification and preclearance review of land use modifications. Grants are limited to $75,000 and must be matched 50 percent with local funds. However, projects in a RAO may receive up to $300,000 and must be matched 33 percent with local funds.[12]

Grant applications are reviewed and certified by DEO in consultation with Enterprise Florida, Inc., the Florida Tourism Industry Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission.[13] Reviews include an evaluation of the economic benefit of the projects and their long-term viability.

A total of $30 million in funding was made through the Rural Infrastructure Fund for Fiscal Year 2022-2023. Twenty-five million was available for eligible rural communities statewide and an additional $5 million was available specifically for Florida Panhandle counties.[14]

Rural Areas of Opportunity

A rural area of opportunity (RAO) is a rural community,[15] or region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.[16] An area may also be designated as an RAO if it presents a unique economic development opportunity of regional impact. The designation of an RAO must be agreed upon by the Department of Economic Opportunity (DEO), as well as the county and municipal governments to be included in the RAO.[17]

[8] *Id.*
[9] Broadband Internet service must be provided in partnership with one or more dealers of communications services. S. 288.0655(2)(b), F.S.
[10] S. 288.0655(2)(c), F.S.
[11] S. 288.0655(2)(e), F.S. Expedited permitting is pursuant to s. 403.9739(18), F.S.
[12] S. 288.0655(2)(e), F.S.
[13] S. 288.0655(3), F.S.
[14] Department of Economic *Opportunity, Rural Infrastructure Fund*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-infrastructure-fund (last visited March 24, 2023).
[15] Section 288.0656(2)(e), F.S., defines a "rural community" as is any county with a population of 75,000 or fewer, any county with a population of 125,000 or fewer that is contiguous to a county with a population of 75,000 or fewer, a municipality in a county that meets either of the aforementioned criteria, or an unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors.
[16] S. 288.0656(2)(d), F.S.
[17] S. 288.0656(7)(b), F.S.

Based on recommendations of the Rural Economic Development Initiative (REDI),[18] the Governor may designate up to three RAOs by executive order.[19] This designation establishes these areas as priority assignments for REDI and allows the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development initiative.

Currently, there are three designated RAO areas:

- Northwest RAO: Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington counties, and portions of Walton County (the City of Freeport and lands north of the Choctawhatchee Bay and intercoastal waterway).
- South Central RAO: DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee counties, and the cities of Pahokee, Belle Glade, and South Bay in Palm Beach County and the city of Immokalee in Collier County.
- North Central RAO: Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union counties.[20]

Florida Development Finance Corporation

The Florida Development Finance Corporation (FDFC) is a statewide development financing authority created by the Legislature.[21] The FDFC operates as a conduit bond issuer that issues bonds on behalf of borrowers.[22] While the FDFC functions as a mechanism to help borrowers access capital markets, it does not take on responsibility of debt repayment, even when a borrower fails to repay. Conversely, the FDFC does not guarantee the bonds it issues but certain borrowers may opt in to the guaranty fund established by the FDFC pursuant to s. 288.9607, F.S., which guarantees that the bonds issued will be repaid. This guaranty fund consists of premiums paid by businesses that wish to participate in the fund and by a property interest in the infrastructure built with the insured bond's proceeds.[23]

A majority of the FDFC's financial assistance results from the issuance of municipal bonds, of which it may issue either a taxable revenue bond or a tax-exempt bond.[24] The bonds issued can provide financing for projects that further public purposes and are issued on behalf of a range of organizations. The FDFC also administers the PACE program, for which it may issue bonds and other financial assistance that supports energy conservation.[25] PACE allows for the repayment of debt to be paid through a property tax bill and typical measures funded by the program include HVAC, lighting, solar, and water fixtures.[26]

The FDFC is governed by a seven-member board of directors. The Secretary of DEO must serve as chair of the board of directors, and the director of the Division of Bond Finance of the State Board of Administration must serve as a director.[27]

Under current law, the FDFC will be repealed on July 1, 2023.[28]

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[18] S. 288.0656(1)(a), F.S. REDI was established by the Legislature to encourage and facilitate the location and expansion of major economic development projects of significant scale in rural communities.
[19] S. 288.0656(7)(a), F.S.
[20] Department of Economic Opportunity, *Rural Areas of Opportunity*, https://floridajobs.org/community-planning-and-development/rural-community-programs/rural-areas-of-opportunity (last visited March 24, 2023). The economic development organizations for these RAOs are named Opportunity Florida, Florida's Heartland Regional Economic Development Initiative, and the North Florida Economic Development Partnership, respectively.
[21] S. 288.9604, F.S.
[22] S. 288.9605, F.S.
[23] The guaranty may not exceed 5 percent of the aggregate principal amount of bonds or other indebtedness relating to any capital project. S. 288.9607, F.S.
[24] Florida Development Finance Corporation, *About Us, available at* https://www.fdfcbonds.com/about (last visited April 7, 2023).
[25] Florida Development Finance Corporation, *Property Assessed Clean Energy "PACE" – Commercial PACE, available at* https://www.fdfcbonds.com/cpace (last visited April 7, 2023).
[26] *Id.*
[27] S. 288.9604(2), F.S.
[28] S. 288.9604, F.S.

Triumph Gulf Coast, Inc.

Pursuant to the Gulf Coast Economic Corridor Act,[29] Triumph Gulf Coast, Inc.,[30] a nonprofit corporation, oversees the expenditure of the immediate transfer of 75 percent of all funds recovered by the Attorney General[31] for economic damages to the state that resulted from the 2010 Deepwater Horizon oil spill. Triumph Gulf Coast, Inc., must use the funds for the recovery, diversification, and enhancement of the following eight counties disproportionately affected by the oil spill: Bay, Escambia, Gulf, Franklin, Okaloosa, Santa Rosa, Wakulla, and Walton.[32]

The awards for projects or programs within the boundaries of each disproportionately affected county are based on the following minimum allocations:

- At least 40 percent of the moneys transferred to Triumph Gulf Coast, Inc., before July, 2017, must be allocated equally among the eight disproportionately affected counties based on a minimum allocation of at least 5 percent per county.
- For each subsequent transfer of funds to Triumph Gulf Coast, Inc., at least 32 percent of the moneys must be allocated equally among the eight disproportionately affected counties based on a minimum allocation of at least 4 percent per county.[33]

Awards may be provided for:

- Ad valorem tax rate reduction within disproportionately affected counties;
- Local match requirements for Rural Infrastructure Fund projects in the disproportionately affected counties;
- Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties;
- Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program;
- Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties. Eligible programs include those that increase students' technology skills and knowledge; encourage industry certifications; provide rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor's and master's level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university or a Florida College System institution within the disproportionately affected counties;
- Grants to support programs that provide participants in the disproportionately affected counties with transferable, sustainable workforce skills that are not confined to a single employer; and
- Grants to Visit Florida for the purpose of advertising and promoting tourism and Fresh From Florida, and grants to promote workforce and infrastructure, on behalf of all of the disproportionately affected counties.[34]

Fiscally Constrained Counties

[29] Chapter 2013-39, s. 51, Laws of Fla.
[30] Section 288.8013, F.S., establishes the corporation.
[31] Following the oil spill, the State of Florida sued B.P. for the economic damages it sustained; entered into a settlement agreement whereby the State will receive a total of $2 Billion dollars over an 18-year period. Attorney General Pam Bondi received BP's initial settlement payment of $400 million in July of 2016, and the funds were placed into the state General Revenue Fund. Thirteen subsequent settlement payments are scheduled to be paid annually to the state in the amount of $106,666,666 from 2019 until 2033. *See* s. 288.8013(2), F.S.
[32] Triumph Gulf Coast, Inc., *Home, available at* https://www.myfloridatriumph.com/ (last visited Apr. 7, 2023).
[33] S. 288.8013(2)(b), F.S.
[34] S. 288.8017(1), F.S.

Fiscally Constrained Counties are counties entirely within a rural area of opportunity or where a 1 mill levy would raise no more than $5 million in annual tax revenue.[35] A rural area of opportunity is a rural community[36] or region that has been adversely affected by an extraordinary economic event, severe distress, natural disaster, or that presents a unique economic development opportunity of regional impact, as designated by the Governor.[37] Florida's fiscally constrained counties are: Baker, Bradford, Calhoun, Columbia, Desoto, Dixie, Franklin, Gadsden, Gilchrist, Glades, Gulf, Hamilton, Hardee, Hendry, Highlands, Holmes, Jackson, Jefferson, Lafayette, Levy, Liberty, Madison, Okeechobee, Putnam, Suwannee, Taylor, Union, Wakulla, and Washington.[38]

Everglades Restoration Agricultural Community Employment Training Program

The Everglades Restoration Agricultural Community Employment Training Program (Everglades Training Program) requires DEO, in cooperation with CareerSource Florida, Inc., to use funds to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to nonagricultural employment opportunities in areas of high agricultural unemployment. The program also provides other training, educational, and information services necessary to stimulate the creation of jobs in the areas of high agricultural unemployment.[39]

Funds may be used for grants for tuition for public or private technical or vocational programs and matching grants to employers to conduct employer-based training programs, or for the purchase of equipment to be used for training purposes, the hiring of instructors, or any other purpose directly associated with the program.[40]

DEO is prohibited from awarding a grant to any given training program which exceeds 50 percent of the total cost of the program, unless the training program is located within a RAO, in which case the grant may exceed 50 percent of the total cost of the program and up to100 percent.[41] Matching contributions may include in-kind services, including, but not limited to, the provision of training instructors, equipment, and training facilities.

DEO may grant up to 100 percent of the tuition for a participant who resides, and has resided for at least three of the last five immediately preceding years, within the Everglades Agricultural Area (EAA)[42] and in counties that provide for water storage and dispersed water storage that are located in RAOs.[43]

Programs established in the EAA must include opportunities to obtain the qualifications and skills necessary for jobs related to federal and state restoration projects, the Airglades Airport in Hendry County, or an inland port in Palm Beach County, or other industries with verifiable, demonstrated interest in operating within the EAA, as well as in counties that provide for water storage and dispersed water storage that are located in RAOs.[44]

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[35] S. 218.67(1), F.S.
[36] A "rural community" as the term relates to counties means a county with a population of 75,000 or fewer, or a county with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer. *See* s. 288.0656(1)(e), F.S.
[37] S. 288.0656(1)(d), F.S.
[38] Florida Department of Revenue, *Fiscally Constrained Counties*, https://floridarevenue.com/property/Documents/fcco081210.pdf (last visited Apr. 7, 2023).
[39] S. 446.71(1), F.S.
[40] S. 446.71(3), F.S.
[41] S. 446.71(4), F.S.
[42] The Everglades Agricultural Area is an approximately 1,160 square-mile area south of Lake Okeechobee of productive agricultural land. *See* s. 373.4592(15), F.S., for the property description. *See also* Lake Okeechobee Business Alliance, *The Everglades Agricultural Area*, http://www.lakeoalliance.org/everglades-agricultural-area#:~:text=The%20Everglades%20Everglades%20Agricultural%20Area,vibrant%20and%20sustianable%20local%20economies. (last visited March 24, 2023).
[43] S. 446.71(6), F.S.
[44] S. 446.71(7), F.S.

In 2022, the Legislature awarded more than $700,000 to the program.[45]

Effect of the Bill

Related to the Regional Rural Development Grants Program, the bill:

- Removes the match requirements.
- Removes the requirement for local governments and private businesses to make financial or in-kind commitments to the regional organization.

Related to the Rural Infrastructure Fund, the bill:

- Allows DEO to award grants for up to 75 percent of the total infrastructure project cost, an increase from 50 percent.
- Allows DEO to award grants for up to 100 percent of the total infrastructure project cost for a project located in a rural community or a rural area of opportunity, if the county is also fiscally constrained.
- Removes the requirement related to infrastructure feasibility studies and other infrastructure planning activities that grants awarded be limited to 30 percent of the total project cost.

Related to the Florida Development Finance Corporation, the bill:

- Removes the repeal of the corporation in current law.
- Provides that after July 1, 2023, the corporation may not establish any new residential PACE agreements.

Related to Triumph Gulf Coast, Inc., the bill:

- Specifies that awards for public infrastructure projects may include projects for workforce housing. The recipient of an award for workforce housing must be a local government in a disproportionately affected county.
- Defines workforce housing, for purposes of the bill, to mean housing that is affordable[46] to natural persons or families whose total annual household income does not exceed 80 percent of the median annual adjusted gross income[47] for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides.

[45] Department of Economic Opportunity, DEO Press Releases, *Governor DeSantis Awards More Than $700,000 for Workforce Training in Everglades Agricultural Communities,* https://www.floridajobs.org/news-center/DEO-Press/2022/04/18/governor-desantis-awards-more-than-$700-000-for-workforce-training-in-everglades-agricultural-communities (last visited March 24, 2023).

[46] Under the bill, "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households.

[47] The bill states that "Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.

Related to the Everglades Restoration Agricultural Community Employment Training Program, the bill:

- Specifies definitions and changes the phrase "areas of high agricultural unemployment" to "Everglades Agricultural Area and rural areas of opportunity."
- Provides legislative findings to include rural areas of opportunity that provide water storage and dispersed water storage for Everglades restoration efforts.
- Requires that for the first six months of each fiscal year, DEO has to set aside up to 50 percent of the Legislature's appropriation to fund employer-based training programs; undisbursed funds after six months may be used for tuition.
- Requires DEO to prioritize awarding employer-based grants to training programs located in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of the Everglades restoration efforts.
- Allows DEO to use a national accreditation or licensure program by the Commission for Independent Education to meet certain requirements.

The bill provides that in the event of a conflict with any of the provisions of House Bill 5, 2023 regular session, or similar legislation, the provisions of House Bill 5, 2023 regular session, or similar legislation, will control.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 288.018, F.S., relating to the Regional Rural Development Grants Program.

Section 2: Amends s. 288.0655, F.S., relating to the Rural Infrastructure Fund.

Section 3: Amends s. 288.9604, F.S., relating to the Florida Development Finance Corporation.

Section 4: Amends s. 288.8017, F.S., relating to Triumph Gulf Coast, Inc.

Section 5: Amends s. 446.71, F.S., relating to the Everglades Restoration Agricultural Community Employment Training Program.

Section 6: Provides implementation directions based on certain conflicts.

Section 7: 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 could increase private sector investment in rural areas.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2023, the Regulatory Reform & Economic Development Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the original bill by removing provisions of the bill relating to:

- The appointment of DEO division directors;
- Reporting on certain military installations;
- The Florida Defense Support Task Force;
- Certain loans made with funds administered by DEO;
- The Florida Development Finance Corporation; and
- The Space Florida board of directors;

On April 12, 2023, the Ways & Means Committee adopted a PCS and reported the bill favorably as a committee substitute. The PCS differs from CS/HB 1209 by adding provisions of the bill related to:

- The Florida Development Finance Corporation; and
- Triumph Gulf Coast, Inc.

This analysis is drafted to the committee substitute as passed by the Ways & Means Committee.

A bill to be entitled

An act relating to economic development; amending s. 288.018, F.S.; removing the requirement that grants received by a regional economic development organization under the Regional Rural Development Grants Program must be matched in a certain manner; removing certain demonstration requirements of program applicants; amending s. 288.0655, F.S.; revising the percentage of certain project costs for which the department may award certain grants; revising limitations on the use of certain grants awarded by the department; amending s. 288.9604, F.S.; providing a date after which the Florida Development Finance Corporation may not enter into specified agreements; removing the scheduled repeal of the corporation; amending s. 288.8017, F.S.; revising the purposes for which certain awards may be provided; amending s. 446.71, F.S.; revising the areas in which the department may provide grants through the Everglades Restoration Agricultural Community Employment Training Program; authorizing the use of certain grant funds for certain purposes; requiring the department to set aside a certain percentage of funds for a certain purpose; prohibiting the department from awarding employer-based grants in excess of a certain amount;

requiring the department to prioritize awarding employer-based grants to certain training programs; providing that certain accreditation or licensure meets a certain qualification requirement; revising requirements for the location in which a training program participant must reside to receive a certain grant from the department; revising the requirements for employer-based training programs established in the Everglades Agricultural Area; providing that certain provisions shall control in the event of certain conflicts; providing an effective date.

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

Section 1. Paragraphs (d) and (e) of subsection (2) of section 288.018, Florida Statutes, are redesignated as paragraphs (b) and (c), respectively, and paragraphs (b), (c), and (d) of subsection (1) and present paragraphs (b) and (c) of subsection (2) of that section are amended to read:

288.018 Regional Rural Development Grants Program.—

(1)

(b) The department shall establish a ~~matching~~ grant program to provide funding to regional economic development organizations for the purpose of building the professional capacity of those organizations. Building the professional

capacity of a regional economic development organization includes hiring professional staff to develop, deliver, and provide needed economic development professional services, including technical assistance, education and leadership development, marketing, and project recruitment. ~~Matching~~ Grants may also be used by a regional economic development organization to provide technical assistance to local governments, local economic development organizations, and existing and prospective businesses.

(c) A regional economic development organization may apply annually to the department for a ~~matching~~ grant. The department is authorized to approve, on an annual basis, grants to such regional economic development organizations. The maximum amount an organization may receive in any year will be $50,000, or $250,000 for any three regional economic development organizations that serve an entire region of a rural area of opportunity designated pursuant to s. 288.0656(7) if they are recognized by the department as serving such a region.

~~(d) Grant funds received by a regional economic development organization must be matched each year by nonstate resources in an amount equal to 25 percent of the state contribution.~~

(2) In approving the participants, the department shall consider the demonstrated need of the applicant for assistance and require the following:

~~(b) Demonstration that each unit of local government has made a financial or in-kind commitment to the regional organization.~~

~~(c) Demonstration that the private sector has made financial or in-kind commitments to the regional organization.~~

Section 2. Paragraphs (b) and (c) of subsection (2) of section 288.0655, Florida Statutes, are amended to read:

288.0655 Rural Infrastructure Fund.—

(2)

(b) To facilitate access of rural communities and rural areas of opportunity as defined by the Rural Economic Development Initiative to infrastructure funding programs of the Federal Government, such as those offered by the United States Department of Agriculture and the United States Department of Commerce, and state programs, including those offered by Rural Economic Development Initiative agencies, and to facilitate local government or private infrastructure funding efforts, the department may award grants for up to 75 ~~50~~ percent of the total infrastructure project cost, or up to 100 percent of the total infrastructure project cost for a project located in a rural community or a rural area of opportunity, as those terms are defined in s. 288.0656(2), which is also located in a fiscally constrained county as described in s. 218.67(1). Eligible projects must be related to specific job-creation or job-retention opportunities. Eligible projects may also include

improving any inadequate infrastructure that has resulted in regulatory action that prohibits economic or community growth, reducing the costs to community users of proposed infrastructure improvements that exceed such costs in comparable communities, and improving access to and the availability of broadband Internet service. Eligible uses of funds shall include improvements to public infrastructure for industrial or commercial sites, upgrades to or development of public tourism infrastructure, and improvements to broadband Internet service and access in unserved or underserved rural communities. Improvements to broadband Internet service and access must be conducted through a partnership or partnerships with one or more dealers, as defined in s. 202.11(2), and the partnership or partnerships must be established through a competitive selection process that is publicly noticed. Authorized infrastructure may include the following public or public-private partnership facilities: storm water systems; telecommunications facilities; broadband facilities; roads or other remedies to transportation impediments; nature-based tourism facilities; or other physical requirements necessary to facilitate tourism, trade, and economic development activities in the community. Authorized infrastructure may also include publicly or privately owned self-powered nature-based tourism facilities, publicly owned telecommunications facilities, and broadband facilities, and additions to the distribution facilities of the existing natural

gas utility as defined in s. 366.04(3)(c), the existing electric utility as defined in s. 366.02, or the existing water or wastewater utility as defined in s. 367.021(12), or any other existing water or wastewater facility, which owns a gas or electric distribution system or a water or wastewater system in this state where:

1. A contribution-in-aid of construction is required to serve public or public-private partnership facilities under the tariffs of any natural gas, electric, water, or wastewater utility as defined herein; and

2. Such utilities as defined herein are willing and able to provide such service.

(c) To facilitate timely response and induce the location or expansion of specific job creating opportunities, The department may award grants for infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities. Authorized grants shall be up to $50,000 for an employment project with a business committed to create at least 100 jobs; up to $150,000 for an employment project with a business committed to create at least 300 jobs; and up to $300,000 for a project in a rural area of opportunity. Grants awarded under this paragraph may be used in conjunction with grants awarded under paragraph (b)~~, provided that the total amount of both grants does not exceed 30 percent of the total project cost~~. In evaluating applications under this

paragraph, the department shall consider the extent to which the application seeks to minimize administrative and consultant expenses.

Section 3. Subsection (5) of section 288.9604, Florida Statutes, is amended to read:

288.9604 Creation of the corporation.—

(5) Effective July 1, 2023, the corporation may not establish new residential Property Assessed Clean Energy agreements. The corporation may only service existing agreements until the completion of the original terms of such agreements ~~This section is repealed July 1, 2023, and July 1 of every fourth year thereafter, unless reviewed and saved from repeal by the Legislature~~.

Section 4. Subsection (1) of section 288.8017, Florida Statutes, is amended to read:

288.8017 Awards.—

(1) Triumph Gulf Coast, Inc., shall make awards from available funds to projects or programs that meet the priorities for economic recovery, diversification, and enhancement of the disproportionately affected counties. Awards may be provided for any of the following:

(a) Ad valorem tax rate reduction within disproportionately affected counties.~~;~~

(b) Local match requirements ~~of s. 288.0655~~ for projects in the disproportionately affected counties.~~;~~

(c) Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties. Such public infrastructure projects include projects for workforce housing, which means housing that is affordable to natural persons or families whose total annual household income does not exceed 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area or, if not within a metropolitan statistical area, within the county in which the person or family resides. The recipient of an award for workforce housing construction, expansion, or maintenance must be a local government in a disproportionately affected county. For purposes of this paragraph, the term:

1. "Adjusted gross income" means all wages, assets, regular cash or noncash contributions or gifts from persons outside the household, and such other resources and benefits as may be determined to be income by the United States Department of Housing and Urban Development, adjusted for family size, less deductions allowable under s. 62 of the Internal Revenue Code.

2. "Affordable" means that monthly rents or monthly mortgage payments including taxes, insurance, and utilities do not exceed 30 percent of that amount which represents the percentage of the median adjusted gross annual income for the households.~~;~~

(d) Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program.~~;~~

(e) Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties. Eligible programs include those that increase students' technology skills and knowledge; encourage industry certifications; provide rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor's and master's level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university or a Florida College System institution within the disproportionately affected counties.~~;~~

(f) Grants to support programs that provide participants in the disproportionately affected counties with transferable, sustainable workforce skills that are not confined to a single employer.~~; and~~

(g) Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism and Fresh From Florida, and grants to promote workforce and infrastructure, on behalf of all of the disproportionately affected counties.

Section 5. Section 446.71, Florida Statutes, is amended to read:

446.71 Everglades Restoration Agricultural Community Employment Training Program.—

(1) The Department of Economic Opportunity, in cooperation with the state board as defined in s. 445.002, shall establish the Everglades Restoration Agricultural Community Employment Training Program within the Department of Economic Opportunity. The Department of Economic Opportunity shall use funds appropriated to the program by the Legislature to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to nonagricultural employment opportunities in the Everglades Agricultural Area as defined in s. 373.4592(2) and rural areas of opportunity as defined in s. 288.0656(2) ~~areas of high agricultural unemployment~~, and to provide other training, educational, and information services necessary to stimulate the creation of jobs in the Everglades Agricultural Area and rural areas of opportunity ~~areas of high agricultural unemployment~~. In determining whether to provide funds to a particular program,

the Department of Economic Opportunity shall consider the location of the program in proximity to the program's intended participants.

(2) The Legislature supports projects that improve the economy in the Everglades Agricultural Area and in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts. In recognition of the employment opportunities and economic development generated by new and expanding industries in such areas ~~the area~~, such as the Airglades Airport in Hendry County and the development of an inland port in Palm Beach County, the Legislature finds that training the citizens of the state to fill the needs of these industries significantly enhances the economic viability of such areas ~~the region~~.

(3) Funds may be used for grants for tuition for public or private technical or vocational programs and matching grants to employers to conduct employer-based training programs. Grant funds provided to employer-based training programs may be used~~,~~ ~~or~~ for the purchase of equipment to be used for training purposes, the hiring of instructors, or any other purpose directly associated with the program. For the first 6 months of each fiscal year, the Department of Economic Opportunity shall set aside up to 50 percent of the amount appropriated by the Legislature to fund employer-based training programs. Any unencumbered funds remaining undisbursed from the set-aside

amount at the end of the 6-month period may be used to provide funding for tuition. The allocation of funds must be included in the notice of grant opportunities.

(4) The Department of Economic Opportunity may not award an employer-based ~~a~~ grant to any given training program which exceeds 50 percent of the total cost of the program, unless the training program is located within a rural area of opportunity, in which case the grant may exceed 50 percent of the total cost of the program and up to 100 percent. Matching contributions may include in-kind services, including, but not limited to, the provision of training instructors, equipment, and training facilities. The department shall prioritize awarding employer-based grants to training programs located in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts.

(5) Before granting a request for funds made in accordance with this section, the Department of Economic Opportunity shall enter into a grant agreement with the requester of funds and the training institution receiving funding through the program. Such agreement must include all of the following information:

(a) An identification of the personnel necessary to conduct the instructional program, the qualifications of such personnel, and the respective responsibilities of the parties for paying costs associated with the employment of such

personnel. National accreditation or licensure of an instructional program by the Commission for Independent Education is sufficient to meet the qualifications requirement.

(b) An identification of the estimated length of the instructional program.

(c) An identification of all direct, training-related costs, including tuition and fees, curriculum development, books and classroom materials, and overhead or indirect costs.

(d) An identification of special program requirements that are not otherwise addressed in the agreement.

(6) The Department of Economic Opportunity may grant up to 100 percent of the tuition for a training program participant who currently resides, and has resided for at least 3 of the 5 immediately preceding years, in ~~within~~ the Everglades Agricultural Area or ~~as described~~ in a rural area of opportunity ~~s. 373.4592 and~~ in a county ~~counties~~ that provides ~~provide~~ for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(7) Employer-based training programs established in the Everglades Agricultural Area must include opportunities to obtain the qualifications and skills necessary for jobs related to federal and state restoration projects, the Airglades Airport in Hendry County, an inland port in Palm Beach County, or other industries with verifiable, demonstrated interest in operating

in ~~within~~ the Everglades Agricultural Area or in rural areas of opportunity ~~and~~ in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(8) The Department of Economic Opportunity shall adopt rules to implement this section.

Section 6. In the event of a conflict of any provision of this act with the provisions of House Bill 5, 2023 Regular Session, or similar legislation, the provisions of House Bill 5, 2023 Regular Session, or similar legislation, shall control to the extent of such conflict.

Section 7. This act shall take effect July 1, 2023.

Commerce Committee
CS/CS/HB 1209 by Rep. Shoaf
Economic Development

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Shoaf (line 39):

- Requires agency agreements that provide state or federal financial assistance to a county or municipality which is a rural community or rural area of opportunity to include a provision allowing for the payment of certain invoices for verified performance.

Amendment 2 by Rep. Shoaf (lines 176-332):

- Clarifies that awards by Triumph Gulf Coast, Inc., for public infrastructure projects may include support for workforce housing properties owned by a local government in a disproportionately affected county.
  - Redefines the term "workforce housing" to mean rented or leased housing for specified individuals.
- Clarifies the areas that the Department of Economic Opportunity must prioritize when awarding funds to programs as part of the Everglades Restoration Agricultural Community Employment Training Program.
- Provides definitions for "employer-based training program," "Everglades Agricultural Area," and "institution-based training program."
- Revises the amount of time a resident must reside in the area to receive a grant for tuition to a training program under the Everglades Restoration Agricultural Community Employment Training Program.

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: Commerce Committee
Representative Shoaf offered the following:

Amendment (with title amendment)

Between lines 39 and 40, insert:

Section 1. Paragraph (h) is added to subsection (1) of section 215.971, Florida Statutes, to read:

215.971 Agreements funded with federal or state assistance.—

(1) An agency agreement that provides state financial assistance to a recipient or subrecipient, as those terms are defined in s. 215.97, or that provides federal financial assistance to a subrecipient, as defined by applicable United States Office of Management and Budget circulars, must include all of the following:

(h) If the agency agreement provides federal or state

financial assistance to a county or municipality that is a rural community or rural area of opportunity, as those terms are defined in s. 288.0656(2), such agreement must include a provision that allows the agency to provide for the payment of invoices to the county or municipality for verified and eligible performance that has been completed in accordance with the terms and conditions set forth in the agreement. This provision is included to alleviate the financial hardships that certain rural counties and municipalities encounter when administering agreements and shall be utilized by the agency based on demonstrated financial hardship. This paragraph may not be construed to alter or limit any other provisions of federal or state law, rule, or other regulation.

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

Remove line 3 and insert:

215.971, F.S.; requiring certain agency agreements to include a provision authorizing the agency to provide for the payment of specified invoices; providing construction; amending s. 288.018, F.S.; removing the requirement that grants

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: Commerce Committee
Representative Shoaf offered the following:

Amendment

Remove lines 176-332 and insert:

(c) Public infrastructure projects for construction, expansion, or maintenance which are shown to enhance economic recovery, diversification, and enhancement of the disproportionately affected counties. Such public infrastructure projects may include public infrastructure support for construction or expansion of workforce housing properties owned by a local government located in a disproportionately affected county. For the purposes of this paragraph, the term:

1. "Infrastructure support" means site improvements.

2. "Workforce housing" means rented or leased housing for residents of the eight disproportionately affected counties who

are employed full-time or who are active duty servicemembers of a branch of the United States Armed Forces. Local governments, or their agents, may rent or lease housing to persons or families who have household incomes that do not exceed 150 percent of the local median income. Renters or lessors are required to provide documentation of full-time employment, or full-time status for self-employed individuals, of 35 hours or more per week.

(d) Grants to local governments in the disproportionately affected counties to establish and maintain equipment and trained personnel for local action plans of response to respond to disasters, such as plans created for the Coastal Impacts Assistance Program.~~;~~

(e) Grants to support programs that prepare students for future occupations and careers at K-20 institutions that have campuses in the disproportionately affected counties. Eligible programs include those that increase students' technology skills and knowledge; encourage industry certifications; provide rigorous, alternative pathways for students to meet high school graduation requirements; strengthen career readiness initiatives; fund high-demand programs of emphasis at the bachelor's and master's level designated by the Board of Governors; and, similar to or the same as talent retention programs created by the Chancellor of the State University System and the Commission of Education, encourage students with

interest or aptitude for science, technology, engineering, mathematics, and medical disciplines to pursue postsecondary education at a state university or a Florida College System institution within the disproportionately affected counties.~~;~~

(f) Grants to support programs that provide participants in the disproportionately affected counties with transferable, sustainable workforce skills that are not confined to a single employer.~~; and~~

(g) Grants to the tourism entity created under s. 288.1226 for the purpose of advertising and promoting tourism and Fresh From Florida, and grants to promote workforce and infrastructure, on behalf of all of the disproportionately affected counties.

Section 5. Section 446.71, Florida Statutes, is amended to read:

446.71 Everglades Restoration Agricultural Community Employment Training Program.—

(1) The Department of Economic Opportunity, in cooperation with the state board as defined in s. 445.002, shall establish the Everglades Restoration Agricultural Community Employment Training Program within the Department of Economic Opportunity. The Department of Economic Opportunity shall use funds appropriated to the program by the Legislature to provide grants to stimulate and support training and employment programs that seek to match persons who complete such training programs to

nonagricultural employment opportunities in the Everglades Agricultural Area as defined in s. 373.4592(2) and rural areas of opportunity as defined in s. 288.0656(2) ~~areas of high agricultural unemployment~~, and to provide other training, educational, and information services necessary to stimulate the creation of jobs in the Everglades Agricultural Area and rural areas of opportunity ~~areas of high agricultural unemployment~~. In determining whether to provide funds to a particular program, the Department of Economic Opportunity shall consider the location of the program in proximity to the program's intended participants. The department shall prioritize awarding employer-based grants to training programs located in rural areas of opportunity in counties with a boundary that is within 75 miles of the Everglades Agricultural Area.

(2) The Legislature supports projects that improve the economy in the Everglades Agricultural Area and in rural areas of opportunity in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts. In recognition of the employment opportunities and economic development generated by new and expanding industries in such areas ~~the area~~, such as the Airglades Airport in Hendry County and the development of an inland port in Palm Beach County, the Legislature finds that training the citizens of the state to fill the needs of these industries significantly enhances the economic viability of such areas ~~the region~~.

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

(a) "Department" means the Department of Economic Opportunity.

(b) "Employer-based training program" means a program established by, or to be established by, a business in this state that provides training for in-demand, nonagricultural occupations for its employees.

(c) "Everglades Agricultural Area" has the same meaning as in s. 373.4592(15).

(d) "Institution-based training program" means a certificate program or other program of study provided by a public or private university, college, or technical or vocational training institution that provides training for in-demand, nonagricultural occupations.

(e) "Program" means the Everglades Restoration Agricultural Community Employment Training Program.

(4)~~(3)~~ Funds may be used for grants for tuition for public or private technical or vocational programs and matching grants to employers to conduct employer-based training programs. Grant funds provided to employer-based training programs may be used~~,~~ ~~or~~ for the purchase of equipment to be used for training purposes, the hiring of instructors, or any other purpose directly associated with the program. For the first 6 months of each fiscal year, the Department of Economic Opportunity shall set aside up to 50 percent of the amount appropriated by the

Legislature to fund employer-based training programs. Any unencumbered funds remaining undisbursed from the set-aside amount at the end of the 6-month period may be used to provide funding for tuition. The allocation of funds must be included in the notice of grant opportunities.

(5)~~(4)~~ The Department of Economic Opportunity may not award an employer-based ~~a~~ grant to any given training program which exceeds 50 percent of the total cost of the program, unless the training program is located within a rural area of opportunity, in which case the grant may exceed 50 percent of the total cost of the program and up to 100 percent. Matching contributions may include in-kind services, including, but not limited to, the provision of training instructors, equipment, and training facilities.

(6)~~(5)~~ Before granting a request for funds made in accordance with this section, the Department of Economic Opportunity shall enter into a grant agreement with the requester of funds and the training institution receiving funding through the program. Such agreement must include all of the following information:

(a) An identification of the personnel necessary to conduct the instructional program, the qualifications of such personnel, and the respective responsibilities of the parties for paying costs associated with the employment of such personnel. National accreditation or licensure of an

instructional program by the Commission for Independent Education is sufficient to meet the qualifications requirement.

(b) An identification of the estimated length of the instructional program.

(c) An identification of all direct, training-related costs, including tuition and fees, curriculum development, books and classroom materials, and overhead or indirect costs.

(d) An identification of special program requirements that are not otherwise addressed in the agreement.

(6) The Department of Economic Opportunity may grant up to 100 percent of the tuition for a training program participant who currently resides, and has resided for the preceding 12 months ~~at least 3 of the 5 immediately preceding years~~, in ~~within~~ the Everglades Agricultural Area or ~~as described~~ in a rural area of opportunity ~~s. 373.4592 and~~ in a county ~~counties~~ that provides ~~provide~~ for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(8)~~(7)~~ Employer-based training programs established in the Everglades Agricultural Area must include opportunities to obtain the qualifications and skills necessary for jobs related to federal and state restoration projects, the Airglades Airport in Hendry County, an inland port in Palm Beach County, or other industries with verifiable, demonstrated interest in operating

in ~~within~~ the Everglades Agricultural Area or in rural areas of opportunity ~~and~~ in counties that provide for water storage and dispersed water storage as part of Everglades restoration efforts ~~that are located in rural areas of opportunity as described in s. 288.0656~~.

(9)~~(8)~~ The Department of Economic Opportunity shall adopt rules to implement this section.

CS/HB 1215

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1215 Pub. Rec./Inspectors and Investigators/DACS
SPONSOR(S): Ethics, Elections & Open Government Subcommittee, Maggard
TIED BILLS: **IDEN./SIM. BILLS:** SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	14 Y, 0 N	Mortellaro	Anstead
2) Ethics, Elections & Open Government Subcommittee	18 Y, 0 N, As CS	Poreda	Toliver
3) Commerce Committee		Mortellaro	Anstead

SUMMARY ANALYSIS

The Office of Agricultural Law Enforcement (OALE) is located in the Department of Agriculture and Consumer Services (DACS) and enforces laws governing businesses regulated by DACS. The goal of OALE is to protect consumers from unfair and deceptive trade practices, protect Florida's agriculture industry from theft and other crimes, and safeguard the wholesomeness of food and other consumer products.

The bill provides a public record exemption for the following information of former and current DACS inspectors and investigators as well as their spouses and children:

- Home addresses;
- Telephone numbers;
- Dates of birth; and
- Photographs.

The bill also protects the following information regarding the spouses and children of current and former DACS inspectors and investigators:

- Places of employment; and
- The names and locations of schools and day care facilities attended.

The exemption is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2023.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person the right to inspect or copy any public record from the legislative, executive, and judicial branches of government.[1] The Legislature, however, may provide by general law for exemption from public record requirements provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.[2]

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person the right to inspect and copy any state, county, or municipal record, unless the record is exempt.[3] Furthermore, the Open Government Sunset Review Act[4] provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[5] An identifiable public purpose is served if the exemption meets 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; or
- Protect trade or business secrets.[6]

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2nd of the fifth year following enactment, unless the Legislature reenacts the exemption.

DACS Inspectors and Investigators in the Office of Agricultural Law Enforcement

The Office of Agricultural Law Enforcement (OALE) is located in the Department of Agriculture and Consumer Services (DACS) and enforces laws governing businesses regulated by the department. The goal of OALE is to protect consumers from unfair and deceptive trade practices, protect Florida's agriculture industry from theft and other crimes, and safeguard the wholesomeness of food and other consumer products.[7] OALE operates agricultural inspection stations on the highways and conduct vehicle inspections of food moving in and out of Florida. Officers are on the lookout for unsafe or unwholesome food that could make people sick including pests and diseases that could harm the state's $100 billion-dollar agricultural industry.[8] OALE investigates crimes, help maintain domestic

[1] Article I, s. 24(a), FLA. CONST..
[2] Article I, s. 24(c), FLA. CONST.
[3] A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the State Constitution. S. 119.011(8), F.S.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] *Id*.
[7] Florida Department of Agriculture and Consumer Services, *Office of Agricultural Law Enforcement*, https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement (last visited March. 17, 2023).
[8] *Id*.

security, and partner with local law enforcement to help coordinate the Domestic Marijuana Eradication Task Force.[9]

Effect of Proposed Changes

The bill provides that the following information regarding current and former DACS inspectors and investigators and their spouses and children is exempt[10] from public record requirements:

- Home addresses;
- Telephone numbers;
- Dates of birth; and
- Photographs.

The bill also protects the following information concerning the spouses and children of such employees:

- Places of employment; and
- The names and locations of schools and day care facilities attended.

The bill provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that revealing the personal information of DACS inspectors and investigators and their family members may place them in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of DACS. They may also be subject to threats or acts of revenge due to the duties they perform.

The public record exemption created by the bill is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2028, unless reviewed and saved from repeal by the Legislature.

The bill takes effect July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Creates a public records exemption for information of certain DACS employees, their spouses, and children.
Section 2: Provides a public necessity statement.
Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[9] *Id*.

[10] 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 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).

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 require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties and municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties and municipalities.

2. Other:

Vote Requirement

Article I, section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly-created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that revealing the personal information of DACS inspectors and investigators and their family members may place them in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of DACS.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public records exemption for sensitive investigative materials and personal information, which does not appear to be broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2023, the Ethics, Elections & Open Government Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment changes the date the exemption will automatically repeal, pursuant to the Open Government Sunset Review act, from October 2, 2024 to October 2, 2028.

This analysis is drafted to the committee substitute as adopted by the Ethics, Elections & Open Government Subcommittee.

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for the personal identifying and location information of current or former inspectors or investigators of the Department of Agriculture and Consumer Services and the spouses and children of the current or former inspectors or investigators; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

a. "Home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood

name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth,

and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone

numbers, photographs, dates of birth, and places of employment of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

e. The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide

prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses,

telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile

justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

1. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant

criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health

care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and

locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this

sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2) and fulfills the screening requirement of s. 39.3035(3), and the members of a Child Protection Team as described in s. 39.303 whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former staff and domestic violence advocates, as defined in s. 90.5036(1)(b), of domestic violence centers certified by the Department of Children and Families under chapter 39; the names,

home addresses, telephone numbers, places of employment, dates of birth, and photographs of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

v. The home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors or investigators of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors or investigators; and the names and locations of schools and day care facilities attended by the children of current or former inspectors or investigators are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. must maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a

written and notarized request for maintenance of the exemption to the custodial agency. The request must state under oath the statutory basis for the individual's exemption request and confirm the individual's status as a party eligible for exempt status.

4.a. A county property appraiser, as defined in s. 192.001(3), or a county tax collector, as defined in s. 192.001(4), who receives a written and notarized request for maintenance of the exemption pursuant to subparagraph 3. must comply by removing the name of the individual with exempt status and the instrument number or Official Records book and page number identifying the property with the exempt status from all publicly available records maintained by the property appraiser or tax collector. For written requests received on or before July 1, 2021, a county property appraiser or county tax collector must comply with this sub-subparagraph by October 1, 2021. A county property appraiser or county tax collector may not remove the street address, legal description, or other information identifying real property within the agency's records so long as a name or personal information otherwise exempt from inspection and copying pursuant to this section are not associated with the property or otherwise displayed in the public records of the agency.

b. Any information restricted from public display, inspection, or copying under sub-subparagraph a. must be

provided to the individual whose information was removed.

5. An officer, an employee, a justice, a judge, or other person specified in subparagraph 2. may submit a written request for the release of his or her exempt information to the custodial agency. The written request must be notarized and must specify the information to be released and the party authorized to receive the information. Upon receipt of the written request, the custodial agency must release the specified information to the party authorized to receive such information.

6. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

7. Information made exempt under this paragraph may be disclosed pursuant to s. 28.2221 to a title insurer authorized pursuant to s. 624.401 and its affiliates as defined in s. 624.10; a title insurance agent or title insurance agency as defined in s. 626.841(1) or (2), respectively; or an attorney duly admitted to practice law in this state and in good standing with The Florida Bar.

8. The exempt status of a home address contained in the Official Records is maintained only during the period when a protected party resides at the dwelling location. Upon conveyance of real property after October 1, 2021, and when such real property no longer constitutes a protected party's home address as defined in sub-subparagraph 1.a., the protected party

must submit a written request to release the removed information to the county recorder. The written request to release the removed information must be notarized, must confirm that a protected party's request for release is pursuant to a conveyance of his or her dwelling location, and must specify the Official Records book and page, instrument number, or clerk's file number for each document containing the information to be released.

9. Upon the death of a protected party as verified by a certified copy of a death certificate or court order, any party can request the county recorder to release a protected decedent's removed information unless there is a related request on file with the county recorder for continued removal of the decedent's information or unless such removal is otherwise prohibited by statute or by court order. The written request to release the removed information upon the death of a protected party must attach the certified copy of a death certificate or court order and must be notarized, must confirm the request for release is due to the death of a protected party, and must specify the Official Records book and page number, instrument number, or clerk's file number for each document containing the information to be released. A fee may not be charged for the release of any document pursuant to such request.

10. Except as otherwise expressly provided in this paragraph, this paragraph is subject to the Open Government

Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the home addresses, telephone numbers, dates of birth, and photographs of current or former inspectors or investigators of the Department of Agriculture and Consumer Services; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former inspectors or investigators; and the names and locations of schools and day care facilities attended by the children of current or former inspectors or investigators be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that the release of such personal identifying and location information might place the department's current or former inspectors or investigators and their family members in danger of physical and emotional harm from disgruntled individuals whose businesses or professional practices have come under the scrutiny of the department. In addition, such personnel may be subject to threats or acts of revenge because of the duties they perform. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N, As CS	Fletcher	Lloyd
2) State Administration & Technology Appropriations Subcommittee	11 Y, 3 N	Perez	Topp
3) Commerce Committee		Fletcher	Hamon

SUMMARY ANALYSIS

The Florida Consumer Finance Act, ch. 516, F.S. (Act), prohibits businesses from making consumer finance loans unless first authorized to do so under the Act. Under the Act, licensed lenders are allowed 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 decreases 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 requires that, at the time of applying for a license, the applicant pay to the office a nonrefundable biennial license fee of $625. Other than applications to renew or reactivate a license, applicants must also pay a nonrefundable investigation fee of $200.

Additionally, 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 the operation of a branch that makes consumer finance loans without first obtaining a license;
- Requires an application fee of $625 to be paid to the Office of Financial Regulation (OFR) 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 that provide assistance programs during a disaster to report to OFR details of such assistance programs; and
- Requires licensees to annually submit to OFR reports of certain information, which OFR may publish in a report after anonymizing and 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 OFR 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 also prohibits licensees from applying delinquency charges until a borrower has been in default for 10 days.

Licensed lenders are allowed 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 decreases 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 OFR for each branch application filed, which is in 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

[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.

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 OFR 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 OFR, 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;
- The total number and dollar amount of loans charged off as of December 31st of the preceding calendar year; and
- The total number and dollar amount of loans with delinquency status listed as:
    - Current or less than 30 days past due.
    - From 30 to 59 days past due.
    - From 60 to 89 days past due.
    - At least 90 days past due.

The bill requires a licensee to submit the report to OFR with an accompanying affidavit certifying that all the information submitted is designated as trade secret. The bill allows OFR 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:

   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] OFR considers this to be a negligible amount which would not impact its operations.[6] Additionally, according to 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:

   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:

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

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 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 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:

Article VII, sec. 19(e), of the Florida Constitution requires any bill that imposes, authorizes, or raises a state tax or fee must be contained in a separate bill that contains no other subject. Current law requires each location of a consumer finance company to pay a $625 application fee and a $200 investigation fee. The bill requires the designation of a principal location. The principal location and each branch location will be subject to the current application fee, but only the principal location will be subject to the investigation fee. Arguably, this is merely a change in status of a location from an applicant location to an applicant principal location; retaining the same fee for that application. Also, other applicant locations will become applicant branch locations; also retaining the same fee. There is no case law to guide this analysis. It is unclear whether a fee bill is required.

B. RULE-MAKING AUTHORITY:

The bill creates a new section of statute that will require a licensee to file an annual report with OFR "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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 207-210: The term "assistance program" is undefined. While OFR is not tasked with approving the assistance program, it is unclear how OFR will determine whether a program is actually an assistance program that may be noticed to OFR pursuant to s. 516.15(5), F.S.[15] An amendment is expected to address this issue.

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. An amendment is expected to address this issue.

[11] *Id.* at 5.
[12] *Id.*
[13] *Id.* at 6.
[14] *Id.* at 6.
[15] *Id.*

Line 238: It is unclear whether the deadline will be March 15th of each year. An amendment is expected to address this issue.

Line 251: This line references "loans outstanding by the licensee." Replacing the word "with" instead of the word "by" may provide clarity. An amendment is expected to address this issue.

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. An amendment is expected to address this issue.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Insurance & Banking Subcommittee considered the bill, adopted one amendment, and reported the bill favorably as a committee substitute. The amendment requires that licensees submit the total number and dollar amount of loans with delinquency status, categorized by amount of days past due, in addition to the other annual reporting requirements proposed by the bill.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

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.

(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.

(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.

COMMERCE COMMITTEE

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

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Fernandez-Barquin (Line 108): The amendment makes non-substantive changes to conform the bill with its Senate counterpart.

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: Commerce Committee

Representative Fernandez-Barquin offered the following:

Amendment (with title amendment)

Remove lines 108-280 and insert:

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. Subsection (1) and paragraph (a) of subsection (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) If the Federal Emergency Management Agency issues a major disaster declaration for this state and if a licensee offers an assistance program to borrowers impacted by the disaster, within 10 days after the licensee's establishment of the program, send written notice to the office in either physical or electronic format and include the following information, subject to change as any additional declarations are issued or declarations are revoked:

(a) The licensed locations affected by the disaster declaration, including 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 program available to borrowers in the affected areas; and

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

For purposes of this subsection, assistance programs may include, but are not limited to, deferments, forbearance, waiver of late fees, payment modification, or changing payment due dates.

Section 6. Section 516.38, Florida Statutes, is created to read:

516.38 Annual reports by licensees.—

(1) By March 15, 2024, and each March 15 thereafter, a licensee shall file a report with the office in a form and manner prescribed by commission rule. The report must include each of the items specified in subsection (2) for the preceding calendar year using aggregated and anonymized data and 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 locations held by the licensee under this chapter as of December 31 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 dollar amount of loans and the number of loans outstanding with the licensee from all licenses held under this chapter as of December 31 of the preceding calendar year.

(d) The total dollar amount of loans and the number of loans in which the licensee holds a security interest in collateral as of December 31 of the preceding calendar year.

(e) The total dollar amount of loans and the number of unsecured loans as of December 31 of the preceding calendar year.

(f) The total number of loans, separated by principal amount, in the following ranges as of December 31 of the preceding calendar year:

1. Up to and including $5,000.

2. Five thousand and one dollars to $10,000.

3. Ten thousand and one dollars to $15,000.

4. Fifteen thousand and one dollars to $20,000.

5. Twenty thousand and one dollars to $25,000.

(g) The total dollar amount of loans and the number of loans charged off as of December 31 of the preceding calendar year.

(h) The total dollar amount of loans and the number 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.

(3) A licensee claiming that any information submitted in the report contains a trade secret must submit to the office an accompanying affidavit in accordance with s. 655.0591 and designate the information claimed to be a trade secret pursuant to s. 655.0591.

(4) The office may publish a report of information submitted pursuant to this section, provided that all data published in the report is anonymized and aggregated from all licensees.

Section 7. Section 516.39, Florida Statutes, is created to read:

516.39 Suspension of penalties and remedial measures after federal disaster declaration.—If the Federal Emergency Management Agency issues a major disaster declaration for a county, a licensee operating in that county designated in the declaration must suspend for a period of 90 days after the date of the initial declaration the following:

(1) The application of delinquency charges under s. 516.031(3)(a)9.

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

(3) The filing of civil actions for the collection of amounts owed for loans made under this chapter.

Section 8. For the purpose of incorporating the amendments made by this act to sections 516.02 and 516.031, Florida Statutes, in references thereto, section 516.19, Florida Statutes, is reenacted to read:

516.19 Penalties.—Any person who violates any of the provisions of s. 516.02, s. 516.031, s. 516.05(3), s. 516.05(6), or s. 516.07(1)(e) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

Remove lines 4-23 and insert:

516.02, F.S.; prohibiting a person from operating a branch of a business making consumer finance loans before obtaining a license from the Office of Financial Regulation; amending s. 516.03, F.S.; specifying application fees for branch licenses; revising the applicability of investigation fees; making a technical change; amending s. 516.031, F.S.; revising the maximum interest rate and the calculation of interest rates on consumer finance loans; revising the minimum amount of time before which a delinquency charge for each payment in default may be imposed; amending s. 516.15, F.S.; requiring licensees offering an assistance program to borrowers after a federally declared major disaster to send a specified notice to the office within a certain timeframe; providing construction; creating s.

516.38, F.S.; requiring licensees to file annual reports with the office; providing for rulemaking by the Financial Services Commission; specifying requirements for the reports; providing requirements for a licensee claiming that submitted information contains a trade secret; authorizing the office to publish a report in a certain manner; creating s. 516.39, F.S.; requiring certain licensees to suspend specified actions for a certain timeframe after a federally declared disaster; reenacting s. 516.19, F.S., relating to penalties, to incorporate the amendments made to ss. 516.02 and 516.031, F.S., in references thereto; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1281 Preemption Over Utility Service Restrictions
SPONSOR(S): Energy, Communications & Cybersecurity Subcommittee, Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1256

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy, Communications & Cybersecurity Subcommittee	12 Y, 3 N, As CS	Walsh	Keating
2) Local Administration, Federal Affairs & Special Districts Subcommittee	13 Y, 3 N	Burgess	Darden
3) Commerce Committee		Walsh	Hamon

SUMMARY ANALYSIS

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law. Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors. Likewise, municipalities have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law. In contrast, special districts have only those powers expressly authorized by general or special law. County and municipal governments have broad authority to legislate on any matter that is not inconsistent with federal or state law.

A local government enactment is inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.

The bill prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of any major appliance, including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

The bill provides an exception for circumstances in which the political subdivision must enforce the Florida Building Code or the Florida Fire Prevention Code.

The bill appears to have no fiscal impact on state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants county and municipal governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2] Likewise, municipalities[3] have those governmental, corporate, and proprietary powers enabling them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[5] Special districts are created by general law,[6] special act,[7] local ordinance,[8] or by rule of the Governor and Cabinet.[9] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[10] As of March 10, 2023, there are 614 active dependent[11] special districts and 1,312 active independent special districts in Florida.[12]

Local Government Authority Over Matters Related to Utility and Energy Services

Many of the powers granted to local governments by general law relate, directly or indirectly, to the provision of utility or other energy services to property owners or utility customers in general or to the authority of local governments to provide these services themselves. These powers include, but may not be limited to, the authority to:

- Prepare and enforce comprehensive plans for development.[13]
- Issue development permits and orders.[14]

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).
[6] S. 189.031(3), F.S.
[7] *Id.*
[8] S. 189.02(1), F.S.
[9] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[10] *2020-2022 Local Gov't Formation Manual,* p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType= Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf (last visited March 10, 2023).
[11] Dependent special districts are under some control by a single county or municipality. S. 189.012(2), F.S. An independent special district is any district that is not a dependent district. S. 189.012(3), F.S. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.
[12] Florida Department of Economic Opportunity, Official List of Special Districts Online, *State Totals*, available at https://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/official-list-of-special-districts (last visited March 10, 2023).
[13] S. 125.01(1)(g), F.S.
[14] Ss. 125.022, F.S. and 166.033, F.S.

- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[15]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[16]
- Enter into contracts with utility companies or others for the supply of water, electricity, or telephone service to or in connection with any project.[17]
- Construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses,[18] construct such other buildings and facilities as may be required to properly and economically operate and maintain such works,[19] and make all necessary rules or regulations governing the use, control and operation of such works;[20]
- Contract with private companies for the right to construct, operate, and maintain gas plants and distribution systems for domestic, municipal, and industrial uses, including the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality, for up to 30 years, provided that the rates or charges to be made by the private company to the individual users of the utility are fixed by the municipality.[21]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[22]
- License the use of gas and power lines in rights-of-way.[23]
- Adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[24]

Further, general law provides a role for local governments in state proceedings related to the siting of certain new electrical power plants, transmission lines, and natural gas pipelines. Specifically, part II of ch. 403, F.S., requires local governments to provide a report to the Department of Environmental Protection (DEP) as to the consistency of proposed electrical power plants, transmission lines, and natural gas pipelines with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed facility, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations.[25]

Municipalities are authorized to levy a public service tax on the purchase of electricity, natural gas liquefied petroleum gas, and manufactured gas.[26]

As noted above, many municipalities own and operate electric utilities and natural gas utilities and govern the operation of those utilities through ordinance, code, or policies. Some special districts provide these services under policies adopted by each special district.

State Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. State preemption precludes a local government from exercising authority in that particular area.[27]

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[15] S. 125.01(1)(h), F.S.
[16] S. 125.01(1)(bb), F.S.
[17] S. 125.012(19), F.S.
[18] S. 180.06(8), F.S.
[19] S. 180.06(9), F.S.
[20] S. 180.13, F.S.
[21] S. 180.14, F.S.
[22] S. 125.01(1)(m), F.S.
[23] S. 125.42, F.S.
[24] S. 125.275, F.S.
[25] Ss. 403.507(2)(a)3., 403.526(2)(a)5., and 403.941, F.S.
[26] S. 166.231, F.S.
[27] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009), https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/ (last visited March 10, 2023).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[28] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[29] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[30] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[31]

Preemption Over Utility Service Restrictions

Section 366.032, F.S., expressly preempts the area of restricting utility services, prohibiting a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that these entities are authorized to serve:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.[32]

An electric utility is one which owns, maintains, or operates an electric generation, transmission or distribution system. An electric utility can be investor-owned, municipally-owned, or a rural electric cooperative.[33] There are four investor-owned electric utilities in Florida: Florida Power & Light Company,[34] Duke Energy Florida, Tampa Electric Company, and Florida Public Utilities Corporation.[35] Additionally, there are thirty-four municipal electric utilities and seventeen rural electric cooperatives.[36] Further, the Florida Municipal Power Agency was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities.[37] Fuels that Florida electric utilities use to generate electric power include, but are not limited to: natural gas, nuclear, coal, and renewables like solar and biomass.[38]

A natural gas utility is a utility that supplies natural or manufactured gas, or liquefied gas with air admixture, or a similar gaseous substance by pipeline, to or for the public. A natural gas utility can be a

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[28] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

[29] *Mulligan*, 934 So. 2d at 1243.

[30] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).

[31] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).

[32] S. 366.032, F.S.

[33] S. 366.02, F.S.

[34] FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022.

[35] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2022), p, 4, available at https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/FactsAndFigures/April%202022.pdf (last visited Mar. 11, 2023).

[36] *Id.* at 11-12.

[37] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, http://fmpa.com/about/members/ (last visited Mar. 11, 2023).

[38] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at. n. 35, p. 3.

gas public utility, gas district, or natural gas utility or municipality.[39] Currently, there are eight investor-owned natural gas utilities, twenty-seven municipally owned natural gas utilities, and four special gas districts.[40]

Liquified petroleum gas is any material which is composed predominately of any of the following hydrocarbons, or mixtures: propane, propylene, butanes, and butylenes.[41] A category I liquid petroleum gas dealer is someone who sells or offers to sell by delivery, or at a stationary location, any liquified petroleum gas to a consumer for industrial, commercial, or domestic use.[42] A category II liquefied petroleum gas dispenser is a person who operates a liquefied petroleum gas dispensing unit for the purpose of serving liquid products to the consumer for industrial, commercial, or domestic use, and who sells, or offers to sell or lease equipment for the use of liquified petroleum gas.[43] A category III liquified petroleum gas cylinder exchange operator is a person who operates a storage facility used for the purpose of storing filled propane cylinders of certain capacities while awaiting sale to the consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.[44]

Gas Stove Bans

Multiple cities around the country have placed restrictions on the use of natural gas, propane, and related appliances. Nearly 100 cities and counties in the U.S. have adopted policies, rules, or ordinances that restrict the use of gas-fueled stoves and heaters.[45] In California, 73 cities and counties have adopted building codes that require new residential and commercial buildings to be all-electric.[46] Additionally, 26 cities and three states (Maryland, Colorado, and Washington) have building codes in effect, or that are scheduled to go into effect, that will require new construction to be all-electric.[47]

Effect of Proposed Changes

The bill creates an express preemption that prohibits a municipality, county, special district, or other political subdivision of the state from enacting or enforcing a resolution, ordinance, rule, code, or policy, or take any other action that restricts or prohibits, or has the effect of restricting or prohibiting, the use of any major appliance, including a stove or grill, which uses the types or fuel source of energy production which may be used, delivered, converted, or supplied by:

- Investor-owned electric utilities;
- Municipal electric utilities;
- Rural electric cooperatives;
- Entities formed by interlocal agreement to generate, sell, and transmit electrical energy;
- Investor-owned gas utilities;
- Gas districts;
- Municipal natural gas utilities;
- Natural gas transmission companies; and
- Certain propane dealers, dispensers, and gas cylinder exchange operators.

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[39] S. 366.04(3)(c), F.S.
[40] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, *supra* at. n. 35, p. 13.
[41] S. 527.01(1), F.S.
[42] This category also includes "any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders." S. 527.01(6), F.S.
[43] S. 527.01(7), F.S.
[44] S. 527.01(8), F.S.
[45] Deppisch, Breanne, *Gas stove bans are advancing around the country — here's the rundown*, Washington Examiner (Jan. 12, 2023), available at https://www.washingtonexaminer.com/policy/energy-environment/gas-stove-bans-rundown (last visited Mar. 14, 2023).
[46] Elizabeth Weise, *Gas stove bans explained: Are natural gas stoves actually a 'hazard'? Why are they suddenly controversial?* USA Today (Feb.1, 2023), https://www.usatoday.com/story/news/2023/02/01/gas-stove-bans-explained-controversy-over-health-climate/11126667002/ (last visited Mar. 14, 2023).
[47] *Id*.

The bill provides an exception for circumstances in which the political subdivision must enforce the Florida Building Code or the Florida Fire Prevention Code.

Under the bill, a board of a municipality or governmental entity is not prevented from adopting rules, regulations, and policies governing an electric or natural gas utility that it owns or operates and directly controls.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 366.032, relating to preemption over utility service restrictions.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill uses the term “major appliance,” but this term is not defined beyond identifying stoves and grills.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 13, 2023, the Energy, Communications & Cybersecurity Subcommittee adopted one amendment to the bill and reported the bill favorably as a committee substitute. The amendment created an exception to the bill’s preemption provisions so that political subdivisions may take actions necessary to enforce the Florida Building Code and the Florida Fire Prevention Code.

This analysis is drafted to the committee substitute as passed by the Energy, Communications & Cybersecurity Subcommittee.

A bill to be entitled

An act relating to preemption over utility service restrictions; amending. s. 366.032, F.S.; prohibiting certain local governmental entities, subject to specified exceptions, from enacting or enforcing a resolution, ordinance, rule, code, or policy or from taking any action that restricts or prohibits or has the effect of restricting or prohibiting the use of any major appliances; revising an exception to preemption; providing an effective date.

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

Section 1. Subsections (2) through (4) of section 366.032, Florida Statutes, are renumbered as (3) through (5), respectively, subsection (1) and present subsection (2) are amended, and a new subsection (2) is added to that section, to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following

entities to serve customers that such entities are authorized to serve:

(a) A public utility or an electric utility as defined in this chapter;

(b) An entity formed under s. 163.01 that generates, sells, or transmits electrical energy;

(c) A natural gas utility as defined in s. 366.04(3)(c);

(d) A natural gas transmission company as defined in s. 368.103; or

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

(2) Except to the extent necessary to enforce the Florida Building Code adopted pursuant to s. 553.73 or the Florida Fire Prevention Code adopted pursuant to s. 633.202, a municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of any major appliances, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1).

(3)~~(2)~~ Notwithstanding the restrictions of this section,

this section does not prevent the board of a municipality or governmental entity which owns or operates and directly controls an electric or natural gas utility~~,~~ from passing rules, regulations, or policies governing the utility.

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

Commerce Committee
CS/HB 1281 by Rep. Buchanan
Preemption Over Utility Service Restrictions

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Buchanan (line 43):

- Provides a definition for the term “appliance.”

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: Commerce Committee

Representative Buchanan offered the following:

Amendment (with title amendment)

Remove lines 43-49 and insert:

state may not enact or enforce a resolution, an ordinance, a rule, a code, or a policy or take any action that restricts or prohibits or has the effect of restricting or prohibiting the use of an appliance, including a stove or grill, which uses the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the entities listed in subsection (1). As used in this subsection, the term "appliance" means a device or apparatus manufactured and designed to use energy and for which the Florida Building Code or the Florida Fire Prevention Code provides specific requirements.

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

Remove lines 6-10 and insert:

resolution, an ordinance, a rule, a code, or a policy or from taking any action that restricts or prohibits or has the effect of restricting or prohibiting the use of appliances; revising an exception to preemption; defining the term "appliance"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1307 Department of Agriculture and Consumer Services
SPONSOR(S): Criminal Justice Subcommittee, McClure
TIED BILLS: **IDEN./SIM. BILLS:** SB 1150

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N	Thompson	Anstead
2) Criminal Justice Subcommittee	16 Y, 0 N, As CS	Padgett	Hall
3) Commerce Committee		Thompson	Hamon

SUMMARY ANALYSIS

The Division of Licensing (DOL) within the Department of Agriculture and Consumer Services (DACS) administers Florida's concealed weapon licensing program and oversees Florida's private investigative, private security, and recovery services industries. The Division of Consumer Services (DCS) within DACS regulates various businesses, such as charitable organizations and telemarketers, and protects consumers and businesses from unfair and unsafe business practices across a wide range of industries, including gasoline, liquefied petroleum (LP) gas, and weighing and measuring devices.

The bill streamlines licensure requirements and reduces fees related to the private investigative, private security, and recovery services industries; relaxes certain registration fee requirements for charitable organizations; revises services that certain LP gas licensees are authorized to conduct; and provides criminal penalties for retail fuel theft violations. In part, the bill:

- Allows former military firearms instructors to use their experience in the military to satisfy a firearm training requirement when applying for a Class "K" Firearms Instructor License.
- Allows Class "K" Firearms Instructor teaching experience to replace the license renewal training.
- Allows DACS to waive the annual firearms training for Class "G" Statewide Firearm Licensees who provide proof of annual training under the federal Law Enforcement Officers' Safety Act.
- Gives DACS more flexibility when charging late fees for renewal applications.
- Allows DACS to publish the private investigative, private security, and recovery industry newsletters and pamphlets online.
- Authorizes electronic verification, instead of verification under oath, for certain recovery agent and security guard applications for licensure.
- Relaxes annual registration fees for charitable organizations that are not in higher revenue categories.
- Expands the types of services that licensed Category I LP Gas Dealers and Category V LP Gas Dealers may provide to include the "design" of LP gas equipment.
- Creates provisions that address retail fuel theft and tampering with gas pumps, including prohibitions, seizure and forfeiture requirements, and criminal penalties.

The bill may have an insignificant fiscal impact on state government from reduced expenditures and potential increases in revenues. The bill is not expected to have a fiscal impact on local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Division of Licensing

The Division of Licensing (DOL) within the Department of Agriculture and Consumer Services (DACS) administers Florida's concealed weapon licensing program[1] and oversees Florida's private investigative, private security, and recovery services industries.[2] The DOL's regulatory oversight of those services includes licensing, enforcing compliance standards, and ensuring public protection from unethical business practices and unlicensed activity.[3]

Private Investigative and Security Services

Currently, the DOL offers 22 different types of private investigative, private security, and recovery services licenses and four different types of concealed weapon or firearm licenses. As of February 28, 2023, the DOL had issued a total of 169,758 private investigative, private security, and recovery services licenses and 2,459,530 concealed weapon permits, to qualified applicants. The following chart provides a breakdown of the total number of each license type.[4]

License Type	License Title	Total
C	Private Investigators	7,240
CC	Private Investigator Interns	1,496
A	Private Investigative Agencies	2,721
AA	Private Investigative Agency Branch Offices	22
MA	Private Investigative Agency Managers	86
M	Private Investigative/Security Agency Managers	475
D	Security Officers	144,151
B	Security Agencies	2,064
BB	Security Agency Branch Offices	184
MB	Security Managers	1,551
AB	Security Agency/Private Investigative Agency Branch Offices	19
DS	Security Officer Schools	427
DI	Security Officer Instructors	1,874
G	Statewide Firearm Licenses	27,363
K	Firearms Instructors	676
E	Recovery Agents	786
EE	Recovery Agent Interns	327
R	Recovery Agencies	296
RR	Recovery Agency Branch Offices	31
MR	Recovery Agency Managers	3
RS	Recovery Agent Schools	6
RI	Recovery Agent Instructors	8
Subtotal of Private Investigative, Private Security, and Recovery Services Licenses		**191,806**
W	Concealed Weapon or Firearm	2,645,444
WJ	Concealed Weapon or Firearm/Circuit and	827

[1] S. 790.06, F.S.
[2] Ch. 493, F.S.
[3] Office of Program Policy Analysis and Government Accountability, Government Program Summaries, *Department of Agriculture and Consumer Services Licensing*, https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=4101 (last visited Mar. 16, 2023).
[4] The Florida Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports*, https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports (last visited Mar. 16, 2023).

	County Judges	
WR	Concealed Weapon or Firearm/Retired Law Enforcement and Correctional Officers	13,680
WS	Concealed Weapon or Firearm/Consular Security Official	10
Subtotal of Concealed Weapon Licenses		**2,659,961**
Total Number of Licenses		**2,851,767**

Class "G" Statewide Firearm License

A Class "G" Statewide Firearm License is a supplemental license that permits specific licensees to carry a firearm during the course of their licensed, employment-related activity. A Class "G" Statewide Firearm License is available only to individuals who currently hold one of the following licenses:[5]

- Private investigator (Class "C");
- Private investigator intern (Class "CC");
- Security officer (Class "D");
- Private investigative or security agency manager (Class "M");
- Private investigative agency manager (Class "MA"); or
- Security agency manager (Class "MB").

Class "G" Statewide Firearm License Application and Training Requirements

An initial applicant for a Class "G" Statewide Firearm License must complete firearm training, which must include at least 28 hours of range and classroom training either by in-person instruction, or via live instruction through a secure website, with no more than eight hours consisting of in-person range training, which must include safe handling and storage of firearms. The training must be administered and taught by a Class "K" Firearms Instructor Licensee who verifies the identity and attendance of the applicant.[6]

The Class "G" Statewide Firearm License applicant must submit a training certificate to DACS upon completion of the training. Additionally, the Class "K" Firearms Instructor Licensee who provides the training must submit results directly to the DOL and provide a copy of the training results to the trainee.[7] An applicant who was discharged from service as a military officer within the last 12 months, and who has completed specific military courses is deemed to have completed a substantially similar training, and is exempt from the 28 hours of range and classroom training required for an initial Class "G" Statewide Firearm License.[8]

The "Class G" Statewide Firearm License must be renewed every two years.[9] Class "G" Statewide Firearm Licensees must annually complete four hours of firearms requalification training for each caliber of firearm that he or she carries in the course of his or her duties.[10] DACS is authorized to waive the firearms training requirement if:[11]

- The applicant provides proof showing he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous two years of the licensure period;
- The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous two years of the licensure period; or

[5] S. 493.6115(2), F.S.
[6] S. 493.6105(5), F.S. *See also* R. 5N-1.132(1)(a), F.A.C.
[7] *Id*.
[8] R. 5N-1.119, F.A.C.
[9] S. 493.6113(1), F.S.
[10] S. 493.6113(3)(b), F.S.
[11] *Id*.

- The applicant submits one of the valid firearm certificates required for a Class "K" Firearms Instructor initial license and provides proof of having completed requalification training during the previous two years of the licensure period.

Class "K" Firearms Instructor License Application and Training Requirements

Class "K" Firearms Instructor Licensees provide classroom or range instruction to applicants for a Class "G" Statewide Firearm License.[12] Applicants for an initial Class "K" Firearms Instructor License must submit one of the following certificates to demonstrate continued firearms qualifications:[13]

- The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms certificate.
- A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than three years before the submission of the application.
- A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than three years before the submission of the application.

The initial applicant must also pay the fee and pass an examination administered by DACS.[14]

Class "K" Firearms Instructor Licensees must renew their license every three years[15] and submit one of the firearms qualification certificates, required for initial licensure, as proof that he or she remains certified to provide firearms instruction.[16] A Class "K" Firearms Instructor Licensee who fails to file a renewal application on or before its expiration must renew the license by fulfilling all renewal application requirements and pay a late fee equal to the amount of the Class "K" Firearms Instructor fee.[17]

License Renewal Late Fee

Failure of a private investigative, private security, or recovery services licensee to renew a license on or before its expiration requires the licensee to:

- Renew his or her license by fulfilling the applicable renewal requirements; and
- Pay a late fee equal to the amount of the license fee.[18]

Recovery Agent and Security Officer School or Training Facility

Any school, training facility, or instructor who offers training for Class "E" Recovery Agents, Class "EE" Recovery Agent Interns, or Class "D" Security Officers, must file an application containing certain information with DACS along with an application fee of up to $60. The application must be signed and verified by the applicant "under oath" as provided in s. 92.525, F.S., which authorizes documents to be verified in the following three ways:

- Under oath or affirmation taken or administered before a judge, clerk or deputy clerk of court, or any notary public;
- Under oath or affirmation taken or administered by law enforcement officer, correctional officer, or traffic officer by electronic means or in the physical presence of the affiant; or
- By signing a written declaration.[19]

However, since the law specifies that applications must be verified "under oath," the law does not allow for electronic verification of applications.

[12] Ss. 493.6101(14) and 493.6115(7), F.S.
[13] S. 493.6105(6)(a), F.S.
[14] S. 493.6105(6)(b), F.S.
[15] S. 493.6113(1), F.S.
[16] S. 493.6113(3)(d), F.S.
[17] S. 493.6113(4), F.S.
[18] S. 493.6113(4), F.S.
[19] S. 493.6304(2) and 493.6406(2), F.S.

Publication to the Industry

DACS is authorized to periodically publish newsletters and pamphlets advising private investigative, private security, and recovery services licensees of certain information that is of interest to the industry as well as the legal authority, rights, and obligations for various classes of licensure. The newsletter also contains administrative complaints against licensed or unlicensed persons or agencies. The newsletter must be published between two to four times annually, while the pamphlet must be updated every two years as necessary.[20]

Division of Consumer Services

The Division of Consumer Services (DCS) within DACS is the state's clearinghouse for consumer complaints, information and protection. The DCS regulates various businesses, such as charitable organizations and telemarketers. In addition, the DCS protects consumers and businesses from unfair and unsafe business practices across a wide range of industries, including antifreeze, brake fluid, gasoline, liquefied petroleum (LP) gas, pesticides, water vending machines, and weighing and measuring devices.[21]

Charitable Organization Fees

Organizations that intend to solicit donations in Florida are required to register with DACS pursuant to the Solicitation of Contributions Act (Act).[22] The Act contains basic registration, financial disclosures, and notification requirements for charitable organizations and sponsors, fundraising consultants, and solicitors. Every charitable organization, sponsor,[23] or parent organization[24] must pay a single registration fee as follows:[25]

- Ten dollars if the contributions:
  - Received for the last fiscal year were less than $5,000; or
  - Actually raised or received from the public during the immediately preceding fiscal year are no more than $25,000 and the fundraising activities are carried on by certain entities who are not compensated.
- Seventy-five dollars if the contributions received for the last fiscal year were $5,000 or more, but less than $100,000.
- One hundred twenty-five dollars if the contributions received for the last fiscal year were $100,000 or more but less than $200,000.
- Two hundred dollars if the contributions received for the last fiscal year were $200,000 or more but less than $500,000.
- Three hundred dollars if the contributions received for the last fiscal year were $500,000 or more but less than $1 million.
- Three hundred fifty dollars if the contributions received for the last fiscal year were $1 million or more but less than $10 million.
- Four hundred dollars if the contributions received for the last fiscal year were $10 million or more.

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[20] S. 493.6123(1), F.S.

[21] Department of Agriculture and Consumer Services, http://www.freshfromflorida.com/Divisions-Offices/Consumer-Services (last visited Mar. 16, 2023).

[22] *See* ch. 496, F.S.

[23] S. 496.404(25), F.S., defines a "sponsor" as a group or person who holds herself or himself out to be soliciting contributions by the use of a name that implies the group or person is in any way affiliated with or organized for the benefit of emergency service employees or law enforcement officers and the group or person is not a charitable organization.

[24] S. 496.404(18), F.S., defines a "parent organization" as part of a charitable organization or sponsor that coordinates, supervises, or exercises control over policy, fundraising, and expenditures or assists or advises one or more of the organization's chapters, branches, or affiliates in Florida.

[25] S. 496.405(4)(a), F.S.

Certain persons and organizations are exempt from the registration fee requirements including a charitable organization that has less than $25,000 in total revenue so long as they did not employ professional solicitors or have paid employees.[26]

Liquefied Petroleum Gas

The Bureau of Compliance within the DCS is responsible for regulating the LP gas industry, including licensing, inspection, training, and examination requirements.[27] These responsibilities ensure that those persons engaged in LP gas-related business activities in this state are trained and that compliance with acceptable safety codes and standards is achieved statewide.[28]

LP gas is defined in statute as any material composed predominantly of any of the following hydrocarbons, or mixtures of the same:

- Propane;
- Propylene;
- Butanes (normal butane or isobutane); and
- Butylenes.[29]

Current law provides licensing requirements for businesses that engage in certain LP gas-related activities, including sales, installations, service and repair work, manufacture of equipment, and other miscellaneous activities. DACS is required to license applicants that it determines to be competent, qualified, and trustworthy. Violations for willfully operating without a license are a third degree felony.[30]

The license categories and associated fees are as follows:[31]

License Category	Annual License Fee
Category I LP Gas Dealer	$400
Category II LP Gas Dispenser	$400
Category III LP Gas Cylinder Exchange Unit Operator	$65
Category IV Dealer in Appliances and Equipment	$65
Category V LP Gas Installer	$200
Category VI Miscellaneous Operator	$200

Licensees may renew their license annually, biennially, or triennially, and must meet the same requirements and conditions, including fee amounts, for each licensed year. An expired license will become inoperative, and the fee for restoration of an expired license is equal to the original license fee and must be paid before the licensee is allowed to resume operations.[32]

DACS is responsible for enforcing reasonable standards of competency, including, but not limited to, the training, licensure, testing, and qualifying of persons participating in the LP gas industry.[33] DACS is also authorized to adopt rules that are:[34]

- In the interest of public health, safety, and welfare and which promotes the safe handling of LP gas, equipment, and systems; and

[26] S. 496.406(1)(d), F.S.
[27] *See* ch. 527, F.S.
[28] Department of Agriculture and Consumer Services, *LP Gas Training*, https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training (last visited Mar. 16, 2023).
[29] S. 527.01(1), F.S.
[30] S. 527.02, F.S. A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[31] *Id*.
[32] S. 527.03, F.S.
[33] S. 527.055(1)(b), F.S.
[34] S. 527.06, F.S.

- Reasonably necessary to assure the competence of persons to safely engage in the business of LP gas.

According to the DACs website, training is required for all employees of an LP gas-related business, and refresher training must be conducted at three-year intervals.[35] In addition, any person applying for a license to engage in Category I LP Gas Dealer, Category II LP Gas Dispenser, or Category V LP Gas Installer activities must prove competency by passing a written examination administered by DACS or its agent.[36]

DACS is required to promulgate and enforce rules setting forth minimum general standards covering the "design, construction, location, installation, and operation" of LP gas equipment.[37] Currently, the definitions for Category I LP Gas Dealers, and Category V LP Gas Installers, do not include the term "design" in the description of services listed that such LP gas licensees are authorized to perform.[38] According to DACS, the national industry standards of the National Fire Protection Association for the storage and handling of LP gases as published in NFPA 58, Liquefied Petroleum Gas Code, 2020 Edition, which is adopted by rule, "contemplates that liquefied petroleum professionals can design such systems within their expertise."[39]

Gasoline and Oil Inspections

Current law governing gasoline and oil inspections in the state makes DACS responsible for monitoring the accuracy of Florida's gas pumps, scales, price scanners, and other commercial weighing and measuring devices to promote a fair and equitable marketplace and protect consumers. This includes the inspection of retail gas stations to ensure that fuel dispensers are working safely and properly.[40]

As part of these responsibilities, DACS is required to inspect all gas pumps used in selling or distributing petroleum fuel at wholesale and retail, and affix a sticker to each gas pump signifying that the device has been inspected and the owner is responsible for its proper use and maintenance.[41]

A gas pump found to be operating outside the tolerances defined by DACS must be deemed inaccurate and DACS is required to either:[42]

- Give the owner or manager reasonable time to repair the measuring device; or
- Condemn or prohibit the further use of the measuring device by using an appropriate security seal.

It is unlawful to operate a gas pump that has been condemned or prohibited from further use without the written consent of DACS. It is also unlawful to break, cut, or remove any seal applied by DACS to a gas pump or container. The seal may be broken by a DACS registered meter mechanic to repair or adjust a gas pump. However, after repairs and adjustments are complete, the adjusting mechanism must immediately be resealed by the mechanic who must immediately notify DACS of this action.[43]

All persons and service agencies that repair or install gas pumps are required to register with DACS and report to DACS when installing a gas pump.

Gas Pump Security Measures

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[35] Department of Agriculture and Consumer Services, *LP Gas Training*, https://www.fdacs.gov/Business-Services/LP-Gas-Inspection/LP-Gas-Training (last visited Mar. 27, 2023).
[36] S. 527.0201(1), F.S.
[37] S. 527.06(2), F.S.
[38] S. 527.01(6) and (10), F.S.
[39] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).
[40] Department of Agriculture and Consumer Services, *Weights and Measures*, https://www.fdacs.gov/Business-Services/Weights-and-Measures (last visited Mar. 27, 2023).
[41] S. 527.07(1), F.S.
[42] S. 527.07(4), F.S.
[43] S. 527.07(7), F.S.

Gas pump owners and operators are required to have a security measuring device affixed or installed on the gas pump to restrict the unauthorized access of customer payment card information.[44] The security measure must include one or more of the following:

- Pressure-sensitive security tape over the panel opening that leads to the scanning device to restrict the unauthorized opening of the panel.
- A device or system that will render the gas pump or scanning device in the gas pump inoperable if there is an unauthorized opening of the panel.
- A device or system that encrypts the customer payment card information.
- A physical locking mechanism that requires an access key unique to each station to restrict the unauthorized access of customer payment card information.
- An alarm to alert the owner or operator if there is an unauthorized opening of the panel.
- A daily inspection of each gas pump using an anti-skimmer application that detects wireless-based skimmers.
- A device or system that permits customers to use a contactless payment method.
- Another security measure approved by DACS.

Effective January 1, 2022, gas pump owners and operators must have at least two of the security measures affixed or installed on the gas pump. A gas pump without a security measure or with an illegal skimming or filtering device or an altered or damaged security measure, upon discovery by DACS, is prohibited from further use until the security measure is installed, replaced, or repaired. DACS is authorized to take gas pumps that do not have the two security measures out of service until compliance is restored, and may seize without warrant any skimming device for use as evidence.[45]

The regulation of gas pumps is preempted to the state.[46]

Retail Theft

The chapter of Florida law governing theft, robbery, and related crimes,[47] defines "theft" as knowingly obtaining, using, or attempting to obtain or use another's property, with the intent to permanently or temporarily:

- Deprive the person of the property, or
- Appropriate the property to an unauthorized use.[48]

The penalties for theft depend on several factors, such as the amount stolen, the type of property or services stolen, and the circumstances involved. Violations for theft offenses are characterized as "grand theft" and "petit theft."

The lowest level theft offense is petit theft of the second degree, which includes theft of property valued at less than $100. Petit theft of the second degree is a second degree misdemeanor,[49] punishable by a term of up to 60 days in jail and a $500 fine.[50]

The most serious level theft offense is grand theft of the first degree, which can include theft of property valued at $100,000 or more, cargo valued at more than $50,000 which has entered interstate or intrastate commerce, any grand theft in which the offender uses a getaway car, and any grand theft that causes more than $1,000 worth of property damage. Grand theft of the first degree is a first degree felony,[51] punishable by a term of imprisonment of not more than 30 years and a fine up to $10,000.[52]

[44] S. 527.07(10), F.S.
[45] *Id*.
[46] *Id*.
[47] *See* ch. 812, F.S.
[48] S. 812.014(1), F.S.
[49] S. 812.014(3)(a), F.S.
[50] Ss. 775.082 and 775.083, F.S.
[51] S. 812.014(2)(d) and (e), F.S.
[52] Ss. 775.082 and 775.083, F.S.

"Retail theft" is defined as "the taking possession of or carrying away of merchandise,[53] property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant[54] of possession, use, benefit, or full retail value."[55]

It is a third degree felony to commit retail theft, if the property stolen is valued at $750 or more, and the person individually or in concert with one or more other persons, commits retail theft in certain situations.[56]

Seized or Forfeited Property

The Florida Contraband Forfeiture Act (FCFA)[57] provides for the seizure and civil forfeiture of property related to criminal and non-criminal violations of the law.[58] Contraband and other property may be seized when utilized during a violation of, or for the purpose of violating, the FCFA. Property constituting a "contraband article" includes, but is not limited to the following items:[59]

- Motor fuel upon which the motor fuel tax has not been paid as required by law;
- Vehicles of any kind which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony; and
- Personal property including equipment, which was used or was attempted to be used as an instrumentality in the commission of, or in aiding or abetting in the commission of, any felony.

Currently, any contraband article, vessel, motor vehicle, aircraft, other personal property, or real property used in violation of any provision of the FCFA, or in, upon, or by means of which any violation of the FCFA has taken or is taking place, may be seized and forfeited.[60]

Retail Fuel Theft (Pulsar Manipulation Devices)

According to reports, recently, fuel thieves have been caught using homemade devices to steal fuel from retail gas pumps. Gas pumps are currently outfitted with a device called a pulsar that counts the gallons being pumped. Criminals will break into the gas pump, install a device to manipulate or reengineer the current pulsar, and allow fuel to flow without counting the gallons. This allows criminals to pump fuel without being charged.[61]

In Hillsborough County, $60,000 worth of gasoline was stolen from two different gas stations by individuals using the pulsar manipulation devices.[62] In Lakeland, two individuals were caught while filling up a large gas tank in the back of a pickup truck after accessing the inside of the fuel pump.[63]

The use of these devices is not just an issue in Florida. It is happening in other states as well. The Arizona Senate is considering a bill that would make the possession of a "pulsar manipulation device" a

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[53] "Merchandise" means "any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant." S. 812.015(1)(a), F.S.
[54] "Merchant" means "an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise." S. 812.015(1)(b), F.S.
[55] S. 812.015(1)(d), F.S.
[56] S. 812.015(8), F.S.
[57] *See* ss. 932.701-932.7062, F.S.
[58] S. 932.701(1), F.S.
[59] S. 932.701(2)(a)4., 5., and 7., F.S.,
[60] S. 932.703(1)(a), F.S.
[61] MCS Petroleum, *Dispenser Security*, https://mcspetroleum.com/security/ (last visited Mar. 16, 2023).
[62] Matthew Impelli, *Fuel Thieves Used 'Homemade Device' to Steal $60,000 in Gas, Police Say*, Newsweek, April 4, 2022, https://www.newsweek.com/fuel-thieves-used-homemade-device-steal-60000-gas-police-say-1694856 (last visited Mar. 16, 2023).
[63] Catherine Hawley, *Florida men accused of tampering with gas pumps, stealing fuel in Bay area*, Fox 13 News, March 17, 2022, https://www.fox13news.com/news/florida-men-accused-of-tampering-with-gas-pumps-stealing-fuel-in-bay-area (last visited Mar.16, 2023).

class 3 felony.[64] The bill defines the term pulsar manipulation device as "a mechanical or electronic device that can manipulate the dispenser meter of a fuel pump."[65]

According to DACS:[66]

- Possession of such devices is legal in Florida.
- Law enforcement agencies throughout Florida continue to report pulsar compromises at gas stations.
- Law enforcement currently relies on a statute to prosecute fuel theft crimes that does not address fuel pulsars.[67]

Effect of Proposed Changes

The bill streamlines licensure requirements and reduces fees related to the private investigative, private security, and recovery services industries, including Class "G" Statewide Firearm Licenses and Class "K" Firearms Instructors, reduces registration fees for certain charitable organizations, clarifies the services that LP gas licensees are authorized to conduct, and provides criminal penalties for retail fuel theft violations.

The bill authorizes former military firearms instructors to use their experience in the military to satisfy a training requirement when applying for a Class "K" Firearms Instructor License. Specifically, the bill allows applicants for a Class "K" Firearms Instructor License to submit a valid DD Form 214 issued by the U.S. Department of Defense not more than three years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served no less than three years in the military as a firearms instructor.

The bill authorizes DACS to waive the four-hour annual firearms training requirement for a Class "G" Statewide Firearms License renewal if the applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act.[68]

The bill authorizes a Class "K" Firearms Instructor Licensee who is renewing their license to provide proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous 3-year license period in lieu of having to provide proof of certification by the Florida Criminal Justice Standards and Training Commission, the NRA, or a federal law enforcement agency.

The bill makes the automatic late fee for late filed private investigative, security, or recovery services license renewal applications discretionary instead of mandatory.

The bill authorizes DACS to publish all information related to the private investigative, security, or recovery services industry newsletter and pamphlet online in lieu of paper format.

The bill removes the requirement for Class "E" Recovery Agents, Class "EE" Recovery Agent Interns, or Class "D" Security Officers to sign and verify their training application under oath, thereby allowing such applications to be signed and verified electronically.

The bill increases the contribution thresholds that are used to determine the assessment and exemption of registration fees for charitable organizations, sponsors, or parent organizations, which will have the effect of lowering fees and registration requirements for such organizations that are not in the higher income categories. Specifically, the bill:

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[64] Morgan Loew, *Arizona Senate committee votes to outlaw fuel theft devices*, 3TV/CBS 5, Feb. 3, 2023, https://www.azfamily.com/2023/02/03/arizona-senate-committee-votes-outlaw-fuel-theft-devices/ (last visited Mar. 16, 2023).
[65] AZ SB1177 (2023).
[66] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).
[67] S. 316.80, F.S.
[68] *See* 18 U.S.C., ss. 926B-926C.

- Raises the $25,000 maximum contribution threshold to $50,000 for organizations that are required to pay a $10 registration fee. Currently, organizations with maximum contributions between $25,000 and $100,000 are required to pay a $75 registration fee.
- Raises the $25,000 total revenue threshold to $50,000 for charitable organizations and sponsors that are exempt from registration requirements.

The bill revises the definition of a Category I LP Gas Dealer to include any person who "designs" the apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas.

The bill revises the definition of a Category V LP Gas Installer to include a person whose services include the "design" of apparatus, piping, tubing, tanks, and equipment for the use of liquefied petroleum or natural gas.

The bill creates criminal offenses relating to retail fuel theft as follows:

- A person commits a third degree felony if he or she willfully, knowingly, and without authorization:
  - Breaches or accesses any internal portion of a retail fuel dispenser; or
  - Possesses any device constructed for the purpose of fraudulently altering, manipulating, or interrupting the normal functioning of a retail fuel dispenser.

- A person commits a second degree felony[69] if he or she willfully, knowingly, and without authorization:
  - Physically tampers with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within the internal portion of a retail fuel dispenser; or
  - Uses any form of electronic communication to fraudulently alter, manipulate, or interrupt the normal functioning of a retail fuel dispenser.

- A person commits a third degree felony if he or she:
  - Obtains fuel as a result of violating any provision relating retail fuel theft in s. 812.0151, F.S.; or
  - Modifies a vehicle's factory installed fuel tank or possesses any item used to hold fuel which was not fitted to a vehicle or conveyance at the time of manufacture with the intent to use such fuel tank or item to hold or transport fuel obtained by violating any provision relating to retail fuel theft in s. 812.0151, F.S.

Under the bill, a person commits a third degree felony if he or she aids, abets, or assists a person in violating any provision relating to retail fuel theft in s. 812.0151, F.S.

The bill provides that any conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section, and any fuel acquired in violation of this section, is subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act. Law enforcement agencies that seize fuel must remove and reclaim, recycle, or dispose of all the fuel as soon as practicable in a safe and proper manner. Upon conviction of a person arrested for a violation of retail fuel theft, the judge must issue an order adjudging and declaring that all conveyances, vehicles, fuel tanks, and other equipment that was used or intended to be used to commit a violation are forfeited and directing their destruction, with the exception of the conveyance or vehicle.

The bill provides that any person convicted of a violation of retail fuel theft is responsible for the following:

- All reasonable costs incurred by the investigating law enforcement agency, including, but not limited to cost for:
  - The towing and storage of the conveyance or vehicle;
  - Removal and disposal of the fuel; and
  - Storage and destruction of all fuel tanks and other equipment described and used or intended to be used in the violation.

[69] A second degree felony is punishable by up to 15 years imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.

- Payment, to the party from whom it was fraudulently obtained, for the retail value of any associated fuel at the time of the underlying act.

The bill defines the term "fuel" to include any of the following:

- Alternative fuel as defined in s. 525.01, F.S.
- Aviation fuel as defined in s. 206.9815, F.S.
- Diesel fuel as defined in s. 206.86, F.S.
- Gas as defined in s. 206.9925, F.S.
- Motor fuel as defined in s. 206.01, F.S.
- Natural gas fuel as defined in s. 206.9951, F.S.
- Oil as defined in s. 206.9925, F.S.
- Petroleum fuel as defined in s. 525.01, F.S.
- Petroleum product as defined in s. 206.9925, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 493.6105, F.S.; making a technical change; revising requirements for applicants for a Class "K" license.

Section 2: Amends s. 493.6113, F.S.; revising the circumstances under which DACS may waive firearms training requirements; revising requirements for applicants for a Class "K" license; requiring the Division of Licensing to establish a specified late fee by rule.

Section 3: Amends s. 493.6123, F.S.; authorizing DACS to publish certain information online in lieu of using a paper format.

Section 4: Amends s. 493.6304, F.S.; relating to security officer school or training facilities.

Section 5: Amends s. 493.6406, F.S.; relating to recovery agent school or training facilities.

Section 6: Amends s. 496.405, F.S.; revising requirements relating to registration fees for certain charitable organizations, sponsors, and parent organizations.

Section 7: Amends s. 496.406, F.S.; relating to exemption from registration for charitable organizations and sponsors.

Section 8: Amends s. 527.01, F.S.; revising the definitions of the terms "Category I liquefied petroleum gas dealer" and "Category V LP gas installer."

Section 9: Creates s. 812.0151, F.S.; relating to retail fuel theft.

Section 10: Reenacts s. 366.032(1)(e), F.S.

Section 11: Reenacts s. 489.105(3)(m), F.S., F.S.

Section 12: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

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 economic impact on the private sector. The bill streamlines professional licensure requirements, allows for reduced late fees for license renewals, reduces registration fee requirements for charitable organizations, expands services that certain LP gas licensees may conduct, and provides fuel theft protections for gas station owners and operators.

Class "K" Firearms Instructors may experience an indeterminate reduction in demand for their services to the extent they will not be used due to the waiver of their annual firearms training for Class "G" Statewide Firearms License renewals.

D. FISCAL COMMENTS:

The fiscal impact to the state is indeterminate. According to DACS, "the majority of the provisions of the bill pose a negligible fiscal impact to the department based on the waiver and exemption of fees proposed."[70]

The creation of additional felony violations associated with retail fuel theft may cause an increase in prison beds for the Department of Corrections. However, there are existing felony violations that are currently being utilized where the new fuel theft offenses will be utilized. It is unknown how many new violations will occur.

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:

Article VII, Section 19 of the Florida Constitution requires a supermajority vote to impose or raise a tax or fee. Under this provision, "Raise" means:

a. "To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
b. To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
c. To decrease or eliminate a state tax or fee exemption or credit."

The bill allows DACS to provide reduced late fees for certain license renewals. The bill also increases the contribution thresholds that are used to determine the assessment and exemption of registration fees for charitable organizations, which will have the effect of lowering fees for such

[70] Florida Department of Agriculture and Consumer Services, Agency Analysis of 2023 Senate Bill 1150, p. 2 (Mar. 8, 2023).

organizations. It is unclear as to whether this would constitute the “raising” of a fee as defined in Art. VII s. 19.

B. RULE-MAKING AUTHORITY:

According to DACS, the DOL will need to create reasonable late fee requirements by administrative rule. Current law provides sufficient rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 29, 2023, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment made technical changes to reorganize and clarify provisions in the bill relating to retail fuel theft.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to the Department of Agriculture and Consumer Services; amending s. 493.6105, F.S.; making a technical change; revising requirements for applicants for a Class "K" license; amending s. 493.6113, F.S.; revising the circumstances under which the Department of Agriculture and Consumer Services may waive firearms training requirements; revising requirements for applicants for a Class "K" license; requiring the Division of Licensing of the department to establish a specified late fee by rule; amending s. 493.6123, F.S.; authorizing the department to publish certain information online in lieu of using a paper format; amending ss. 493.6304 and 493.6406, F.S.; making technical changes; amending s. 496.405, F.S.; revising requirements relating to registration fees for certain charitable organizations, sponsors, and parent organizations; amending s. 496.406, F.S.; conforming provisions to changes made by the act; amending s. 527.01, F.S.; revising the definitions of the terms "Category I liquefied petroleum gas dealer" and "Category V LP gas installer"; creating s. 812.0151, F.S.; defining the term "fuel"; providing criminal penalties for certain actions relating to retail fuel theft; requiring law enforcement agencies

to remove and reclaim, recycle, or dispose of fuel in a specified manner; requiring judges to enter a specified order for persons convicted of violating specified provisions; specifying that convicted persons are responsible for certain costs and payments; reenacting ss. 366.032(1)(e) and 489.105(3)(m), F.S., relating to preemption over utility service restrictions and definitions, respectively, to incorporate the amendments made by this act to s. 527.01, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (2) and paragraph (a) of subsection (6) of section 493.6105, Florida Statutes, are amended to read:

493.6105 Initial application for license.—

(2) Each application must be signed and verified by the applicant ~~individual under oath~~ as provided in s. 92.525.

(6) In addition to the requirements under subsection (3), an applicant for a Class "K" license must:

(a) Submit one of the following:

1. The Florida Criminal Justice Standards and Training Commission Instructor Certificate and written confirmation by the commission that the applicant possesses an active firearms

certification.

2. A valid National Rifle Association Private Security Firearm Instructor Certificate issued not more than 3 years before the submission of the applicant's Class "K" application.

3. A valid firearms instructor certificate issued by a federal law enforcement agency issued not more than 3 years before the submission of the applicant's Class "K" application.

4. A valid DD Form 214 issued not more than 3 years before the submission of the applicant's Class "K" application, indicating that the applicant has been honorably discharged and served no less than 3 years in the military as a firearms instructor.

Section 2. Paragraphs (b) and (d) of subsection (3) and subsection (4) of section 493.6113, Florida Statutes, are amended to read:

493.6113 Renewal application for licensure.—

(3) Each licensee is responsible for renewing his or her license on or before its expiration by filing with the department an application for renewal accompanied by payment of the renewal fee and the fingerprint retention fee to cover the cost of ongoing retention in the statewide automated biometric identification system established in s. 943.05(2)(b). Upon the first renewal of a license issued under this chapter before January 1, 2017, the licensee shall submit a full set of fingerprints and fingerprint processing fees to cover the cost

of entering the fingerprints into the statewide automated biometric identification system pursuant to s. 493.6108(4)(a) and the cost of enrollment in the Federal Bureau of Investigation's national retained print arrest notification program. Subsequent renewals may be completed without submission of a new set of fingerprints.

(b) Each Class "G" licensee shall additionally submit proof that he or she has received during each year of the license period a minimum of 4 hours of firearms requalification training taught by a Class "K" licensee and has complied with such other health and training requirements that the department shall adopt by rule. Proof of completion of firearms requalification training shall be submitted to the department upon completion of the training. A Class "G" licensee must successfully complete this requalification training for each type and caliber of firearm carried in the course of performing his or her regulated duties. If the licensee fails to complete the required 4 hours of annual training during the first year of the 2-year term of the license, the license shall be automatically suspended. The licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be reinstated. If the licensee fails to complete the required 4 hours of annual training during the second year of the 2-year term of the

license, the licensee must complete the minimum number of hours of range and classroom training required at the time of initial licensure and submit proof of completion of such training to the department before the license may be renewed. The department may waive the firearms training requirement if:

1. The applicant provides proof that he or she is currently certified as a law enforcement officer or correctional officer under the Criminal Justice Standards and Training Commission and has completed law enforcement firearms requalification training annually during the previous 2 years of the licensure period;

2. The applicant provides proof that he or she is currently certified as a federal law enforcement officer and has received law enforcement firearms training administered by a federal law enforcement agency annually during the previous 2 years of the licensure period; ~~or~~

3. The applicant submits a valid firearm certificate among those specified in s. 493.6105(6)(a) and provides proof of having completed requalification training during the previous 2 years of the licensure period; or

4. The applicant provides proof that he or she has completed annual firearms training in accordance with the requirements of the federal Law Enforcement Officers Safety Act under 18 U.S.C. ss. 926B-926C.

(d) Each Class "K" licensee shall additionally submit:

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

1. One of the certificates specified under s. 493.6105(6) as proof that he or she remains certified to provide firearms instruction; or

2. Proof of having taught at least six 28-hour firearms instruction courses to Class "G" applicants during the previous 3-year license period.

(4) A licensee who fails to file a renewal application on or before its expiration must renew his or her license by fulfilling the applicable requirements of subsection (3) and may be required to pay ~~by paying~~ a late fee ~~equal to the amount of the license fee~~. The division shall establish the amount of the late fee authorized under this subsection by rule; however, such late fee may not exceed the amount of the license fee.

Section 3. Subsection (3) is added to section 493.6123, Florida Statutes, to read:

493.6123 Publication to industry.—

(3) The department may publish all information required by this section online in lieu of using a paper format.

Section 4. Subsection (2) of section 493.6304, Florida Statutes, is amended to read:

493.6304 Security officer school or training facility.—

(2) The application must ~~shall~~ be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must contain, at a minimum, the following information:

(a) The name and address of the school or training

facility and, if the applicant is an individual, her or his name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted.

(c) A copy of the training curriculum and final examination to be administered.

Section 5. Subsection (2) of section 493.6406, Florida Statutes, is amended to read:

493.6406 Recovery agent school or training facility.—

(2) The application must be signed and verified by the applicant ~~under oath~~ as provided in s. 92.525 and must ~~shall~~ contain, at a minimum, the following information:

(a) The name and address of the school or training facility and, if the applicant is an individual, his or her name, address, and social security or alien registration number.

(b) The street address of the place at which the training is to be conducted or the street address of the Class "RS" school offering Internet-based or correspondence training.

(c) A copy of the training curriculum and final examination to be administered.

Section 6. Paragraph (a) of subsection (4) of section 496.405, Florida Statutes, is amended to read:

496.405 Registration statements by charitable organizations and sponsors.—

(4)(a) Every charitable organization, sponsor, or parent

organization filing on behalf of one or more chapters, branches, or affiliates that is required to register under this section must pay a single registration fee. A parent organization filing on behalf of one or more chapters, branches, or affiliates shall total all contributions received by the chapters, branches, or affiliates included in the registration statement to determine registration fees. Fees shall be assessed as follows:

1.a. Ten dollars, if the contributions received for the last fiscal or calendar year were less than $5,000; or

b. Ten dollars, if the contributions actually raised or received from the public during the immediately preceding fiscal year by such organization or sponsor are no more than $50,000 ~~$25,000~~ and the fundraising activities of such organization or sponsor are carried on by volunteers, members, officers, or permanent employees, who are not compensated, primarily to solicit such contributions, provided no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or commercial co-venturer;

2. Seventy-five dollars, if the contributions received for the last fiscal year were $5,000 or more, but less than $100,000;

3. One hundred twenty-five dollars, if the contributions received for the last fiscal year were $100,000 or more, but

less than $200,000;

4. Two hundred dollars, if the contributions received for the last fiscal year were $200,000 or more, but less than $500,000;

5. Three hundred dollars, if the contributions received for the last fiscal year were $500,000 or more, but less than $1 million;

6. Three hundred fifty dollars, if the contributions received for the last fiscal year were $1 million or more, but less than $10 million;

7. Four hundred dollars, if the contributions received for the last fiscal year were $10 million or more.

Section 7. Paragraph (d) of subsection (1) of section 496.406, Florida Statutes, is amended to read:

496.406 Exemption from registration.—

(1) The following charitable organizations and sponsors are exempt from the requirements of s. 496.405:

(d) A charitable organization or sponsor that has less than $50,000 ~~$25,000~~ in total revenue during a fiscal year if the fundraising activities of such organization or sponsor are carried on by volunteers, members, or officers who are not compensated and no part of the assets or income of such organization or sponsor inures to the benefit of or is paid to any officer or member of such organization or sponsor or to any professional fundraising consultant, professional solicitor, or

commercial co-venturer. If a charitable organization or sponsor that has less than $50,000 ~~$25,000~~ in total revenue during a fiscal year actually acquires total revenue equal to or in excess of $50,000 ~~$25,000~~, the charitable organization or sponsor must register with the department as required by s. 496.405 within 30 days after the date the revenue reaches $50,000 ~~$25,000~~.

Section 8. Subsections (6) and (10) of section 527.01, Florida Statutes, are amended to read:

527.01 Definitions.—As used in this chapter:

(6) "Category I liquefied petroleum gas dealer" means any person selling or offering to sell by delivery or at a stationary location any liquefied petroleum gas to the consumer for industrial, commercial, or domestic use; any person leasing or offering to lease, or exchanging or offering to exchange, any apparatus, appliances, and equipment for the use of liquefied petroleum gas; any person designing, installing, servicing, altering, or modifying apparatus, piping, tubing, appliances, and equipment for the use of liquefied petroleum or natural gas; any person installing carburetion equipment; or any person requalifying cylinders.

(10) "Category V LP gas installer" means any person who is engaged in the liquefied petroleum gas business and whose services include the design, installation, servicing, altering, or modifying of apparatus, piping, tubing, tanks, and equipment

for the use of liquefied petroleum or natural gas and selling or offering to sell, or leasing or offering to lease, apparatus, appliances, and equipment for the use of liquefied petroleum or natural gas.

Section 9. Section 812.0151, Florida Statutes, is created to read:

812.0151 Retail fuel theft.—

(1) As used in this section, the term "fuel" has the same meaning as in s. 163.3206(2).

(2)(a) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she willfully, knowingly, and without authorization:

1. Breaches a retail fuel dispenser or accesses any internal portion of a retail fuel dispenser; or

2. Possesses any device constructed for the purpose of fraudulently altering, manipulating, or interrupting the normal functioning of a retail fuel dispenser.

(b) A person commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she willfully, knowingly, and without authorization:

1. Physically tampers with, manipulates, removes, replaces, or interrupts any mechanical or electronic component located within the internal portion of a retail fuel dispenser; or

2. Uses any form of electronic communication to

fraudulently alter, manipulate, or interrupt the normal functioning of a retail fuel dispenser.

(c) A person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if he or she:

1. Obtains fuel as a result of violating paragraph (a) or paragraph (b); or

2. Modifies a vehicle's factory installed fuel tank or possesses any item used to hold fuel which was not fitted to a vehicle or conveyance at the time of manufacture with the intent to use such fuel tank or item to hold or transport fuel obtained as a result of violating paragraph (a) or paragraph (b).

(3) Any person who aids, abets, or assists a person in committing a violation of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) Any conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section, and any fuel acquired in a violation of this section, is subject to seizure and forfeiture as provided by the Florida Contraband Forfeiture Act.

(5) A law enforcement agency that seizes fuel under this section must remove and reclaim, recycle, or dispose of all the fuel as soon as practicable in a safe and proper manner.

(6) Upon conviction of a person arrested for a violation

of this section, the judge must issue an order adjudging and declaring that all conveyances, vehicles, fuel tanks, and other equipment used or intended to be used in a violation of this section are forfeited and directing their destruction, with the exception of the conveyance or vehicle.

(7) Any person convicted of a violation of this section is responsible for both of the following:

(a) All reasonable costs incurred by the investigating law enforcement agency, including, but not limited to, the costs for the towing and storage of the conveyance or vehicle, the removal and disposal of the fuel, and the storage and destruction of all fuel tanks and other equipment described and used or intended to be used in a violation of this section.

(b) Payment, to the party from whom it was fraudulently obtained, for the retail value of any associated fuel at the time of the underlying act.

Section 10. For the purpose of incorporating the amendments made by this act to section 527.01, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 366.032, Florida Statutes, is reenacted to read:

366.032 Preemption over utility service restrictions.—

(1) A municipality, county, special district, or other political subdivision of the state may not enact or enforce a resolution, ordinance, rule, code, or policy or take any action that restricts or prohibits or has the effect of restricting or

prohibiting the types or fuel sources of energy production which may be used, delivered, converted, or supplied by the following entities to serve customers that such entities are authorized to serve:

(e) A Category I liquefied petroleum gas dealer or Category II liquefied petroleum gas dispenser or Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01.

Section 11. For the purpose of incorporating the amendments made by this act to section 527.01, Florida Statutes, in a reference thereto, paragraph (m) of subsection (3) of section 489.105, Florida Statutes, is reenacted to read:

489.105 Definitions.—As used in this part:

(3) "Contractor" means the person who is qualified for, and is only responsible for, the project contracted for and means, except as exempted in this part, the person who, for compensation, undertakes to, submits a bid to, or does himself or herself or by others construct, repair, alter, remodel, add to, demolish, subtract from, or improve any building or structure, including related improvements to real estate, for others or for resale to others; and whose job scope is substantially similar to the job scope described in one of the paragraphs of this subsection. For the purposes of regulation under this part, the term "demolish" applies only to demolition of steel tanks more than 50 feet in height; towers more than 50

feet in height; other structures more than 50 feet in height; and all buildings or residences. Contractors are subdivided into two divisions, Division I, consisting of those contractors defined in paragraphs (a)-(c), and Division II, consisting of those contractors defined in paragraphs (d)-(q):

(m) "Plumbing contractor" means a contractor whose services are unlimited in the plumbing trade and includes contracting business consisting of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, if not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, if not prohibited by law, design the following without obtaining an additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities, water and sewer plants and substations, venting systems, public or private water supply systems, septic tanks, drainage and supply wells, swimming pool piping, irrigation systems, and solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas, liquefied petroleum gas and related venting, and storm and sanitary sewer lines. The scope of work of the plumbing contractor also includes the design, if not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping,

vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers if authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in a manner that complies with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor applies to private property and public property, including any excavation work incidental thereto, and includes the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified as being the work of a trade other than that of a plumbing contractor. This definition does not limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6) and does not require certification or registration under this part as a category I liquefied petroleum gas dealer, or category V LP gas installer, as defined in s. 527.01, who is licensed under chapter 527 or an authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater. A plumbing contractor may perform drain cleaning and clearing and install or repair rainwater catchment systems;

however, a mandatory licensing requirement is not established for the performance of these specific services.

Section 12. This act shall take effect July 1, 2023.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1317 Local Regulation of Nonconforming or Unsafe Structures
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Roach
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	12 Y, 1 N, As CS	Wright	Anstead
2) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Roy	Darden
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

The Florida Building Codes Act requires a person, firm, or corporation that wishes to demolish any building to first obtain a building permit from the local government. Some local governments in Florida have placed additional requirements or restrictions on property owners when obtaining permits for the demolition of buildings deemed historic.

The bill creates the “Resiliency and Safe Structures Act,” which provides that:

- A “nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
- A local government may not prohibit, restrict, or prevent the demolition of any nonconforming structures, any structure determined to be unsafe by a local building official, or any structure ordered to be demolished by a local government for any reason other than public safety, unless the structure is a single-family home or individually listed on the National Register of Historic Places.
- A local government may not impose or enforce any limitation or condition on the approval of a replacement structure including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure's elements.
- A local government may not in any way limit the demolition of structures and buildings to which the act is applicable or limit the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state. *See* Fiscal Comments

The bill provides an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Building Code

In 1974, Florida adopted legislation requiring all local governments to adopt and enforce a minimum building code. In 1992, Hurricane Andrew demonstrated that Florida's system of local codes did not work and a study was commissioned to make recommendations. In 1998, the Legislature adopted the recommendations for a single state building code and enhanced the oversight role of the state over local code enforcement. The 2000 Legislature authorized implementation of the Florida Building Code (Building Code), and that first edition replaced all local codes on March 1, 2002.[1] The current edition of the Building Code is the seventh edition, which is referred to as the 2020 Florida Building Code.[2]

Chapter 553, part IV, F.S., is known as the "Florida Building Codes Act" (FBCA). The Act provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[3]

A local enforcement agency is an agency of local government with jurisdiction to make inspections of buildings and to enforce the Building Code.[4]

Building code administrators are regulated by the Building Code Administrators and Inspectors Board (BCAIB) within DBPR.[5] A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises Building Code activities, including plans review, enforcement, and inspection.[6]

Demolition Permits

It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or **demolish** any building without first obtaining a building permit from the local government or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[7]

The FBCA provides that a local law, ordinance, or regulation may not prohibit or otherwise restrict the ability of a private property owner to obtain a building permit to demolish his or her **single-family residential structure** provided that:[8]

- Such structure is located in a coastal high-hazard area, moderate flood zone, or special flood hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency

[1] The Florida Building Commission Report to the 2006 Legislature, *Florida Department of Community Affairs*, p. 4, http://www.floridabuilding.org/fbc/2006_Legislature_Rpt_rev2.pdf (last visited Mar. 14, 2023).
[2] Florida Building Commission Homepage, https://floridabuilding.org/c/default.aspx (last visited Mar. 14, 2023).
[3] *See* s. 553.72(1), F.S.
[4] S. 553.71(5), F.S.
[5] *See* Ss. 120.569, 120.57(1)-(2), 468.605, 468.606, and 468.621, F.S.
[6] S. 468.603(2), F.S.
[7] S. 553.79(1), F.S.
[8] S. 553.79(25)(a), F.S.

Management Agency (FEMA) for the purpose of participating in the National Flood Insurance Program;
- The lowest finished floor elevation of such structure is at or below base flood elevation as established by the Building Code or a higher base flood elevation as may be required by local ordinance, whichever is higher; and
- Such permit complies with all applicable Building Code, Fire Prevention Code, and local amendments to such codes.

However, a local law, ordinance, or regulation may restrict demolition permits for a:[9]
- Structure designated on the National Register of Historic Places;[10]
- Privately owned single-family residential structure designated historic by a local, state, or federal governmental agency on or before January 1, 2022; or
- Privately owned single-family residential structure designated historic after January 1, 2022, by a local, state, or federal governmental agency with the consent of its owner.

Permits for Property with a Historic Designation

Some local governments in Florida have adopted land development regulations that designate certain older buildings to be historic. These local governments have placed restrictions on property owners from obtaining permits for the demolition of older buildings that the local government has deemed historic. Below are examples of such regulations:
- Requiring a special demolition permit process,[11] and
- Requiring new construction on the site of the demolished structure to be subject to certain architectural regulations, related to:[12]
  - The colors, pattern, and trim used in the building's façade.
  - The design of the roof.
  - The proportions and relationships between doors and windows.

Proponents of these land development regulations argue that these regulations are needed to protect Florida's history and preserve Florida's character and architectural style.[13] Opponents of these regulations argue that these older buildings are damaged, do not meet the Building Code's minimum flood elevation requirements, which can make them dangerous and can be demolished for new structures or buildings that meet the requirements of the current Building Code.[14]

There appear to be conflicts[15] in some areas related to whether older buildings that may be unsafe should be demolished or be given time to be rehabilitated. Some argue that policies related to demolition are having an effect on affordable housing.[16]

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[9] S. 553.79(25)(d), F.S.
[10] The National Register of Historic Places is the federal government's official list of historic places in the United States. The National Historic Preservation Act of 1966 authorized the register, which is administered by the National Park Service. In order to be listed on the register the owner of the property must not object. National Park Service, *What is the National Register of Historic Places*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Mar. 13, 2023); National Park Service, *How to List a Property*, https://www.nps.gov/subjects/nationalregister/how-to-list-a-property.htm (last visited Mar. 13, 2023).
[11] Sec. 54-71., 54-125., Town of Palm Beach Code of Ordinances.
[12] Sec. 54-122., Town of Palm Beach Code of Ordinances.
[13] Miami Herald Editorial Board, *Historic-home teardowns risk washing away Miami Beach's character in a flood of cash*, Miami Herald (Jan. 11, 2022) https://www.miamiherald.com/opinion/editorials/article257198932.html (last visited Mar. 14, 2023).
[14] Pedro Portal, *Miami Beach older homes demolished in part because of 'flood requirements'*, Miami Herald (Jan. 9, 2022) https://www.miamiherald.com/news/business/real-estate-news/article257166737.html (last visited Mar. 14, 2023); CBS Miami, *Miami Beach Waterfront Home Of Notorious Prohibition-Era Gangster Al Capone Slated For Demolition*, https://miami.cbslocal.com/video/5955888-miami-beach-waterfront-home-of-notorious-prohibition-era-gangster-al-capone-slated-for-demolition/ (last visited Mar. 14, 2023).
[15] In November 2022, news reports indicated that there were "dozens of ongoing lawsuits that have recently been filed between property owners and the City of Miami over attempts to demolish their properties. WLRN Miami | South Florida, *After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs*, December 5, 2022, After Surfside, Miami changes rules to fast-track demolition. Affordable housing is in the crosshairs | WLRN (last visited Mar. 16, 2023).
[16] In 2022, approximately "48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city." *Id*.

In 2022, approximately "48 buildings were demolished by city order, including 30 residential properties. In 2019, 52 buildings were demolished by order of the city."

FEMA Flood Insurance Rate Map, Coastal High Hazard Area

In order to support the National Flood Insurance Program (NFIP), FEMA identifies, publishes, and periodically updates flood hazard data nationwide. This data is provided to communities in the form of a Flood Insurance Rate Map and Flood Insurance Study report, typically prepared in a countywide format.[17]

Along the coast, the flood map has delineated coastal Special Flood Hazard Areas (SFHA), where the source of flooding is from coastal hazards, such as storm surge and waves. FEMA scientists and engineers work with other federal, state, regional, community, tribal, nonprofit, non-governmental, and private-sector partners to determine flood hazards along the U.S. coastline.[18]

Flood maps along the coasts show areas at high risk of flooding within the coastal SFHA. The coastal SFHA has three flood hazard zones: Zones VE (which are unique to coastal areas), AE and AO. Zone VE, also known as a Coastal High Hazard Area, is where wave action and fast-moving water can cause extensive damage during a base flood event.[19]

New Construction Requirements in Coastal Flood Hazard Zones

When a community is participating in the NFIP, FEMA places requirements on any new construction built in flood hazard areas. Generally, new construction in flood-prone areas must be:[20]

- Designed and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- Constructed with materials resistant to flood damage;
- Constructed by methods and practices that minimize flood damages; and
- Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Specific conditions for new construction in coastal flood hazard zones include requiring all new construction to:[21]

- Be located landward of the reach of mean high tide;
- Be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level;
- Be elevated on pilings and columns so that the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
- Have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
    - Such space may be used only for parking of vehicles, building access, or storage.

[17] FEMA, *Adoption of Flood Insurance Rate Maps by Participating Communities, FEMA 495 January 2019*, https://www.fema.gov/sites/default/files/2020-07/fema_adoption-flood-insurance-rate-maps-participating-communities_bulletin.pdf (last visited Mar. 13, 2023).
[18] FEMA, *Features of Flood Insurance Rate Maps in Coastal Areas*, https://www.fema.gov/flood-maps/coastal/insurance-rate-maps (last visited Mar. 13, 2023).
[19] *Id*.
[20] 44 C.F.R. § 60.3(a)(3)
[21] 44 C.F.R. § 60.3(e)(3)-(5)

When an NFIP-participating structure, in an SFHA, has "substantial damage"[22] for which the total cost of repairs is 50 percent or more of the structure's market value before a disaster occurred, regardless of the cause of damage, the structure must undergo a "substantial improvement" and be brought into compliance with current local floodplain-management regulations and the Building Code. The decision and specific metrics used to determine if a structure is substantially damaged is made by the local government.[23]

For example, the City of Naples determined that a substantial improvement means any combination of repair, reconstruction, rehabilitation, addition, or improvement of a building or structure taking place during a one-year period from the date of permit issuance, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. Substantial improvement does not include:[24]

- Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

Effect of the Bill

The bill creates the "Resiliency and Safe Structures Act" (act) and provides the following definitions:

- "Nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) which does not conform to the requirements for new construction issued by the National Flood Insurance Program.
- "Replacement structure" means a structure built on a property where a structure was demolished or will be demolished.

Unless the structure is a single-family home or individually listed on National Register of Historic Places, the bill provides that the act applies to the following structures (applicable structures):

- Nonconforming structures in coastal high-hazard areas which fail to meet FEMA standards for new construction.
- Any structure determined to be unsafe by a local building official.
- Any structure ordered to be demolished by a local government that has proper jurisdiction.

The bill provides that a local government may not prohibit, restrict, or prevent the demolition of any applicable structure for any reason, other than public safety.

The bill provides that a local government may not impose or enforce any limitation or condition on the approval of a replacement structure that replaces a demolished applicable structure, including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the demolished structure's elements.

Owners or developers of replacement structures are permitted to develop in accordance with all land use, zoning, and other land development rights, whether established by law, ordinance, rule, regulation, policy, development order, or any other act, without regard to any local government restrictions or penalties resulting from the demolition of an applicable structure that may restrict development of a replacement structure as a result of a local government order, a designation, a code enforcement proceeding, or an ordinance.

The bill provides that the act applies prospectively and retroactively to any law adopted contrary to the bill and its intent.

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[22] 44 C.F.R. § 59.1

[23] FEMA, *FACT SHEET: "Substantial Damage" – What Does it Mean?*, December 2, 2019, https://www.fema.gov/press-release/20210318/fact-sheet-substantial-damage-what-does-it-mean (last visited Mar. 16, 2023).

[24] Sec. 16-112., City of Naples Ordinances.

The bill provides a that a municipality, county, special district, or political subdivision may not adopt or apply a law, an ordinance, a rule, a regulation, a policy, a resolution, or any other act that in any way limits the demolition of structures and buildings to which the act is applicable or limits the development of a replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for demolishing a structure in accordance with the bill. All laws, ordinances, rules, regulations, policies, resolutions, and other acts of a municipality, county, special district, or political subdivision to the contrary are void.

The bill provides an effective date of upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 553.8991, F.S.; relating to demolition of nonconforming structures.
Section 2: Providing an effective date.

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:

There may be an increase in demolition permits, which may create an increase in permit revenue.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more structures to be demolished and new structures to be built in their places, which would increase development.

D. FISCAL COMMENTS:

Local governments may have to expend funds to process a possible increase in demolition permits. The amount local governments will have to spend, if any, is indeterminate. However, local governments are permitted by state law to collect fees to cover the cost of their expenses to enforce the Building Code, which includes reviewing building permit applications.

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 16, 2023, the Regulatory Reform & Economic Development Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Provided that the bill does not apply to single-family homes or structures individually listed on the National Register of Historic Places.
- Removed the provision relating to demolition permits for single family homes.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to local regulation of nonconforming or unsafe structures; creating s. 553.8991, F.S.; providing a short title; defining terms; providing applicability; prohibiting local governments from prohibiting, restricting, or preventing the demolition of certain structures unless necessary for public safety; requiring replacement structures to be permitted to be developed in accordance with applicable zoning codes and ordinances; providing an exception; providing that owners and developers of replacement structures are permitted to develop in accordance with all land use, zoning, and other land development rights; providing for retroactive application; preempting regulation of the demolition or replacement of certain structures to the state under certain circumstances; providing an effective date.

WHEREAS, it is of paramount importance to replace older, unsafe, or nonconforming structures that are a threat to life and safety with new, resilient buildings built to contemporary building codes and standards, and

WHEREAS, nonconforming structures within coastal high-hazard areas and structures ordered to be demolished or deemed

unsafe by local building officials pose an increased risk of collapse, may affect the integrity or stability of neighboring buildings or structures, and may cause injury to persons or property, and

WHEREAS, local governmental laws, procedures, and policies that prohibit or limit the demolition of nonconforming or unsafe structures or limit the construction of new resilient structures pose a threat to life and public safety, and

WHEREAS, on properties where there is a nonconforming structure within a coastal high-hazard area, a structure that has been deemed unsafe by a local building official, or a structure that is subject to a demolition order, such structure must be authorized to be demolished and any replacement structure authorized which allows owners or developers to enjoy all land use and development rights that would apply to the property without regard to any local restrictions that may restrict future development at the subject property as a result of the local building official's order or demolition, and

WHEREAS, to make the application and enforcement of this act uniform throughout this state, the Legislature intends to preempt the regulation of the demolition of certain structures and buildings to the state, NOW, THEREFORE,

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

Section 1. Section 553.8991, Florida Statutes, is created to read:

553.8991 Resiliency and Safe Structures Act.—

(1) SHORT TITLE.—This section may be cited as the "Resiliency and Safe Structures Act."

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

(a) "Nonconforming structure" means a structure located in a coastal high-hazard area according to a Flood Insurance Rate Map issued by the Federal Emergency Management Agency (FEMA) which does not conform to the requirements for new construction issued by the National Flood Insurance Program.

(b) "Replacement structure" means a new structure built on a property where a structure was demolished or will be demolished in accordance with this section.

(3) QUALIFYING STRUCTURES AND BUILDINGS.—This section applies to all of the following structures, unless the structure is individually listed in the National Register of Historic Places or is a single-family home:

(a) Nonconforming structures in coastal high-hazard areas which fail to meet FEMA standards for new construction.

(b) Any structure determined to be unsafe by a local building official.

(c) Any structure ordered to be demolished by a local government that has proper jurisdiction.

(4) RESTRICTIONS ON DEMOLITION PROHIBITED.—A local

government may not prohibit, restrict, or prevent the demolition of any structure identified in subsection (3) for any reason, other than public safety.

(5) RESTRICTIONS ON REDEVELOPMENT PROHIBITED.—A replacement structure must be permitted to be developed in accordance with all applicable zoning codes and ordinances, provided that the zoning codes and ordinances do not in any way penalize or restrict development rights due or related to the demolition of any structure in accordance with this section, including a requirement for replication of the demolished structure, a limitation on the size or height of the replacement structure, or the maintenance of any of the elements of the demolished structure. Owners or developers of replacement structures are permitted to develop in accordance with all land use, zoning, and other land development rights, whether established by law, ordinance, rule, regulation, policy, development order, or any other act, without regard to any local government restrictions or penalties resulting from the demolition of any structure identified in subsection (3) that may restrict development of a replacement structure as a result of a local government order, a designation, a code enforcement proceeding, or an ordinance.

(6) APPLICATION.—This section applies prospectively and retroactively to any law adopted contrary to this section and its intent.

(7) PREEMPTION.—A municipality, county, special district, or political subdivision may not adopt or apply a law, an ordinance, a rule, a regulation, a policy, a resolution, or any other act that in any way limits the demolition of any structures and buildings identified in subsection (3) or limits the development of any replacement structure in a way that would divest property owners or developers of land use, zoning, or other land development rights for the demolition of any structure in accordance with this section. All laws, ordinances, rules, regulations, policies, resolutions, and other acts of a municipality, county, special district, or political subdivision to the contrary are void.

Section 2. This act shall take effect upon becoming a law.

COMMERCE COMMITTEE

CS/HB 1317 by Rep. Roach
Local Regulation of Nonconforming or Unsafe Structures

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Roach (strike-all):

- Defines "nonconforming structure" as a structure that does not conform to the Base Flood Elevation requirements for new construction issued by the National Flood Insurance Program.
- Provides that the bill does not apply to single-family homes or structures individually listed in the National Register of Historic Places.
- Provides that the bill is applicable to the following qualifying structures:
    - Nonconforming structures located within one-half mile of the coastline in certain FEMA coastal flood zones.
    - Any structure determined to be unsafe by a local building official.
    - Any structure ordered to be demolished by the local government.
- Prohibits a local government from prohibiting, restricting, or preventing the demolition of any qualifying structure for any reason other than public safety. Local governments may review an application for a demolition permit for compliance with the Building Code, Fire Prevention Code, and any regulation applicable to similarly situated parcels.
- Requires a local government to allow replacement structures to be developed to the maximum height and overall building size authorized by local development regulation.
- Prohibits a local government from:
    - Limiting the development potential of replacement structures below the maximum allowed by local development regulations.
    - Requiring replication of a demolished structure.
    - Requiring the preservation of any of the elements of a demolished structure.
    - Impose additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated parcel.
    - Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.
- Provides that development applications submitted for replacement structures must be processed in accordance with the process outlined in local land development regulations, including any required public hearings in front of the local historic board, with no additional hearings that would not applicable to similarly situated parcels.
- Provides that the bill applies prospectively an retroactively to any contrary law, and all contrary laws are preempted.

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: Commerce Committee

Representative Roach offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 553.8991, Florida Statutes, is created to read:

553.8991 Resiliency and Safe Structures Act.—

(1) SHORT TITLE.—This section may be cited as the "Resiliency and Safe Structures Act."

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

(a) "Coastline" means the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters as defined in the Submerged Lands Act, 43 U.S.C. ss. 1301 et seq.

(b) "Law" means any statute, ordinance, rule, regulation, policy, resolution, code enforcement order, agreement, or other governmental act.

(c) "Local government" means a municipality, county, special district, or any other political subdivision of the state.

(d) "Nonconforming structure" means a structure that does not conform to the Base Flood Elevation requirements for new construction issued by the National Flood Insurance Program.

(e) "Replacement structure" means a new structure built on a property where a structure was demolished or will be demolished in accordance with this section.

(3) QUALIFYING STRUCTURES AND BUILDINGS.—This section applies to all of the following structures, unless the structure is individually listed in the National Register of Historic Places or is a single-family home:

(a) Nonconforming structures located within one-half mile of the coastline that are also within zones V, VE, AO, or AE, as identified in the Flood Insurance Rate Map issued by the Federal Emergency Management Agency.

(b) Any structure determined to be unsafe by a local building official.

(c) Any structure ordered to be demolished by a local government that has proper jurisdiction.

(4) RESTRICTIONS ON DEMOLITION PROHIBITED.—A local government may not prohibit, restrict, or prevent the demolition of any structure identified in subsection (3) for any reason other than public safety. A local government may review an application for a demolition permit sought pursuant to this section only administratively for compliance with the Florida Building Code, the Florida Fire Prevention Code, and the Life Safety Code, or local amendments thereto, and any regulation applicable to a similarly situated parcel. The local government may not subject an application to additional local land development regulations or public hearings.

(5) RESTRICTIONS ON REDEVELOPMENT PROHIBITED.— A local government shall authorize replacement structures to be developed to the maximum height and overall building size authorized by local development regulations. A local government may not do any of the following:

(a) Limit, for any reason, the development potential of replacement structures below the maximum allowed by local development regulations.

(b) Require replication of a demolished structure.

(c) Require the preservation of any elements of a demolished structure.

(d) Impose additional regulatory or building requirements on replacement structures which would not otherwise be applicable to a similarly situated vacant parcel.

(e) Impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.

(6) DEVELOPMENT APPLICATIONS.- Development applications submitted for replacement structures shall be processed in accordance with the process outlined in local land development regulations including any required public hearings in front of the local historic board. However, a local government shall not impose additional public hearings or administrative processes that would not otherwise be applicable to a similarly situated vacant parcel.

(7) APPLICATION AND CONSTRUCTION.— This section applies prospectively and retroactively to any law adopted contrary to this section or its intent, and must be liberally construed to effectuate its intent. Nothing in this section shall apply to or affect s. 553.79(25).

(8) PREEMPTION.—A local government may not adopt or enforce a law that in any way limits the demolition of a structure identified in subsection (3) or that limits the development of a replacement structure in violation of subsection (5). A local government may not penalize an owner or a developer of a replacement structure for a demolition pursuant to this section or otherwise enact laws that defeat the intent of this section. Any local government law contrary to this section is void.

Section 2. This act shall take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:
An act relating to local regulation of nonconforming or unsafe structures; creating s. 553.8991, F.S.; providing a short title; defining terms; providing applicability; prohibiting local governments from prohibiting, restricting, or preventing the demolition of certain structures unless necessary for public safety; authorizing local governments to review demolition permit applications only for a specified purpose; requiring that replacement structures be permitted to be developed in accordance with applicable development regulations; prohibiting local governments from taking certain actions regarding replacement structures; providing for retroactive application; providing applicability and construction; preempting regulation of the demolition or replacement of certain structures to the state under certain circumstances; providing an effective date.

WHEREAS, it is of paramount importance to replace older, unsafe, or nonconforming structures that are a threat to life and safety with new, resilient buildings built to contemporary building codes and standards, and

WHEREAS, nonconforming structures within coastal special flood hazard areas and structures that are ordered to be

demolished or that are deemed unsafe by local building officials pose an increased risk of collapse, may affect the integrity or stability of neighboring buildings or structures, and may cause injury to persons or property, and

WHEREAS, local governmental laws, procedures, and policies that prohibit or limit the demolition of nonconforming or unsafe structures or limit the construction of new, resilient structures pose a threat to life and public safety, and

WHEREAS, nonconforming structures within a half mile of the coast and within a coastal special flood hazard area, regardless of whether the structure is deemed unsafe by a local building official or is subject to a demolition order, shall be permitted to be demolished and a replacement structure authorized, which will allow owners or developers to enjoy all land use and development rights that would apply to the property without regard to local restrictions that may restrict future development as a result of demolition, and

WHEREAS, to make the application and enforcement of this act uniform throughout this state, the Legislature intends to preempt the regulation of the demolition of certain structures and buildings to the state, NOW, THEREFORE,

HB 1353

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	14 Y, 0 N	Fletcher	Lloyd
2) Justice Appropriations Subcommittee	15 Y, 0 N	Saag	Keith
3) Commerce Committee		Fletcher	Hamon

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 help businesses access capital without the business owner having to incur a personal loan guarantee or forfeit 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 in ch. 559, F.S. Currently, there are no Florida laws regulating commercial financing product brokers and providers.

The bill:

- Creates Part XIII of ch. 599, F.S., entitled "Florida Commercial Financing Disclosure Law;"
- Provides definitions for and establishes the scope of Part XIII;
- Requires certain disclosures by commercial financing product providers;
- Prohibits brokers from engaging in certain activities; and
- Grants the Attorney General exclusive authority to enforce Part XIII.

The bill will have an indeterminate impact on state expenditures and may have an indeterminate, but likely insignificant, 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. 30, 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.

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[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; and
(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. 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 provides that 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.

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.

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 will have an indeterminate impact on workload within the Department of Legal Affairs. To the extent that the Attorney General must enforce the provisions of the bill, workload may increase. Any impacts of the bill can likely be absorbed within existing resources. If additional workload is unmanageable, the department could request additional resources from the Legislature through the annual Legislative Budget Request process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have an indeterminate impact on private entities who qualify as providers under the bill. The bill may benefit or hinder some businesses to the extent that new regulations influence the outcome of their transactions. Any such impact is indeterminate, yet likely insignificant.

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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

None.

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.

COMMERCE COMMITTEE

HB 1353 by Rep. Bankson
Relating to Commercial Financing Product Brokers and Providers

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Bankson (Strike-all): The amendment creates an exception to proposed disclosure requirements related to commercial financing transactions so that a provider of a financing arrangement known as a “commercial financing facility”, which is a single agreement that involves a series of transactions subject to the same terms, is only required to issue a single disclosure. It also makes technical and clarifying changes.

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: Commerce Committee
Representative Bankson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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, Florida Statutes, 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's accounts or payment

intangibles as those terms are 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 transaction.

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

(4) "Business" means a person or a group of persons, a sole proprietorship, a corporation, a limited liability company, a trust, an estate, a cooperative, an association, or a limited or general partnership engaged in a business activity.

(5) “Commercial financing facility” means a provider’s plan for purchasing multiple accounts receivable from the recipient over a period of time pursuant to an agreement that

sets forth the terms and conditions governing the use of the facility.

(6) "Commercial financing transaction" means a commercial loan, an accounts receivable purchase transaction, or a commercial open-end credit plan to the extent the transaction is also 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 to be used 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 be contained in an application, agreement, or other document signed by the business or the business owner.

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

(8) "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.

(9) "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 this 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 this state.

(10) "Provider" means a person who consummates more than five commercial financing transactions with a business located in this state in any calendar year. The term includes a person who enters into a written agreement with a depository institution to arrange a commercial financing transaction between the depository institution and a business via an online lending platform administered by the person. The fact that a provider extends a specific offer for a commercial financing transaction 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 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 or that is under common ownership with 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 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 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 transaction 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 manufactures, 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 transactions in this state in a 12-month period.

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

559.9613 Disclosures.—

(1) A provider that consummates a commercial financing transaction shall provide a written disclosure of the terms of the commercial financing 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 transaction, and a disclosure is not required as result of a modification, forbearance, or change to a consummated commercial financing transaction.

(2) A provider shall provide a written disclosure of the following information in connection with each commercial financing 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)1. The manner, frequency, and amount of each payment; or

2. If the amount of the payments may vary, the manner and frequency of the payments, the estimated amount of the initial payment, a description of the methodology for calculating any variable payment, and the circumstances under which payments may vary.

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

(3) A provider that consummates a commercial financing facility may provide disclosures required by subsection (2) based on an example of a transaction that could occur under the agreement. The example shall be based on an accounts receivable which has a total face amount owed of $10,000. Only one disclosure must be provided for the commercial financing facility, and a disclosure is not required as a result of a modification, forbearance, or change to the facility. For purposes of clarity, a new disclosure is not required each time an accounts receivable is purchased under the facility.

559.9614 Prohibited acts.—A broker may not do any of the following:

(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 transaction, 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.

(4) Offer the services of a broker in any advertisement without disclosing the actual address and telephone number of the business of the broker and the address and telephone number of any forwarding service the broker may use, if any.

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 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 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 this part does not affect the enforceability or validity of the underlying commercial financing transaction.

(3) This part does not create a private right of action against any person or entity based upon compliance or noncompliance with this part.

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

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to 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.; defining terms; creating s. 559.9612, F.S.; providing applicability; creating s. 559.9613, F.S.; requiring providers that consummate commercial financing transactions to provide specified written disclosures; creating s. 559.9614, F.S.; prohibiting brokers from taking specified actions; creating s. 559.9615, F.S.; providing exclusive authority of the Attorney General to enforce

specified provisions; providing civil penalties; providing construction; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1395 Management and Safety of Condominium and Cooperative Buildings
SPONSOR(S): Regulatory Reform & Economic Development Subcommittee, Lopez, V.
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform & Economic Development Subcommittee	11 Y, 0 N, As CS	Wright	Anstead
2) State Administration & Technology Appropriations Subcommittee	13 Y, 0 N	Helpling	Topp
3) Commerce Committee		Wright	Hamon

SUMMARY ANALYSIS

On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium building in the Town of Surfside, partially collapsed resulting in the death of 98 people. In response, during Special Session, 2022D, SB 4-D was enacted to provide building safety inspection requirements (milestone inspections) and reserve requirements (structural integrity reserve study, or SIRS) for condominium and cooperative association buildings.

The bill clarifies provisions created by SB 4-D. Specifically, the bill:

- Requires all condominium and cooperative buildings to have a milestone inspection when they reach 25 years of age, without regard to location, and allows local governments to extend the deadline to complete a milestone inspection, under certain circumstances.
- Extends the deadline for certain condominiums and cooperatives built between 1994 to 2000 to complete the milestone inspection and SIRS.
- Allows condominiums and cooperatives to use prior inspection reports completed within the last 5 years for both the milestone inspection and SIRS, under certain circumstances.
- Requires phase 2 of milestone inspections to begin within 180 days of completing phase 1, if necessary.
- Increases the number of professionals available to perform milestone inspections and structural integrity reserve studies;
    - Allows certain general contractors and building code professionals with at least 5 years' threshold building experience to do the visual inspection portion of SIRS and phase one of the milestone inspection, in addition to architects and engineers.
    - Phase two of the milestone inspection may only be performed by an architect or engineer.
- Limits setting reserves for only those items that have 25 years or less of useful life remaining.
- Requires the Florida Building Commission to create a uniform form for certain inspection reports.
- Requires milestone inspection and SIRS reports and disclosures to be included in sales contracts.
- Allows an injunction process to enforce milestone inspection and SIRS requirements in county court.
- Allows unit owners to utilize pre-suit mediation to resolve certain disputes related to milestone inspections and SIRS.

In response to concerns from condominium owners and industry regarding new flood insurance coverage requirements in SB 2-A from Special Session 2022A, the bill provides exemptions from such requirements for certain Citizens Property Insurance Corporation policyholders who own or reside in a condominium.

The bill may have an insignificant negative fiscal impact on state government and does not appear to affect local governments. *See* Fiscal Analysis & Economic Impact Statement.

Except as otherwise provided, the bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations – Background

The Florida Division of Condominiums, Timeshares and Mobile Homes ("Division"), within the Department of Business and Professional Regulation ("DBPR"), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, alternative dispute resolution, and developer disclosure. The Division has regulatory authority over:

- Condominium associations.
- Cooperative associations.
- Florida mobile home parks and related associations.
- Vacation units and timeshares.
- Yacht and ship brokers and related business entities.
- Homeowners' associations (limited to the arbitration of election and recall disputes).

Condominiums

A condominium is a form of real property ownership created under ch. 718, F.S., the "Condominium Act." Persons own condominium units along with an undivided right of access to the condominium's common elements.[1] A condominium is created by recording a declaration of condominium, which governs the relationship between condominium unit owners and the condominium association, in the public records of the county where the condominium is located.[2] All unit owners are members of the condominium association, and the association is responsible for common elements operation and maintenance.[3] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration," which is responsible for the association's administration.[4]

Cooperatives

A cooperative is a form of property ownership created under ch. 719, F.S., the "Cooperative Act," in which the real property is owned by the cooperative association and individual units are leased to the residents, who own shares in the association.[5] The lease payment amount is the pro-rata share of the cooperative's operational expenses. Cooperatives operate similarly to condominiums, and the laws regulating cooperatives are largely identical to those regulating condominiums.

Fiduciary Relationship

Board members and officers of a condominium or cooperative association have a fiduciary relationship with the unit owners in their condominium or cooperative. This fiduciary relationship requires board members and officers to act in good faith and in the best interests of the unit owners. Under the "business judgment rule," the board must act within the scope of its authority, in a reasonable manner, and must perform its duties with the care and responsibility that an ordinarily prudent person would exercise under similar circumstances.[6]

Board members and officers can be the subject of a cause of action for a breach of their fiduciary duty. However, a person bringing such action must prove that the board member or officer had a fiduciary

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 718.103(2), F.S.
[4] S. 718.103(4), F.S.
[5] S. 719.103(2), (26), F.S.
[6] Ss. 718.111(1) and 719.104(8), F.S.

duty that was breached that caused damages and rose to the level of criminal activity, fraud, self-dealing, unjust enrichment, or other improper personal benefit.[7]

To determine if a board member or officer breached his or her fiduciary duty, Florida courts look to see if the board member or officer violated the business judgment rule by determining if the association had the contractual or statutory authority to perform the relevant act and if the decision was reasonable. The business judgment rule generally will protect association board members and officers, as long those board members or officers act within the scope of their authority and in a reasonable manner.[8]

It is a breach of a board member or officer's fiduciary duty if an association fails to complete a milestone inspection or structural integrity reserve study.

Florida Building Code

In response to the destruction of Hurricane Andrew, in 1998, the Legislature approved a single state building code and enhanced the oversight role of the state over local code enforcement. In 2000, the Legislature authorized the implementation of the Building Code (Code), and that first edition replaced all local codes on March 1, 2002, making it the first statewide building code in the United States.[9]

The "Florida Building Codes Act" was created to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state Code. The Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.[10]

The Florida Building Commission (Building Commission) was statutorily created to implement the Code. The Building Commission, which is housed within DBPR, is a 19-member technical body made up of design professionals, contractors, and government experts in various disciplines covered by the Code. The Building Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes (model codes) to determine if the Code needs to be updated and adopts an updated Code every three years.[11]

Local Enforcement of the Florida Building Code

It is the intent of the Legislature that local governments have the power to inspect all buildings, structures, and facilities within their jurisdiction in protection of the public's health, safety, and welfare.[12] Every local government must enforce the Building Code and issue building permits.[13] It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.[14]

Any construction work that requires a building permit also requires plans and inspections to ensure the work complies with the Building Code. The Building Code requires certain building, electrical, plumbing, mechanical, and gas inspections.[15] Construction work may not be done beyond a certain point until it

[7] Harris B. Katz, *Condo column: Can board members be sued and how can an association remove a director?*, TC Palm (Oct. 17, 2019) https://www.tcpalm.com/story/news/local/florida/2019/10/17/can-condo-board-members-sued-and-how-can-association-remove-director/3907749002/ (last visited Mar. 19, 2023).
[8] *Id.*; *Hollywood Towers Condominium Association v. Hampton*, 40 So. 3d 784, 787 (Fla. 4th DCA 2010).
[9] *Id.*
[10] *See* s. 553.72(1), F.S.
[11] Ss. 553.73 and 553.74, F.S.
[12] S. 553.72, F.S.
[13] Ss. 125.01(1)(bb), 125.56(1), and 553.80(1), F.S.
[14] Ss. 125.56(4)(a) and 553.79(1), F.S.
[15] 2020 Florida Building Code (7th ed.), s. 110.

passes an inspection. Generally speaking, a permit for construction work that passes the required inspections is considered completed or closed.[16]

The Florida Building Code does not contain mandatory requirements for the maintenance and inspection of existing buildings in the state. Mandatory inspections of existing condominium buildings were once required by Florida law, but the law was repealed shortly after enactment. In 2008, the Legislature mandated that every condominium greater than three stories in height be inspected for maintenance, useful life, and replacement costs of the common elements every five years by an engineer or architect licensed in the state.[17] A condominium association could waive this requirement for five years by a majority vote of interests present at a properly called meeting of the association.[18] This provision was repealed in 2010.[19]

Building Code Administrators and Inspectors

Building officials, inspectors, and plans examiners are regulated by the Florida Building Code Administrators and Inspectors Board within DBPR.[20]

A building code administrator, also known as a building official, is a local government employee or a person contracted by a local government who supervises building code activities, including plans review, enforcement, and inspection.[21]

A building code inspector (inspector) inspects construction that requires permits to determine compliance with the Building Code and state accessibility laws. Inspectors are divided into several different categories. An inspector's ability to practice is limited to the category or categories in which the inspector has been licensed. The inspector categories are:[22]

- Building inspector;
- Coastal construction inspector;
- Commercial electrical inspector;
- Residential electrical inspector;
- Mechanical inspector;
- Plumbing inspector;
- Residential inspector; and
- Electrical inspector.

In order to become an inspector, an applicant must meet the following criteria:[23]

- Be at least 18 years of age,
- Be of good moral character,
- Successfully complete the inspector exam, and
- Meet eligibility requirements according to an accepted combination of education and experience, which consists of completing a combined 3 to 4 years of proven experience, college-level credits or a degree, a training program, and an internship program.

In order to become a building official, an applicant must meet the following criteria:[24]

- Be at least 18 years of age,
- Be of good moral character,

[16] Doug Wise, *Closing Inactive & Excluded Building Permits*, Palm Beach County Planning, Zoning & Building Department, Building Division, at: http://discover.pbcgov.org/pzb/building/BuildingCodes/PBO-126%20%E2%80%93%20Closing%20Inactive%20and%20Excluded%20Building%20Permits.pdf (last visited Mar. 19, 2023).
[17] Ch. 2008-28, L.O.F.
[18] *Id.*
[19] Ch. 2010-176, s. 59, L.O.F.
[20] S. 468.605, F.S.
[21] S. 468.603(2), F.S.
[22] S. 468.603(5), F.S.
[23] S. 468.609(2), F.S.
[24] S. 468.609(3), F.S.

- Successfully complete the building code administrator exam, and
- Meet eligibility requirements according to an accepted combination of education and experience, which consists of completing a combined 10 years of proven architect, engineer, plans examiner, building code inspector, registered or certified contractor, or construction superintendent experience and postsecondary education in the field of construction or related field.

General Contractors

General contractors are regulated by the Construction Industry Licensing Board within DBPR. A general contractor may provide unlimited construction services and may contract for and perform any construction activity requiring licensure, with certain exceptions, such as electrical, mechanical, plumbing work.[25]

In order to become a construction contractor, an applicant must meet the following criteria:[26]
- Be of good moral character;
- Be at least 18 years of age;
- Successfully pass the certification examination; and
- Meet eligibility requirements according to an accepted combination of education and experience, which consists of completing a combined 4 to 5 years of proven experience and college-level credits or a degree.[27]

Threshold Buildings

In 1981, a "five-story Harbour Cay Condominium building in Cocoa Beach, Florida, collapsed during the placement of concrete for the roof slab, killing 11 workers and injuring 23 more."[28] In response to this tragedy, the Legislature instituted threshold building inspections, requiring licensed "special inspectors" to conduct structural inspections for all threshold buildings.[29] A special inspector is a licensed architect or registered engineer to conduct inspections of threshold buildings.[30]

A threshold building is defined as any building which is greater than three stories or 50 feet in height, or which has an assembly occupancy classification, as defined in the Building Code, which exceeds 5,000 square feet in area and an occupant content of greater than 500 persons.[31] An enforcing agency must require a special inspector to perform structural inspections on a threshold building during new construction or during repair or restoration projects in which the structural system or structural loading of a building is being modified.[32]

For a building that qualifies as a threshold building, a structural inspection plan must be submitted by the special inspector and the design professional of record to the enforcing agency prior to the issuance of a building permit for the construction of or modification to the building.[33] However, a fee-simple owner may declare a building a threshold building even when it does not meet the definitions.[34]

The inspection plan for a threshold building provides specific inspection instructions or the adequate inspection of construction. The owner must retain the services of a special inspector who must inspect

[25] Ss. 489.105(3)(a) and 489.113, F.S.
[26] S. 489.111(1)-(3), F.S.
[27] S. 489.111(2)(c)1.-3., F.S.
[28] National Institute of Standards and Technology, Harbour Cay Condominium Collapse Florida 1981, available at https://www.nist.gov/el/harbour-cay-condominium-collapse-florida-1981 (last visited Mar. 19, 2023).
[29] Florida Building Commission, Florida Building Construction Standards available at https://www.floridabuilding.org/fbc/commission/FBC_0413/Commission_Education_POC/173/173-1-MATERIAL%20.pdf (last visited Mar. 19, 2023).
[30] *See* s. 553.71, F.S.
[31] *Id.*
[32] S. 553.79(5)(a), F.S.
[33] *Id.*
[34] *Id.*

the building according to the special inspection plan. In addition, the inspector must determine that a professional engineer who specializes in shoring design has inspected the shoring and reshoring for conformance with the shoring and reshoring plans submitted to the enforcing agency.[35] Special inspectors report directly to local building administrators. The role of threshold building inspectors is unique to Florida.[36]

Champlain Towers South and SB 4-D (Special Session D 2022)

On June 24, 2021, Champlain Towers South, a 12-story beachfront condominium building in the Town of Surfside, which was completed in 1981, partially collapsed resulting in the death of 98 people.

In response, the National Institute of Standards and Technology (NIST) within the United States Department of Commerce launched a full investigation into the cause of the building's failure. According to NIST, it will provide regular progress updates, but because of the amount of evidence and, the investigation could take multiple years to complete.[37]

Despite the fact that the investigations to determine the cause of the building's failure may take months if not years to complete, the condition of the building prior to collapse and released documentation about the building's history have revealed potential factors that may have caused or contributed to the building's collapse,[38] including issues with the pool deck[39] and building design flaws.[40] According to news reports, the association also delayed the repairs of the issues identified in the engineering reports because of infighting among members of the association.[41]

In response to the Champlain Towers South collapse, during the Special Session D, 2022, SB 4-D[42] was enacted to revise the laws related to building safety. The bill provided building safety inspection requirements for condominium and cooperative association buildings (milestone inspections), increased the rights of unit owners and prospective unit owners to access information regarding the condition of such buildings, and revised the requirements for associations to fund reserves for the continued maintenance and repair of such buildings (structural integrity reserve study).

SB 4-D required the Building Commission to make recommendations to the Governor and Legislature regarding the inspection requirements in the bill. This report was completed on December 14, 2022, and some of the recommendations were included in the bill.

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[35] *Id.*

[36] Florida Board of Professional Engineers, *What Are Threshold Building Inspectors?*, available at https://fbpe.org/what-are-threshold-building-inspectors/ (last visited Mar. 19, 2023).

[37] National Institute of Standards and Technology, *NIST Establishes Expert Team to Investigate the Champlain Towers South Collapse*, Aug. 25, 2021 https://www.nist.gov/news-events/news/2021/08/nist-establishes-expert-team-investigate-champlain-towers-south-collapse (last visited Mar. 19, 2023).

[38] The Occupational Safety and Health Administration, the town of Surfside and Miami-Dade County's State Attorney's Office are also investigating the collapse. The Real Property, Probate and Trust Law Section of the Florida Bar created the Condominium Law and Policy on Life Safety Task Force, which provided recommendations to improve building safety on October 12, 2021. In addition, the Miami-Dade police are handling a homicide investigation, and the unit owners have filed a class-action lawsuit against the condo association.

[39] Gina Harkins, *What you need to know about the Florida condo collapse as the search for survivors continues and probe begins*, Washington Post (Jul. 10, 2021), https://www.washingtonpost.com/nation/2021/06/25/florida-condo-collapse-what-you-should-know/ (last visited Mar. 19, 2023); Visual Journalism Team, *Miami building collapse: What could have caused it?*, BBC (Jul. 1, 2021) https://www.bbc.com/news/world-us-canada-57651025 (last visited Mar. 19, 2023).

[40] Alissa Walker, *Collapsed Surfside Towers Actually Broke Building Code From the Very Beginning*, Curbed (Aug. 9, 2021) https://www.curbed.com/2021/08/miami-condo-collapse-structural-flaws.html (last visited May 31, 2022); James Glanz, Mike Baker, and Anjali Singhvi, *Condo Wreckage Hints at First Signs of Possible Construction Flaw*, The New York Times (Jul. 3, 2021) https://www.nytimes.com/2021/07/03/us/florida-condo-collapse-steel-rebar.html (last visited Mar. 19, 2023).

[41] Russell Lewis, *Months Before Florida Condo Collapsed, Residents And The Board Sparred Over Repairs*, NPR (Jul. 2, 2021) https://www.npr.org/sections/live-updates-miami-area-condo-collapse/2021/07/02/1012373938/months-before-florida-condo-collapse-residents-and-board-sparred-over-repairs (last visited Mar. 19, 2023); Beth Reinhard, Tik Root, Brady Dennis, and Jon Swaine, *Majority of Florida condo board quit in 2019 as squabbling residents dragged out plans for repairs*, Washington Post (Jun. 30, 2021) https://www.washingtonpost.com/investigations/majority-of-florida-condo-board-quit-in-2019-as-squabbling-residents-dragged-out-plans-for-repairs/2021/06/30/43592282-d98e-11eb-ae62-2d07d7df83bd_story.html (last visited Mar. 19, 2023).

[42] Ch. 2022-269, L.O.F.

SB 4-D also required associations to report to the Division on or before January 1, 2023, the number of buildings that are three stories or higher in height and the total number of units in such buildings and required the division to publish that information on its website. While the full report is being completed by the Division, the total number of reporting entities is 6,132, the total number of buildings 3 stories or higher is 22,338, and the total number of units is 688,439.[43]

Age of Condominium Buildings

There are 1,529,764 condominium units in Florida operated by 27,588 associations. Of those units:[44]

- 105,404 units are 50 years or older.
- 479,435 units are 40-50 years old.
- 327,537 units are 30-40 years old.
- 141,773 units are 20-30 years old.
- 428,657 units are 10-20 years old.
- 46,958 units are 0-10 years old.

Additionally, over 2,000,000 residents are estimated to be occupying condominiums 30 years or older in Florida, based upon census data of approximately 2.2 persons living in an average condominium unit.[45]

Local Building Recertification Programs

Until 2022, Florida does not generally require recertification of buildings or regular inspections of existing buildings, which is consistent with state building codes across the country.[46] However, local governments adopted such requirements at their discretion to apply throughout a local jurisdiction. According to DBPR, some local jurisdictions in the state have used the following model standards to aid in their adoption of local requirements for the maintenance and inspections of existing buildings: the International Property Maintenance Code, the Standard Housing Code, and the Standard Unsafe Building Abatement Code, or some combination thereof.[47]

Miami-Dade and Broward Counties have amended their local building codes to require a recertification process and inspection of buildings 40 years and older. Miami-Dade's program was established in 1975,[48] and Broward County's program was modeled after Miami-Dade's and has been in effect since January 2006.[49]

Miami Dade's recertification program states that:

> All buildings, except single-family residences, duplexes and minor structures as defined below, shall be recertified in the manner described below where such buildings or structures have been in existence for forty (40) years or longer, as determined by the Building Official, who shall at such time issue a Notice of Required Inspection to the building owner. Subsequent recertification shall be

[43] Email from Jonas Marquez, Legislative Affairs Director, Florida Department of Business and Professional Regulation, RE: Condo/Co-Op Reporting (Feb. 15, 2021).
[44] Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force, p. 4, *available at:* https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf (last visited Mar. 19, 2023).
[45] *Id*.
[46] Department of Business and Professional Regulation, Agency Analysis of 2022 Senate Bill 1702, p. 2 (Jan. 7, 2022).
[47] *Id*.
[48] Miami-Dade Recertification at https://www.miamidade.gov/global/economy/building/recertification.page#:~:text=Miami%2DDade%20County%20has%20had,amended%20on%20June%201%2C%202022 (last visited Mar. 19, 2023).
[49] Broward County, Building Safety Inspection Program, available at https://www.broward.org/CodeAppeals/Documents/Broward%20County%20Building%20Safety%20Inspection%20Program.pdf (last visited Mar. 19, 2023).

> required at ten (10) years interval. In the event a building is determined to be structurally and electrically safe under the conditions set forth herein, and such building or structure is less than forty (40) years of age, recertification shall not be required for a minimum of ten (10) years from that time, or age forty (40), whichever is the longer period of time.[50]

Inspection procedures must "conform, in general, to the minimum inspection procedural guidelines" issued by the county, and are for the purpose of determining the general structural condition of the building or structure to the extent reasonably possible which affects the safety of the building or structure.[51] Miami-Dade's recertification program exempts buildings under 2,000 square feet,[52] and Broward's program exempts buildings under 3,500 square feet.[53] The inspections must be carried out by a professional engineer or architect registered with the State of Florida.[54]

Following the 2021 tragedy in Surfside, Florida, the concept of recertification programs gained considerable attention. The City of Boca Raton recently instituted a building recertification program for buildings over 30 years of age that are greater than three stories or 50 feet in height, or greater than 5,000 square feet and have an occupancy greater than 500 people.[55]

Milestone Inspections – Current Situation

Under s. 553.899, F.S, a "milestone inspection" means a structural inspection of a building, including an inspection of load-bearing walls, primary structural members, and primary structural systems[56] by a licensed architect or engineer for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the fire safety code.

A condominium or cooperative must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 30 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If the building is located within 3 miles of a coastline[57], the condominium or cooperative must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. This requirement does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

If a milestone inspection is required and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy is to be the date of occupancy evidenced in any record of the local building official.

Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium or cooperative by certified mail, return receipt requested. Within 180 days after receiving such written notice, the condominium or

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[50] *See* Code of Miami-Dade, ch. 8 Building Code, s. 8-11(f)(ii), at https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIICOOR_CH8BUCO_ARTIAD_S8-11EXBU (last visited Mar. 19, 2023).
[51] *Id*. at s. 8-11(f)(i).
[52] *Id*. at s. 8-11(f)(ii).
[53] Broward County, *supra* note 49.
[54] *Id*. and *See* Code of Miami-Dade, ch. 8, Building Code, s. 8-11(iv).
[55] City of Boca Raton. Ordinance 5589, *available at:* https://www.myboca.us/DocumentCenter/View/28152/Ordinance-No-5589?bidId= (last visited Mar. 19, 2023).
[56] As they are defined in s. 627.706, F.S.
[57] "Coastline" has the same meaning as in the Submerged Lands Act, 43 U.S.C. ss. 1301 et seq.

cooperative must complete phase one of the milestone inspection. Completion of phase one of the milestone inspection means the **licensed engineer or architect** who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

A milestone inspection consists of two phases.

For phase one of the milestone inspection, a licensed architect or engineer must perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the architect or engineer finds no signs of substantial structural deterioration[58] to any building components under visual examination, phase two of the inspection is not required.

Phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure.

The bill requires that upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium or cooperative, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

- Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.
- Indicate the manner and type of inspection forming the basis for the inspection report.
- Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.
- State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.
- Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.
- Identify and describe any items requiring further inspection.

The condominium or cooperative must:

- distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to received notice by electronic transmission;
- post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and
- publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

A local enforcement agency may prescribe timelines and penalties with respect to compliance.

[58] "Substantial structural deterioration" means substantial structural distress that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

If a condominium or cooperative is required to have a milestone inspection, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners.

Milestone Inspections – Effect of the Bill

The bill requires every condominium or cooperative association to complete a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. The bill removed the provision that treated inland buildings differently than coastal buildings by setting the deadline to complete a milestone inspection for inland condominiums and cooperatives at 30 years.

The bill clarifies that condominium or cooperative associations that only include a single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground are not subject to milestone inspection requirements.

The bill clarifies the deadline to complete a required milestone inspection. The bill requires that if a building's certificate of occupancy was issued on or before December 31, 1994, the building's initial milestone inspection must be performed before December 31, 2024. If the building's certificate of occupancy was issued during the period of January 1, 1995, through December 31, 2000, the building's initial milestone inspection must be performed before December 31, 2026.

The bill allows a local enforcement agency to extend the deadline for a building's initial milestone inspection upon a showing of good cause by the condominium or cooperative association that the association has entered into a contract for the performance of the milestone inspection but that the inspection cannot reasonably be completed before the deadline.

The bill requires a condominium or cooperative association to notify the unit owners of a required milestone inspection and provide the date that the milestone inspection must be completed within 14 days after receipt of the written notice from the local enforcement agency.

The bill allows phase one of the milestone inspection to be performed by, in addition to professional engineers and architects:

- a licensed general contractor with at least 5 years' experience building or constructing threshold buildings, and
- a licensed building code administrator or building code inspector with at least 5 years' experience inspecting threshold buildings.

The bill requires a general contractor, building code administrator, or building code inspector who has competed a phase one milestone inspection report to submit a copy of the report, to the building official of the local jurisdiction where the association is located, under an attestation that the report complies with all requirements, similar to the seal requirement for an professional engineer or architect.

Phase two of the milestone inspection may still only be performed by a professional engineer or architect.

If a phase two inspection is required, the bill requires a condominium or cooperative association to contract, within 90 days after receipt of the phase one inspection report, with an architect or professional engineer to perform the phase two inspection. The architect or engineer contracted must begin the phase two inspection within 90 days after entering into a contract with the association.

The bill requires a condominium or cooperative association to distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, within 60 days after receipt of the inspector-prepared summary of the milestone inspection report from any phase one or phase two milestone inspection.

The bill clarifies that a governing body of a municipality may adopt an ordinance related to timeframes for phase two inspection reports.

By October 1, 2023, the bill requires the Building Commission to create a standardized milestone inspection report form for professionals to submit to the local enforcement agencies. Local enforcement agencies must require that this form be used to submit such reports.

The bill allows associations to use a SIRS visual inspection report in place of a phase one milestone inspection report if the report was performed within the past 5 years and meets the phase one milestone inspection report requirements.

The bill removes a provision requiring a report from the Building Commission by a certain date because such report has been completed.

The bill makes clarifying changes.

Structural Integrity Reserve Study – Current Situation

A reserve study is a budget-planning tool for community associations. Generally, a reserve study consists of the following two parts:[59] physical analysis and financial analysis.

In Florida law, "structural integrity reserve study" (SIRS) means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A SIRS may be performed by any person qualified to perform such study. However, the visual inspection portion of the SIRS must be performed by a **licensed engineer or an architect**.

At a minimum, a SIRS must:

- Identify the common areas being visually inspected,
- State the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and
- Provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

A condominium or cooperative must have a SIRS completed at least every 10 years after the condominium's or cooperative's creation for each building on the condominium or cooperative property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building (SIRS items):

- Roof.
- Load-bearing walls or other primary structural members.
- Floor.
- Foundation.
- Fireproofing and fire protection systems.
- Plumbing.
- Electrical systems.

[59] Cedar Management Group, *HOA Reserve Study: Why Does Your Community Need It?*, https://cedarmanagementgroup.com/hoa-reserve-study-community/#what (last visited Mar. 19, 2023); Kevin Leonard and Robert Nordlund, Understanding Reserves: A guide to your association's reserve fund & reserve study, 26-29 (1st ed. 2021); Community Associations Institute, *National Reserve Study Standards*, https://www.reservestudy.com/wp-content/uploads/2019/01/NRSS-998-CAI-version-updated-2016.pdf (last visited Mar. 19, 2023).

- Waterproofing and exterior painting.
- Windows.
- Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed above as determined by the licensed engineer or architect performing the visual inspection portion of the structural integrity reserve study.

Before a developer turns over control of an association to unit owners other than the developer, the developer must have a SIRS completed for each building on the condominium or cooperative property that is three stories or higher in height.

Condominium or cooperative associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a SIRS completed by December 31, 2024, for each building on the condominium or cooperative property that is three stories or higher in height.

If a condominium or cooperative association fails to complete a SIRS, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners.

Reserves

Every condominium and cooperative association must have a budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the association. The budget is adopted for a 12-month period reflecting an association's fiscal year, and it must provide a detailed listing of the estimated revenues and expenses that the association reasonably projects for the coming fiscal year. The annual budget is made up of two parts, the part covering the regular operations of the association and the part covering the cost for capital expenses and deferred maintenance (reserves).[60]

Reserves are funds that are set aside for capital expenses and deferred maintenance. Reserves provide funds for major capital repairs or replacements that are needed intermittently such as replacing a roof. The reserves are designed to ensure that an association will have the funds when the repairs are needed and will not have to do a large special assessment.[61]

The amount of funds that must be placed in reserve is determined by the condominium or cooperative association's most recent structural integrity reserve study. If the amount to be reserved for an item is not in the association's most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, then the association may use the traditional formula or alternative formula to determine the amount of funds to reserve.

Current law also requires associations to have and fund reserve accounts for roof replacement, building painting, pavement resurfacing, and any item for which the deferred maintenance expense or replacement cost is greater than $10,000.[62] There are two methods of calculating these reserves.

The first is the traditional formula, and the second is the alternative formula. The traditional formula takes into account the estimated deferred maintenance or capital expenditure amount, estimated fund balance, and number of years remaining until deferred maintenance or a capital expenditure is needed.[63]

The alternative formula allows associations to maintain a pooled account for multiple reserve assets that are similar or related. For example, an association responsible for managing two swimming pools may create a pool reserve account for both pools instead of a reserve account for each pool. The

[60] Ss. 718.112(2)(f) and 719.106(1)(j), F.S.
[61] Ss. 718.112(2)(f) and 719.106(1)(j), F.S.
[62] *Id*.
[63] *Id*.; Rules 61B-22.005(3), and 61B-76.005(1), F.A.C.

formula for a pooled account must provide for an annual contribution that will ensure the balance on hand in the account is equal to or greater than the annual projected outflows from the account.[64]

Waiver of Reserves

Effective December 1, 2024, a unit-owner controlled association may not waive collecting reserves or collect less reserve funds than required for items that are required to be inspected in a SIRS for an association building that is three stories or higher in height. In addition, unit-owner controlled associations may not use such reserve funds for purposes other than their intended purpose.

For other reserve items, associations may waive funding reserves for capital expenditures and deferred maintenance or provide funds that are less than the required amount by a majority of the voting interests present at a properly called meeting. The waiver of reserves by the membership is only for the current year, and a separate vote must be taken each year to waive the reserves or fund less than the required amount.[65] Associations may also vote to use reserve funds for purposes other than their intended purpose, such as using funds from the roof reserve account for painting buildings, by a majority of the voting interests present at a properly called meeting.[66]

Structural Integrity Reserve Study – Effect of the Bill

The bill allows the visual inspection portion of the SIRS to be performed by, in addition to professional engineers and architects:

- a licensed general contractor licensed with at least 5 years' experience building or constructing threshold buildings, and
- a licensed building code administrator or building code inspector with at least 5 years' experience inspecting threshold buildings.

The bill clarifies that only if an association is required to complete a structural integrity reserve study, is that association's reserve account required to include SIRS items. The bill also clarifies that an item does not need to be accounted for in the reserve account if it has a remaining useful life of more than 25 years.

The bill adds "exterior doors" to the list of SIRS items.

The bill clarifies the timeline to complete a SIRS. The bill requires all associations that are controlled by unit owners other than the developer to have a SIRS completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. The bill allows associations that are required to complete a milestone inspection on or before December 31, 2026 to complete the SIRS simultaneously with the milestone inspection. However, in no event may the SIRS be completed after December 31, 2026.

The bill allows associations to use a milestone inspection report or an inspection report completed for a similar local requirement in place of a SIRS visual inspection report if the report was performed within the past 5 years and meets the SIRS requirements.

Developer and Non-developer Disclosures Prior to Sale – Current Situation

Developers and non-developer owners of condominium or cooperative units must give certain documents to a prospective buyer or lessee before the execution of a contract for the sale of a residential unit, including a copy of the inspector prepared summary of the milestone inspection report, and a copy of the most recent SIRS or a statement that the association has not completed a SIRS.[67]

[64] Rules 61B-22.005(1), (3), and 61B-76.005(1), (3), F.A.C.
[65] Ss. 718.112(2)(f) and 719.106(1)(j), F.S.; Rules 61B-22.005(8), and 61B-76.005(8), F.A.C.
[66] Ss. 718.112(2)(f) and 719.106(1)(j), F.S.
[67] Ss. 718.503(1) and 719.503(1), F.S.

A developer may not close for 15 days following the execution of a purchase contract or certain lease contracts, or the delivery of the required documents to the buyer, including the documents creating the association, the bylaws, and the estimated operating budget of the association. A prospective purchaser may void the contract within 15 days of his or her receipt of all the required documents.[68]

Developer and Non-developer Disclosures Prior to Sale – Effect of the Bill

The bill requires the following disclosures relating to milestone inspections and SIRS requirements in developer and non-developer sales contracts entered into on or after January 1, 2025, for the sale of a residential unit:

- If the association is required to have a milestone inspection or a structural integrity reserve study, and the association has not completed the milestone inspection or structural integrity reserve study, each contract must contain in conspicuous type a statement indicating that the association is required to have a milestone inspection or a structural integrity reserve study and the association has failed to complete such inspection or study, as applicable.
- If the association is required to have a milestone inspection or a structural integrity reserve study, and the association has completed such inspection or study, each contract must contain a copy of the most recent milestone inspection report or structural integrity reserve study, as applicable.
- If the association is not required to have a milestone inspection or a structural integrity reserve study, each contract must contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as applicable.

Enforcement– Current Situation

For condominium associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Condominium Act for associations that are controlled by a developer, a bulk buyer, or a bulk assignee. Once a developer has turned over control of the condominium to the association the Division only has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to official records.[69]

For cooperative associations, the Division has jurisdiction to investigate complaints and enforce compliance with the Cooperative Act.[70]

If a person believes there is a violation of the Condominium Act or Cooperative Act, he or she may file a complaint with the Division. If the complaint is within the Division's jurisdiction, the Division assigns an investigator to the complaint. After investigating the complaint, if the Division has reasonable cause to believe that a violation occurred, it may initiate an enforcement proceeding in its own name as follows:[71]

- Enter in a voluntary consent proceeding with the person who violated the Condominium Act or Cooperative Act where he or she consents to stopping the violation.
- Issue a cease and desist.
- File an administrative complaint against the person.
- File an enforcement action in circuit court to seek declaratory or injunctive relief on behalf of the unit owners.
- Remove an individual from his or her position as an officer or board member of a condominium or cooperative.
- Impose civil penalties in the amount of up to $5,000 per violation.

In order to enforce the Condominium Act and Cooperative Act, the Division may conduct investigations, take sworn statements, receive evidence, and subpoena individuals and documentation. If the Division

[68] Ss. 718.503(1) and 719.503(1), F.S., providing the developer disclosures before the sale or lease of a residential condominium or cooperative unit, respectively.
[69] S. 718.501(1), F.S.
[70] S. 719.504(1), F.S.
[71] Ss. 718.501(1)(d), (m), and 719.501(1)(d), (m), F.S.

believes a person has destroyed or altered association documents or impaired the availability of association documents during an investigation, the Division must refer it to local law enforcement.[72]

The Division has authority to investigate condominium and cooperative complaints related to the procedural completion of milestone structural inspections and structural integrity reserve studies.

Alternative Dispute Resolution

There is an alternative dispute resolution process for certain disputes between unit owners and condominium or cooperative associations. Before the institution of court litigation, a party to certain disputes must either petition the division for nonbinding arbitration or initiate pre-suit mediation.[73] Alternative dispute resolution offers a more efficient, cost-effective option to court litigation, but alternative dispute resolution should not be used as a mechanism to encourage the filing of frivolous or nuisance suits.[74]

Alternative dispute resolution is required for any disagreements between two or more parties that involves:[75]

- The authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements;[76]
- The board of directors' failure to:
    - Properly conduct elections;
    - Give adequate notice of meetings;
    - Properly conduct meetings;
    - Provide access to association books and records; and
- A plan of termination.

The Division does not have jurisdiction to arbitrate or mediate disputes between a unit owner and an association that involve: [77]

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or other removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or
- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for pre-suit mediation and must be arbitrated by the Division or filed directly with a court of competent jurisdiction.[78]

Arbitration is binding on the parties if all parties in arbitration agree to be bound in a writing filed in the arbitration,[79] or if a complaint for a trial de novo is not filed in a court of competent jurisdiction in which the condominium is located within 30 days after the arbitration decision is rendered.[80]

[72] Ss. 718.501(1)(c) and 719.501(1)(c), F.S.
[73] S. 718.1255, 719.1255, and 719.106(1)(f), F.S.
[74] S. 718.1255(3)(b), F.S., providing legislative findings regarding the advantages of pre-suit alternative dispute resolution.
[75] S. 718.1255(1)(a), F.S., defining the term "dispute."
[76] *Id*.
[77] *Id*.
[78] S. 718.1255(5), F.S.
[79] S. 718.1255(4)(a), F.S.
[80] S. 718.1255(4)(k), F.S.

The filing fee for a petition to the Division to initiate nonbinding arbitration or pre-suit mediation is $50.[81] The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration.

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center.[82]

The mediation of disputes in condominium and cooperative associations is regulated under s. 720.311, F.S., which also provides for the mediation of the certain homeowners' association disputes. An aggrieved party in a dispute must initiate the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.[83]

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees. Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.[84]

The bylaws for condominium and cooperative associations must provide for mandatory dispute resolution.[85]

Enforcement – Effect of the Bill

The bill redefines the term "dispute" to permit unit owners in condominium and cooperative associations to utilize the mediation process in s. 720.311, F.S., related to disputes in homeowners' associations.

Under the bill, condominium and cooperative unit owners may use the mediation process for disputes related to failure of a board of administration to:

- Obtain a milestone inspection.
- Obtain a structural integrity reserve study.
- Fund reserve accounts as required for a SIRS item.
- Make or provide necessary maintenance or repairs of the condominium property as recommended by a milestone inspection or a structural integrity reserve study.

The bill provides the following avenues for injunctive relief:

- A unit owner may institute an action in a court of competent jurisdiction in which the condominium is located to seek injunctive relief against the association to:
  - Enforce compliance with milestone inspection requirements and structural integrity reserve study requirements.
  - Prevent irreparable injury to unit owners and the association and to protect human health, safety, and welfare caused or threatened by any violation of the milestone inspection requirements and structural integrity reserve study requirements.
- The Division may, in the name of the state, seek injunctive relief in any court of competent jurisdiction in which the condominium or cooperative is located to obtain relief against the association to enforce compliance with milestone inspection requirements. This relief is in addition to, and not in lieu of, any other available penalty or remedy.

[81] S. 718.1255(4)(a), F.S.
[82] S. 718.1255(2), F.S.
[83] *Id*.
[84] S. 720.311(2)(b), F.S.
[85] Ss. 718.112(2)(k) and 719.106(1)(l), F.S., relating to condominium and cooperative associations, respectively.

- Any local authority having jurisdiction to enforce milestone inspection requirements may seek injunctive relief from any court of competent jurisdiction in which the condominium or cooperative is located against the association to enforce compliance with milestone inspection requirements, upon an affidavit of the local authority having jurisdiction specifying the manner in which the condominium does not conform to such requirements.

Condominium Flood Coverage Requirements – Current Situation

Until December 2022, Citizens Property Insurance Corporation (Citizens) could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming the following:

- That Citizens does not provide flood insurance coverage, and
- That, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk is not covered for flood damage.[86]

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.[87]

In December 2022, the Legislature established a requirement that Citizens personal lines residential policyholders and applicants must purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

The requirement to purchase is being phased in as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
    - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
    - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
    - January 1, 2024, for property valued at $600,000 or more.
    - January 1, 2025, for property valued at $500,000 or more.
    - January 1, 2026, for property valued at $400,000 or more.
    - January 1, 2027, for all other personal lines residential property insured by Citizens.

A Citizens policyholder who does not obtain flood coverage and has executed such a form, and who makes a claim for water damage against Citizens, has the burden of proving the damage was not caused by flooding.[88] Additionally, Citizens may deny coverage to a policyholder or applicant who refuses to execute the form.[89]

Condominium Flood Coverage Requirements – Effect of the Bill

[86] S. 627.351(6)(aa), F.S. (2021).
[87] Current NFIP personal lines flood policies have limits of $250,000 per claim.
[88] S. 627.351(6)(aa), F.S. (2022).
[89] *Id.*

The bill provides exemptions from the purchase of flood insurance coverage by certain Citizens policyholders who own or reside in condominiums. In addition to individuals whose Citizens policy does not cover wind, the following Citizens policyholders do not need to purchase flood insurance to be eligible for coverage from Citizens:

- Condominium unit owners or tenants who are covered under a master flood policy issued to someone other than the owner of the unit.
- Condominium unit owners or tenants who reside in a unit with occupiable space that is not less than 40 feet above the grade plane,[90] as defined in the Florida Building Code. Units on the fifth floor above the grade plane or higher are deemed to meet this criteria. Additionally, the bill specifies that unit owners or condominium associations may submit a certificate from licensed engineers, surveyors and mappers, or architects indicating which units meet this criteria.

Except as otherwise provided, the bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

Section 1: Amends s. 468.4334, F.S.; relating to community association managers.
Section 2: Amends s. 553.899, F.S.; relating to milestone inspections.
Section 3: Amends s. 627.351, F.S.; relating to Citizens flood insurance requirements.
Section 4: Amends s. 718.103, F.S.; relating to the definition of structural integrity reserve study.
Section 5: Amends s. 718.112, F.S.; relating to requirements of a structural integrity reserve study.
Section 6: Amends s. 718.1255, F.S.; relating to alternative dispute resolution at the Division.
Section 7: Amends s. 718.13, F.S.; relating to injunctive relief.
Section 8: Amends s. 718.301, F.S.; making conforming changes.
Section 9: Amends s. 718.503, F.S.; relating to provisions and disclosures in sales contracts.
Section 10: Amends s. 719.103, F.S.; relating to the definition of structural integrity reserve study.
Section 11: Amends s. 719.106, F.S.; relating to requirements of a structural integrity reserve study.
Section 12: Amends s. 719.132, F.S.; relating to injunctive relief.
Section 13: Amends s. 719.301, F.S.; making conforming changes.
Section 14: Amends s. 719.503, F.S.; relating to provisions and disclosures in sales contracts.
Section 15: Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

DBPR may incur an insignificant indeterminant increase in expenditures related to creating a uniform inspection form and possible increased complaints related to milestone inspection and SIRS requirements.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

[90] The grade plane is a reference plan representing the average of the finished ground level adjoining a building at its exterior walls. 2020 Florida Building Code, Residential, 7th Edition, § R202, *available at* https://codes.iccsafe.org/content/FLRC2020P1/chapter-2-definitions (last visited Mar. 22, 2023); 2020 Florida Building Code, Building, 7th Edition, § 202, *available at* https://codes.iccsafe.org/content/FLBC2020P1/chapter-2-definitions (last visited Mar. 22, 2023).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Condominium and cooperative associations and unit owners in those communities may incur expenses related to the required conduct of a milestone inspection and reserve study. However, the associations and unit owners may benefit from the long-term financial planning benefits of a reserve study and from the maintenance or repair of association property.

Providers of reserve studies and architects, engineers, general contractors, building officials, and inspectors who offer milestone inspections and SIRS may benefit from additional business due to the required milestone inspections and reserve studies.

The bill will reduce the number of individual condominium unit owners who have to purchase additional flood insurance coverage.

D. FISCAL COMMENTS:

Fannie Mae[91] and the Federal Housing Administration[92] have altered their requirements for loans secured by condominiums and cooperatives in response to the Champlain Towers collapse, including requiring:

- The association to have assessments sufficient to fund any repairs; and
- That at least 10 percent of the association's assessments are dedicated to budget reserves.

Fannie Mae also provides that condominiums and cooperatives with significant deferred maintenance or that have received a directive from a regulatory authority or inspection agency to make repairs due to unsafe conditions are not eligible for purchase until the repairs are made.[93]

Although the underwriting standard was adopted before the Champlain Towers South collapse, Freddie Mac also requires that at least 10 percent of a condominium association's assessments be dedicated to budget reserves.[94]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Building Commission to create a uniform inspection form which may be used statewide for milestone inspection and SIRS reporting requirements. There is adequate rulemaking authority to do so.

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[91] Fannie Mae, Lender Letter (LL-20221-14), Oct. 12, 2021, available at: https://singlefamily.fanniemae.com/media/29411/display (last visited Mar. 19, 2023).

[92] Freddie Mac, *Handbook 4000.1, FHA Single Family Housing Policy Handbook, Condominium Project Approval*, sec. II.C.2.vi., p. 530, available at: https://www.hud.gov/sites/dfiles/OCHCO/documents/4000.1hsgh-102021.pdf (last visited Mar. 19, 2023).

[93] Fannie Mae, s*upra* note 91.

[94] Freddie Mac, Established Condominium Projects, Effective June 1, 2022, available at: https://guide.freddiemac.com/app/guide/section/5701.5 (last visited Mar. 19, 2023).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 22, 2023, the Regulatory Reform & Economic Development Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The committee substitute:

- Makes the use of the Building Commission's uniform milestone inspection report form to be mandatory rather than optional.
- Changes the due date for the Building Commission's form to October 1, 2023.
- Clarifies that only associations required to complete a structural integrity reserve study are required to maintain reserves for items required to be in such study.
- Clarifies when condominium association unit owners with Citizens Property Insurance have to have flood insurance.

This analysis is drafted to the committee substitute as passed by the Regulatory Reform & Economic Development Subcommittee.

A bill to be entitled

An act relating to the management and safety of condominium and cooperative buildings; amending s. 468.4334, F.S.; revising professional practice standards for community association managers and community association management firms; amending s. 553.899, F.S.; revising legislative findings; revising definitions; requiring condominium associations and cooperative associations to have milestone inspections performed on certain buildings after they reach 25 years of age; removing provisions relating to certain buildings located near coastlines; revising the date on which a building's certificate of occupancy was issued to trigger the requirement of a milestone inspection; authorizing an extension of the deadline for the completion of a milestone inspection under certain circumstances; requiring certain notice be given to unit owners within a specified time period; authorizing additional persons to conduct phase one inspections; specifying the only persons authorized to conduct phase two inspections; requiring certain associations to enter into contracts with certain persons within a specified timeframe; requiring that a phase two inspection begin within a specified timeframe; requiring certain inspection reports to

bear certain attestations; authorizing the governing body of a municipality to adopt certain ordinances; removing a specified review by the Florida Building Commission; removing the requirement that the commission submit a certain report to the Governor and Legislature by a specified date; requiring the commission to create standardized milestone inspection forms by a specified date; requiring local enforcement agencies to use such standardized forms to submit certain reports; conforming provisions to changes made by the act; amending s. 627.351, F.S.; revising requirements for certain condominium unit owners relating to the purchase of flood insurance as a condition for maintaining certain policies issued by Citizens Property Insurance Corporation; amending ss. 718.103 and 719.103, F.S.; revising the definition of "structural integrity reserve study"; amending ss. 718.112 and 719.106, F.S.; requiring certain items that will require maintenance, repair, or replacement within a certain timeframe to be included in reserve accounts; removing a date by which certain structural integrity reserve studies must be completed; providing an exception to the requirement of a structural integrity reserve study; requiring certain associations' budgets to include reserves, in an

amount determined by a specified study, for certain items; requiring the structural integrity reserve study to include exterior doors; authorizing certain inspections to be used in place of other inspections under certain circumstances; requiring that the inspector-prepared summary of the inspection report be provided to certain persons within a specified time period; conforming provisions to changes made by the act; amending s. 718.1255, F.S.; revising the definition of a "dispute" for purposes of alternative dispute resolution; requiring certain disputes to be submitted to presuit mediation; creating ss. 718.13 and 719.132, F.S.; authorizing unit owners and certain entities to file an action in court for certain injunctive relief; amending ss. 718.301 and 719.301, F.S.; conforming provisions to changes made by the act; amending ss. 718.503 and 719.503, F.S.; requiring that certain provisions be included in certain contracts entered into after specified dates under certain circumstances; conforming provisions to changes made by the act; providing effective dates.

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

Section 1. Paragraph (b) of subsection (1) of section

468.4334, Florida Statutes, is amended to read:

468.4334 Professional practice standards; liability.—

(1)

(b) If a community association manager or a community association management firm has a contract with a community association that ~~has a building on the association's property that~~ is subject to s. 553.899, the community association manager or the community association management firm must comply with that section as directed by the board.

Section 2. Subsection (13) of section 553.899, Florida Statutes, is renumbered as subsection (12), subsections (1) through (8) and (11) and present subsection (12) are amended, and a new subsection (13) is added to that section, to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(1) The Legislature finds that maintaining the structural integrity of a building throughout the ~~its service~~ life of the building is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

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

(a) "Milestone inspection" means a structural inspection of a building, including an inspection of load-bearing elements ~~walls~~ and the primary structural members and primary structural systems as those terms are defined in s. 627.706. Phase one of the milestone inspection must be performed~~,~~ by a general contractor licensed under chapter 489 with at least 5 years' experience building or constructing threshold buildings, a building code administrator or building code inspector licensed under part XII of chapter 468 with at least 5 years' experience inspecting threshold buildings, or by a licensed architect or engineer authorized to practice in this state. Phase two of the milestone inspection must be performed by a licensed architect or engineer authorized to practice in this state. Such structural inspection must be completed with the purpose ~~for the purposes~~ of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.

(b) "Substantial structural deterioration" means

substantial structural distress or a substantial structural weakness that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed general contractor, building code administrator, building code inspector, engineer, or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

(3) A condominium association under chapter 718 and a cooperative association under chapter 719 must have a milestone inspection performed for each building that is three stories or more in height by December 31 of the year in which the building reaches 25 ~~30~~ years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. ~~If the building is located within 3 miles of a coastline as defined in s. 376.031, the condominium association or cooperative association must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.~~ The condominium association or cooperative association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the

requirements of this section. The condominium association or cooperative association is responsible for all costs associated with the inspection. This subsection does not apply to associations that only include ~~a~~ single-family, two-family, or three-family dwellings ~~dwelling~~ with three or fewer habitable stories above ground.

(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before December 31, 1994 ~~July 1, 1992~~, the building's initial milestone inspection must be performed before December 31, 2024. If a milestone inspection is required under this section and the building's certificate of occupancy was issued during the period of January 1, 1995, through December 31, 2000, the building's initial milestone inspection must be performed before December 31, 2026. The local enforcement agency may extend the deadline for a building's initial milestone inspection upon a showing of good cause by the condominium or cooperative association that the association has entered into a contract for the performance of the milestone inspection but that the inspection cannot reasonably be completed before the deadline. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.

(5) Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association by certified mail, return receipt requested. The condominium or cooperative association must notify the unit owners of the required milestone inspection within 14 days after receipt of the written notice from the local enforcement agency and provide the date that the milestone inspection must be completed.

(6) Within 180 days after receiving the written notice under subsection (5), the condominium association or cooperative association must complete phase one of the milestone inspection. For purposes of this section, completion of phase one of the milestone inspection means the licensed general contractor, building code administrator, building code inspector, engineer, or architect who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

(7) A milestone inspection consists of two phases:

(a) For phase one of the milestone inspection, a general contractor licensed under chapter 489 with at least 5 years' experience building or constructing threshold buildings, a building code administrator or building code inspector licensed under part XII of chapter 468 with at least 5 years' experience inspecting threshold buildings, or a licensed architect or

engineer authorized to practice in this state shall perform a visual examination of habitable and nonhabitable areas of a building, including the major structural components of a building, and provide a qualitative assessment of the structural conditions of the building. If the general contractor, building code administrator, building code inspector, architect, or engineer finds no signs of substantial structural deterioration to any building components under visual examination, phase two of the inspection, as provided in paragraph (b), is not required. A general contractor, a building code administrator, a building code inspector, an architect, or an engineer who completes a phase one milestone inspection shall prepare and submit an inspection report pursuant to subsection (8).

(b) A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. Only a licensed architect or engineer authorized to practice in this state may perform a phase two milestone inspection. If a phase two inspection is required, the association must contract, within 90 days after receipt of the phase one inspection report, with a licensed architect or engineer to perform the phase two inspection. The licensed architect or engineer contracted with to perform the inspection must begin the phase two inspection within 90 days after entering into a contract with the association. A phase two inspection may involve destructive or nondestructive testing at

the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building. When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to subsection (8).

(8) Upon completion of a phase one or phase two milestone inspection, the general contractor, building code administrator, building code inspector, architect, or engineer who performed the inspection must submit a copy, or a sealed copy, if applicable, of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

(a)1. Bear an attestation and signature, or electronic signature, of the licensed general contractor, building code administrator, or building code inspector who performed the inspection; or

2. Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection,

indicating that such report complies with the statutory requirements for the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

(11) A board of county commissioners or the governing body of a municipality may adopt an ordinance requiring that a condominium or cooperative association schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be

commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

~~(12) The Florida Building Commission shall review the milestone inspection requirements under this section and make recommendations, if any, to the Legislature to ensure inspections are sufficient to determine the structural integrity of a building. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2022.~~

(13) By October 1, 2023, the Florida Building Commission shall create a standardized milestone inspection report form for the submission of such reports to local enforcement agencies by general contractors, building code administrators, building code inspectors, engineers, and architects. Local enforcement agencies must require that the standardized form be used to submit such reports.

Section 3. Paragraph (aa) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

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

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for property valued at $600,000 or more.

b. January 1, 2025, for property valued at $500,000 or more.

c. January 1, 2026, for property valued at $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders ~~whose policies issued by the corporation do not provide coverage for the peril of wind~~ are not required to purchase flood insurance as a condition for maintaining their policies issued by ~~with~~ the corporation, if such policy:

a. Does not provide coverage for the peril of wind.

b. Provides coverage under a condominium unit owners or condominium tenant form and the policyholder's unit is covered under a master flood policy issued to someone other than the policyholder.

c. Provides coverage under a condominium unit owners or condominium tenant form and the policyholder resides in a condominium unit with occupiable space that is not less than 40 feet above the grade plane, as defined in the Florida Building Code. A unit located on the fifth floor above the grade plane or higher is deemed to be not less than 40 feet above the grade plane, as defined in the Florida Building Code. A unit owner or

a condominium association may submit a certification from an engineer licensed under chapter 471, a surveyor and mapper licensed under chapter 472, or an architect licensed under chapter 481, detailing which units in the condominium association are not less than 40 feet above the grade plane, as defined in the Florida Building Code, and the corporation may rely on such certification.

The flood insurance required under this paragraph must meet, at a minimum, the coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

Section 4. Subsection (25) of section 718.103, Florida Statutes, is amended to read:

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

(25) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471, a general contractor licensed under chapter 489 with at least 5 years' experience building or constructing threshold buildings as defined in s. 553.71, a

building code administrator or building code inspector licensed under part XII of chapter 468 with at least 5 years' experience inspecting threshold buildings as defined in s. 553.71, or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 5. Paragraphs (f), (g), and (h) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(f) Annual budget.—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board

fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, ~~and~~ any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000, and those items listed in paragraph (g) that will require maintenance, repair, or replacement within the next 25 years. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study

that must be completed as provided in paragraph (g) ~~by December 31, 2024~~. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. However, any item with a remaining useful life greater than 25 years is not required to be included in the study. If an association is required to complete a structural integrity reserve study, the association's budget must maintain reserves, in the amount recommended in the association's most recent structural integrity reserve study, for the items listed in paragraph (g). The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. Effective December 31, 2024, the members of a unit-owner-controlled association that is required to complete a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g).

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. Effective December 31, 2024, members of a unit-owner-controlled association that is required to complete a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (g) for any other purpose other than their intended purpose.

4. The only voting interests that are eligible to vote on

questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) Structural integrity reserve study.—

1. An association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows and exterior doors.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-i., as determined by the licensed engineer, general contractor, building code administrator, building code inspector, or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the condominium property that is three stories or higher in height.

3. Associations that ~~existing on or before July 1, 2022, which~~ are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity

reserve study be completed after December 31, 2026.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

5. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

(h) Mandatory milestone inspections.—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 718.111(1)(a). Within 60 days after ~~Upon completion of a phase one or phase two milestone inspection and~~ receipt of the inspector-prepared summary of the milestone inspection report from any phase one or phase two milestone inspection ~~from the~~

~~architect or engineer who performed the inspection~~, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website. If the visual inspection portion of the structural integrity reserve study required under paragraph (g) was performed within the past 5 years and meets the requirements for a milestone inspection in s. 553.899, such inspection may be used in place of the phase one milestone inspection.

Section 6. Effective July 1, 2027, subsection (5) of section 718.1255, Florida Statutes, is amended, and paragraph (d) is added to subsection (1) of that section, to read:

718.1255 Alternative dispute resolution; mediation; nonbinding arbitration; applicability.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(d) The failure of a board of administration, when

required by this chapter or a governing document of the association, to:

1. Obtain a milestone inspection as required under s. 553.899.

2. Obtain a structural integrity reserve study as required under s. 718.112(2)(g).

3. Fund reserve accounts as required for an item identified in s. 718.112(2)(g).

4. Make or provide necessary maintenance or repairs of the condominium property as recommended by a milestone inspection or a structural integrity reserve study.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(5) PRESUIT MEDIATION.—In lieu of the initiation of nonbinding arbitration as provided in subsections (1)-(4), a party may submit a dispute to presuit mediation in accordance with s. 720.311, except for:

(a) Disputes listed in paragraph (1)(d) are not subject to nonbinding arbitration under subsection (4) and must be submitted to presuit mediation in accordance with s. 720.311.~~;~~ ~~however,~~

(b) Election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the division or filed in a court of competent jurisdiction.

Section 7. Section 718.13, Florida Statutes, is created to read:

718.13 Injunctive relief.—

(1) A unit owner may institute an action in a court of competent jurisdiction in which the condominium is located to seek injunctive relief against the association to:

(a) Enforce compliance with milestone inspection requirements under s. 553.899 and structural integrity reserve study requirements under s. 718.112(2)(g).

(b) Prevent irreparable injury to unit owners and the association and to protect human health, safety, and welfare caused or threatened by any violation of the milestone inspection requirements under s. 553.899 and structural integrity reserve study requirements under s. 718.112(2)(g).

(2) The division may, in the name of the state, seek injunctive relief in any court of competent jurisdiction in which the condominium is located to obtain relief against the association to enforce compliance with milestone inspection

requirements under s. 553.899. A proceeding commenced under this subsection is in addition to, and not in lieu of, any other penalty or remedy under this chapter.

(3) Any local authority having jurisdiction to enforce milestone inspection requirements may seek injunctive relief from any court of competent jurisdiction in which the condominium is located against the association to enforce compliance with milestone inspection requirements under s. 553.899, upon an affidavit of the local authority having jurisdiction specifying the manner in which the condominium does not conform to the requirements of s. 553.899.

Section 8. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the

association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer or under attestation of a general contractor, building code administrator, or building code inspector authorized to practice in this state indicating that such report complies with the statutory requirements for the inspection, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

Section 9. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 718.503, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) and paragraph (e) is added to subsection (2) of that section, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close

before the expiration of the 15 days. The developer shall retain in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close before the expiration of the voidability period. The developer must retain such proof for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees

assessed pursuant to s. 718.113(1) for the maintenance of limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions that will affect the use of the property and are not contained in the

foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.112(2)(h) ~~ss. 553.899 and 718.301(4)(p)~~.

19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(d) Milestone inspection or structural integrity reserve study.—

1. If the association is required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), and the association has not completed the milestone inspection or structural integrity reserve study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a

statement indicating that the association is required to have a milestone inspection or a structural integrity reserve study and the association has failed to complete such inspection or study, as applicable.

2. If the association is required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), and the association has completed such inspection or study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain a copy of the most recent milestone inspection report or structural integrity reserve study, as applicable.

3. If the association is not required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as applicable.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled,

at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. Financial information required by s. 718.111.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 718.112(2)(h) ~~ss. 553.899 and 718.301(4)(p)~~, if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(e)1. If the association is required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), and the association has not completed the milestone inspection or structural integrity reserve study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is required to have a milestone inspection or a structural integrity reserve study and the association has failed to complete such inspection or study, as applicable.

2. If the association is required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), and the association has completed such inspection or study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain a copy of the most recent milestone inspection report or structural integrity reserve study, as applicable.

3. If the association is not required to have a milestone inspection as described in ss. 553.899 and 718.112(2)(h) or a structural integrity reserve study as described in s. 718.112(2)(g), each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as applicable.

Section 10. Subsection (24) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(24) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural

integrity reserve study must be performed by an engineer licensed under chapter 471, a general contractor licensed under chapter 489 with at least 5 years' experience building or constructing threshold buildings as defined in s. 553.71; a building code administrator or building code inspector licensed under part XII of chapter 468 with at least 5 years' experience inspecting threshold buildings as defined in s. 553.71; or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area.

Section 11. Paragraphs (j), (k), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(j) Annual budget.—

1. The proposed annual budget of common expenses must be detailed and must show the amounts budgeted by accounts and

expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not ~~be~~ limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, ~~and~~ for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000, and those items listed in paragraph (k) that will require maintenance, repair, or replacement within the next 25 years. The amount to be reserved for an item is determined by the association's most recent structural integrity reserve study that must be completed as provided in paragraph (k) ~~by December 31, 2024~~. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount must be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense

of the reserve item. However, any item with a remaining useful life greater than 25 years is not required to be included in the study. If an association is required to complete a structural integrity reserve study, the association's budget must maintain reserves, in the amount recommended in the association's most recent structural integrity reserve study, for the items listed in paragraph (k). The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, at a duly called meeting of the association, for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. Effective December 31, 2024, a unit-owner-controlled association that is required to complete a structural integrity reserve study may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k). If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended. Effective December 31, 2024, members of a unit-owner-controlled association that is required to complete a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, that are reserved for items listed in paragraph (k) for purposes other than their intended purpose.

(k) Structural integrity reserve study.—

1. An association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Load-bearing walls or other primary structural members.

c. Floor.

d. Foundation.

e. Fireproofing and fire protection systems.

f. Plumbing.

g. Electrical systems.

h. Waterproofing and exterior painting.

i. Windows and exterior doors.

j. Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-i., as determined by the licensed engineer, general contractor, building code administrator, building code inspector, or architect performing the visual inspection portion of the structural integrity reserve study.

2. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the cooperative property that is three stories or higher in height.

3. Associations that ~~existing on or before July 1, 2022, which~~ are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899, may complete the structural integrity reserve study simultaneously with the

milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

4. If an association fails to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(8).

5. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

(l) Mandatory milestone inspections.—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the inspection. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 719.104(8)(a). Within 60 days after ~~Upon completion of a phase one or phase two milestone inspection and~~ receipt of the inspector-prepared summary of the milestone inspection report

from any phase one or phase two milestone inspection ~~the architect or engineer who performed the inspection~~, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery and by electronic transmission to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website. If the visual inspection portion of the structural integrity reserve study required under paragraph (k) was performed within the past 5 years and meets the requirements for a milestone inspection in s. 553.899, such inspection may be used in place of the phase one milestone inspection.

Section 12. Section 719.132, Florida Statutes, is created to read:

719.132 Injunctive relief.—

(1) A unit owner may institute an action in a court of competent jurisdiction in which the cooperative is located to seek injunctive relief against the association to:

(a) Enforce compliance with milestone inspection requirements under s. 553.899 and structural integrity reserve

requirements under s. 719.106(1)(k).

(b) Prevent irreparable injury to unit owners and the association and to protect human health, safety, and welfare caused or threatened by any violation of the milestone inspection requirements under s. 553.899 and structural integrity reserve requirements under s. 719.106(1)(k).

(2) The division may, in the name of the state, seek injunctive relief in any court of competent jurisdiction in which the cooperative is located to obtain relief against the association to enforce compliance with milestone inspection requirements under s. 553.899. A proceeding commenced under this subsection is in addition to, and not in lieu of, any other penalty or remedy under this chapter.

(3) Any local authority having jurisdiction to enforce milestone inspection requirements may seek injunctive relief from any court of competent jurisdiction in which the cooperative is located against the association to enforce compliance with milestone inspection requirements under s. 553.899, upon an affidavit of the local authority having jurisdiction specifying the manner in which the cooperative does not conform to the requirements of s. 553.899.

Section 13. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a

majority of the members of the board of administration of an association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a milestone inspection report in compliance with s. 553.899 included in the official records, under seal of an architect or engineer or under attestation of a general contractor, building code administrator, or building code inspector authorized to practice in this state indicating that such report complies with the statutory requirements for the inspection, attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Elevators.

5. Heating and cooling systems.

6. Plumbing.

7. Electrical systems.

8. Swimming pool or spa and equipment.

9. Seawalls.

10. Pavement and parking areas.

11. Drainage systems.

12. Painting.

13. Irrigation systems.

14. Waterproofing.

Section 14. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 719.503, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) and paragraph (d) is added to subsection (2) of that section, to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(b) Copies of documents to be furnished to prospective buyer or lessee.—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as

provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close before the expiration of the 15 days. The developer shall retain in his or her records a separate signed agreement as proof of the buyer's agreement to close before the expiration of the voidability period. The developer must retain such proof for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the

cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing

improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions that will affect the use of the property and are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.106(1)(l) ~~ss. 553.899 and 719.301(4)(p)~~, if applicable.

19. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(d) Milestone inspection or structural integrity reserve

study.—

1. If the association is required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), and the association has not completed the milestone inspection or structural integrity reserve study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is required to have a milestone inspection or a structural integrity reserve study and the association has failed to complete such inspection or study, as applicable.

2. If the association is required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), and the association has completed such inspection or study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain a copy of the most recent milestone inspection report or structural integrity reserve study, as applicable.

3. If the association is not required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in

conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as applicable.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of all of the following:

1. The articles of incorporation of the association.

2. The bylaws and rules of the association.

3. A copy of the question and answer sheet as provided in s. 719.504.

4. A copy of the inspector-prepared summary of the milestone inspection report as described in ss. 553.899 and 719.106(1)(l) ~~ss. 553.899 and 719.301(4)(p)~~, if applicable.

5. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

(d)1. If the association is required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), and the association has not completed the milestone inspection or structural integrity reserve study, each

contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is required to have a milestone inspection or a structural integrity reserve study and the association has failed to complete such inspection or study, as applicable.

2. If the association is required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), and the association has completed such inspection or study, each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain a copy of the most recent milestone inspection report or structural integrity reserve study, as applicable.

3. If the association is not required to have a milestone inspection as described in ss. 553.899 and 719.106(1)(l) or a structural integrity reserve study as described in s. 719.106(1)(k), each contract entered into on or after January 1, 2025, for the sale of a residential unit must contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as applicable.

Section 15. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2023.

COMMERCE COMMITTEE

CS/HB 1395 by Rep. Lopez, V.
Management and Safety of Condominium and Cooperative Buildings

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Lopez, V. (strike-all):

- Delays the requirement for certain condominium Citizens policyholders to obtain flood insurance until January 1, 2027.
- Clarifies applicability of the milestone inspection requirement to those buildings with at least one residential unit and at least 3 stories in height, subject in whole or part to a residential or mixed-use association.
- Clarifies that the association is responsible for arranging and completing the milestone inspection, but may be reimbursed by any unit owners or other owners for expenses as agreed upon in documents governing the property.
- Allows multicondominiums to use an alternative funding method approved by DBPR instead of maintaining reserves.
- Removes “floor” and “foundation” on the list of SIRS items and adds “primary structural systems.”
- Removes the ability of certain general contractors and building code professionals to perform phase 1 of the milestone inspection and the visual inspection of the structural integrity reserve study (SIRS).
- Allows certain reserve study specialists to complete the visual inspection of the SIRS.
- Clarifies the purpose and content of a SIRS.
- Provides that the association is responsible to maintain common elements as stated in the governing documents.
- Clarifies documentation and inspection requirements for turnover of the association.
- Provides boilerplate language that must be used in sales contracts to provide notice of milestone inspection and SIRS reports.
- Removes the specific injunctive procedures related to milestone inspections.
- Requires the Florida Building Commission to create a building safety program.
- Appropriates, for the 2023-2024 fiscal year, the sums of $1,301,928 in recurring funds and $67,193 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund to DBPR, and provides 10 full-time equivalent positions with associated salary rate of 487,264 to implement the bill.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Commerce Committee
Representative Lopez, V. offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (b) of subsection (1) of section 468.4334, Florida Statutes, is amended to read:

468.4334 Professional practice standards; liability.—

(1)

(b) If a community association manager or a community association management firm has a contract with a community association that ~~has a building on the association's property that~~ is subject to s. 553.899, the community association manager or the community association management firm must comply with that section as directed by the board.

Section 2. Subsections (1) through (6), paragraph (b) of subsection (7), and subsections (8), (9), (11), and (12) of section 553.899, Florida Statutes, are amended to read:

553.899 Mandatory structural inspections for condominium and cooperative buildings.—

(1) The Legislature finds that maintaining the structural integrity of a building throughout the life of the building ~~its service life~~ is of paramount importance in order to ensure that buildings are structurally sound so as to not pose a threat to the public health, safety, or welfare. As such, the Legislature finds that the imposition of a statewide structural inspection program for aging condominium and cooperative buildings in this state is necessary to ensure that such buildings are safe for continued use.

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

(a) "Milestone inspection" means a structural inspection of a building, including an inspection of load-bearing elements ~~walls~~ and the primary structural members and primary structural systems as those terms are defined in s. 627.706, by an ~~a licensed~~ architect licensed under chapter 481 or engineer licensed under chapter 471 authorized to practice in this state for the purposes of attesting to the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determining the general structural condition of the building as it affects the safety of such

building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building. The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code. The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.

(b) "Substantial structural deterioration" means substantial structural distress or substantial structural weakness that negatively affects a building's general structural condition and integrity. The term does not include surface imperfections such as cracks, distortion, sagging, deflections, misalignment, signs of leakage, or peeling of finishes unless the licensed engineer or architect performing the phase one or phase two inspection determines that such surface imperfections are a sign of substantial structural deterioration.

(3)(a) A building with one or more residential units that is three stories or more in height as determined by the Florida Building Code and that is subject, in whole or in part, to the condominium or cooperative form of ownership as a residential or mixed-use condominium ~~association~~ under chapter 718 or ~~and~~ a residential cooperative ~~association~~ under chapter 719 must have

a milestone inspection performed ~~for each building that is three stories or more in height~~ by December 31 of the year in which the building reaches 25 ~~30~~ years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter. If a building reached 25 years of age before July 1, 2022, the building's initial milestone inspection must be performed before December 31, 2024. If a building reaches 25 years of age on or after July 1, 2022, and before December 31, 2024, the building's initial milestone inspection must be performed before December 31, 2025. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official. ~~If the building is located within 3 miles of a coastline as defined in s. 376.031, the condominium association or cooperative association must have a milestone inspection performed by December 31 of the year in which the building reaches 25 years of age, based on the date the certificate of occupancy for the building was issued, and every 10 years thereafter.~~

(c) The local enforcement agency may extend the date by which a building's initial milestone inspection must be completed upon a showing of good cause by the owner or owners of the building that the inspection cannot be timely completed if the owner or owners have entered into a contract with an

architect or engineer to perform the milestone inspection and the inspection cannot reasonably be completed before the deadline or other circumstance to justify an extension.

(d) The local enforcement agency may accept an inspection report prepared by a licensed engineer or architect for a structural integrity and condition inspection of a building performed before July 1, 2022, if the inspection and report substantially comply with the requirements of this section. Notwithstanding when such inspection was completed, the condominium or cooperative association must comply with the unit owner notice requirements in subsection (9). The inspection for which an inspection report is accepted by the local enforcement agency under this paragraph is deemed a milestone inspection for the applicable requirements in chapters 718 and 719. If a previous inspection and report is accepted by the local enforcement agency under this paragraph, the deadline for the building's subsequent 10-year milestone inspection is based on the date of the accepted previous inspection.

(4) The milestone inspection report must be arranged and completed by a condominium or cooperative association. The condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership are each ~~must arrange for the milestone inspection to be performed and is~~ responsible for ensuring compliance with the requirements of

this section. The condominium association or cooperative association is responsible for all costs associated with the milestone inspection. However, expenses may be recovered for such inspection from unit owners or other owners in accordance with the general expense allocations of the documents governing the property. This section ~~subsection~~ does not apply to a single-family, two-family, or three-family dwelling with three or fewer habitable stories above ground.

~~(4) If a milestone inspection is required under this section and the building's certificate of occupancy was issued on or before July 1, 1992, the building's initial milestone inspection must be performed before December 31, 2024. If the date of issuance for the certificate of occupancy is not available, the date of issuance of the building's certificate of occupancy shall be the date of occupancy evidenced in any record of the local building official.~~

(5) Upon determining that a building must have a milestone inspection, the local enforcement agency must provide written notice of such required inspection to the condominium association or cooperative association and any owner of any portion of the building which is not subject to the condominium or cooperative form of ownership, as applicable, by certified mail, return receipt requested. The condominium or cooperative association must notify the unit owners of the required milestone inspection within 14 days after receipt of the written

notice from the local enforcement agency and provide the date that the milestone inspection must be completed. Such notice may be given by electronic submission to unit owners who consent to receive notice by electronic submission or by posting on the association's website.

(6) Phase one of the milestone inspection must be completed within 180 days after the owner or owners of the building receive ~~receiving~~ the written notice under subsection (5)~~, the condominium association or cooperative association must complete phase one of the milestone inspection~~. For purposes of this section, completion of phase one of the milestone inspection means the licensed engineer or architect who performed the phase one inspection submitted the inspection report by e-mail, United States Postal Service, or commercial delivery service to the local enforcement agency.

(7) A milestone inspection consists of two phases:

(b) A phase two of the milestone inspection must be performed if any substantial structural deterioration is identified during phase one. A phase two inspection may involve destructive or nondestructive testing at the inspector's direction. The inspection may be as extensive or as limited as necessary to fully assess areas of structural distress in order to confirm that the building is structurally sound and safe for its intended use and to recommend a program for fully assessing and repairing distressed and damaged portions of the building.

When determining testing locations, the inspector must give preference to locations that are the least disruptive and most easily repairable while still being representative of the structure. If a phase two inspection is required, within 180 days after submitting a phase one inspection report the architect or engineer performing the phase two inspection must submit a phase two progress report to the local enforcement agency with a timeline for completion of the phase two inspection. An inspector who completes a phase two milestone inspection shall prepare and submit an inspection report pursuant to subsection (8).

(8) Upon completion of a phase one or phase two milestone inspection, the architect or engineer who performed the inspection must submit a sealed copy of the inspection report with a separate summary of, at minimum, the material findings and recommendations in the inspection report to the condominium association or cooperative association, to any other owner of any portion of the building which is not subject to the condominium or cooperative form of ownership, and to the building official of the local government which has jurisdiction. The inspection report must, at a minimum, meet all of the following criteria:

(a) Bear the seal and signature, or the electronic signature, of the licensed engineer or architect who performed the inspection.

(b) Indicate the manner and type of inspection forming the basis for the inspection report.

(c) Identify any substantial structural deterioration, within a reasonable professional probability based on the scope of the inspection, describe the extent of such deterioration, and identify any recommended repairs for such deterioration.

(d) State whether unsafe or dangerous conditions, as those terms are defined in the Florida Building Code, were observed.

(e) Recommend any remedial or preventive repair for any items that are damaged but are not substantial structural deterioration.

(f) Identify and describe any items requiring further inspection.

(9) Within 45 days after receiving the applicable inspection report, the condominium or cooperative association must distribute a copy of the inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under chapter 718 or chapter 719, as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by

electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

(11) A board of county commissioners or municipal governing body may adopt an ordinance requiring that a condominium or cooperative association and any other owner that is subject to this section schedule or commence repairs for substantial structural deterioration within a specified timeframe after the local enforcement agency receives a phase two inspection report; however, such repairs must be commenced within 365 days after receiving such report. If an association fails to submit proof to the local enforcement agency that repairs have been scheduled or have commenced for substantial structural deterioration identified in a phase two inspection report within the required timeframe, the local enforcement agency must review and determine if the building is unsafe for human occupancy.

(12) By December 31, 2024, the Florida Building Commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 to establish a building safety program for the implementation of this section within the Florida Building Code: Existing Building. The building inspection program must, at minimum, include inspection criteria, testing protocols, standardized

inspection and reporting forms that are adaptable to an electronic format, and record maintenance requirements for the local authority ~~review the milestone inspection requirements under this section and make recommendations, if any, to the Legislature to ensure inspections are sufficient to determine the structural integrity of a building. The commission must provide a written report of any recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2022~~.

Section 3. Paragraph (aa) of subsection (6) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to

secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2., ~~and~~ 3., and 4., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for property valued at $600,000 or more.

b. January 1, 2025, for property valued at $500,000 or more.

c. January 1, 2026, for property valued at $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders whose policies issued by the corporation do not provide coverage for the peril of wind are not required

to purchase flood insurance as a condition for maintaining their policies with the corporation.

4. Effective on or after January 1, 2027, policyholders whose policies issued by the corporation provide coverage under a condominium unit owners or condominium tenant form must purchase flood insurance upon issuance or renewal of their policies by the corporation, unless:

a. The policyholder's unit is covered under a master flood policy issued to someone other than the policyholder.

b. The policyholder resides in a condominium unit with occupiable space that is not less than 40 feet above the grade plane, as defined in the Florida Building Code. A unit located on the fifth floor above the grade plane or higher is deemed to be not less than 40 feet above the grade plane, as defined in the Florida Building Code. A unit owner or a condominium association may submit a certification from an engineer licensed under chapter 471, a surveyor and mapper licensed under chapter 472, or an architect licensed under chapter 481, detailing which units in the condominium association are not less than 40 feet above the grade plane, as defined in the Florida Building Code, and the corporation may rely on such certification.

The flood insurance required under this paragraph must meet, at a minimum, the coverage available from the National Flood

Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

Section 4. Present subsections (1) through (31) of section 718.103, Florida Statutes, are redesignated as subsections (2) through (32), respectively, a new subsection (1) is added to that section, and present subsection (25) of that section is amended, to read:

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

(1) "Alternative funding method" means a method approved by the division for funding the capital expenditures and deferred maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.

(26) ~~(25)~~ "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the condominium property performed as required under s. 718.112(2)(g) ~~common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study~~

~~must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area~~.

Section 5. Paragraph (c) of subsection (12) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(c)1. The official records of the association are open to inspection by any association member and any person authorized by an association member as a ~~or the authorized~~ representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a ~~or authorized~~ representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not

require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and

year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

b. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

c. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this sub-subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An

owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

Section 6. Paragraphs (e), (f), (g), and (h) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

(2) REQUIRED PROVISIONS.—The bylaws shall provide for the following and, if they do not do so, shall be deemed to include the following:

(e) *Budget meeting.*—

1. Any meeting at which a proposed annual budget of an association will be considered by the board or unit owners shall be open to all unit owners. At least 14 days prior to such a

meeting, the board shall hand deliver to each unit owner, mail to each unit owner at the address last furnished to the association by the unit owner, or electronically transmit to the location furnished by the unit owner for that purpose a notice of such meeting and a copy of the proposed annual budget. An officer or manager of the association, or other person providing notice of such meeting, shall execute an affidavit evidencing compliance with such notice requirement, and such affidavit shall be filed among the official records of the association.

2.a. If a board adopts in any fiscal year an annual budget which requires assessments against unit owners which exceed 115 percent of assessments for the preceding fiscal year, the board shall conduct a special meeting of the unit owners to consider a substitute budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The special meeting shall be conducted within 60 days after adoption of the annual budget. At least 14 days prior to such special meeting, the board shall hand deliver to each unit owner, or mail to each unit owner at the address last furnished to the association, a notice of the meeting. An officer or manager of the association, or other person providing notice of such meeting shall execute an affidavit evidencing compliance with this notice requirement, and such affidavit shall be filed among the official records of the association. Unit owners may

consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget previously adopted by the board shall take effect as scheduled.

b. Any determination of whether assessments exceed 115 percent of assessments for the prior fiscal year shall exclude any authorized provision for reasonable reserves for repair or replacement of the condominium property, anticipated expenses of the association which the board does not expect to be incurred on a regular or annual basis, insurance premiums, or assessments for betterments to the condominium property.

c. If the developer controls the board, assessments shall not exceed 115 percent of assessments for the prior fiscal year unless approved by a majority of all voting interests.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is

deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved ~~for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has~~

~~not completed a structural integrity reserve study, the amount~~ must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g), and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection. Effective December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to

provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if such multicondominium uses an alternative funding method approved by the division.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. Effective December 31, 2024,

members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, ~~that are reserved for items listed in paragraph (g)~~ for any other purpose other than the replacement or deferred maintenance costs of the components listed in paragraph (g) ~~their intended purpose~~.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

(g) *Structural integrity reserve study.*—

1. A residential or mixed-use condominium ~~An~~ association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building with at least one residential unit on the condominium

property that is three stories or higher in height as determined by the Florida Building Code which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and ~~or~~ other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. ~~Floor.~~

~~d. Foundation.~~

~~e.~~ Fireproofing and fire protection systems.

d.~~f.~~ Plumbing.

e.~~g.~~ Electrical systems.

f.~~h.~~ Waterproofing and exterior painting.

g.~~i.~~ Windows and exterior doors.

h.~~j.~~ Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g. ~~sub-subparagraphs a.-i.~~, as determined by the ~~licensed engineer or architect performing the~~ visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified

to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471 or an architect licensed under chapter 481, or performed by a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of condominium property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater

than 25 years, or the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the condominium property that is three stories or higher in height.

6.~~3.~~ Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the

visual inspection portion of the structural integrity reserve study.

8.~~4.~~ If the officers or directors of an association fail ~~fails~~ to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

(h) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the milestone inspection for to the portions of the building which the association is responsible for maintaining under the governing documents of the association. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 718.111(1)(a). Within 14 days after receipt of a written notice from the local enforcement agency that a milestone inspection is required, the association must notify the unit owners of the required milestone inspection and provide the date by which the milestone inspection must be completed. Such notice may be given by electronic submission to

unit owners who consent to receive notice by electronic submission or by posting on the association's website. Within 45 days after receiving ~~Upon completion of~~ a phase one or phase two milestone inspection ~~and receipt of the inspector-prepared summary of the inspection~~ report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the condominium property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 7. Effective July 1, 2027, subsection (5) of section 718.1255, Florida Statutes, is amended, and paragraph (d) is added to subsection (1) of that section, to read:

718.1255 Alternative dispute resolution; mediation; nonbinding arbitration; applicability.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(d) The failure of a board of administration, when required by this chapter or an association document, to:

1. Obtain the milestone inspection required under s. 553.899.

2. Obtain a structural integrity reserve study required under s. 718.112(2)(g).

3. Fund reserves as required for an item identified in s. 718.112(2)(g).

4. Make or provide necessary maintenance or repairs of condominium property recommended by a milestone inspection or a structural integrity reserve study.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

(5) PRESUIT MEDIATION.—In lieu of the initiation of nonbinding arbitration as provided in subsections (1)-(4), a party may submit a dispute to presuit mediation in accordance with s. 720.311; however, election and recall disputes are not eligible for mediation and such disputes must be arbitrated by the division or filed in a court of competent jurisdiction. Disputes identified in paragraph (1)(d) are not subject to nonbinding arbitration under subsection (4) and must be submitted to presuit mediation in accordance with s. 720.311.

Section 8. Subsection (1) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(1) Maintenance of the common elements is the responsibility of the association, except for any maintenance responsibility for limited common elements assigned to the unit owner by the declaration. The association shall provide for the maintenance, repair, and replacement of the condominium property for which it bears responsibility pursuant to the declaration of condominium. After turnover of control of the association to the unit owners, the association must perform any required maintenance identified by the developer pursuant to s. 718.301(4)(p) and (q) until the association obtains new maintenance protocols from a licensed professional engineer or

architect or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 718.116 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

Section 9. Present paragraphs (q) and (r) of subsection (4) of section 718.301, Florida Statutes, are redesignated as paragraphs (r) and (s), respectively, a new paragraph (q) is added to that subsection, and paragraph (p) of that subsection is amended, to read:

718.301 Transfer of association control; claims of defect by association.—

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the

association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association which is held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a structural integrity reserve study ~~a milestone inspection report~~ in compliance with s. 718.112(2)(g) ~~s. 553.899~~ included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing ~~Elevators~~.

5. Electrical systems ~~Heating and cooling systems~~.
6. Waterproofing and exterior painting ~~Plumbing~~.
7. Windows and exterior doors ~~Electrical systems~~.
~~8. Swimming pool or spa and equipment.~~
~~9. Seawalls.~~
~~10. Pavement and parking areas.~~
~~11. Drainage systems.~~
~~12. Painting.~~
~~13. Irrigation systems.~~
~~14. Waterproofing.~~

(q) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable condominium property comprising a turnover inspection report:

1. Elevators.
2. Heating and cooling systems.
3. Swimming pool or spa and equipment.
4. Seawalls.
5. Pavement and parking areas.

6. Drainage systems.

7. Irrigation systems.

Section 10. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 718.503, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) and paragraph (e) is added to subsection (2) of that section, to read:

718.503 Developer disclosure prior to sale; nondeveloper unit owner disclosure prior to sale; voidability.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a residential unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 718.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after the execution of the agreement and delivery of the documents to the buyer as evidenced by a signed receipt for documents unless the buyer is informed in the 15-day voidability period and agrees to close before the expiration of the 15 days. The developer shall retain

in his or her records a separate agreement signed by the buyer as proof of the buyer's agreement to close before the expiration of the voidability period. The developer must retain such proof for a period of 5 years after the date of the closing of the transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to s. 718.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 718.504, and declaration of condominium, or the proposed declaration if the declaration has not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 718.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the condominium.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the condominium and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the condominium and a schedule of expenses for each type of unit, including fees assessed pursuant to s. 718.113(1) for the maintenance of

limited common elements where such costs are shared only by those entitled to use the limited common elements.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject condominium.

8. The lease of recreational and other common facilities that will be used by unit owners in common with unit owners of other condominiums.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the condominium but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one condominium, a description of the plan of phase development or the arrangements for the association to manage two or more condominiums.

12. If the condominium is a conversion of existing improvements, the statements and disclosure required by s. 718.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions that will affect the use of the property and are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the condominium, a copy of any such acceptance or approval acquired by the time of filing with the division under s. 718.502(1), or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the condominium is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899, or a statement in conspicuous type indicating that the required milestone inspection described in s. 553.899 has not been completed or that a milestone inspection is not required, as applicable ~~ss. 553.899 and 718.301(4)(p)~~.

19. A copy of the ~~association's~~ most recent structural integrity reserve study, or a statement in conspicuous type indicating that ~~the association has not completed~~ a required structural integrity reserve study has not been completed or that a structural integrity reserve study is not required, as applicable.

20. A copy of the turnover inspection report described in s. 718.301(4)(p) and (q) or a statement in conspicuous type indicating that a turnover inspection report has not been completed, as applicable.

(d) *Milestone inspection, turnover inspection report, or structural integrity reserve study.*—If the association is required to have completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, and the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is required to have a milestone inspection, a turnover inspection report, or a structural integrity reserve study and has not completed such inspection, report, or study, as appropriate. If the association is not required to have a milestone inspection as described in s. 553.899 or a structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as appropriate. If the association has completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, each contract entered into after

December 31, 2024, for the sale of a residential unit shall contain in conspicuous type:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; and

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED

WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her unit. Each prospective purchaser who has entered into a contract for the purchase of a condominium unit is entitled, at the seller's expense, to a current copy of all of the following:

1. The declaration of condominium.

2. Articles of incorporation of the association.

3. Bylaws and rules of the association.

4. Financial information required by s. 718.111.

5. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899 ~~ss. 553.899 and 718.301(4)(p)~~, if applicable.

6. The association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

7. A copy of the inspection report described in s. 718.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023.

8. The document entitled "Frequently Asked Questions and Answers" required by s. 718.504.

(e) If the association is required to have completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, and the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is required to have a milestone inspection, a turnover inspection report, or a structural integrity reserve study and has not completed such inspection, report, or study, as appropriate. If the association

is not required to have a milestone inspection as described in s. 553.899 or a structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as appropriate. If the association has completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, each contract entered into after December 31, 2024, for the resale of a residential unit shall contain in conspicuous type:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; and

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO

CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 718.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 718.103(26) AND 718.112(2)(g), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 11. Paragraph (a) of subsection (7) and paragraph (c) of subsection (21) of section 718.504, Florida Statutes, are amended to read:

718.504 Prospectus or offering circular.—Every developer of a residential condominium which contains more than 20 residential units, or which is part of a group of residential condominiums which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which shall be in accordance with a format approved by the division and a copy of the financial information required by s. 718.111. This page shall, in readable language, inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; shall indicate whether and in what amount the unit owners or the association is

obligated to pay rent or land use fees for recreational or other commonly used facilities; shall contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special assessments, and which shall further identify the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; shall state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and which shall further state whether membership in a recreational facilities association is mandatory, and if so, shall identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one condominium, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(7) A description of the recreational and other facilities that will be used in common with other condominiums, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built and a summary description of the structural integrity of each building for which reserves are required pursuant to s. 718.112(2)(g).

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(21) An estimated operating budget for the condominium and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(c) The estimated items of expenses of the condominium and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and condominium:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used facilities.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves for all applicable items referenced in s. 718.112(2)(g).

l. Fees payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used facilities, which use and payment is a mandatory condition of ownership and is not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

Section 12. Subsection (24) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(24) "Structural integrity reserve study" means a study of the reserve funds required for future major repairs and replacement of the cooperative property performed as required under s. 719.106(1)(k) ~~common areas based on a visual inspection of the common areas. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural~~

~~integrity reserve study must be performed by an engineer licensed under chapter 471 or an architect licensed under chapter 481. At a minimum, a structural integrity reserve study must identify the common areas being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of the common areas being visually inspected, and provide a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each common area being visually inspected by the end of the estimated remaining useful life of each common area~~.

Section 13. Present subsections (5) through (11) of section 719.104, Florida Statutes, are redesignated as subsections (6) through (12), respectively, a new subsection (5) is added to that section, and paragraph (c) of subsection (2) of that section is amended, to read:

719.104 Cooperatives; access to units; records; financial reports; assessments; purchase of leases.—

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member and any person authorized by an association member as a ~~or the authorized~~ representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member and of the

person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the association's bylaws and rules and the inspection reports described in ss. 553.899 and 719.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or

maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express

direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

2. Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit.

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or

facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the association to safeguard data, including passwords.

7. The software and operating system used by the association which allow the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

8. All affirmative acknowledgments made pursuant to s. 719.108(3)(b)3.

(5) MAINTENANCE.—Maintenance of the common elements is the responsibility of the association, except for any maintenance responsibility for limited common elements assigned to the unit owner by the declaration. The association shall provide for the

maintenance, repair, and replacement of the cooperative property for which it bears responsibility pursuant to the declaration of cooperative. After turnover of control of the association to the unit owners, the association must perform any required maintenance identified by the developer pursuant to s. 719.301(4)(p) and (q) until the association obtains new maintenance protocols from a licensed professional engineer or architect or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts. The declaration may provide that certain limited common elements shall be maintained by those entitled to use the limited common elements or that the association shall provide the maintenance, either as a common expense or with the cost shared only by those entitled to use the limited common elements. If the maintenance is to be by the association at the expense of only those entitled to use the limited common elements, the declaration shall describe in detail the method of apportioning such costs among those entitled to use the limited common elements, and the association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners entitled to use the limited common elements.

Section 14. Paragraphs (e), (j), (k), and (l) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(e) *Budget procedures.*—

1. The board of administration shall mail, hand deliver, or electronically transmit to each unit owner at the address last furnished to the association, a meeting notice and copies of the proposed annual budget of common expenses to the unit owners not less than 14 days prior to the meeting at which the budget will be considered. Evidence of compliance with this 14-day notice must be made by an affidavit executed by an officer of the association or the manager or other person providing notice of the meeting and filed among the official records of the association. The meeting must be open to the unit owners.

2. If an adopted budget requires assessment against the unit owners in any fiscal or calendar year which exceeds 115 percent of the assessments for the preceding year, the board upon written application of 10 percent of the voting interests to the board, shall call a special meeting of the unit owners within 30 days, upon not less than 10 days' written notice to each unit owner. At the special meeting, unit owners shall consider and enact a budget. Unless the bylaws require a larger vote, the adoption of the budget requires a vote of not less than a majority of all the voting interests.

3. The board of administration may, in any event, propose a budget to the unit owners at a meeting of members or by writing, and if the budget or proposed budget is approved by the unit owners at the meeting or by a majority of all voting interests in writing, the budget is adopted. If a meeting of the unit owners has been called and a quorum is not attained or a substitute budget is not adopted by the unit owners, the budget adopted by the board of directors goes into effect as scheduled.

4. In determining whether assessments exceed 115 percent of similar assessments for prior years, any authorized provisions for reasonable reserves for repair or replacement of cooperative property, anticipated expenses by the association which are not anticipated to be incurred on a regular or annual basis, <u>insurance premiums,</u> or assessments for betterments to the cooperative property must be excluded from computation. However, as long as the developer is in control of the board of administration, the board may not impose an assessment for any year greater than 115 percent of the prior fiscal or calendar year's assessment without approval of a majority of all voting interests.

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board

of administration shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and for any other items for which the deferred maintenance expense or replacement cost exceeds $10,000. The amount to be reserved ~~for an item is determined by the association's most recent structural integrity reserve study that must be completed by December 31, 2024. If the amount to be reserved for an item is not in the association's initial or most recent structural integrity reserve study or the association has not completed a structural integrity reserve study, the amount~~ must be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (k), and the reserve amount for such items must be based on the findings and

recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of deferred maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. The members of a unit-owner-controlled association may determine, at a duly called meeting of the association, for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. Effective December 31, 2024, a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k). If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or

a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a vote of the majority of the voting interests, voting in person or by limited proxy at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended. Effective December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, ~~that are reserved for items listed in paragraph (k)~~ for purposes other than the replacement or deferred maintenance costs of the components listed in paragraph (k) ~~their intended purpose~~.

(k) *Structural integrity reserve study.*—

1. A residential cooperative ~~An~~ association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height as determined by the Florida Building Code that includes, at a minimum, a study of the

following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and ~~or~~ other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. ~~Floor.~~

~~d. Foundation.~~

~~e.~~ Fireproofing and fire protection systems.

d.~~f.~~ Plumbing.

e.~~g.~~ Electrical systems.

f.~~h.~~ Waterproofing and exterior painting.

g.~~i.~~ Windows and exterior doors.

h.~~j.~~ Any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g. ~~sub-subparagraphs a.-i.~~, as determined by the ~~licensed engineer or architect performing the~~ visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or

verified by an engineer licensed under chapter 471 or an architect licensed under chapter 481, or performed by a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or deferred maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or deferred maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a deferred maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a deferred maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a structural integrity reserve study completed for each building on the cooperative property that is three stories or higher in height.

6.~~3.~~ Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8.~~4.~~ If the officers or directors of an association fail ~~fails~~ to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9) ~~s. 719.104(8)~~.

(l) *Mandatory milestone inspections.*—If an association is required to have a milestone inspection performed pursuant to s. 553.899, the association must arrange for the milestone inspection to be performed and is responsible for ensuring compliance with the requirements of s. 553.899. The association is responsible for all costs associated with the milestone inspection for the portions of the building which the association is responsible for maintaining under the governing documents of the association. If the officers or directors of an association willfully and knowingly fail to have a milestone inspection performed pursuant to s. 553.899, such failure is a breach of the officers' and directors' fiduciary relationship to the unit owners under s. 719.104(9)(a) ~~s. 719.104(8)(a)~~. Within 14 days after receipt of a written notice from the local enforcement agency that a milestone inspection is required, the association must notify the unit owners of the required milestone inspection and provide the date by which the milestone inspection must be completed. Such notice may be given by electronic submission to unit owners who consent to receive notice by electronic submission or by posting on the

association's website. Within 45 days after receiving ~~Upon completion of~~ a phase one or phase two milestone inspection ~~and receipt of the inspector-prepared summary of the inspection~~ report from the architect or engineer who performed the inspection, the association must distribute a copy of the inspector-prepared summary of the inspection report to each unit owner, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission; must post a copy of the inspector-prepared summary in a conspicuous place on the cooperative property; and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Section 15. Present paragraph (q) of subsection (4) of section 719.301, Florida Statutes, is redesignated as paragraph (r), a new paragraph (q) is added to that subsection, and paragraph (p) of that subsection is amended, to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an

association, the developer shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a structural integrity reserve study ~~milestone inspection report~~ in compliance with s. 719.106(1)(k) ~~s. 553.899~~ included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing ~~Elevators~~.
5. Electrical systems ~~Heating and cooling systems~~.
6. Waterproofing and exterior painting ~~Plumbing~~.
7. Windows and exterior doors ~~Electrical systems~~.
~~8. Swimming pool or spa and equipment.~~
~~9. Seawalls.~~
~~10. Pavement and parking areas.~~
~~11. Drainage systems.~~
~~12. Painting.~~
~~13. Irrigation systems.~~
~~14. Waterproofing.~~

(q) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property comprising a turnover inspection report:

1. Elevators.
2. Heating and cooling systems.
3. Swimming pool or spa and equipment.
4. Seawalls.

5. Pavement and parking areas.

6. Drainage systems.

7. Irrigation systems.

Section 16. Paragraph (b) of subsection (1) and paragraph (a) of subsection (2) of section 719.503, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) and paragraph (d) is added to subsection (2) of that section, to read:

719.503 Disclosure prior to sale.—

(1) DEVELOPER DISCLOSURE.—

(b) *Copies of documents to be furnished to prospective buyer or lessee.*—Until such time as the developer has furnished the documents listed below to a person who has entered into a contract to purchase a unit or lease it for more than 5 years, the contract may be voided by that person, entitling the person to a refund of any deposit together with interest thereon as provided in s. 719.202. The contract may be terminated by written notice from the proposed buyer or lessee delivered to the developer within 15 days after the buyer or lessee receives all of the documents required by this section. The developer may not close for 15 days after the execution of the agreement and delivery of the documents to the buyer as evidenced by a receipt for documents signed by the buyer unless the buyer is informed in the 15-day voidability period and agrees to close before the expiration of the 15 days. The developer shall retain in his or

her records a separate signed agreement as proof of the buyer's agreement to close before the expiration of the voidability period. The developer must retain such proof for a period of 5 years after the date of the closing transaction. The documents to be delivered to the prospective buyer are the prospectus or disclosure statement with all exhibits, if the development is subject to s. 719.504, or, if not, then copies of the following which are applicable:

1. The question and answer sheet described in s. 719.504, and cooperative documents, or the proposed cooperative documents if the documents have not been recorded, which shall include the certificate of a surveyor approximately representing the locations required by s. 719.104.

2. The documents creating the association.

3. The bylaws.

4. The ground lease or other underlying lease of the cooperative.

5. The management contract, maintenance contract, and other contracts for management of the association and operation of the cooperative and facilities used by the unit owners having a service term in excess of 1 year, and any management contracts that are renewable.

6. The estimated operating budget for the cooperative and a schedule of expenses for each type of unit, including fees assessed to a shareholder who has exclusive use of limited

common areas, where such costs are shared only by those entitled to use such limited common areas.

7. The lease of recreational and other facilities that will be used only by unit owners of the subject cooperative.

8. The lease of recreational and other common areas that will be used by unit owners in common with unit owners of other cooperatives.

9. The form of unit lease if the offer is of a leasehold.

10. Any declaration of servitude of properties serving the cooperative but not owned by unit owners or leased to them or the association.

11. If the development is to be built in phases or if the association is to manage more than one cooperative, a description of the plan of phase development or the arrangements for the association to manage two or more cooperatives.

12. If the cooperative is a conversion of existing improvements, the statements and disclosure required by s. 719.616.

13. The form of agreement for sale or lease of units.

14. A copy of the floor plan of the unit and the plot plan showing the location of the residential buildings and the recreation and other common areas.

15. A copy of all covenants and restrictions that will affect the use of the property and are not contained in the foregoing.

16. If the developer is required by state or local authorities to obtain acceptance or approval of any dock or marina facilities intended to serve the cooperative, a copy of any such acceptance or approval acquired by the time of filing with the division pursuant to s. 719.502(1) or a statement that such acceptance or approval has not been acquired or received.

17. Evidence demonstrating that the developer has an ownership, leasehold, or contractual interest in the land upon which the cooperative is to be developed.

18. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899 ~~ss. 553.899 and 719.301(4)(p)~~, or a statement in conspicuous type indicating that the required milestone inspection described in s. 553.899 has not been completed or that a milestone inspection is not required, as ~~if~~ applicable.

19. A copy of the ~~association's~~ most recent structural integrity reserve study or a statement in conspicuous type indicating that ~~the association has not completed~~ a required structural integrity reserve study has not been completed or that a structural integrity reserve study is not required, as applicable.

20. A copy of the turnover inspection report described in s. 719.301(4)(p) and (q) or a statement in conspicuous type indicating that a turnover inspection report has not been completed, as applicable.

(d) *Milestone inspection, turnover inspection report, or structural integrity reserve study.*—If the association is required to have completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, and the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is required to have a milestone inspection, a turnover inspection report, or a structural integrity reserve study and has not completed such inspection, report, or study, as appropriate. If the association is not required to have a milestone inspection as described in s. 553.899 or a structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as appropriate. If the association has completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, each contract entered into after

December 31, 2024, for the sale of a residential unit shall contain in conspicuous type:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; and

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED

WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 15 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

(2) NONDEVELOPER DISCLOSURE.—

(a) Each unit owner who is not a developer as defined by this chapter must comply with this subsection before the sale of his or her interest in the association. Each prospective purchaser who has entered into a contract for the purchase of an interest in a cooperative is entitled, at the seller's expense, to a current copy of all of the following:

1. The articles of incorporation of the association.

2. The bylaws and rules of the association.

3. A copy of the question and answer sheet as provided in s. 719.504.

4. A copy of the inspector-prepared summary of the milestone inspection report as described in s. 553.899 ~~ss. 553.899 and 719.301(4)(p)~~, if applicable.

5. A copy of the association's most recent structural integrity reserve study or a statement that the association has not completed a structural integrity reserve study.

6. A copy of the inspection report described in s. 719.301(4)(p) and (q) for a turnover inspection performed on or after July 1, 2023.

(d) If the association is required to have completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, and the association has not completed the milestone inspection, the turnover inspection report, or the structural integrity reserve study, each contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is required to have a milestone inspection, a turnover inspection report, or a structural integrity reserve study and has not completed such inspection, report, or study, as appropriate. If the association is not required to have a milestone inspection as described in s. 553.899 or a structural integrity reserve study, each

contract entered into after December 31, 2024, for the sale of a residential unit shall contain in conspicuous type a statement indicating that the association is not required to have a milestone inspection or a structural integrity reserve study, as appropriate. If the association has completed a milestone inspection as described in s. 553.899, a turnover inspection report for a turnover inspection performed on or after July 1, 2023, or a structural integrity reserve study, each contract entered into after December 31, 2024, for the resale of a residential unit shall contain in conspicuous type:

1. A clause which states: THE BUYER HEREBY ACKNOWLEDGES THAT BUYER HAS BEEN PROVIDED A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF APPLICABLE, MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, PRIOR TO EXECUTION OF THIS CONTRACT; and

2. A clause which states: THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE

BUYER AND RECEIPT BY BUYER OF A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES, IF APPLICABLE; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES, IF APPLICABLE; AND A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF APPLICABLE. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN 3 DAYS, EXCLUDING SATURDAYS, SUNDAYS, AND LEGAL HOLIDAYS, AFTER THE BUYER RECEIVES A CURRENT COPY OF THE INSPECTOR-PREPARED SUMMARY OF THE MILESTONE INSPECTION REPORT AS DESCRIBED IN SECTION 553.899, FLORIDA STATUTES; A COPY OF THE TURNOVER INSPECTION REPORT DESCRIBED IN SECTION 719.301(4)(p) AND (q), FLORIDA STATUTES; OR A COPY OF THE ASSOCIATION'S MOST RECENT STRUCTURAL INTEGRITY RESERVE STUDY DESCRIBED IN SECTIONS 719.103(24) AND 719.106(1)(k), FLORIDA STATUTES, IF REQUESTED IN WRITING. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.

A contract that does not conform to the requirements of this paragraph is voidable at the option of the purchaser prior to closing.

Section 17. Paragraph (a) of subsection (7) and paragraph (c) of subsection (20) of section 719.504, Florida Statutes, are amended to read:

719.504 Prospectus or offering circular.—Every developer of a residential cooperative which contains more than 20 residential units, or which is part of a group of residential cooperatives which will be served by property to be used in common by unit owners of more than 20 residential units, shall prepare a prospectus or offering circular and file it with the Division of Florida Condominiums, Timeshares, and Mobile Homes prior to entering into an enforceable contract of purchase and sale of any unit or lease of a unit for more than 5 years and shall furnish a copy of the prospectus or offering circular to each buyer. In addition to the prospectus or offering circular, each buyer shall be furnished a separate page entitled "Frequently Asked Questions and Answers," which must be in accordance with a format approved by the division. This page must, in readable language: inform prospective purchasers regarding their voting rights and unit use restrictions, including restrictions on the leasing of a unit; indicate whether and in what amount the unit owners or the association is obligated to pay rent or land use fees for recreational or other commonly used facilities; contain a statement identifying that amount of assessment which, pursuant to the budget, would be levied upon each unit type, exclusive of any special

assessments, and which identifies the basis upon which assessments are levied, whether monthly, quarterly, or otherwise; state and identify any court cases in which the association is currently a party of record in which the association may face liability in excess of $100,000; and state whether membership in a recreational facilities association is mandatory and, if so, identify the fees currently charged per unit type. The division shall by rule require such other disclosure as in its judgment will assist prospective purchasers. The prospectus or offering circular may include more than one cooperative, although not all such units are being offered for sale as of the date of the prospectus or offering circular. The prospectus or offering circular must contain the following information:

(7) A description of the recreational and other facilities that will be used in common with other cooperatives, community associations, or planned developments which require the payment of the maintenance and expenses of such facilities, directly or indirectly, by the unit owners. The description shall include, but not be limited to, the following:

(a) Each building and facility committed to be built and a summary description of the structural integrity of each building for which reserves are required pursuant to s. 719.106(1)(k).

Descriptions shall include location, areas, capacities, numbers, volumes, or sizes and may be stated as approximations or minimums.

(20) An estimated operating budget for the cooperative and the association, and a schedule of the unit owner's expenses shall be attached as an exhibit and shall contain the following information:

(c) The estimated items of expenses of the cooperative and the association, except as excluded under paragraph (b), including, but not limited to, the following items, which shall be stated as an association expense collectible by assessments or as unit owners' expenses payable to persons other than the association:

1. Expenses for the association and cooperative:

a. Administration of the association.

b. Management fees.

c. Maintenance.

d. Rent for recreational and other commonly used areas.

e. Taxes upon association property.

f. Taxes upon leased areas.

g. Insurance.

h. Security provisions.

i. Other expenses.

j. Operating capital.

k. Reserves for all applicable items referenced in s. 719.106(1)(k).

l. Fee payable to the division.

2. Expenses for a unit owner:

a. Rent for the unit, if subject to a lease.

b. Rent payable by the unit owner directly to the lessor or agent under any recreational lease or lease for the use of commonly used areas, which use and payment are a mandatory condition of ownership and are not included in the common expense or assessments for common maintenance paid by the unit owners to the association.

Section 18. Subsection (2) of section 558.002, Florida Statutes, is amended to read:

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

(2) "Association" has the same meaning as in s. 718.103 ~~s. 718.103(2)~~, s. 719.103(2), s. 720.301(9), or s. 723.075.

Section 19. Paragraph (b) of subsection (1) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments that

1999 became due before the mortgagee's acquisition of title is
2000 limited to the lesser of:
2001 a. The unit's unpaid common expenses and regular periodic
2002 assessments which accrued or came due during the 12 months
2003 immediately preceding the acquisition of title and for which
2004 payment in full has not been received by the association; or
2005 b. One percent of the original mortgage debt. The
2006 provisions of this paragraph apply only if the first mortgagee
2007 joined the association as a defendant in the foreclosure action.
2008 Joinder of the association is not required if, on the date the
2009 complaint is filed, the association was dissolved or did not
2010 maintain an office or agent for service of process at a location
2011 which was known to or reasonably discoverable by the mortgagee.
2012 2. An association, or its successor or assignee, that
2013 acquires title to a unit through the foreclosure of its lien for
2014 assessments is not liable for any unpaid assessments, late fees,
2015 interest, or reasonable attorney's fees and costs that came due
2016 before the association's acquisition of title in favor of any
2017 other association, as defined in s. 718.103 ~~s. 718.103(2)~~ or s.
2018 720.301(9), which holds a superior lien interest on the unit.
2019 This subparagraph is intended to clarify existing law.
2020 Section 20. Paragraph (d) of subsection (2) of section
2021 720.3085, Florida Statutes, is amended to read:
2022 720.3085 Payment for assessments; lien claims.—
2023 (2)

(d) An association, or its successor or assignee, that acquires title to a parcel through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney's fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103 ~~s. 718.103(2)~~ or s. 720.301(9), which holds a superior lien interest on the parcel. This paragraph is intended to clarify existing law.

Section 21. Effective July 1, 2027, for the purpose of incorporating the amendments made by this act to section 718.1255, Florida Statutes, in a reference thereto, section 719.1255, Florida Statutes, is reenacted to read:

719.1255 Alternative resolution of disputes.—The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall provide for alternative dispute resolution in accordance with s. 718.1255.

Section 22. Paragraph (f) of subsection (1) of section 718.501, Florida Statutes, is reenacted to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the

procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g).

(f) The division may adopt rules to administer and enforce this chapter.

Section 23. Paragraph (f) of subsection (1) of section 719.501, Florida Statutes, is reenacted to read:

719.501 Powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 718, has the power to enforce and ensure compliance with this chapter and adopted rules relating to the development, construction,

sale, lease, ownership, operation, and management of residential cooperative units; complaints related to the procedural completion of the structural integrity reserve studies under s. 719.106(1)(k); and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division shall have the following powers and duties:

(f) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement and enforce the provisions of this chapter.

Section 24. For the 2023-2024 fiscal year, the sums of $1,301,928 in recurring funds and $67,193 in nonrecurring funds from the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund are appropriated to the Department of Business and Professional Regulation, and 10 full-time equivalent positions with associated salary rate of 487,264 are authorized for the purpose of implementing this act.

Section 25. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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

Remove everything before the enacting clause and insert:

An act relating to management and safety of condominium and cooperative buildings; amending s. 468.4334, F.S.; revising the circumstances under which community association managers or management firms must comply with a specified provision; amending s. 553.899, F.S.; revising legislative findings; revising the definition of the terms "milestone inspection" and "substantial structural deterioration"; revising who must have milestone inspections performed for buildings; revising the deadline for milestone inspections of certain buildings; authorizing local enforcement agencies to make certain determinations relating to milestone inspections after a building reaches a specified age; authorizing local enforcement agencies to extend deadlines for milestone inspections under certain circumstances; authorizing local enforcement agencies to accept certain inspection reports under certain circumstances; deeming the inspections relating to such inspection reports a milestone inspection for certain purposes; revising costs that condominium and cooperative associations are responsible for; revising requirements relating to written notice of required inspections; requiring architects or engineers performing milestone inspections to submit a specified progress report to a local enforcement agency within a specified timeframe under certain circumstances; specifying that associations must distribute copies of certain inspection reports within a specified timeframe and in a specified manner; authorizing

municipal governing bodies to adopt certain ordinances relating to association repairs; requiring the Florida Building Commission to adopt rules by a specified date; providing requirements for such rules; conforming provisions; amending s. 627.351, F.S.; revising requirements relating to the purchase of flood insurance as a condition for maintaining certain policies issued by the Citizens Property Insurance Corporation; amending s. 718.103, F.S.; defining the term "alternative funding method"; revising the definition of the term "structural integrity reserve study"; amending s. 718.111, F.S.; making a technical change; amending s. 718.112, F.S.; revising requirements relating to budget meetings; revising condominium association reserve account requirements; revising requirements relating to waiving reserve requirements or providing less reserves than required by law; revising requirements relating to using reserve funds or interest accrued on reserve funds for certain purposes; revising requirements for structural integrity reserve studies and mandatory milestone inspections; providing applicability; conforming provisions to changes made by the act; amending s. 718.1255, F.S.; revising the definition of the term "dispute"; specifying that certain disputes are not subject to nonbinding arbitration and must be submitted to presuit mediation; amending s. 718.113, F.S.; revising requirements relating to maintenance, repair, and replacement of common elements and condominium property; amending s. 718.301, F.S.;

revising items that developers are required to deliver to an association upon relinquishing control of the association; amending s. 718.503, F.S.; revising the documents developers are required to provide to prospective buyers or lessees; revising the documents that prospective purchasers are entitled to when purchasing a condominium unit from a unit owner; requiring specified disclosures relating to milestone inspections, turnover inspection reports, and structural integrity reserve studies for certain contracts entered into after a specified date; amending s. 718.504, F.S.; revising requirements for prospectuses and offering circulars; amending s. 719.103, F.S.; revising the definition of the term "structural integrity reserve study"; amending s. 719.104, F.S.; revising rights relating to the official records of a cooperative association; providing maintenance requirements for cooperative associations; amending s. 719.106, F.S.; revising requirements relating to budget procedures; revising cooperative association reserve account requirements; revising requirements relating to waiving reserve requirements or providing less reserves than required by law; revising a prohibition on using reserve funds or interest accrued on reserve funds for certain purposes; revising requirements for structural integrity reserve studies and mandatory milestone inspections; providing applicability; conforming provisions to changes made by the act; amending s. 719.301, F.S.; revising items that developers are required to

deliver to an association upon relinquishing control of the association; amending s. 719.503, F.S.; revising the types of documents developers are required to provide to prospective buyers and lessees; revising the documents that a prospective purchaser is entitled to when purchasing an interest in cooperative from a unit owner; requiring specified disclosures relating to milestone inspections, turnover inspection reports, and structural integrity reserve studies for certain contracts entered into after a specified date; amending s. 719.504, F.S.; revising requirements for prospectuses and offering circulars; amending ss. 558.002, 718.116, and 720.3085, F.S.; conforming cross-references; reenacting s. 719.1255, F.S., relating to alternative resolution of disputes, to incorporate amendments made to s. 718.1255, F.S., in a reference thereto; reenacting ss. 718.501(1)(f) and 719.501(1)(f), F.S., relating to the rulemaking authority of the Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation; providing appropriations; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Fortenberry	Lloyd
2) Commerce Committee		Fortenberry	Hamon

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 until they are ready to move to the CCRC. The fees associated with a CCRC include a reservation deposit, an initial entrance fee (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 OIR;
- 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;
- Permits the release of expansion-related escrow funds when 3/4ths of the total units are reserved, rather than when only half of the total units have been paid in full, plus, the provider must submit an 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 temporary suspension of some or all of the applicable financial and operating requirements;
- Revises when a provider may 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 to each have their own designated resident representative; and
- Specifies resident representative obligations of good faith 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 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 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

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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.

approved by OIR.[11] A CCRC enters into contracts with prospective residents to provide housing and 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 (MLR) consisting of, as applicable, a debt service reserve, operating reserve, and renewal and replacement reserve. A provider may meet the MLR requirement by obtaining an unconditional irrevocable letter of credit from a financial institution participating in the State of Florida Treasury Certificate of Deposit Program.[19]

Rights of Residents in a Continuing Care Retirement Community

OIR is also authorized to discipline a facility for violations of residents' rights.[20] These rights include:

- A right 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
- Ability to 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.[21]

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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. 651.085(5), F.S.

[20] S. 651.083, F.S.

[21] Id.

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. [22] CCRCs are required to maintain and make 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.[23]

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.[24] 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.[25] 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.[26] 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.[27] 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.[28] Typically, residents will contact DFS Division of Consumer Services, which receives and resolves complaints involving products and persons regulated by OIR or DFS.[29]

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.[30] In Florida, the Division of Rehabilitation

[22] S. 651.081, F.S.
[23] S. 651.091, F.S.
[24] S. 651.105(4), F.S.
[25] *Id.*
[26] S. 651.114(8), F.S.
[27] S. 651.071, F.S.
[28] Rr. 69O-193.062 and 69O-193.063, F.A.C.
[29] S. 624.307, F.S.
[30] 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.

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.

2019 Statutory Changes Regarding CCRCs

In 2019, the state enacted broad statutory changes to enhance OIR's authority to regulate CCRCs.[31] 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 allowed OIR to begin partnering with a provider much sooner 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 MLR. 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 OIR. Although OIR received advance notice of a financing transaction, 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 OIR could prevent a provider from securing new financing, additional financing, or refinancing that may be hazardous to the residents.

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

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 OIR or the DFS;
- A notice of any change in ownership filing submitted to OIR; and
- 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 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 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 MLR 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 OIR authority to require the transfer of reserve funds into the custody of the DFS Bureau of Collateral Management if OIR finds that the provider is impaired or insolvent in order to ensure the safety of those assets. Any increase in the MLR must be funded no later than 61 days after the MLR calculation is due to be filed. If the MLR 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 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.[32]

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.[33]

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

[33] 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).

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 additional entities owned or controlled by the provider, in accordance with generally accepted accounting principles,[34] 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 MLR 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;

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

- 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.

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.[35] 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,[36] 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.

The bill also 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 also 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.

Additionally, the bill 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;

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

[36] 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.

- Loyalty; and
- Obedience.

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.[37] 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.[38] 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.[39] "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.

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

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.[40] The language of the bill should make it clear that OIR retains the ability to conduct target market examinations based upon specific findings or allegations.[41]

Amendments are expected to address the above drafting comments.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 27, 2023, the Insurance & Banking Subcommittee considered the bill, adopted two amendments, and reported the bill favorably as a committee substitute. The amendments made the following changes to the bill:

- Clarified the means to document financial statements when the CCRC provider is presenting consolidated or combined financial statements to OIR;
- Conformed existing language regarding resident council governance that is relocated and expanded in another portion of the bill;
- Revised 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; and
- Made technical and grammatical changes.

The analysis is drafted to the committee substitute as passed by the Insurance & Banking Subcommittee.

[40] *Id.*
[41] *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 the authority of the residents' council; providing residents' rights; deleting provisions relating to certain duties of the residents' council; 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 continuing care providers relating to distribution and disclosure of certain documents and information; requiring continuing care providers to make available

master plans approved by the providers' boards and governing bodies, rather than governing boards; 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 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 financial statements of additional entities that are included in the consolidated or combined financial report.

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. 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's ~~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~~ 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. The ~~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, paragraph (d) of subsection (3) is amended, and new paragraphs (e) and (m) are added to subsection (2) 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:

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's board or governing body ~~board~~ and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk

real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

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

COMMERCE COMMITTEE

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

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Persons-Mulicka (Line 126): The amendment:

- Deletes a proposed revision to reporting requirements related to expansion applications and reverts the bill to current law, which requires an independent evaluation and examination opinion by a certified public accountant.
- Specifies the maximum amount of a reservation deposit.
- Removes a proposed provision allowing the Office of Insurance Regulation (OIR) to suspend certain reporting requirements because current law governing OIR's general authority in such cases is adequate for the purposes of regulating continuing care retirement communities (CCRCs).
- Clarifies that funds withdrawn from a debt service reserve by a CCRC may be used to pay property taxes and insurance in addition to principal and interest payments.
- Specifies that a CCRC must provide OIR with ten-days' notice before withdrawing funds from a debt service reserve even when prior approval for the fund withdrawal is not required.
- Revises language related to OIR's examination authority to make certain appropriate authority is maintained.
- Makes other technical and grammatical changes to conform the bill to the Senate.

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: Commerce Committee
Representative Persons-Mulicka offered the following:

Amendment (with title amendment)

Remove lines 126-606 and insert:

12. An independent evaluation and examination opinion 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 a provider has collected a reservation deposit for at least 75 percent of the proposed units for which an entrance fee is to be charged and the escrowed funds will be used for the sole purpose of paying secured indebtedness as specified in the feasibility study submitted pursuant to paragraph (2)(a). The minimum reservation deposit must be the lesser of $40,000 or 10 percent of the then-current entrance fee for the unit being reserved. 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 include as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows for the individual provider and each additional entity comprising the consolidated or combined financial report.

4. If the provider is a member of an obligated group, the provider may use the obligated group's audited financial statements if they contain as supplemental information a separate balance sheet, statement of income and expenses, statement of equity or fund balances, and statement of changes in cash flows for the individual provider and 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 state-chartered bank, ~~Florida~~ savings bank ~~and loan association~~, or ~~Florida~~ trust company, or a federal savings or thrift association, bank, savings bank, or trust company ~~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.

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; a Florida state-chartered bank, savings bank, or trust company; or a federal savings or thrift association, bank, savings bank, or trust company, 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 will be used to pay principal or interest payments, which may include property taxes and insurance, the debtor is obligated to pay when sufficient funds are not available on the next principal or interest payment due date.

The notice specified in section 651.035(1)(b) must be sent to the office 10 days before debt service reserve funds may be withdrawn without prior approval.

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 residency contract pursuant to this section 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. 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's ~~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~~ 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. The ~~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, paragraph (d) of subsection (3) is amended, and new paragraphs (e) and (m) are added to subsection (2) 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:

(d) In keeping with the intent of this subsection relating to disclosure, the provider shall make available for review master plans approved by the provider's board or governing body ~~board~~ and any plans for expansion or phased development, to the extent that the availability of such plans does not put at risk real estate, financing, acquisition, negotiations, or other implementation of operational plans and thus jeopardize the success of negotiations, operations, and development.

(m) Disclosure of whether the provider has one or more residents serving on its board or governing body 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. An examination covering the preceding 3 or 5 fiscal years of the provider, as applicable, must be commenced within 12 months after the end of the most recent fiscal year covered by the examination. Such examination may include events subsequent to the end of the most recent fiscal year and the events of any prior period that relate to possible violations of this chapter or that affect the present financial condition of the provider. At least once every 3 or 5 fiscal years, as applicable, the office shall conduct an interview in person, telephonically, or through electronic communication 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, as part of the examination process. The ~~Such~~ examinations must be made by a

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

Remove lines 5-56 and insert:

s. 651.0246, F.S.; revising a requirement for specified information that must be submitted by a provider applying for expansion of a certificated continuing care facility; revising a condition for the release of certain escrowed funds to providers; revising the timeframe in which the Office of Insurance Regulation must complete its review of an application

for expansion; amending s. 651.026, F.S.; revising information required to be contained in certain providers' financial reports in their annual reports; amending s. 651.033, F.S.; revising financial institutions in which escrow accounts must be established; revising a condition under which a provider may hold and not deposit a resident's check for a specified period; amending s. 651.034, F.S.; revising the timeframe during which the office may exempt certain providers from certain regulatory actions; amending s. 651.035, F.S.; providing that certain documents relating to a provider's debt service reserve must require certain notice to the office before the withdrawal of debt service reserve funds; specifying requirements for the notice and for certain plans to replenish withdrawn funds; revising the calculation of minimum liquid reserve requirements for certain facilities; revising requirements for letters of credit which satisfy minimum liquid reserve requirements; revising circumstances under which a provider may withdraw funds held in escrow without the office's approval; making a technical change; amending s. 651.055, F.S.; specifying that a forfeiture penalty may be deducted from certain resident refunds, except under certain circumstances; conforming a provision to changes made by the act; amending s. 651.081, F.S.; specifying the authority of residents' councils and the eligibility of persons to participate in residents' council matters; deleting a requirement for open meetings of residents' councils; amending

s. 651.083, F.S.; specifying that a resident has the right to access ombudsman staff; amending s. 651.085, F.S.; requiring residents' councils to nominate and elect a designated resident representative to represent them on specified matters; providing requirements for designated resident representatives; revising meetings of the full governing body for which the designated resident representative must be notified; requiring each facility of certain providers to have its own designated resident representative; providing a requirement for certain designated resident representatives; amending s. 651.091, F.S.; adding reporting and notice requirements for continuing care facilities; adding a disclosure requirement for providers to prospective residents or their legal representatives; amending s. 651.105, F.S.; specifying requirements for the office's examination of providers and applicants for certificates of authority; deleting a requirement for a provider's representative to give examination reports and corrective action plans to the governing body's executive officer within a certain timeframe; amending ss. 651.012 and 651.0261, F.S.; conforming cross-references; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1575 Public Safety Emergency Communications Systems
SPONSOR(S): Brackett
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	18 Y, 0 N	Fortenberry	Lloyd
2) Local Administration, Federal Affairs & Special Districts Subcommittee	18 Y, 0 N	Burgess	Darden
3) Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The State Fire Marshal (SFM), within the Department of Financial Services (DFS), enforces laws applicable to fire safety, and adopts, by rule, the Florida Fire Prevention Code (FFPC), which is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities. Local authorities having jurisdiction (LAHJs) set standards for radio signal strength in buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities. Two-way radio communication enhancement systems (enhancement systems) are post-construction systems that accept and amplify first responders' radio signals so that the radio signal strength at ground level is equal to the radio signal strength in all locations throughout the building.

LAHJs must determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access. In 2022, the Legislature clarified that the LAHJ has jurisdiction over buildings of any height, not just high-rise buildings.

Enhancement systems, or equivalent systems, may be used to comply with the minimum radio signal strength requirements for fire department communications, but systems are not required in apartment buildings that are 75 feet or less in height that also meet all of the following criteria: constructed using wood framing; have 150 or less dwelling units; and all dwelling units discharge to the exterior or to a corridor that leads directly to an exit as defined in the Florida Building Code (Code).

The bill creates a limitation on when an LAHJ can require installation of an enhancement system, as follows:

- Prior to assessment – a qualified third party must certify that the LAHJ's public safety emergency communications systems meets or exceeds the minimum radio coverage design criteria.
- Assessment:
  - The LAHJ may only require an assessment no more often than:
    - Every three years for high-rise buildings; or
    - Every five years for all other buildings.
  - If an enhancement system is required after assessment, a certificate of occupancy cannot be refused if the registered architect or professional engineer who designed the building determined that an enhancement system is not necessary
- Post-assessment – an LAHJ may not require installation of the enhancement system until at least 90 days after the building's interior radio coverage and signal strength assessment report is completed.

The bill has no impact on state government revenues or expenditures or local government revenues. It has an indeterminate effect on local government expenditures and an indeterminate direct economic impact on the private sector.

The bill is effective on July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the Chief Financial Officer (CFO) as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within the Department of Financial Services (DFS), is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.[1] The SFM also has the responsibility to minimize the loss of life and property due to fire.[2] Pursuant to this authority, the SFM regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

Florida Fire Prevention Code

The SFM adopts by rule the Florida Fire Prevention Code (FFPC), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of such fire safety laws and rules.[3] The SFM adopts a new edition of the FFPC every three years[4] and the 7th edition of the FFPC took effect on December 31, 2020.[5] The FFPC is largely based on the *National Fire Protection Association's (NFPA) Standard 1, Fire Prevention Code,* along with the current edition of the *NFPA's Life Safety Code, NFPA 101*.[6]

The FFPC is the minimum fire prevention code deemed adopted in each municipality, county, and special district with firesafety responsibilities, and applies to every building and structure throughout the state with few exceptions.[7] Municipalities, counties, and special districts with firesafety responsibilities may supplement the FFPC with more stringent standards.[8] Local fire authorities (authorities having jurisdiction or LAHJs) set standards for radio signal strength throughout buildings within their jurisdiction to ensure consistent fire and rescue communication capabilities.

Radio Signal Strength for Fire Department Communications

The life safety of firefighters and citizens depends on reliable, functional communication tools that work in the harshest and most hostile of environments.[9] "All firefighters, professional and volunteer, operate in extreme environments that are markedly different from those of any other radio users."[10] The radio connects the firefighters to command and outside assistance in the most desperate of situations.[11] The focus on radio signal strength stems from difficulties firefighters experienced when attempting rescue

[1] S. 633.104 F.S.
[2] *Id.*
[3] Ch. 69A, F.A.C.
[4] S. 633.202, F.S.
[5] *See* Florida Fire Prevention Code (FFPC), https://www.myfloridacfo.com/division/sfm/bfp/florida-fire-prevention-code (last visited Mar. 17, 2023).
[6] S. 633.202(2), F.S.
[7] S. 633.208, F.S. and R. 69A-60.002(1), F.A.C.
[8] S. 633.208(3), F.S., and R. 69A-60.002(2), F.A.C.
[9] U.S. Fire Administration, *Voice Radio Communications Guide for the Fire Service* (June 2016), https://www.usfa.fema.gov/downloads/pdf/publications/Voice_Radio_Communications_Guide_for_the_Fire_Service.pdf (last visited Mar. 18, 2023).
[10] *Id*.
[11] *Id*.

operations on September 11, 2001, in the World Trade Center Towers.[12] These firefighters found that in certain areas of the buildings their radio signal degraded, making live communications difficult or impossible.[13]

Two-way radio communication enhancement systems (enhancement systems) are devices installed after a building is constructed that accept, and then amplify, radio signals used by first responders. A radio frequency site survey may be conducted in a building to determine areas where radio signal strength drops due to materials used in construction, such as thick walls, metal construction, underground structures, and low-emissivity glass windows. The generally desired effect is that the radio signal strength at ground level, where a fire rescue operation might be based, is equal to the radio signal strength in all locations throughout the building, to ensure consistent communication. Several devices are available to boost signal strength to meet required radio signal strength. These include bi-directional amplifiers and networks of indoor antennae, referred to collectively as a distributed antenna system.[14]

Florida Fire Code Minimum Radio Signal Strength

Amendments to the FFPC, effective January 1, 2018, provided that all new and existing buildings must maintain minimum radio signal strength at a level determined by the local authority having jurisdiction (LAHJ).[15] Where required by a local fire authority, signal enhancement systems must comply with federal standards for installation and upkeep.[16] Additionally, if an enhancement system would have a negative impact on the operations of a facility, the local fire authority may accept an automatically activated emergency responder radio coverage system in the alternative.[17]

Minimum Radio Signal Strength for High-Rise Buildings

Section 633.202(18), F.S., enacted in 2016,[18] provides that local LAHJ have to determine minimum radio signal strength for fire department communications in all new and existing high-rise buildings. The FFPC defines a high-rise building as a building where the floor of an occupiable story is greater than 75 feet above the lowest level of fire department vehicle access.[19] Existing high-rise buildings are not required to comply with minimum radio strength for fire department communications and enhancement systems as required by the FFPC until January 1, 2025.[20] By January 1, 2024, an existing building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply to the local government agency having jurisdiction for an appropriate permit for the required system installation.[21] Such an existing building must demonstrate that the building will become compliant with the FFPC by January 1, 2025.[22]

2022 Changes to the FFPC

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[12] *See* National Fire Protection Association, *Assessment of Total Evacuation Systems for Tall Buildings: Literature Review*, evacsystemstallbuildingsliteraturereviewexecsum.ashx (nfpa.org) (last visited Mar. 17, 2023).
[13] *Id.*
[14] *See* City of Treasure Island, Florida, *Enhancement Radio Communications Enhancement Systems Requirements* (Apr. 20, 2019), High-Rise Public Safety System Integrators (mytreasureisland.org) (last visited Mar. 17, 2023); *see also* East Lake Tarpon Special Fire Control District, *Information Bulletin: Enhancement Radio Communication Enhancement System Requirements*, Bulletin+East+Lake+Two+Way+Communications.pdf (elfr.org) (last visited Mar. 17, 2023).
[15] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.1, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 17, 2023).
[16] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.2, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 17, 2023).
[17] Florida Fire Prevention Code (7th ed. 2020) s. 11.10.3, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 17, 2023).
[18] Ch. 2016-129, s. 27, Laws of Fla.
[19] Florida Fire Prevention Code (7th ed. 2020) s. 3.3.29.6, https://www.nfpa.org/codes-and-standards/all-codes-and-standards/codes-and-standards/free-access?mode=view (last visited Mar. 17, 2023).
[20] Prior to July 1, 2022, the compliance dates for existing apartment buildings were the same as those for all other high-rise buildings.
[21] *Id.*
[22] *Id.*

During the 2022 session, the Legislature clarified that the LAHJ has jurisdiction over buildings of any height, not just high-rise buildings. It established that enhancement systems, or equivalent systems, may be used to comply with the minimum radio signal strength requirements for fire department communications. It also established that these systems are not required in apartment buildings that are 75 feet or less in height that also meet all of the following criteria:

- Constructed using wood framing;
- Have 150 or less dwelling units; and
- All dwelling units discharge to the exterior or to a corridor that leads directly to an exit as defined in the Florida Building Code (Code).

Evidence of wood frame construction is shown by the property owner providing building permit documentation that confirms this type of construction. Existing high-rise buildings, as defined in the Code, are not required to comply with minimum radio signal strength for fire department communications and enhancement systems until January 1, 2025, but they must apply for the appropriate permit for installation by January 1, 2024. However, existing high-rise apartment buildings are subject to the same installation deadlines as all other existing high-rise buildings.

Effect of the Bill

The bill creates a framework for determining whether an enhancement system must be installed in a new or existing building. Before an LAHJ may require an assessment of the need for, or the installation of, an enhancement system in a new or existing building (assessment), a qualified third party must certify that the LAHJ's public safety emergency communications systems meets or exceeds the minimum radio coverage design criteria for emergency services communications systems in the current edition of the NFPA. The certification is valid until the next triennial adoption of the FFPC, which will incorporate changes made to the NFPA.

The bill establishes that, if an LAHJ has a valid radio coverage design certification, the LAHJ may only require an assessment to determine the need for an enhancement system once:

- Every three years for high-rise buildings; or
- Every five years for all other buildings.

If an assessment determines that the installation of an enhancement system is required, the LAHJ may not withhold the issuance of a certificate of occupancy for the building if the registered architect or professional engineer who designed the building determined that an enhancement system is not necessary for the building to meet the minimum standards for interior radio coverage and signal strength. Finally, the bill prohibits an LAHJ from requiring the installation of an enhancement system until at least 90 days after the building's interior radio coverage and signal strength assessment report is completed.

B. SECTION DIRECTORY:

Section 1. Amends s. 633.202, F.S. relating to Florida Fire Prevention Code.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. LAHJs may need to spend money to hire a third party to certify that the public safety emergency communications system meets or exceeds the minimum radio coverage design criteria. The specific cost of the certification process has not been determined.

Additionally, LAHJs with noncompliant systems must upgrade their systems if they wish to use assessments to require installation of signal enhancement systems. System upgrades would require the expenditure of funds.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate, but potentially positive impact on the private sector. If it is determined that certain apartment buildings are exempt from putting in enhancement systems, they save the money that would have been spent to install the systems.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 43: This line states that a "qualified third party" must certify that an LAHJ's public safety emergency communications system meets or exceeds minimum radio coverage design criteria, but does not describe the qualifications necessary for the third party. Consideration should be given to specifying the qualifications within the bill.

Lines 67-68: These lines mention the minimum standards for interior radio coverage and signal strength. However, the FFPC does not set minimum standards for enhancement radio strength. Consideration should be given to amending the bill to be more specific about the minimum signal strength required. Alternatively, the bill could specify that the minimum standards mentioned in those lines will be set by the LAHJ.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public safety emergency communications systems; amending s. 633.202, F.S.; requiring a qualified third party to make a specified certification before a local authority having jurisdiction may require an assessment of the need for or the installation of a two-way radio communications enhancement system in certain buildings; specifying the length of time such certification is valid; limiting the number of times, under certain circumstances, that the local authority having jurisdiction may require a specified assessment; prohibiting the local authority having jurisdiction from withholding a certificate of occupancy under certain circumstances and from requiring the installation of a specified system within a certain time period after completion of a specified report; providing an effective date.

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

Section 1. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18)(a) The authority having jurisdiction shall determine

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

the minimum radio signal strength for fire department communications in all new and existing buildings.

(b) Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings 75 feet or less in height that are constructed using wood framing, provided that the building has less than 150 dwelling units and that all dwelling units discharge to the exterior or to a corridor that leads directly to an exit as defined by the Florida Building Code. Evidence of wood frame construction shall be shown by the owner providing building permit documentation which identifies the construction type as wood frame.

(c) Before a local authority having jurisdiction may require an assessment of the need for or the installation of a two-way radio communications enhancement system in a new or existing building, a qualified third party must certify that the jurisdiction's public safety emergency communications system meets or exceeds the minimum radio coverage design criteria for emergency services communications systems in the current edition of the National Fire Protection Association (NFPA) 1221: Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems. Such certification is valid until the next triennial adoption of the Florida Fire Prevention

Code which incorporates any changes made to NFPA 1221.

(d) If a jurisdiction has a valid radio coverage design certification under paragraph (c), the local authority having jurisdiction may only require an assessment of a new or existing building's interior radio coverage and signal strength in such building once every 3 years for high-rise buildings or once every 5 years for any other buildings in order to determine the need for a two-way radio communications enhancement system.

(e)1. If an assessment of a new building's interior radio coverage and signal strength determines that installation of a two-way radio communications enhancement system is required, the local authority having jurisdiction may not withhold the issuance of a certificate of occupancy for the building if the registered architect or professional engineer who designed the building determines, in his or her professional judgment, that a two-way radio communications enhancement system is not necessary in order for the building to meet the minimum standards for interior radio coverage and signal strength.

2. The local authority having jurisdiction may not require the installation of a two-way radio communications enhancement system until at least 90 days after the building's interior radio coverage and signal strength assessment report is completed.

(f) Existing high-rise buildings as defined by the Florida Building Code are not required to comply with minimum radio

strength for fire department communications and two-way radio communication enhancement systems as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing high-rise apartment buildings are not required to comply until January 1, 2025. However, existing high-rise apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

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

COMMERCE COMMITTEE

CS/HB 1575 by Rep. Brackett
Relating to Public Safety Emergency Communications Systems

AMENDMENT SUMMARY
April 17, 2023

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

- Provides that, when installation of an two-way radio signal enhancement system is required, the local authority having jurisdiction (LAHJ) must require the installation within 180 days after the issuance of a temporary certificate of occupancy.
- Clarifies which buildings must be assessed by an LAHJ on a three-year basis, which must be assessed on a five-year basis, and which are exempt from assessment.
- Establishes that the frequency license holder (e.g. a local emergency or fire safety provider) must expressly consent to the modification of an existing enhancement system or the installation of a new enhancement system.
- Establishes that an LAHJ must give enhancement system owners at least 180-days' notice before requiring modifications in an existing enhancement system.
- Provides that LAHJs must allow at least a one-year grace period for existing buildings to complete any required retrofitting of enhancement systems.
- Makes technical and grammatical changes to conform the bill to the Senate.

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: Commerce Committee
Representative Brackett offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Present subsections (23), (24), and (25) of section 553.79, Florida Statutes, are redesignated as subsections (24), (25), and (26), respectively, and a new subsection (23) is added to that section, to read:

553.79 Permits; applications; issuance; inspections.—

(23) If an assessment of a new building's interior radio coverage and signal strength under the Florida Fire Prevention Code determines that installation of a two-way radio communications enhancement system is required, a contractor having the appropriate license issued by the department must submit a design for a two-way radio communications enhancement

system to correct noncompliant radio coverage. The local jurisdiction may not withhold issuance of a temporary certificate of occupancy for the building based solely on the need for a two-way radio communications enhancement system. Upon approval of the design by the local authority having jurisdiction, the jurisdiction must require the installation of the two-way radio communications enhancement system within 180 days after the issuance of a temporary certificate of occupancy. A temporary certificate of occupancy extension may not be unnecessarily withheld.

Section 2. Subsection (18) of section 633.202, Florida Statutes, is amended to read:

633.202 Florida Fire Prevention Code.—

(18)(a) The authority having jurisdiction shall determine the minimum radio signal strength for fire department communications in all new and existing buildings. Two-way radio communication enhancement systems or equivalent systems may be used to comply with the minimum radio signal strength requirements. However, two-way radio communication enhancement systems or equivalent systems are not required in apartment buildings 75 feet or less in height that are constructed using wood framing, provided that the building has less than 150 dwelling units and that all dwelling units discharge to the exterior or to a corridor that leads directly to an exit as defined by the Florida Building Code. Evidence of wood frame

construction shall be shown by the owner providing building permit documentation which identifies the construction type as wood frame. Existing high-rise buildings as defined by the Florida Building Code are not required to comply with minimum radio strength for fire department communications and two-way radio communication enhancement systems as required by the Florida Fire Prevention Code until January 1, 2025. However, by January 1, 2024, an existing high-rise building that is not in compliance with the requirements for minimum radio strength for fire department communications must apply for an appropriate permit for the required installation with the local government agency having jurisdiction and must demonstrate that the building will become compliant by January 1, 2025. Existing high-rise apartment buildings are not required to comply until January 1, 2025. However, existing high-rise apartment buildings are required to apply for the appropriate permit for the required communications installation by January 1, 2024.

(b) Except as modified in this subsection, all new and existing buildings must meet the minimum radio signal strength requirements for public safety agency communications as provided in the Florida Fire Prevention Code.

(c) The local authority having jurisdiction as defined in the Florida Fire Prevention Code may:

1. Require the installation of a two-way radio communications enhancement system in a new or existing building

if the interior of the building does not meet the minimum radio signal strength as required in the Florida Fire Prevention Code.

2. Require assessment of a new or existing building's interior radio coverage and signal strength, for purposes of determining the need for a two-way radio communications enhancement system within the building, not more frequently than once every 3 years for existing high-rise buildings and existing buildings over 12,000 total gross square feet and once every 5 years for all other existing buildings, unless such building undergoes Level III building alteration or rehabilitation as defined in the Florida Building Code or reconstruction as determined by the Florida Fire Prevention Code or if a public safety agency reports to the local authority having jurisdiction that the agency's communications devices failed to function correctly inside a building due to poor signal coverage or upon determination of an imminent life safety threat to responders.

(d) Any modification to an existing system or any new installation must have the express consent of the frequency license holder of the frequencies for which the device or system is intended to amplify. The consent must be maintained in a recordable format that can be presented to a Federal Communications Commission representative or other relevant agency investigating radio interference.

(e) Where public safety agency communications signal strength or delivered audio quality, as defined in the Florida

Fire Prevention Code, is determined by the authority having jurisdiction to be inadequate at the exterior of the building, a two-way radio communications enhancement system or minimum radio strength assessment shall not be required.

(f) If a jurisdiction modifies its public safety emergency communications system such that modifications to existing two-way radio communications enhancement system installations are required, the local authority having jurisdiction must give owners of the two-way radio communications enhancement systems at least 180 days' notice before requiring any modification.

(g) Notwithstanding paragraph (f), a local authority having jurisdiction which requires an existing building to retrofit its two-way radio communications enhancement system after the effective dates in paragraph (a) must give the building owner at least 1 year to complete the retrofit. The 1-year period begins when the local authority having jurisdiction cites the building owner with a notice of code violation in accordance with chapter 162.

(h) The following occupancies or buildings are not required to meet minimum radio signal strength requirements or have a radio signal strength assessment for public safety agency communications:

1. One- and two-family dwellings and townhouses.

2. Buildings less than 12,000 square feet with no underground areas.

3. Apartments and transient public lodging establishments that are less than three stories and that have direct access from the apartment or guest area to an exterior means of egress.

4. Wood frame apartment buildings that are not required to install two-way radio communication enhancement systems or equivalent systems pursuant to paragraph (a).

(i) The provisions of s. 633.208 and this section which authorize local adoption of more stringent requirements than those specified in the Florida Fire Prevention Code and minimum firesafety codes do not apply to the requirements of this subsection. The local authority having jurisdiction may not enforce requirements that are more stringent than those specified in the Florida Fire Prevention Code and the provisions of this subsection with respect to the requirement for, design of, or installation of a two-way radio communications enhancement system.

(j) The State Fire Marshal shall incorporate this subsection in the Florida Fire Prevention Code and may adopt rules to implement, interpret, and enforce this subsection.

Section 3. Paragraph (f) is added to subsection (3) of section 843.16, Florida Statutes, to read:

843.16 Unlawful to install or transport radio equipment using assigned frequency of state or law enforcement officers; definitions; exceptions; penalties.—

(3) This section does not apply to the following:

(f) The installation of a two-way radio communications enhancement system to comply with the requirements of s. 633.202(18).

Section 4. Section 440.103, Florida Statutes, is amended to read:

440.103 Building permits; identification of minimum premium policy.—Every employer shall, as a condition to applying for and receiving a building permit, show proof and certify to the permit issuer that it has secured compensation for its employees under this chapter as provided in ss. 440.10 and 440.38. Such proof of compensation must be evidenced by a certificate of coverage issued by the carrier, a valid exemption certificate approved by the department, or a copy of the employer's authority to self-insure and shall be presented, electronically or physically, each time the employer applies for a building permit. As provided in s. 553.79(24) ~~s. 553.79(23)~~, for the purpose of inspection and record retention, site plans or building permits may be maintained at the worksite in the original form or in the form of an electronic copy. These plans and permits must be open to inspection by the building official or a duly authorized representative, as required by the Florida Building Code. As provided in s. 627.413(5), each certificate of coverage must show, on its face, whether or not coverage is secured under the minimum premium provisions of rules adopted by rating organizations licensed pursuant to s. 627.221. The words

"minimum premium policy" or equivalent language shall be typed, printed, stamped, or legibly handwritten.

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

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

Remove everything before the enacting clause and insert:
An act relating to public safety emergency communications systems; amending s. 553.79, F.S.; requiring a licensed contractor to submit a certain design if an interior radio coverage and signal strength assessment of a new building determines a two-way radio communications enhancement system installation is required; specifying restrictions on a local jurisdiction's withholding issuance of a temporary certificate of occupancy for the building; requiring the local jurisdiction to require installation of such a system within a certain timeframe; amending s. 633.202, F.S.; requiring new and existing buildings to meet certain minimum radio signal strength requirements, except under certain circumstances; specifying the authority of local authorities having jurisdiction relating to two-way radio communications enhancement systems; specifying requirements for, and restrictions on, such authorities; providing requirements for obtaining and maintaining the consent of frequency license holders; exempting certain occupancies and

buildings from certain signal strength and assessment requirements; providing applicability and construction; requiring the State Fire Marshal to incorporate provisions in the Florida Fire Prevention Code; authorizing the State Fire Marshal to adopt rules; amending s. 843.16, F.S.; exempting certain installations of two-way radio communications enhancement systems from prohibitions against the installation or transportation of certain radio equipment; amending s. 440.103, F.S.; conforming a cross-reference; providing an effective date.

PCS for CS/HB 487

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 487 Department of Financial Services
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 1158

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Lloyd	Hamon

SUMMARY ANALYSIS

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer, and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Changes made by the bill include:

- Providing that county agencies, municipalities, and special districts must have adequate controls over tangible property.
- Changing the frequency of a required hurricane-related report by DFS from annual to triennial.
- Requiring insurers to bear certain costs and make certain elections prior to mediation of claims;
- Authorizing the suspension of agent appointments by insurers for non-payment of costs;
- Revising various requirements applicable to the DFS property insurance claims mediation program;
- Reducing certain administrative obligations of title agents and agencies; changing certain continuing education requirements; reducing barriers to licensing;
- Expanding the circumstances when DFS can suspend, revoke, or refuse to renew or continue the licenses and the types of criminal offenses that can disqualify an insurance agent licensee;
- Allowing reciprocal non-resident licenses in certain circumstances;
- Eliminating temporary bail bond licenses and creating a means to convert to regular bail bond agent licenses; specifying the qualifications of a primary bail bond agent;
- Converting bail bond agency registration to licensure;
- Improving processing of insolvent insurer estates;
- Authorizing a State Fire Marshal direct support organization, which is repealed in five years, unless saved by subsequent legislative action;
- Allowing any governmental employee to participate in the Deferred Compensation Plan;
- Ratifying the 2020 Workers' Compensation Health Care Provider Reimbursement Manual; eliminating the need for future Reimbursement Manual ratifications;
- Creating term limits, ethical requirements, and other improvements to specified Boards; authorizing the CFO to remove Board members in certain circumstances;
- Exempting travel-related transportation protection agreements for the preparation and return of human remains from regulation as a preneed funeral contract or insurance.
- Prohibiting certain practices in the issuance of collateral protection insurance;
- Increasing the reserve requirement for warranty associations;

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

Except as expressly specified in the bill, it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

ORGANIZATION OF THE DEPARTMENT OF FINANCIAL SERVICES

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the state's chief fiscal officer,[1] and is designated as the State Fire Marshal. The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal, and the Department of Banking and Finance merged to form DFS. DFS consists of 13 divisions and several specialized offices.[2] DFS is composed of the following divisions and independent office:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;[3]
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;
- Unclaimed Property;
- Workers' Compensation;
- Administration; and the
- Office of Insurance Consumer Advocate.

Division of Accounting and Auditing

The mission of the Division of Accounting and Auditing is to safeguard public assets, settle the state's financial obligations, report financial information, and improve accountability of the state.[4] The Division includes the Bureau of Unclaimed Property and the Office of Fiscal Integrity. It is also empowered by statute to "examine, audit, adjust, and settle the accounts of all the officers of this state, and any other person in anywise entrusted with, or who may have received any property, funds, or moneys of this state, or who may be in anywise indebted or accountable to this state for any property, funds, or moneys, and require such officer or persons to render full accounts thereof, and to yield up such property or funds according to law, or pay such moneys into the treasury of this state, or to such officer or agent of the state as may be appointed to receive the same, and on failure so to do, to cause to be instituted and prosecuted proceedings, criminal or civil, at law or in equity, against such persons, according to law."[5] In executing this power, the Division has the authority to conduct investigations, as necessary inside and outside of the state, and refer any suspected criminal conduct to the appropriate law enforcement and prosecutorial agency.

Every state and local government entity provides its financial information to DFS annually, so DFS can prepare annual financial statements for the state of Florida and provide an online clearinghouse for the financial statements of every county, municipality, and special district in Florida. The Florida Open Financial Statement System is open to public inspection.[6]

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[1] Art. IV, s. 4, Fla. Const.
[2] S. 20.121, F.S.
[3] This division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.
[4] FLORIDA DEPARTMENT OF FINANCIAL SERVICES, *Accounting & Auditing*, http://www.myfloridacfo.com/Division/AA/ (last visited Mar. 19, 2023).
[5] S. 17.04, F.S.
[6] S. 218.32(1)(h), F.S.

Effect of the Bill

The bill makes the following changes within the purview of the Division of Accounting and Auditing:

- Adds county agencies, municipalities, and special districts[7] to those public entities that must have adequate controls over tangible property.

Division of Consumer Services

The Division of Consumer Services deals with consumer issues and complaints related to the jurisdiction of DFS and the Office of Insurance Regulation (OIR). The Division:

- Receives inquiries and complaints from consumers;
- Prepares and disseminates information as DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers; and
- Reports potential violations of law or applicable rules by a person or entity licensed by DFS or OIR to the appropriate division within DFS or OIR, as appropriate.[8]

Effect of the Bill

The bill:

- Mandates that a property insurer either make a claim determination or elect to repair under applicable law prior to participating in mediation allowed by statute.
- Allows DFS to suspend an insurer's ability to appoint agents to represent the insurer if the insurer does not pay required mediation fees timely.
- Removes a requirement that DFS adopt rules governing qualifications, denials of application, suspension, revocation of approval, and penalties applicable to mediators related to DFS property insurance claim mediation program.
- Provides that mediation costs must be reasonable, that the insurer bears all such costs, but requires the policyholder must pay the costs of rescheduling mediations in certain circumstances. If an insurer representative attends a mediation, but lacks authority to settle the claim, the insurer is deemed to have not appeared, in which case the insurer must pay the insured's actual costs of attendance and the cost of rescheduling the mediation, including DFS' costs. If the per-mediation-event administrative fee is not paid timely, the mediation administrator may request that DFS suspend the insurer's ability to appoint agents to represent the insurer.
- Removes mediation-related tolling of time to file a lawsuit on the disputed claim.
- Deletes a requirement that the policy include details on requirements for filing of first-party claims mediation.
- Repeals mediation program requirements, including:
    - That the mediation must be a formal process;
    - Mediators be randomly selected, with options and process to handle rejections of the selected mediator; and,
    - Equal sharing of costs.

Division of Insurance Agent and Agency Services

The DFS Division of Insurance Agent and Agency Services is responsible for the licensing and regulation of insurance agents, adjusters, insurance agencies, as well as related personnel and business entities.[9]

No person may be, act as, or advertise, or hold himself/herself out to be an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by DFS and appointed by an

[7] As defined in s. 189.12, F.S.
[8] S. 20.121(2)(h), F.S.
[9] Ch. 626, parts I, II, III, IV, V, VI, VIII, IX, and XIII, F.S.

appropriate appointing entity or person.[10] There are several types of insurance representatives. These include:

- General lines agents,
- Life insurance agents,
- Health insurance agents,
- Title insurance agents,
- Personal lines agents, and
- Unaffiliated insurance agents.[11]

General Lines Agent

A general lines agent[12] is one who sells the following lines of insurance: property;[13] casualty,[14] including commercial liability insurance underwritten by a risk retention group, a commercial self-insurance fund,[15] or a workers' compensation self-insurance fund;[16] surety;[17] health;[18] and, marine.[19] The general lines agent may only transact health insurance for an insurer that the general lines agent also represents for property and casualty insurance. If the general lines agent wishes to represent health insurers that are not also property and casualty insurers, they must be licensed as a health insurance agent.[20]

Title Agents and Agencies

Title insurance insures owners of real property (owner's policy) or others having an interest in real property, as well as lenders (mortgagee policies) against loss by encumbrance, defective title, invalidity, or adverse claim to title. It is a policy issued by a title insurer that, after evaluating a search of title, insures against a number of covered risks, including title defects or liens that are not identified as exceptions. In Florida, title insurers operate on a monoline basis, meaning that the insurer can only transact title insurance and cannot transact any other type of insurance.[21]

Bail Bond Agents

Currently, a person may not act as a bail bond agent or temporary bail bond agent unless qualified, licensed, and appointed.[22] A person also may not represent himself or herself to be a bail enforcement agent, bounty hunter, or other similar title, and a person, other than a certified law enforcement officer, may not apprehend, detain, or arrest a principal on a bond unless qualified, licensed, and appointed.[23]

Effect of the Bill

The bill makes the following changes related to agents and agencies:

Generally –

- Removes the requirement that applicants be fingerprinted at a designated examination center; but, retains the remaining fingerprinting options that include a law enforcement agency or other DFS-approved entity.

[10] S. 626.112, F.S.
[11] S. 626.015, F.S.
[12] S. 626.015(5), F.S.
[13] S. 624.604, F.S.
[14] S. 624.605, F.S.
[15] As defined in s. 624.462, F.S.
[16] Pursuant to s. 624.4621, F.S.
[17] S. 626.606, F.S.
[18] Ss. 624.603 and 627.6482, F.S.
[19] S. 624.607, F.S.
[20] S. 626.829, F.S.
[21] S. 627.786, F.S.
[22] S. 648.30(1), F.S.
[23] S. 648.30(2) and (3), F.S.

- Relieves title insurance, life insurance, and annuity insurance agents and agencies from the requirement that they notice all active policyholders of an office closure that is more than 30 days because the related policies are not continually serviced by the agent or agency.
- Clarifies that a licensee that possesses an advanced degree beyond a Bachelor's degree is eligible for a reduced continuing education requirement; six hours every two years, rather than 20 hours every two years, or other variations thereof depending on experience and credential.
- Removes a prohibition on licensees holding a limited license in motor vehicle damage and mechanical breakdown insurance, industrial fire insurance, burglary insurance, or credit insurance from holding multiple licenses.
- Expands the type of criminal background that allows DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a licensee to include a misdemeanor related to the financial services business, this is in addition to any felony or crime punishable by one year or more in prison.
- Allows DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a licensee who has lost their resident license in another state.
- Permits DFS to suspend, revoke, or refuse to renew or continue the license or appointment of a title agent or agency that:
    - Misappropriates, converts, or unlawfully withholds funds related to an escrow agreement, real estate sales contract, or settlement of a real estate transaction; or
    - Is the subject of an adverse action against a license or similar credential in another state, a court of competent jurisdiction, or federal agency, or similar.
- Reduces a reinsurance intermediary credential from a license to an appointment and removes the $50 application and license fee for a reinsurance intermediary; such intermediaries are otherwise licensed as another type of insurance licensee.
- Allows DFS to cancel an insurer's ability to appoint agents when an insurer fails to timely pay the exchange of business fee that the insurer is beholden to pay for the agent and applicable to reported agent production activity.
- For the purposes of title agents and agencies, changes the authority to act as an escrow agent from the title agent to the title agency and removes the obligation to invest the escrow funds consistent with the requirements applicable to state investment of funds.
- Broadens the qualifying continuing education courses that public adjusters may take from those specially designed for public adjusters to any related to commercial and residential property and casualty coverage, claim adjusting, and any other adjuster courses approved by DFS.
- Allows DFS to deny the privileges of a temporary adjuster who has been lawfully appointed during a catastrophe or emergency for any violation described in Ch. 626, F.S., rather than only those in ss. 626.611 and 626.621, F.S.
- Provides for expiration of a health insurance navigator's registration if the navigator's fails to maintain a valid, active federal registration.
- Creates a limited insurance license to allow already licensed preneed funeral sales agents to be appointed to represent the preneed insurer.

Bail Bonds –

- Eliminates the "temporary bail bond agent" license type; ends issuance of such licenses as of January 1, 2024; and expires all such licenses as of June 30, 2025.
- Removes authority to grant temporary licensure to the surviving spouse of a licensee to facilitate transfer or wrap-up of the deceased's bail bond operations.
- Allows DFS to share complaint and investigatory information with other qualified law enforcement or regulatory agencies.
- Converts bail bond agency registration to licensure; requires all commensurate filings and actions consistent with such licensure and other similar types of licensure.
- Clarifies that bail bond agents and agencies must have insurer appointments to conduct business.
- Requires bail bond agencies to pay a fee; however, the referenced statute does not specify such fee, the bill does not amend that statute to create the fee, and there is no associated fee bill to create the fee.

- Allows required classroom instruction to be conducted in in-person and virtual formats consistent with the format allowed for other lines.
- Establishes qualifications for designation as the primary bail bond agent of an agency, which includes 24 months of experience as a bail bond agent immediately preceding the appointment.
- Allows permissible in-jail advertising to include and email address and web address.
- Prohibits all in-person or telephone contacts by bail bond agents or agencies between 9:00 pm and 8:00 am, rather just those related to domestic violence cases.
- Requires appointing insurers to certify that appointees have signed a specified sworn statement regarding owed premiums, discharges, and forfeitures.
- Expires a bail bond agency's license by operation of law upon failure to file the designation of a new agent in charge with DFS following separation of the previous designee.

Division of Rehabilitation and Liquidation

Part I of ch. 631, F.S., relates to insurer insolvency and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[24] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of DFS is responsible for rehabilitating or liquidating insurance companies.[25] This process involves the initiation of a delinquency proceeding and the placement of an insurer under the control of DFS as the Receiver. The typical causes of insurer insolvency include undercapitalization, uncollectible or inflated assets, insufficient loss reserves for risks assumed, fraudulent transactions, failure to monitor agents, and mismanagement by directors and/or officers.[26]

Upon a determination by OIR that one or more grounds exist for the initiation of delinquency proceedings and that such proceedings must be initiated, OIR must notify DFS of such determination and must provide DFS with all necessary documentation and evidence.[27] DFS subsequently initiates delinquency proceedings by either applying to the appropriate court for an order directing such an insurer to show cause why the proceedings should not be initiated or petitioning the court for the entry of a consent order.[28]

Effect of the Bill

The bill:

- Authorizes DFS as the Receiver to transfer estate property to a solvent insurer and share records with a prospective assuming insurer to extent necessary to conduct due diligence in the possible transfer of obligations.
- Permits the Receivership Court to set a date requested by the Receiver for policy cancellation as an earlier alternative to dates currently specified in statute.

Division of State Fire Marshal

Chapter 633, F.S., Fire Prevention and Control, designates the CFO as the State Fire Marshal (SFM). The SFM, through the Division of the State Fire Marshal within DFS, is charged with enforcing the provisions of ch. 633, F.S., and all other applicable laws relating to fire safety.[29] The SFM also has the

[24] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[25] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[26] Department of Financial Services, Agency Analysis of 2017 House Bill 837, p.2 (Feb. 20, 2017).

[27] S. 631.031, F.S.

[28] *Id.*

[29] S. 633.104 F.S.

responsibility to minimize the loss of life and property due to fire.[30] Pursuant to this authority, the SFM regulates, trains, and certifies fire service personnel and firesafety inspectors; investigates the causes of fires; enforces arson laws; regulates the installation of fire equipment; conducts firesafety inspections of state property; and operates the Florida State Fire College.

The State Fire Marshal has two bureaus:

- The Bureau of Fire Prevention conducts safety inspections and reviews construction plans for all state-owned buildings, regulates fireworks and the fire sprinkler industry, inspects and licenses boilers, and certifies persons working in the fire suppression industry; and
- The Bureau of Firefighter Standards and Training approves curricula and training at the Florida State Fire College and certifies that fire service members meet industry standards. Persons may be certified as a volunteer firefighter, firefighter, or administrator of a fire service provider (*i.e.* fire chief, fire coordinator, fire director, or fire administrator).[31]

Effect of the Bill

The bill authorizes the Division of State Fire Marshal to create a direct support organization to be known as the "State Fire Marshal Safety and Training Force" to support the safety and training of firefighters and recognize exemplary service.

Division of Treasury

The CFO, with approval of the State Board of Administration, is required to establish a deferred compensation plan for state employees under the "Government Employees' Deferred Compensation Act." A deferred compensation plan is a retirement savings plan that allows eligible employees to supplement any existing retirement and pension benefits by saving and investing before-tax dollars through a tax-deferred voluntary salary contribution. The Deferred Compensation Plan is open to employees of state agencies, State University System, State Board of Administration, and other special district employers (subject to employer election). These various constituencies are delineated in statute and represented by a member of the Deferred Compensation Advisory Council. The Deferred Compensation Plan has been in operation for over 35 years and offers a reasonably priced supplemental retirement savings program.

Effect of the Bill

The bill:

- Allows a governmental employee of any governmental unit of the state to participate in the Deferred Compensation Plan.
- Expands the membership of the Deferred Compensation Advisory Council from seven members to eight members. The additional member will be an executive branch appointee made by the Chancellor of the Florida College System who must be an employee of the system.

Division of Workers' Compensation

Florida's Workers' Compensation Law[32] 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.[33] The Department of Financial Services, Division of Workers' Compensation (DWC), 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

[30] *Id.*
[31] Department of Financial Services, Division of State Fire Marshal, *What We Do*, https://myfloridacfo.com/Division/SFM/ (last visited Mar. 19, 2023).
[32] Ch. 440, F.S.
[33] S. 440.13(2)(a), F.S.

providers[34] 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.[35] DFS incorporates the MRAs approved by the Three-Member Panel in reimbursement manuals[36] through the rulemaking process provided by the Administrative Procedures Act.[37]

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.[38]

In 1980, the Legislature delegated authority over maximum reimbursement allowances to a Three-Member-Panel which consists of the Insurance Commissioner (as a representative of the Chief Financial Officer) and two others appointed by the Governor and subject to confirmation by the Senate. Section 440.13(12)(a), F.S., states: "Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient care, hospital outpatient care, ambulatory surgical centers, work-hardening programs, and pain programs."

The Medical Services Section within the DWC provides administrative support to the panel, which is statutorily charged with collecting data to evaluate the adequacy of the fee schedule, surveying healthcare providers to determine the availability and accessibility of healthcare, and surveying carriers to determine the impact of changes to the reimbursement schedule.[39] According to DWC, medical costs represent 67 percent of all workers' compensation costs in Florida.

Maximum reimbursements approved by the Three-Member Panel must be based on the following statutory requirements:

- For inpatient treatment, hospitals must be reimbursed 75 percent of the usual and customary charges;[40]
- For schedule surgeries, hospitals must be reimbursed 60 percent of the charges;[41]
- For physicians, reimbursement is 110 percent of the reimbursement allowed by Medicare for an office visit and 140 percent of the reimbursement allowed by Medicare for a surgical procedure.[42]
- For prescription medications, reimbursement is the wholesale price plus a $4.18 dispensing fee; but for repackaged or relabeled prescription medications, reimbursement is 112.5 percent of the average wholesale price plus an $8 dispensing fee.[43]

Healthcare providers cannot recover fees that are higher than those outlined in the schedule. This applies to treatment, care, and attendance provided by any hospital or other healthcare provider,

[34] 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.
[35] S. 440.13(12), F.S.
[36] Ss. 440.13(12) and (13), F.S., and Ch. 69L-7, F.A.C.
[37] Ch. 120, F.S.
[38] S. 440.13, F.S.
[39] S. 440.13(12)(e), F.S.
[40] S. 440.13(12)(a), F.S.
[41] S. 440.13(12)(b), F.S.
[42] *Id.*
[43] S. 440.13(12)(c), F.S

ambulatory surgical center, work-hardening program, or pain program.[44] Florida courts have enforced fee schedule limits against healthcare providers who sought higher fees for their services.[45]

The law requires reimbursement to medical providers at either the agreed-upon contract price or the maximum reimbursement allowed in the appropriate schedule.

The Three-Member Panel adopts the schedules as an independent entity, but DWC relies on the schedules when rendering determinations in reimbursement disputes between healthcare providers and insurance carriers,[46] and when adopting fee schedules for services rendered by medical providers.[47] As a result, DWC adopts the maximum reimbursement schedules through rulemaking, and, when the cost of a schedule exceeds $1 million in the aggregate within a five-year period, the adopted rule is subject to legislative ratification.

The Administrative Procedures Act requires a statement of regulatory cost that includes an economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;
2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or
3. Is likely to increase regulatory costs, including any transactional costs, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.[48]

The law provides three exemptions to the ratification requirement. Legislative ratification does not apply to triennial updates of the Florida Building Code and Florida Fire Prevention Code, which are expressly authorized by statute, or when a state agency adopts federal standards or rules that are needed to receive federal funds or other benefits under federal law.[49]

The Legislature ratified the 2016 manual for healthcare providers, which increased the overall cost of the workers' compensation system by 1.8 percent, or $64 million.[50]

The Legislature declined to ratify reimbursement manuals for:

- Ambulatory surgical centers – the 2016 manual proposed an increase of 0.6 percent or $22 million; the 2017 manual proposed an increase of 1.1 percent or $40 million.[51]
- Healthcare providers – the 2017 manual proposed an increase of 0.1 percent, or $4 million.[52]
- Hospitals – the 2016 and 2017 manuals proposed increases of 2.2 percent, or $80 million.[53]

On October 22, 2020, DFS filed a rule adopting the 2020 Health Care Reimbursement Manual approved by the Three-Member Panel setting a revised uniform schedule of MRAs for physicians and

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[44] S. 440.13(12)(d), F.S.
[45] *Sun Bank/South Florida, N.A. v. Baker*, 632 So. 2d 669 (Fla. 4th DCA 1994), cause dismissed, 639 So. 2d 982 (Fla. 1994); citing, *Easter Elevator Co. v. Hedman,* 290 So. 2d 56, 58 (Fla. 1974).
[46] S. 440.13(7), F.S.
[47] S. 440.13(13), F.S.
[48] S. 120.541(2)(a), F.S.
[49] S. 120.541(4), F.S.
[50] Three Member Panel, 2019 Biennial Report, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjjgNuTnun9AhWIr4QIHYLrBecQFnoECA8QAQ&url=https%3A%2F%2Fwww.myfloridacfo.com%2Fdocs-sf%2Fworkers-compensation-libraries%2Fworkers-comp-documents%2Freports%2Fthree-member-panel%2F2019-biennial-report.pdf%3Fsfvrsn%3Db3c08839_4&usg=AOvVaw20P1pPOhVMVyfoJ2TFEMvc , at 18 (last visited Mar. 19, 2023).
[51] *Id.*
[52] *Id.*
[53] *Id.*

other recognized practitioners.[54] According to the National Council on Compensation Insurance, the revisions to MRAs in the 2020 Edition will result in increased costs to the overall compensation system of $8 million over the next five years, as of November 16, 2020.[55]

Effect of the Bill

The bill:

- Ratifies Rule 69L-7.020, F.A.C., allowing the rule to go into effect. The Rule incorporates by reference the 2020 Edition of the Manual, which provides for reimbursement of health care providers under the increased MRAs approved by the Three-Member Panel. The National Council on Compensation Insurance estimates that this will produce a 0.2 percent increase in workers' compensation rates, as of November 16, 2020. This increase would likely be incorporated into the next annual rate filing for OIR approval, to become effective January 1, 2024, which could be an overall increase or decrease in total rate, after considering the entirety of the annual rate filing.
- Removes the authority of the Three-Member Panel to adopt maximum reimbursement allowances for individually licensed health care providers, work-hardening programs, pain programs, and durable medical equipment providers. Rather, it requires DFS to post the maximum reimbursement allowance for physician and non-hospital reimbursements on its website by July 1st each year, to become effective the following January 1st. This seeks to remove the health care provider reimbursements from rulemaking and the applicable legislative rule ratification requirement for rules that increase private sector costs by more than $1 million in the aggregate over five years.[56]
- Repeals the statutory incorporation of an outdated medical practice and parameters requirement.[57]
- Allows a judge of compensation claims the discretion to order an expert medical examination, rather than requiring it to be ordered by the judge upon request of either the injured worker or insurance carrier during litigation.

Miscellaneous

Effect of the Bill

The bill also makes the following changes:

Boards within the CFO's Appointment Authority:

Florida Self-Insurers Guaranty Association, Inc. (Section 8)
Florida Insurance Guaranty Association (Section 41)
Florida Life and Health Insurance Guaranty Association (Section 42)
Florida Health Maintenance Organization Consumer Assistance Plan (Section 43)
Florida Workers' Compensation Insurance Guaranty Association (Section 44)
Medical Malpractice Risk Apportionment Plan (Section 32)

- Allows the CFO to consider board appointment recommendations from persons with experience in applicable subject matter, in addition to current recommendation sources;
- Authorizes the CFO removal of board members based on misconduct, malfeasance, misfeasance, or neglect of duty;
- Clarifies that the board member's appointment and service are within an exemption to a prohibition on conflicting employment of public employees.

[54] Email from Austin Stowers, Legislative Affairs Director, Department of Financial Services, RE: . Department of Financial Services Rule 69L-7.020, F.A.C. (Jan. 30, 2023).
[55] The National Council on Compensation Insurance, Inc., *Analysis of Florida Medial Fee Schedule Changes Proposed to be Effective July 1, 2021* (Nov. 16, 2020).
[56] It is unclear if this provision abrogates DFS' obligation under Ch. 120, F.S., the Administrative Procedures Act, to adopt policy and interpretations of statute via rulemaking.
[57] S. 440.13(14), F.S., requires workers' compensation medical practice parameters and protocols to adhere to the United States Agency for Healthcare Research and Quality practice parameters and protocols in effect on January 1, 2003.

- Subjects board members to the code of ethics under part III of ch. 112, F.S., with specifications regarding application of the code to the board members;
- Creates gift restrictions for board members; and,
- Provides penalties for board member ethical and gift acceptance violations.

DFS, Division of Investigative and Forensic Services (DIFS)

- Allows DIFS to initiate, not just conduct, investigations and specifies that such investigations may cover any matter under the jurisdiction of the CFO, including the CFO's role as State Fire Marshal; and,
- Expands DIFS authority to refer suspected criminal violations for prosecution to include criminal violation of federal law, in addition to state law criminal violations.

Strategic Markets Research and Assessment Unit

- Repeals the unit and its required quarterly report on the state of the financial services industry in the state.[58]

Insurance Field Representatives (Agents)

- Corrects the name of a referenced association to reflect their current name.
- Prohibits insurance agents from selling nonprofit religious organization health coverage that is exempt from the Florida Insurance Code.[59]

Continuing Education Requirements

- Authorizes the Professional in Claims (PIC) designation from 2021 Training, LLC, to be accepted for a permitted exemption from examination.

Insurance Fraud

- Removes the requirement that a conviction be obtained to qualify for a reward under the Anti-Fraud Reward Program. A tip that leads to an arrest will be eligible for the reward.

Property Insurance Claim Mediation

- Limits claim eligibility until an insurer has either made a claim determination or elected to repair the property.
- Authorizes DFS to contract with an administrator to oversee sinkhole-related alternative dispute resolution provided by law.
- Allows mediation of issues involving litigants referred by a county court or circuit court.

Service Warranty Contracts

- Exempts service warranty sales representatives from the requirements of the home solicitation sales law.

Unclaimed Property Recovery Contracts

- Clarifies provisions limiting recovery agreements or contracts.

Regulation of Preneed Funeral Contracts

- Creates an express exemption to make clear that travel-related transportation protection agreement for the preparation and return of human remains is not a preneed funeral contract. It also provides that such agreements are not subject to the Florida Insurance Code.

B. SECTION DIRECTORY:

Section 1: Amends s. 20.121, F.S., relating to Department of Financial Services.

[58] DFS asserts that this report is duplicative and out of date. Department of Financial Services, Agency Bill Analysis HB 487, p. 3 (Feb. 15, 2023).

[59] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S., constitute the "Florida Insurance Code." S. 624.01, F.S.

Section 2: Amends s. 112.215, F.S., relating to Government employees; deferred compensation program.

Section 3: Amends s. 215.55952, F.S., relating to Annual report on economic impact of a 1-in-100-year hurricane.

Section 4: Amends s. 274.01, F.S., relating to Definitions.

Section 5: Amends s. 440.13, F.S., relating to Medical services and supplies; penalty for violations; limitations.

Section 6: Amends s. 440.385, F.S., relating to Florida Self-Insurers Guaranty Association, Incorporated.

Section 7: Amends s. 497.005, F.S., relating to Definitions.

Section 8: Amends 624.1265, F.S., relating to Nonprofit religious organization exemption; authority; notice.

Section 9: Amends s. 624.501, F.S., relating to Filing, license, appointment, and miscellaneous fees.

Section 10: Amends s. 626.015, F.S., relating to Definitions.

Section 11: Amends s. 626.171, F.S., relating to Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.

Section 12: Amends s. 626.173, F.S., relating to Insurance agency closure; cancellation of licenses.

Section 13: Amends s. 626.207, F.S., relating to Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.

Section 14: Amends s. 626.221, F.S., relating to Examination requirement; exemptions.

Section 15: Amends s. 626.2815, F.S., relating to Continuing education requirements.

Section 16: Amends s. 626.321, F.S., relating to Limited licenses and registration.

Section 17: Amends s. 626.611, F.S., relating to Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

Section 18: Amends s. 626.621, F.S., relating to Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.

Section 19: Amends s. 626.7492, F.S., relating to Reinsurance intermediaries.

Section 20: Amends s. 626.752, F.S., relating to Exchange of business.

Section 21: Amends s. 626.785, F.S., relating to Qualifications for license.

Section 22: Amends s. 626.793, F.S., relating to Excess or rejected business.

Section 23: Amends s. 626.837, F.S., relating to Excess or rejected business.

Section 24: Amends s. 626.8411, F.S., relating to Application of Florida Insurance Code provisions to title insurance agents or agencies.

Section 25: Amends s. 626.8437, F.S., relating to Grounds for denial, suspension, revocation, or refusal to renew license or appointment.

Section 26: Amends s. 626.844, F.S., relating to Grounds for discretionary refusal, suspension, or revocation of license or appointment.

Section 27: Amends s. 626.8473, F.S., relating to Escrow; trust fund.

Section 28: Amends s. 626.854, F.S., relating to "Public adjuster" defined; prohibitions.

Section 29: Amends s. 626.874, F.S., relating to Catastrophe or emergency adjusters.

Section 30: Amends s. 626.9892, F.S., relating to Anti-Fraud Reward Program; reporting of insurance fraud.

Section 31: Amends s. 626.9957, F.S., relating to Conduct prohibited; denial, revocation, or suspension of registration.

Section 32: Amends s. 627.351, F.S., relating to Insurance risk apportionment plans.

Section 33: Amends s. 627.7015, F.S., relating to Alternative procedure for resolution of disputed property insurance claims.

Section 34: Amends s. 627.7074, F.S., relating to Alternative procedure for resolution of disputed sinkhole insurance claims.

Section 35: Amends s. 627.745, F.S., relating to Mediation of claims.

Section 36: Amends s. 631.141, F.S., relating to Conduct of delinquency proceeding; domestic and alien insurers.

Section 37: Amends s. 631.252, F.S., relating to Continuation of coverage.

Section 38: Amends s. 631.56, F.S., relating to Board of directors.

Section 39: Amends s. 631.716, F.S., relating to Board of directors.

Section 40: Amends s. 631.816, F.S., relating to Board of directors.

Section 41: Amends s. 631.912, F.S., relating to Board of directors.

Section 42: Creates s. 633.1423, F.S., relating to State Fire Marshal direct-support organization.

Section 43: Amends s. 634.181, F.S., relating to Grounds for compulsory refusal, suspension, or revocation of license or appointment of salespersons.

Section 44: Amends s. 634.191, F.S., relating to Grounds for discretionary refusal, suspension, or revocation of license or appointment of salespersons.

Section 45: Amends s. 634.320, F.S., relating to Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.

Section 46: Amends s. 634.321, F.S., relating to Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.

Section 47: Amends s. 634.419, F.S., relating to License and appointment required.

Section 48: Amends s. 634.422, F.S., relating to Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.

Section 49: Amends s. 634.423, F.S., relating to Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.

Section 50: Amends s. 648.25, F.S., relating to Definitions.

Section 51: Amends s. 648.26, F.S., relating to Department of Financial Services; administration.

Section 52: Amends s. 648.27, F.S., relating to Licenses and appointments; general.

Section 53: Amends s. 648.285, F.S., relating to Bond agency; ownership requirements.

Section 54: Amends s. 648.30, F.S., relating to Licensure and appointment required; prohibited acts; penalties.

Section 55: Amends s. 648.31, F.S., relating to Appointment taxes and fees.

Section 56: Amends s. 648.34, F.S., relating to Bail bond agents; qualifications.

Section 57: Amends s. 648.355, F.S., relating to Temporary limited license as Limited surety agent or professional bail bond agent; qualifications pending examination.

Section 58: Amends s. 648.382, F.S., relating to Appointment of bail bond agents and temporary bail bond agents; effective date of appointment.

Section 59: Amends s. 648.386, F.S., relating to Qualifications for prelicensing and continuing education schools and instructors.

Section 60: Amends s. 648.387, F.S., relating to Primary Bail bond agents; duties.

Section 61: Creates s. 648.3875, F.S., relating to Primary bail bond agents; qualifications.

Section 62: Amends s. 648.39, F.S., relating to Termination of appointment of managing general agents, bail bond agents, and temporary bail bond agents.

Section 63: Repeals s. 648.41, F.S., relating to Registration of bail bond agents.

Section 64: Amends s. 648.42, F.S., relating to Prohibitions; penalty.

Section 65: Amends s. 648.44, F.S., relating to Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.

Section 66: Amends s. 648.441, F.S., relating to Procedure for disciplinary action against licensees.

Section 67: Amends s. 648.46, F.S., relating to Effect of suspension, revocation upon associated licenses and licensees.

Section 68: Amends s. 648.50, F.S., relating to Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs.

Section 69: Amends s. 717.135, F.S., relating to Unlawful possession of a concealed handcuff key.

Section 70: Amends s. 843.021, F.S., relating to Conduct of delinquency proceeding; foreign insurers.

Section 71: Amends s. 631.152, F.S., relating to Prevention of insolvencies.

Section 72: Amends s. 631.398, F.S., relating to Justification of sureties.

Section 73: Amends s. 903.09, F.S., relating to ratification of the Workers' Compensation Health Care Providers Reimbursement Manual adopted under Rule 69L-7.020, F.A.C.

Section 74: Creates s. undirected law, F.S., relating to Provides an effective date of upon becoming law.

Section 75: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill eliminates the reinsurance intermediary application filing and license fee. The bill will result in an insignificant reduction in revenues. The chart below shows total revenues collected for the last four fiscal years.

	FY 19-20	FY 20-21	FY 21-22	FY 22-23 (partial)
TOTAL [60]	$ 1,250.00	$ 1,100.00	$ 2,050.00	$ 750.00

2. Expenditures:

   The bill makes numerous changes that will require systems and process changes in DFS. However, the fiscal impact is anticipated to be insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[60] Email from Teri Madsen, Director of the Office of Finance and Budget, Department of Financial Services, FW: Reinsurance.xls (Apr. 06, 2023).

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires warranty associations to have a reserve of $100 million, instead of $10 million. The bill requires motor vehicle insurers bear the entire cost of mediation. It makes various other changes that have an indeterminate, negative fiscal impact.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Certain portions of the bill may present a single subject concern or violate separate bill requirements of the Florida Constitution.

B. RULE-MAKING AUTHORITY:

The Department of Financial Services is provided rulemaking authority to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Department of Financial Services; amending s. 20.121, F.S.; revising powers and duties of the department's Division of Investigative and Forensic Services; deleting the department's Strategic Markets Research and Assessment Unit; amending s. 112.215, F.S.; redefining the term "employee" as "government employee" and revising the definition of the term; revising eligibility for plans of deferred compensation established by the Chief Financial Officer; revising the membership of the Deferred Compensation Advisory Council; making technical changes; amending s. 215.55952, F.S.; revising the initial date and subsequent intervals in which the Chief Financial Officer must provide the Governor and the Legislature with a report on the economic impact of certain hurricanes; amending s. 274.01, F.S.; revising the definition of the term "governmental unit" for purposes of ch. 274, F.S.; amending s. 440.13, F.S.; authorizing, rather than requiring, a judge of compensation claims to order an injured employee's evaluation by an expert medical advisor under certain circumstances; revising the schedules of maximum reimbursement allowances determined by the three-member panel under the

Workers' Compensation Law; revising reimbursement requirements for certain providers; requiring the department to annually notify carriers and self-insurers of certain schedules; requiring the publication of a schedule in a certain manner; providing construction; revising factors the panel must consider in establishing the uniform schedule of maximum reimbursement allowances; deleting certain standards for practice parameters; amending s. 440.385, F.S.; revising eligibility requirements for the board of directors of the Florida Self-Insurers Guaranty Association, Incorporated; authorizing the Chief Financial Officer to remove a director under certain circumstances; specifying requirements for, and restrictions on, directors; prohibiting directors and employees of the association from knowingly accepting certain gifts or expenditures; providing penalties; amending s. 497.005, F.S.; adding and revising definitions for purposes of the Florida Funeral, Cemetery, and Consumer Services Act; amending s. 624.1265, F.S.; revising conditions for a nonprofit religious organization to be exempt from requirements of the Florida Insurance Code; amending s. 624.501, F.S.; deleting an application filing and license fee for reinsurance intermediaries; amending s. 626.015,

F.S.; revising the definition of the term "association" for purposes of part I of ch. 626, F.S.; amending s. 626.171, F.S.; deleting the authority of designated examination centers to take fingerprints of applicants for a license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary; amending s. 626.173, F.S.; providing that a certain notice requirement for certain licensed insurance agencies ceasing the transacting of insurance does not apply to certain kinds of insurance; amending s. 626.207, F.S.; revising violations for which the department must adopt rules establishing specific penalties; amending s. 626.221, F.S.; adding a certification that exempts an applicant for license as an all-lines adjuster from an examination requirement; amending s. 626.2815, F.S.; revising continuing education requirements for certain insurance representatives; amending s. 626.321, F.S.; deleting certain requirements for, and restrictions on, licensees of specified limited licenses; adding a limited license for transacting preneed funeral agreement insurance; specifying conditions for issuing such license without an examination; amending s. 626.611, F.S.; revising specified grounds for compulsory disciplinary actions

taken by the department against insurance representatives; amending s. 626.621, F.S.; adding grounds for discretionary disciplinary actions taken by the department against insurance representatives; amending s. 626.7492, F.S.; revising definitions of the terms "producer" and "reinsurance intermediary manager"; revising licensure requirements for reinsurance intermediary brokers and reinsurance intermediary managers; deleting the authority of the department to refuse to issue a reinsurance intermediary license under certain circumstances; amending s. 626.752, F.S.; requiring the department to suspend the authority of an insurer or employer to appoint licensees under certain circumstances relating to the exchange of insurance business; amending s. 626.785, F.S.; authorizing certain persons to obtain a limited license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise; amending ss. 626.793 and 626.837, F.S.; requiring the department to suspend the authority of an insurer or employer to appoint licensees under certain circumstances relating to the acceptance of excess or rejected insurance business; amending s. 626.8411, F.S.; providing that certain notice requirements do not apply to title insurance

agents or title insurance agencies; amending s. 626.8437, F.S.; adding grounds for compulsory disciplinary actions taken by the department against a title insurance agent or agency; amending s. 626.844, F.S.; adding grounds for discretionary disciplinary actions taken by the department against a title insurance agent or agency; amending s. 626.8473, F.S.; revising requirements for engaging in the business as an escrow agent in connection with real estate closing transactions; amending s. 626.854, F.S.; revising applicability of a prohibited act relating to public insurance adjusters; amending s. 626.874, F.S.; revising eligibility requirements for the department's issuance of licenses to catastrophe or emergency adjusters; revising grounds on which the department may deny such license; amending s. 626.9892, F.S.; revising a condition and adding violations for which the department may pay rewards under the Anti-Fraud Reward Program; amending s. 626.9957, F.S.; providing for the expiration of a health coverage navigator's registration under certain circumstances; specifying a restriction on expired registrations; amending s. 627.351, F.S.; revising requirements for membership of the Florida Medical Malpractice Joint Underwriting Association; specifying a requirement for filling

vacancies; authorizing the Chief Financial Officer to remove board members under certain circumstances; providing requirements for, and restrictions on, board members; providing penalties; amending s. 627.7015, F.S.; providing that a disputed property insurance claim is not eligible for mediation until certain conditions are met; providing that fees for a rescheduled mediation conference be assessed by the department rather than the administrator; authorizing the department to suspend an insurer's authority to appoint licensees under certain circumstances; amending s. 627.7074, F.S.; authorizing the department to designate, by written contract or agreement, an entity or a person to administer the alternative dispute resolution process for sinkhole insurance claims; amending s. 627.745, F.S.; revising requirements and procedures for the mediation of personal injury claims under a motor vehicle insurance policy; requiring the department to adopt specified rules relating to a motor vehicle claims insurance mediation program; authorizing the department to designate a person or entity to serve as administrator; amending s. 631.141, F.S.; authorizing the department in receivership proceedings to take certain actions as a domiciliary receiver; amending s.

631.252, F.S.; revising conditions under which policies and contracts of insolvent insurers are canceled; amending ss. 631.56, 631.716, 631.816, and 631.912, F.S.; revising membership eligibility requirements for the Florida Insurance Guaranty Association, the Florida Life and Health Insurance Guaranty Association, the Florida Health Maintenance Organization Consumer Assistance Plan, and the Florida Workers' Compensation Insurance Guaranty Association, Incorporated, respectively; authorizing the Chief Financial Officer to remove a board member under certain circumstances; specifying requirements for, on restrictions on, board members; providing penalties; creating s. 633.1423, F.S.; defining the term "organization"; authorizing the Division of State Fire Marshal to establish a direct-support organization; specifying the purpose of and requirements for the organization; specifying requirements for the organization's written contract and board of directors; providing requirements for the use of property, annual budgets and reports, an annual audit, and the division's receipt of proceeds; authorizing moneys received to be held in a depository account; providing for future repeal; amending s. 634.181, F.S.; adding grounds for compulsory disciplinary

actions by the department against motor vehicle service agreement salespersons; requiring the department to immediately temporarily suspend a license or appointment under certain circumstances; prohibiting a person from transacting insurance business after such suspension; authorizing the department to adopt rules; amending s. 634.191, F.S.; revising grounds for discretionary disciplinary actions by the department against motor vehicle service agreement salespersons; requiring salespersons to submit certain documents to the department; authorizing the department to adopt rules; amending s. 634.320, F.S.; revising grounds for compulsory disciplinary actions by the department against home warranty association sales representatives; requiring the department to immediately temporarily suspend a license or appointment under certain circumstances; prohibiting a person from transacting insurance business after such suspension; authorizing the department to adopt rules; amending s. 634.321, F.S.; revising grounds for discretionary disciplinary actions by the department against home warranty association sales representatives; authorizing the department to adopt rules; amending s. 634.419, F.S.; providing that specified home solicitation sale

requirements do not apply to certain persons relating to the solicitation of service warranty or related service or product sales; amending s. 634.422, F.S.; revising grounds for compulsory disciplinary actions by the department against service warranty association sales representatives; requiring the department to immediately temporarily suspend a license or appointment under certain circumstances; prohibiting a person from transacting insurance business after such suspension; authorizing the department to adopt rules; amending s. 634.423, F.S.; revising grounds for discretionary disciplinary actions by the department against service warranty association sales representatives; authorizing the department to adopt rules; reordering and amending s. 648.25, F.S.; defining and redefining terms; amending s. 648.26, F.S.; authorizing certain actions by the department or the Office of Insurance Regulation relating to certain confidential records relating to bail bond agents; amending s. 648.27, F.S.; deleting a provision relating to the continuance of a temporary bail bond agent license; amending s. 648.285, F.S.; revising requirements, conditions, and procedures for a bail bond agency license; providing applicability; conforming a provision to changes made by the act;

amending s. 648.30, F.S.; revising requirements and conditions for the licensure and appointment as a bail bond agent or bail bond agency; conforming a provision to changes made by the act; amending s. 648.31, F.S.; specifying that there is no fee for the issuance of any appointment to a bail bond agency; conforming a provision to changes made by the act; amending s. 648.34, F.S.; revising qualifications for a bail bond agent license; conforming a provision to changes made by the act; amending s. 648.355, F.S.; deleting provisions relating to temporary licenses as a limited surety agent or professional bail bond agent; specifying requirements for an individual licensed as a temporary bail bond agent to qualify for bail bond agent license; prohibiting the department from issuing a temporary bail bond agent license beginning on a specified date; providing construction relating to existing temporary licenses; amending s. 648.382, F.S.; revising requirements for the appointment of bail bond agents or bail bond agencies; conforming a provision to changes made by the act; amending s. 648.386, F.S.; defining the term "classroom instruction"; revising requirements for approval and certification as an approved limited surety agent and professional bail bond agent continuing education

school; amending s. 648.387, F.S.; renaming primary bail bond agents as bail bond agents in charge; revising the department's disciplinary authority; revising prohibited actions and the applicability of such prohibitions; providing for the automatic expiration of a bail bond agency's license under certain circumstances; creating s. 648.3875, F.S.; providing requirements for applying for designation as a bail bond agent in charge; amending s. 648.39, F.S.; revising applicability of provisions relating to termination of appointments of certain agents and agencies; repealing s. 648.41, F.S., relating to termination of appointment of temporary bail bond agents; amending s. 648.42, F.S.; conforming a provision to changes made by the act; making a technical change; amending s. 648.44, F.S.; revising applicability of prohibited acts; revising and specifying prohibited acts of bail bond agents and bail bond agencies; conforming provisions to changes made by the act; amending s. 648.441, F.S.; revising applicability of a prohibition against furnishing supplies to an unlicensed bail bond agent; amending s. 648.46, F.S.; authorizing certain actions by the department or the office relating to certain confidential records relating to bail bond agents;

amending s. 648.50, F.S.; revising applicability of provisions relating to disciplinary actions taken by the department; conforming provisions to changes made by the act; amending s. 717.135, F.S.; revising a requirement for, and a prohibition on, claimants' representatives relating to unclaimed property recovery agreements and purchase agreements; providing construction; amending s. 843.021, F.S.; revising a defense to an unlawful possession of a concealed handcuff key; amending ss. 631.152, 631.398, and 903.09, F.S.; conforming cross-references; ratifying a specified rule of the Florida Administrative Code relating to the Florida Workers' Compensation Health Care Provider Reimbursement Manual; providing construction; providing effective dates.

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

Section 1. Paragraph (e) of subsection (2) and subsection (6) of section 20.121, Florida Statutes, are amended to read:

20.121 Department of Financial Services.—There is created a Department of Financial Services.

(2) DIVISIONS.—The Department of Financial Services shall consist of the following divisions and office:

(e) The Division of Investigative and Forensic Services,

which shall function as a criminal justice agency for purposes of ss. 943.045-943.08. The division may initiate and conduct investigations into any matter under the jurisdiction of the Chief Financial Officer and Fire Marshal within or outside of this state as it deems necessary. If, during an investigation, the division has reason to believe that any criminal law of this state or the United States has or may have been violated, it shall refer any records tending to show such violation to state ~~or federal~~ law enforcement and, if applicable, federal ~~or~~ prosecutorial agencies and shall provide investigative assistance to those agencies as appropriate ~~required~~. The division shall include the following bureaus and office:

1. The Bureau of Forensic Services;

2. The Bureau of Fire, Arson, and Explosives Investigations;

3. The Office of Fiscal Integrity, which shall have a separate budget;

4. The Bureau of Insurance Fraud; and

5. The Bureau of Workers' Compensation Fraud.

~~(6) STRATEGIC MARKETS RESEARCH AND ASSESSMENT UNIT.—The Strategic Markets Research and Assessment Unit is established within the Department of Financial Services. The Chief Financial Officer or his or her designee shall report on September 1, 2008, and quarterly thereafter, to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives on~~

~~the status of the state's financial services markets. At a minimum, the report must include a summary of issues, trends, and threats that broadly impact the condition of the financial services industries, along with the effect of such conditions on financial institutions, the securities industries, other financial entities, and the credit market. The Chief Financial Officer shall also provide findings and recommendations regarding regulatory and policy changes to the Cabinet, the President of the Senate, and the Speaker of the House of Representatives.~~

Section 2. Subsections (2) and (4), paragraph (a) of subsection (8), and subsection (12) of section 112.215, Florida Statutes, are amended to read:

112.215 Government employees; deferred compensation program.—

(2) For the purposes of this section, the term "government employee" means any person employed, whether appointed, elected, or under contract, by ~~providing services for~~ the state or any governmental unit of the state, including, but not limited to,~~:~~ any state agency; any ~~or~~ county, municipality, or other political subdivision of the state; any special district or water management district, as the terms are defined in s. 189.012 ~~municipality~~; any state university or Florida College System institution, as the terms are defined in s. 1000.21(6) and (3), respectively ~~board of trustees~~; or any constitutional

county officer under s. 1(d), Art. VIII of the State Constitution for which compensation or statutory fees are paid.

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

(b) If the Chief Financial Officer deems it advisable, he or she shall have the power, with the approval of the State Board of Administration, to create a trust or other special funds for the segregation of funds or assets resulting from compensation deferred at the request of government employees participating in ~~of~~ the state plan ~~or its agencies and~~ for the administration of such program.

(c) The Chief Financial Officer, with the approval of the State Board of Administration, may delegate responsibility for administration of the state plan to a person the Chief Financial Officer determines to be qualified, compensate such person, and, directly or through such person or pursuant to a collective

bargaining agreement, contract with a private corporation or institution to provide such services as may be part of any such plan or as may be deemed necessary or proper by the Chief Financial Officer or such person, including, but not limited to, providing consolidated billing, individual and collective recordkeeping and accountings, asset purchase, control, and safekeeping, and direct disbursement of funds to employees or other beneficiaries. The Chief Financial Officer may authorize a person, private corporation, or institution to make direct disbursement of funds under the state plan to an employee or other beneficiary.

(d) In accordance with such approved state plan, and upon contract or agreement with an eligible government employee, deferrals of compensation may be accomplished by payroll deductions made by the appropriate officer or officers of the state, with such funds being thereafter held and administered in accordance with the plan.

(e) The administrative costs of the deferred compensation plan must be wholly or partially self-funded. Fees for such self-funding of the state plan shall be paid by investment providers and may be recouped from their respective plan participants. Such fees shall be deposited in the Deferred Compensation Trust Fund.

(8)(a) There is created a Deferred Compensation Advisory Council composed of eight ~~seven~~ members.

1. One member shall be appointed by the Speaker of the House of Representatives and the President of the Senate jointly and shall be an employee of the legislative branch.

2. One member shall be appointed by the Chief Justice of the Supreme Court and shall be an employee of the judicial branch.

3. One member shall be appointed by the chair of the Public Employees Relations Commission and shall be a nonexempt public employee.

4. The remaining five ~~four~~ members shall be employed by the executive branch and shall be appointed as follows:

a. One member shall be appointed by the Chancellor of the State University System and shall be an employee of the university system.

b. One member shall be appointed by the Chief Financial Officer and shall be an employee of the Chief Financial Officer.

c. One member shall be appointed by the Governor and shall be an employee of the executive branch.

d. One member shall be appointed by the Executive Director of the State Board of Administration and shall be an employee of the State Board of Administration.

e. One member shall be appointed by the Chancellor of the Florida College System and shall be an employee of the Florida College System.

(12) The Chief Financial Officer may adopt any rule

necessary to administer and implement this act with respect to the state deferred compensation plan or plans ~~for state employees and persons employed by a state university as defined in s. 1000.21, a special district as defined in s. 189.012, or a water management district as defined in s. 189.012~~.

Section 3. Section 215.55952, Florida Statutes, is amended to read:

215.55952 Triennial ~~Annual~~ report on economic impact of a 1-in-100-year hurricane.—The Chief Financial Officer shall provide a report on the economic impact on the state of a 1-in-100-year hurricane to the Governor, the President of the Senate, and the Speaker of the House of Representatives by March 1, 2025, and of each triennial year thereafter. The report shall include an estimate of the short-term and long-term fiscal impacts of such a storm on Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, the private insurance and reinsurance markets, the state economy, and the state debt. The report shall also include an analysis of the average premium increase to fund a 1-in-100-year hurricane event and list the average cost, in both a percentage and dollar amount, impact to consumers on a county-level basis. The report may also include recommendations by the Chief Financial Officer for preparing for such a hurricane and reducing the economic impact of such a hurricane on the state. In preparing the analysis, the Chief Financial Officer shall coordinate with and

obtain data from the Office of Insurance Regulation, Citizens Property Insurance Corporation, the Florida Hurricane Catastrophe Fund, the Florida Commission on Hurricane Loss Projection Methodology, the State Board of Administration, the Office of Economic and Demographic Research, and other state agencies.

Section 4. Subsection (1) of section 274.01, Florida Statutes, is amended to read:

274.01 Definitions.—The following words as used in this act have the meanings set forth in the below subsections, unless a different meaning is required by the context:

(1) "Governmental unit" means the governing board, commission, or authority of a county, a county agency, a municipality, a special district as defined in s. 189.012 or taxing district of the state, or the sheriff of the county.

Section 5. Present subsections (15) and (16) of section 440.13, Florida Statutes, are redesignated as subsections (14) and (15), respectively, and paragraph (c) of subsection (9), subsection (12), and present subsection (14) of that section are amended, to read:

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

(9) EXPERT MEDICAL ADVISORS.—

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical

evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the department may, and the judge of compensation claims may ~~shall~~, upon his or her own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The injured employee and the employer or carrier may agree on the health care provider to serve as an expert medical advisor. If the parties do not agree, the judge of compensation claims shall select an expert medical advisor from the department's list of certified expert medical advisors. If a certified medical advisor within the relevant medical specialty is unavailable, the judge of compensation claims shall appoint any otherwise qualified health care provider to serve as an expert medical advisor without obtaining the department's certification. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

(12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM REIMBURSEMENT ALLOWANCES.—

(a) A three-member panel is created, consisting of the Chief Financial Officer, or the Chief Financial Officer's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by ~~physicians,~~ hospitals and~~,~~ ambulatory surgical centers~~, work-hardening programs, pain programs, and durable medical equipment~~. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the department, including maximum hours in which an outpatient may remain in observation status, which shall not exceed 23 hours. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges, except as otherwise provided by this subsection. Annually, the three-member panel shall adopt

schedules of maximum reimbursement allowances for ~~physicians,~~ hospital inpatient care, hospital outpatient care, and ambulatory surgical centers~~, work-hardening programs, and pain programs~~. A ~~An individual physician,~~ hospital or an~~,~~ ambulatory surgical center~~, pain program, or work-hardening program~~ shall be reimbursed either the agreed-upon contract price or the maximum reimbursement allowance in the appropriate schedule.

(b) ~~It is the intent of the Legislature to increase the schedule of maximum reimbursement allowances for selected physicians effective January 1, 2004, and to pay for the increases through reductions in payments to hospitals. Revisions developed pursuant to this subsection are limited to the following:~~

~~1.~~ Payments for outpatient physical, occupational, and speech therapy provided by hospitals shall be ~~reduced to~~ the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

(c)~~2.~~ Payments for scheduled outpatient nonemergency radiological and clinical laboratory services that are not provided in conjunction with a surgical procedure shall be ~~reduced to~~ the schedule of maximum reimbursement allowances for these services which applies to nonhospital providers.

(d)~~3.~~ Outpatient reimbursement for scheduled surgeries shall be ~~reduced from 75 percent of charges to~~ 60 percent of charges.

(e)1. By July 1 of each year, the department shall notify carriers and self-insurers of the physician and nonhospital services schedule of maximum reimbursement allowances. The notice must include publication of this schedule of maximum reimbursement allowances on the division's website. This schedule is not subject to approval by the three-member panel and does not include reimbursement for prescription medication.

2. Subparagraph 1. shall take effect January 1, following the July 1, 2024, notice of the physician and nonhospital services schedule of maximum reimbursement allowances which the department provides to carriers and self-insurers.

(f)~~4.~~ Maximum reimbursement for a physician licensed under chapter 458 or chapter 459 shall be ~~increased to~~ 110 percent of the reimbursement allowed by Medicare, using appropriate codes and modifiers or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(g)~~5.~~ Maximum reimbursement for surgical procedures shall be ~~increased to~~ 140 percent of the reimbursement allowed by Medicare or the medical reimbursement level adopted by the three-member panel as of January 1, 2003, whichever is greater.

(h)~~(e)~~ As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price plus $4.18 for the dispensing fee. For repackaged or relabeled prescription medications dispensed by a dispensing practitioner as provided in s. 465.0276, the fee

schedule for reimbursement shall be 112.5 percent of the average wholesale price, plus $8.00 for the dispensing fee. For purposes of this subsection, the average wholesale price shall be calculated by multiplying the number of units dispensed times the per-unit average wholesale price set by the original manufacturer of the underlying drug dispensed by the practitioner, based upon the published manufacturer's average wholesale price published in the Medi-Span Master Drug Database as of the date of dispensing. All pharmaceutical claims submitted for repackaged or relabeled prescription medications must include the National Drug Code of the original manufacturer. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount except where the employer or carrier, or a service company, third party administrator, or any entity acting on behalf of the employer or carrier directly contracts with the provider seeking reimbursement for a lower amount.

(i) ~~(d)~~ Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical

examinations performed by health care providers under this chapter. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;

2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers; and

3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care

delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers~~; and~~

~~4. The most recent average maximum allowable rate of increase for hospitals determined by the Health Care Board under chapter 408~~.

(j)~~(e)~~ In addition to establishing the uniform schedule of maximum reimbursement allowances, the panel shall:

1. Take testimony, receive records, and collect data to evaluate the adequacy of the workers' compensation fee schedule, nationally recognized fee schedules and alternative methods of reimbursement to health care providers and health care facilities for inpatient and outpatient treatment and care.

2. Survey health care providers and health care facilities to determine the availability and accessibility of workers' compensation health care delivery systems for injured workers.

3. Survey carriers to determine the estimated impact on carrier costs and workers' compensation premium rates by implementing changes to the carrier reimbursement schedule or implementing alternative reimbursement methods.

4. Submit recommendations on or before January 15, 2017, and biennially thereafter, to the President of the Senate and the Speaker of the House of Representatives on methods to improve the workers' compensation health care delivery system.

The department, as requested, shall provide data to the panel, including, but not limited to, utilization trends in the workers' compensation health care delivery system. The department shall provide the panel with an annual report regarding the resolution of medical reimbursement disputes and any actions pursuant to subsection (8). The department shall provide administrative support and service to the panel to the extent requested by the panel. For prescription medication purchased under the requirements of this subsection, a dispensing practitioner shall not possess such medication unless payment has been made by the practitioner, the practitioner's professional practice, or the practitioner's practice management company or employer to the supplying manufacturer, wholesaler, distributor, or drug repackager within 60 days of the dispensing practitioner taking possession of that medication.

~~(14) PRACTICE PARAMETERS.—The practice parameters and protocols mandated under this chapter shall be the practice parameters and protocols adopted by the United States Agency for Healthcare Research and Quality in effect on January 1, 2003.~~

Section 6. Effective January 1, 2024, subsection (2) of section 440.385, Florida Statutes, is amended to read:

440.385 Florida Self-Insurers Guaranty Association, Incorporated.—

(2) BOARD OF DIRECTORS.—The board of directors of the association shall consist of nine persons and shall be organized

as established in the plan of operation. Each director must ~~All board members shall~~ be experienced in self-insurance in this state. Each director shall serve for a 4-year term and may be reappointed. Appointments after January 1, 2002, shall be made by the department upon recommendation of members of the association or other persons with experience in self-insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director shall be reimbursed for expenses incurred in carrying out the duties of the board on behalf of the association.

(a) The Chief Financial Officer may remove a director from office for misconduct, malfeasance, misfeasance, or neglect of duty. Any vacancy so created shall be filled as provided in this subsection.

(b) Directors are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of directors, those persons are considered public officers and the association is considered their agency. Notwithstanding s. 112.3143(2), a director may not vote on any measure that he or

she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such director shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(c) Notwithstanding s. 112.3148, s. 112.3149, or any other law, an employee of the association or a director may not knowingly accept, directly or indirectly, any gift or expenditure from a person or an entity, or an employee or a representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(d) A director who fails to comply with paragraph (b) or paragraph (c) is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 7. Present subsections (62) through (77) and (78) of section 497.005, Florida Statutes, are redesignated as

subsections (63) through (78) and (80), respectively, a new subsection (62) and subsection (79) are added to that section, and subsections (9) and (61) of that section are amended, to read:

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

(9) "Burial service" or "service" means any service offered or provided in connection with the final disposition, memorialization, interment, entombment, or inurnment of human remains or cremated remains which is required to be offered or provided by an individual or entity licensed under this chapter.

(61) "Preneed ~~contract~~" means any arrangement or method, of which the provider of funeral merchandise or services has actual knowledge, whereby any person agrees to furnish funeral merchandise or service in the future.

(62) "Preneed contract" means any arrangement or method for which the provider of funeral merchandise or services receives any payment in advance for funeral or burial merchandise and services after the death of the contract beneficiary. The term excludes a transportation protection agreement and any payments received on a transportation protection agreement.

(79) "Transportation protection agreement" means an agreement that exclusively provides or arranges for services related to the preparation for the purpose of transportation and subsequent transportation of human remains or cremated remains.

The Florida Insurance Code, as defined in s. 624.01, does not apply to any transportation protection agreement sold by any licensee under this chapter.

Section 8. Subsection (1) of section 624.1265, Florida Statutes, is amended to read:

624.1265 Nonprofit religious organization exemption; authority; notice.—

(1) A nonprofit religious organization is not subject to the requirements of the Florida Insurance Code if the nonprofit religious organization:

(a) Qualifies under Title 26, s. 501 of the Internal Revenue Code of 1986, as amended;

(b) Limits its participants to those members who share a common set of ethical or religious beliefs;

(c) Acts as a facilitator among participants who have financial, physical, or medical needs to assist those with financial, physical, or medical needs in accordance with criteria established by the nonprofit religious organization;

(d) Provides for the financial or medical needs of a participant through contributions from other participants, or through payments directly from one participant to another participant;

(e) Provides amounts that participants may contribute, with no assumption of risk and no promise to pay:

1. Among the participants; or

2. By the nonprofit religious organization to the participants;

(f) Provides a monthly accounting to the participants of the total dollar amount of qualified needs actually shared in the previous month in accordance with criteria established by the nonprofit religious organization; ~~and~~

(g) Conducts an annual audit that is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and that is made available to the public by providing a copy upon request or by posting on the nonprofit religious organization's website; and

(h) Does not market or sell health plans by agents licensed by the department under chapter 626.

Section 9. Subsection (25) of section 624.501, Florida Statutes, is amended to read:

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(25) Reinsurance intermediary:

~~(a) Application filing and license fee $50.00~~

~~(b)~~ Original appointment and biennial renewal or continuation thereof, appointment fee $60.00

Section 10. Subsection (5) of section 626.015, Florida

Statutes, is amended to read:

626.015 Definitions.—As used in this part:

(5) "Association" includes the Florida Association of Insurance Agents (FAIA), the National Association of Insurance and Financial Advisors (NAIFA), the National Association of Benefits and Insurance Professionals Florida Chapter (NABIP Florida) ~~Florida Association of Health Underwriters (FAHU)~~, the Latin American Association of Insurance Agencies (LAAIA), the Florida Association of Public Insurance Adjusters (FAPIA), the Florida Bail Agents Association (FBAA), or the Professional Bail Agents of the United States (PBUS).

Section 11. Subsection (4) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, or reinsurance intermediary.—

(4) An applicant for a license issued by the department under this chapter must submit a set of the individual applicant's fingerprints, or, if the applicant is not an individual, a set of the fingerprints of the sole proprietor, majority owner, partners, officers, and directors, to the department and must pay the fingerprint processing fee set forth in s. 624.501. Fingerprints must be processed in accordance with s. 624.34 and used to investigate the applicant's qualifications pursuant to s. 626.201. The fingerprints must be taken by a law

enforcement agency~~, designated examination center,~~ or other department-approved entity. ~~The department shall require all designated examination centers to have fingerprinting equipment and to take fingerprints from any applicant or prospective applicant who pays the applicable fee.~~ The department may not approve an application for licensure as an agent, customer service representative, adjuster, service representative, or reinsurance intermediary if fingerprints have not been submitted.

Section 12. Paragraph (c) of subsection (1) of section 626.173, Florida Statutes, is amended to read:

626.173 Insurance agency closure; cancellation of licenses.—

(1) If a licensed insurance agency permanently ceases the transacting of insurance or ceases the transacting of insurance for more than 30 days, the agent in charge, the director of the agency, or other officer listed on the original application for licensure must, within 35 days after the agency first ceases the transacting of insurance, do all of the following:

(c) Notify all policyholders currently insured by a policy written, produced, or serviced by the agency of the agency's cessation of operations; the date on which operations ceased; and the identity of the agency or agent to which the agency's current book of business has been transferred or, if no transfer has occurred, a statement directing the policyholder to contact

the insurance company for assistance in locating a licensed agent to service the policy. This paragraph does not apply to title insurance, life insurance, or annuity contracts.

Section 13. Subsection (8) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(8) The department shall adopt rules establishing specific penalties against licensees in accordance with ss. 626.641 and 626.651 for violations of s. 626.112(7) or (9), s. 626.611, s. 626.6115, s. 626.621, s. 626.6215, s. 626.7451, s. 626.8437, s. 626.844, s. 626.8695, s. 626.8697, s. 626.8698, s. 626.935, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of the revocation or suspension is to provide a sufficient penalty to deter future violations of the Florida Insurance Code. The imposition of a revocation or the length of suspension shall be based on the type of conduct and the probability that the propensity to commit further illegal conduct has been overcome at the time of eligibility for relicensure. The length of suspension may be adjusted based on aggravating or mitigating factors, established by rule and consistent with this purpose.

Section 14. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state; Certified All Lines Adjuster (CALA) from Kaplan Financial Education; Associate in Claims (AIC) from the Insurance Institute of America; Professional Claims Adjuster (PCA) from the Professional Career Institute; Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy; Certified Adjuster (CA) from ALL LINES Training; Certified Claims Adjuster (CCA) from AE21 Incorporated; Claims Adjuster Certified Professional (CACP) from WebCE, Inc.; Accredited Insurance Claims Specialist (AICS) from Encore Claim Services; Professional in Claims (PIC) from 2021 Training, LLC; or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 15. Paragraphs (c) and (f) of subsection (3) of section 626.2815, Florida Statutes, are amended to read:

626.2815 Continuing education requirements.—

(3) Each licensee except a title insurance agent must complete a 4-hour update course every 2 years which is specific to the license held by the licensee. The course must be developed and offered by providers and approved by the department. The content of the course must address all lines of insurance for which examination and licensure are required and include the following subject areas: insurance law updates, ethics for insurance professionals, disciplinary trends and case studies, industry trends, premium discounts, determining suitability of products and services, and other similar insurance-related topics the department determines are relevant to legally and ethically carrying out the responsibilities of the license granted. A licensee who holds multiple insurance licenses must complete an update course that is specific to at least one of the licenses held. Except as otherwise specified, any remaining required hours of continuing education are elective and may consist of any continuing education course approved by the department under this section.

(c) A licensee who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree or higher in risk management or insurance with evidence of 18 or more semester hours in insurance-related courses must also complete a minimum of 6 hours of elective continuing education courses every 2 years.

(f) Elective continuing education courses for public

adjusters may ~~must~~ be any course related to commercial and residential property coverages, claim adjusting practices, and any other adjuster elective courses ~~specifically designed for public adjusters and~~ approved by the department. Notwithstanding this subsection, public adjusters for workers' compensation insurance or health insurance are not required to take continuing education courses pursuant to this section.

Section 16. Paragraphs (a), (b), and (e) of subsection (1) of section 626.321, Florida Statutes, are amended, and paragraph (i) is added to that subsection, to read:

626.321 Limited licenses and registration.—

(1) The department shall issue to a qualified applicant a license as agent authorized to transact a limited class of business in any of the following categories of limited lines insurance:

(a) Motor vehicle physical damage and mechanical breakdown insurance.—License covering insurance against only the loss of or damage to a motor vehicle that is designed for use upon a highway, including trailers and semitrailers designed for use with such vehicles. Such license also covers insurance against the failure of an original or replacement part to perform any function for which it was designed. ~~A licensee under this paragraph may not hold a license as an agent for any other or additional kind or class of insurance coverage except a limited license for credit insurance as provided in paragraph (e).~~

Effective October 1, 2012, all licensees holding such limited license and appointment may renew the license and appointment, but no new or additional licenses may be issued pursuant to this paragraph, and a licensee whose limited license under this paragraph has been terminated, suspended, or revoked may not have such license reinstated.

(b) Industrial fire insurance or burglary insurance.—License covering only industrial fire insurance or burglary insurance. ~~A licensee under this paragraph may not hold a license as an agent for any other or additional kind or class of insurance coverage except for life insurance and health insurance.~~ Effective July 1, 2019, all licensees holding such limited license and appointment may renew the license and appointment, but no new or additional licenses may be issued pursuant to this paragraph, and a licensee whose limited license under this paragraph has been terminated, suspended, or revoked may not have such license reinstated.

(e) Credit insurance.—License covering credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (GAP) insurance, and any other form of insurance offered in connection with an extension of credit which is limited to partially or wholly extinguishing a credit obligation that the department determines should be designated a form of limited line credit insurance.

Effective October 1, 2012, all valid licenses held by persons for any of the lines of insurance listed in this paragraph shall be converted to a credit insurance license. ~~Licensees who wish to obtain a new license reflecting such change must request a duplicate license and pay a $5 fee as specified in s. 624.501(15).~~ The license may be issued only to an individual employed by a life or health insurer as an officer or other salaried or commissioned representative, to an individual employed by or associated with a lending or financial institution or creditor, or to a lending or financial institution or creditor, and may authorize the sale of such insurance only with respect to borrowers or debtors of such lending or financing institution or creditor. However, only the individual or entity whose tax identification number is used in receiving or is credited with receiving the commission from the sale of such insurance shall be the licensed agent of the insurer. ~~No individual while so licensed shall hold a license as an agent as to any other or additional kind or class of life or health insurance coverage.~~

(i) Preneed funeral agreement insurance.—Limited license for insurance covering only prearranged funeral, cremation, or cemetery agreements, or any combination thereof, funded by insurance and offered in connection with an establishment that holds a preneed license pursuant to s. 497.452. Such license may be issued without examination only to an individual who has

filed with the department an application for a license in a form and manner prescribed by the department, who currently holds a valid preneed sales agent license pursuant to s. 497.466, who paid the applicable fees for a license as prescribed in s. 624.501, who has been appointed under s. 626.112, and who paid the prescribed appointment fee under s. 624.501.

Section 17. Paragraph (n) of subsection (1) of section 626.611, Florida Statutes, is amended to read:

626.611 Grounds for compulsory refusal, suspension, or revocation of agent's, title agency's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—

(1) The department shall deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it shall suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist:

(n) Having been found guilty of or having pleaded guilty or nolo contendere to a misdemeanor directly related to the financial services business, any felony, or any ~~a~~ crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under

the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.

Section 18. Subsection (18) is added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(18) Cancellation of the applicant's, licensee's, or appointee's resident license in a state other than Florida.

Section 19. Paragraphs (d) and (g) of subsection (2) and paragraphs (a), (b), and (e) through (j) of subsection (3) of section 626.7492, Florida Statutes, are amended to read:

626.7492 Reinsurance intermediaries.—

(2) DEFINITIONS.—As used in this section:

(d) "Producer" means a licensed ~~an~~ agent, broker, or insurance agency that is appointed as a reinsurance intermediary ~~licensed~~ pursuant to the applicable provision of the Florida Insurance Code.

(g) "Reinsurance intermediary manager" means any person who has authority to bind, or manages all or part of, the assumed reinsurance business of a reinsurer, including the management of a separate division, department, or underwriting office, and acts as a representative ~~an agent~~ for the reinsurer whether known as a reinsurance intermediary manager, manager, or other similar term. Notwithstanding the above, none of the following persons is a reinsurance intermediary manager with respect to the reinsurer for the purposes of this section:

1. An employee of the reinsurer;

2. A manager of the United States branch of an alien reinsurer;

3. An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to the holding company act, and whose compensation is not based on the volume of premiums written.

4. The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory authority of the state in which the

manager's principal business office is located.

(3) LICENSURE.—

(a) No person shall act as a reinsurance intermediary broker in this state if the reinsurance intermediary broker maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation:

1. In this state, unless the reinsurance intermediary broker is a licensed producer in this state; or

2. In another state, unless the reinsurance intermediary broker is a licensed producer in this state or in another state having a law substantially similar to this section or the reinsurance intermediary broker is licensed in this state as an insurance agency and appointed as a ~~nonresident~~ reinsurance intermediary.

(b) No person shall act as a reinsurance intermediary manager:

1. For a reinsurer domiciled in this state, unless the reinsurance intermediary manager is a licensed producer in this state;

2. In this state, if the reinsurance intermediary manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary manager is a licensed producer in this state;

3. In another state for a nondomestic insurer, unless the reinsurance intermediary manager is a licensed producer in this state or another state having a law substantially similar to this section, or the person is licensed in this state as a producer ~~nonresident reinsurance intermediary~~.

(e) If the applicant for a reinsurance intermediary appointment ~~license~~ is a nonresident, the applicant, as a condition precedent to receiving or holding an appointment ~~a license~~, must designate the Chief Financial Officer as agent for service of process in the manner, and with the same legal effect, provided for by this section for designation of service of process upon unauthorized insurers. Such applicant shall also furnish the department with the name and address of a resident of this state upon whom notices or orders of the department or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the department in writing of each change in its designated agent for service of process, and the change shall not become effective until acknowledged by the department.

(f) ~~The department may refuse to issue a reinsurance intermediary license if, in its judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant, has demonstrated a lack of fitness and trustworthiness, or that any controlling person of the applicant is not fit or trustworthy to act as a reinsurance~~

~~intermediary, or that any of the foregoing has given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license.~~

~~(g)~~ Reinsurance intermediaries shall be ~~licensed,~~ appointed, renewed, continued, reinstated, or terminated as prescribed in this chapter for insurance representatives in general~~, except that they shall be exempt from the photo, education, and examination provisions~~. ~~License,~~ Appointment~~,~~ and other fees shall be those prescribed in s. 624.501.

(g)~~(h)~~ The grounds and procedures for refusal of an ~~a license or~~ appointment or suspension or revocation of a license or appointment issued to a reinsurance intermediary under this section are as set forth in ss. 626.611-626.691 for insurance representatives in general.

(h)~~(i)~~ An attorney licensed in this state, when acting in a professional capacity, is exempt from this subsection.

(i)~~(j)~~ The department may develop necessary rules to carry out this section.

Section 20. Subsection (5) of section 626.752, Florida Statutes, is amended to read:

626.752 Exchange of business.—

(5) Within 15 days after the last day of each month, any insurer accepting business under this section shall report to the department the name, address, telephone number, and social security number of each agent from which the insurer received

more than four personal lines risks during the calendar year, except for risks being removed from the Citizens Property Insurance Corporation and placed with that insurer by a brokering agent. Once the insurer has reported pursuant to this subsection an agent's name to the department, additional reports on the same agent shall not be required. However, the fee set forth in s. 624.501 must be paid for the agent by the insurer for each year until the insurer notifies the department that the insurer is no longer accepting business from the agent pursuant to this section. The insurer may require that the agent reimburse the insurer for the fee. If the insurer or employer does not pay the fees and taxes due pursuant to this subsection within 21 days after notice by the department, the department must suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 21. Subsection (3) of section 626.785, Florida Statutes, is amended to read:

626.785 Qualifications for license.—

(3) Notwithstanding any other provisions of this chapter, a funeral director, a direct disposer, or an employee of a funeral establishment that holds a preneed license pursuant to s. 497.452 may obtain an agent's license or a limited license to sell only policies of life insurance covering the expense of a prearrangement for funeral services or merchandise so as to provide funds at the time the services and merchandise are

needed. The face amount of insurance covered by any such policy shall not exceed $21,000, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for 2016.

Section 22. Subsection (4) of section 626.793, Florida Statutes, is amended to read:

626.793 Excess or rejected business.—

(4) Within 15 days after the last day of each month, any insurer accepting business under this section shall report to the department the name, address, telephone number, and social security number of each agent from which the insurer received more than four risks during the calendar year. Once the insurer has reported an agent's name to the department pursuant to this subsection, additional reports on the same agent shall not be required. However, the fee set forth in s. 624.501 must be paid for the agent by the insurer for each year until the insurer notifies the department that the insurer is no longer accepting business from the agent pursuant to this section. The insurer may require that the agent reimburse the insurer for the fee. If the insurer or employer does not pay the fees and taxes due pursuant to this subsection within 21 days after notice by the department, the department must suspend the insurer's or employer's authority to appoint licensees until all outstanding

fees and taxes have been paid.

Section 23. Subsection (5) of section 626.837, Florida Statutes, is amended to read:

626.837 Excess or rejected business.—

(5) Within 15 days after the last day of each month, any insurer accepting business under this section shall report to the department the name, address, telephone number, and social security number of each agent from which the insurer received more than four risks during the calendar year. Once the insurer has reported pursuant to this subsection an agent's name to the department, additional reports on the same agent shall not be required. However, the fee set forth in s. 624.501 must be paid for the agent by the insurer for each year until the insurer notifies the department that the insurer is no longer accepting business from the agent pursuant to this section. The insurer may require that the agent reimburse the insurer for the fee. If the insurer or employer does not pay the fees and taxes due pursuant to this subsection within 21 days after notice by the department, the department must suspend the insurer's or employer's authority to appoint licensees until all outstanding fees and taxes have been paid.

Section 24. Paragraph (e) is added to subsection (2) of section 626.8411, Florida Statutes, to read:

626.8411 Application of Florida Insurance Code provisions to title insurance agents or agencies.—

(2) The following provisions of part I do not apply to title insurance agents or title insurance agencies:

(e) Section 626.173(1)(c), relating to notifying policyholders of the agency closure.

Section 25. Present subsections (8) through (11) of section 626.8437, Florida Statutes, are redesignated as subsections (9) through (12), respectively, and a new subsection (8) and subsection (13) are added to that section, to read:

626.8437 Grounds for denial, suspension, revocation, or refusal to renew license or appointment.—The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it shall suspend or revoke the eligibility to hold a license or appointment of such person, if it finds that as to the applicant, licensee, appointee, or any principal thereof, any one or more of the following grounds exist:

(8) Misappropriation, conversion, or improper withholding of funds not legally entitled thereto and which are received in a fiduciary capacity and held as part of an escrow agreement, real estate sales contract, or as provided on a settlement statement in a real estate transaction.

(13) Revocation or cancellation of a licensee's resident license in a jurisdiction other than this state.

Section 26. Subsections (7) and (8) are added to section 626.844, Florida Statutes, to read:

626.844 Grounds for discretionary refusal, suspension, or revocation of license or appointment.—The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any title insurance agent or agency, and it may suspend or revoke the eligibility to hold a license or appointment of any such title insurance agent or agency if it finds that as to the applicant or licensee or appointee, or any principal thereof, any one or more of the following grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.8437:

(7) Having been the subject of, or having had a license, permit, appointment, registration, or other authority to conduct business subject to, any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

(8) Revocation or cancellation of a licensee's resident

license in a jurisdiction other than this state.

Section 27. Section 626.8473, Florida Statutes, is amended to read:

626.8473 Escrow; trust fund.—

(1) A title insurance agency ~~agent~~ may engage in business as an escrow agent as to funds received from others to be subsequently disbursed ~~by the title insurance agent~~ in connection with real estate closing transactions involving the issuance of title ~~insurance binders,~~ commitments, policies of title insurance, or guarantees of title, provided that a licensed and appointed title insurance agency ~~agent~~ complies with the requirements of s. 626.8419 ~~s. 626.8417~~, including such requirements added after the initial licensure of the agency ~~agent~~.

(2) All funds received by a title insurance agency ~~agent~~ as described in subsection (1) shall be trust funds received in a fiduciary capacity by the title insurance agency ~~agent~~ and shall be the property of the person or persons entitled thereto.

(3) All funds received by a title insurance agency ~~agent~~ to be held in trust shall be immediately placed in a financial institution that is located within this state and is a member of the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. These funds shall be invested in an escrow account in accordance with the investment requirements and standards established for deposits and investments of state

funds in s. 17.57, where the funds shall be kept until disbursement thereof is properly authorized.

(4) Funds required to be maintained in escrow trust accounts pursuant to this section shall not be subject to any debts of the title insurance agency ~~agent~~ and shall be used only in accordance with the terms of the individual, escrow, settlement, or closing instructions under which the funds were accepted.

(5) The title insurance agency ~~agents~~ shall maintain separate records of all receipts and disbursements of escrow, settlement, or closing funds.

(6) In the event that the department promulgates rules necessary to implement the requirements of this section pursuant to s. 624.308, the department shall consider reasonable standards necessary for the protection of funds held in trust, including, but not limited to, standards for accounting of funds, standards for receipt and disbursement of funds, and protection for the person or persons to whom the funds are to be disbursed.

(7) A title insurance agency ~~agent~~, or any officer, director, or employee thereof, or any person associated therewith as an independent contractor for bookkeeping or similar purposes, who converts or misappropriates funds received or held in escrow or in trust by such title insurance agency ~~agent~~, or any person who knowingly receives or conspires to

receive such funds, commits:

(a) If the funds converted or misappropriated are $300 or less, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) If the funds converted or misappropriated are more than $300, but less than $20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) If the funds converted or misappropriated are $20,000 or more, but less than $100,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the funds converted or misappropriated are $100,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) An attorney shall deposit and maintain all funds received in connection with transactions in which the attorney is serving as a title or real estate settlement agent into a separate trust account that is maintained exclusively for funds received in connection with such transactions and permit the account to be audited by its title insurers, unless maintaining funds in the separate account for a particular client would violate applicable rules of The Florida Bar.

Section 28. Subsection (19) of section 626.854, Florida Statutes, is amended to read:

626.854 "Public adjuster" defined; prohibitions.—The Legislature finds that it is necessary for the protection of the

public to regulate public insurance adjusters and to prevent the unauthorized practice of law.

(19) Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed and appointed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

(a) Prepare, complete, or file an insurance claim for an insured or a third-party claimant;

(b) Act on behalf of or aid an insured or a third-party claimant in negotiating for or effecting the settlement of a claim for loss or damage covered by an insurance contract;

(c) Offer to initiate or negotiate a claim on behalf of an insured;

(d) Advertise services that require a license as a public adjuster; or

(e) Solicit, investigate, or adjust a claim on behalf of a public adjuster, an insured, or a third-party claimant.

Section 29. Section 626.874, Florida Statutes, is amended to read:

626.874 Catastrophe or emergency adjusters.—

(1) In the event of a catastrophe or emergency, the department may issue a license, for the purposes and under the conditions and for the period of emergency as it shall determine, to persons who are residents or nonresidents of this state, who are at least 18 years of age, who are United States

citizens or legal aliens who possess work authorization from the United States Bureau of Citizenship and Immigration Services, and who are not licensed adjusters under this part but who have been designated and certified to it as qualified to act as adjusters by an authorized insurer to adjust claims, losses, or damages under policies or contracts of insurance issued by such insurers, or by a licensed ~~the primary adjuster of an~~ independent adjusting firm contracted with an authorized insurer to adjust claims on behalf of the insurer. The fee for the license is as provided in s. 624.501(12)(c).

(2) If any person not a licensed adjuster who has been permitted to adjust such losses, claims, or damages under the conditions and circumstances set forth in subsection (1), engages in any of the misconduct described in or contemplated by chapter 626 ~~ss. 626.611 and 626.621~~, the department, without notice and hearing, shall be authorized to issue its order denying such person the privileges granted under this section; and thereafter it shall be unlawful for any such person to adjust any such losses, claims, or damages in this state.

Section 30. Subsection (2) of section 626.9892, Florida Statutes, is amended to read:

626.9892 Anti-Fraud Reward Program; reporting of insurance fraud.—

(2) The department may pay rewards of up to $25,000 to persons providing information leading to the arrest ~~and~~

~~conviction~~ of persons committing crimes investigated by the department arising from violations of s. 400.9935, s. 440.105, s. 624.15, s. 626.112, s. 626.8473, s. 626.8738, s. 626.9541, s. 626.989, s. 790.164, s. 790.165, s. 790.166, s. 806.01, s. 806.031, s. 806.10, s. 806.111, s. 812.014, s. 817.034, s. 817.233, ~~or~~ s. 817.234, s. 817.236, s. 817.2361, s. 817.505, s. 817.568, s. 831.01, s. 895.03, s. 895.04, or s. 896.101.

Section 31. Present subsections (7) through (12) of section 626.9957, Florida Statutes, are redesignated as subsections (8) through (13), respectively, and a new subsection (7) is added to that section, to read:

626.9957 Conduct prohibited; denial, revocation, termination, expiration, or suspension of registration.—

(7) If a navigator registered under this part fails to maintain an active, valid navigator's registration status with the Federal Government or an exchange, the navigator's registration issued under this part shall expire by operation of law. A navigator with an expired registration may not be granted subsequent registration until the navigator qualifies as a first-time applicant.

Section 32. Paragraph (c) of subsection (4) of section 627.351, Florida Statutes, is amended to read:

627.351 Insurance risk apportionment plans.—

(4) MEDICAL MALPRACTICE RISK APPORTIONMENT.—

(c) The Joint Underwriting Association shall operate

subject to the supervision and approval of a board of governors consisting of representatives of five of the insurers participating in the Joint Underwriting Association, an attorney named by The Florida Bar, a physician named by the Florida Medical Association, a dentist named by the Florida Dental Association, and a hospital representative named by the Florida Hospital Association. The Chief Financial Officer shall select the representatives of the five insurers or other persons with experience in medical malpractice insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). One insurer representative shall be selected from recommendations of the American Insurance Association. One insurer representative shall be selected from recommendations of the Property Casualty Insurers Association of America. One insurer representative shall be selected from recommendations of the Florida Insurance Council. Two insurer representatives shall be selected to represent insurers that are not affiliated with these associations. Vacancies on the board shall be filled for the remaining period of the term in the same manner as the initial appointments. During the first meeting of the board after June 30 of each year, the board shall choose one of its members to serve as chair of the board and another member to serve as vice chair of the board. There is no liability on the part of, and no cause of action shall arise against, any member

insurer, self-insurer, or its agents or employees, the Joint Underwriting Association or its agents or employees, members of the board of governors, or the office or its representatives for any action taken by them in the performance of their powers and duties under this subsection.

1. The Chief Financial Officer may remove a board member from office for misconduct, malfeasance, misfeasance, or neglect of duty. Any vacancy so created shall be filled as provided in this paragraph.

2. Board members are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of governors, those persons are considered public officers and the Joint Underwriting Association is considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that he or she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such board member shall publicly state to the board the nature of his or her

interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

3. Notwithstanding s. 112.3148, s. 112.3149, or any other law, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the Joint Underwriting Association or which is under consideration for a contract.

4. A board member who fails to comply with subparagraph 2. or subparagraph 3. is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 31. Subsections (2) and (3) of section 627.7015, Florida Statutes, are amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(2) At the time of issuance and renewal of a policy or at the time a first-party claim within the scope of this section is filed by the policyholder, the insurer shall notify the policyholder of its right to participate in the mediation program under this section. A claim is not eligible for mediation until an insurer has made a claim determination or

elected to repair pursuant to s. 627.70131. The department shall prepare a consumer information pamphlet for distribution to persons participating in mediation.

(3) The costs of mediation must be reasonable, and the insurer must bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If a policyholder fails to appear at the conference, the conference must be rescheduled upon the policyholder's payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer must pay the policyholder's actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled conference. The fees assessed by the department ~~administrator~~ must include a charge necessary to defray the expenses of the department related to its duties under this section and must be deposited in the Insurance Regulatory Trust Fund. The department may suspend the insurer's authority to appoint licensees if the insurer does not timely pay the required fees.

Section 34. Subsection (18) is added to section 627.7074, Florida Statutes, to read:

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

(18) The department may designate, by means of a written contract or agreement, an entity or a person to serve as administrator to carry out any of the provisions of this section.

Section 35. Section 627.745, Florida Statutes, is amended to read:

627.745 Mediation of claims.—

(1)(a) In any claim filed with an insurer for personal injury in an amount of $10,000 or less or any claim for property damage in any amount, arising out of the ownership, operation, use, or maintenance of a motor vehicle, either party may demand mediation of the claim prior to the institution of litigation.

(b) The costs of mediation must be reasonable, and the insurer must bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If a policyholder fails to appear at the conference, the conference must be rescheduled upon the policyholder's payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer must pay the policyholder's actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer is deemed to have failed to appear if the insurer's representative lacks authority

to settle the full value of the claim. The insurer shall incur an additional fee, paid to the mediator, for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled conference. The fees assessed by the department or administrator must include a charge necessary to defray the expenses of the department related to its duties under this section and must be deposited in the Insurance Regulatory Trust Fund. The department or administrator may request that the department suspend the insurer's authority to appoint licensees if the insurer does not timely pay the per-mediation-event administrative fee. Mediation under this section is also available to litigants referred to the department by a county court or circuit court.

~~(b) A request for mediation shall be filed with the department on a form approved by the department. The request for mediation shall state the reason for the request for mediation and the issues in dispute which are to be mediated. The filing of a request for mediation tolls the applicable time requirements for filing suit for a period of 60 days following the conclusion of the mediation process or the time prescribed in s. 95.11, whichever is later.~~

(c) ~~The insurance policy must specify in detail the terms and conditions for mediation of a first-party claim.~~

~~(d) The mediation shall be conducted as an informal process in which formal rules of evidence and procedure need not~~

~~be observed. Any party participating in a mediation must have the authority to make a binding decision. All parties must mediate in good faith.~~

~~(e) The department shall randomly select mediators. Each party may once reject the mediator selected, either originally or after the opposing side has exercised its option to reject a mediator.~~

~~(f) Costs of mediation shall be borne equally by both parties unless the mediator determines that one party has not mediated in good faith.~~

~~(g)~~ Only one mediation may be requested for each claim, unless all parties agree to further mediation.

~~(2) Upon receipt of a request for mediation, the department shall refer the request to a mediator. The mediator shall notify the applicant and all interested parties, as identified by the applicant, and any other parties the mediator believes may have an interest in the mediation, of the date, time, and place of the mediation conference. The conference may be held by telephone, if feasible. The mediation conference shall be held within 45 days after the request for mediation.~~

(2)(a)~~(3)(a)~~ The department shall approve mediators to conduct mediations pursuant to this section. All mediators must file an application under oath for approval as a mediator.

(b) To qualify for approval as a mediator, an individual must meet one of the following qualifications:

1. Possess an active certification as a Florida Supreme Court certified circuit court mediator. A Florida Supreme Court certified circuit court mediator in a lapsed, suspended, sanctioned, or decertified status is not eligible to participate in the mediation program.

2. Be an approved department mediator as of July 1, 2014, and have conducted at least one mediation on behalf of the department within 4 years immediately preceding that date.

(3) ~~(4)~~ The department shall deny an application, or suspend or revoke its approval, of a mediator to serve in such capacity if the department finds that one or more of the following grounds exist:

(a) Lack of one or more of the qualifications specified in this section for approval.

(b) Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the approval.

(c) Demonstrated lack of fitness or trustworthiness to act as a mediator.

(d) Fraudulent or dishonest practices in the conduct of mediation or in the conduct of business in the financial services industry.

(e) Violation of any provision of this code or of a lawful order or rule of the department, violation of the Florida Rules for Certified and Court-Appointed Mediators, or aiding, instructing, or encouraging another party in committing such a

violation.

The department may adopt rules to administer this subsection.

(4) The department shall adopt by rule a motor vehicle claims insurance mediation program to be administered by the department or its designee. The department may also adopt special rules that are applicable in cases of an emergency within the state. The rules shall be modeled after practices and procedures set forth in mediation rules of procedure adopted by the Supreme Court. The rules must include:

(a) Reasonable requirements for processing and scheduling of requests for mediation.

(b) Provisions governing who may attend mediation conferences.

(c) Selection of mediators.

(d) Criteria for the conduct of mediation conferences.

(e) Right to legal counsel.

~~(5) The department must adopt rules of procedure for claims mediation, taking into consideration a system which:~~

~~(a) Is fair.~~

~~(b) Promotes settlement.~~

~~(c) Avoids delay.~~

~~(d) Is nonadversarial.~~

~~(e) Uses a framework for modern mediating technique.~~

(f) Controls of costs and expenses of mediation.

(5) The department may designate an entity or person to serve as an administrator to carry out any of the provisions of this section and may take this action by means of a written contract or agreement.

(6) Disclosures and information divulged in the mediation process are not admissible in any subsequent action or proceeding relating to the claim or to the cause of action giving rise to the claim. A person demanding mediation under this section may not demand or request mediation after a suit is filed relating to the same facts already mediated.

Section 36. Present subsections (7) through (12) of section 631.141, Florida Statutes, are redesignated as subsections (8) through (13), respectively, and a new subsection (7) is added to that section, to read:

631.141 Conduct of delinquency proceeding; domestic and alien insurers.—

(7) In order to preserve as much as possible the right and interest of the policyholders whose insurance policies or similar contracts are affected by the receivership proceedings, the department as a domiciliary receiver may:

(a) Use the property of the estate of the insurer to transfer the insurer's book of business, policies, or similar contracts of coverage, in whole or in part, to a solvent assuming insurer or insurers.

(b) Notwithstanding s. 631.195, share records of the

insurer with the prospective solvent assuming insurer or insurers, but only to the extent necessary to undertake due diligence for a transfer contemplated under this section.

Section 37. Subsections (1) and (3) of section 631.252, Florida Statutes, are amended to read:

631.252 Continuation of coverage.—

(1) Unless another insurer, with approval of the receivership court, assumes or otherwise provides coverage for the policies of the insolvent insurer, all insurance policies or similar contracts of coverage, other than coverages defined in s. 631.713 or health maintenance organization coverage under part IV, issued by the insurer shall be canceled upon the earlier ~~earliest to occur~~ of the following:

(a) The date of entry of the liquidation or, if the court so provides in its order, the expiration of 30 days from the date of entry of the liquidation order;

(b) The normal expiration of the policy or contract coverage;

(c) The replacement of the coverage by the insured, or the replacement of the policy or contract of coverage, with a policy or contract acceptable to the insured by the receiver with another insurer; ~~or~~

(d) The date proposed by the receiver and approved by the receivership court to cancel coverage; or

(e) ~~(d)~~ The termination of the coverage by the insured.

(3) The 30-day coverage continuation period provided in paragraph (1)(a) and s. 631.57(1)(a)1. may not be extended unless the Chief Financial Officer ~~office~~ determines, based on a reasonable belief, that market conditions are such that policies of residential property insurance coverage cannot be placed with an authorized insurer within 30 days and that an additional 15 days is needed to place such coverage.~~; and~~ Failure of actual notice to the policyholder of the insolvency of the insurer, of commencement of a delinquency proceeding, or of expiration of the extension period does not affect such expiration.

Section 38. Subsection (1) of section 631.56, Florida Statutes, is amended, and subsections (5) through (8) are added to that section, to read:

631.56 Board of directors.—

(1) The board of directors of the association shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. Three members of the board must be representatives from domestic insurers and appointed by the Chief Financial Officer. The department shall approve and appoint to the board persons recommended by the member insurers or other persons with experience in property and casualty insurance or motor vehicle insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). ~~In the event the department finds that any recommended person~~

~~does not meet the qualifications for service on the board, the department shall request the member insurers to recommend another person.~~ Each member shall serve for a 4-year term and may be reappointed. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments.

(5) The Chief Financial Officer may remove a board member from office for misconduct, malfeasance, misfeasance, or neglect of duty. Any vacancy so created shall be filled as provided in subsection (1).

(6) Board members are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of directors, those persons are considered public officers and the association is considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that he or she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the

nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(7) Notwithstanding s. 112.3148, s. 112.3149, or any other law, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(8) A board member who fails to comply with subsection (6) or subsection (7) is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 39. Paragraph (a) of subsection (1) of section 631.716, Florida Statutes, is amended, and subsections (4) through (7) are added to that section, to read:

631.716 Board of directors.—

(1)(a) The board of directors of the association shall have at least 9, but no more than 11, members. The members shall consist ~~be comprised~~ of member insurers serving terms as established in the plan of operation and 1 Florida Health Maintenance Organization Consumer Assistance Plan director confirmed pursuant to paragraph (b), or other persons with

experience in life and annuity or accident and health insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). At all times, at least 1 ~~member of the~~ board member must be a domestic insurer as defined in s. 624.06(1). The ~~members of the~~ board members who are member insurers shall be elected by member insurers, subject to the approval of the department. Each board member shall serve for a 4-year term and may be reappointed.

(4) The Chief Financial Officer may remove a board member from office for misconduct, malfeasance, misfeasance, or neglect of duty. Any vacancy so created shall be filled as provided in subsection (1).

(5) Board members are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of directors, those persons are considered public officers and the association is considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that he or she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she

knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(6) Notwithstanding s. 112.3148, s. 112.3149, or any other law, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the association or which is under consideration for a contract.

(7) A board member who fails to comply with subsection (5) or subsection (6) is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 40. Subsection (1) of section 631.816, Florida Statutes, is amended, and subsections (8) through (11) are added to that section, to read:

631.816 Board of directors.—

(1) The board of directors of the plan shall consist of not less than five or more than nine persons serving terms as established in the plan of operation. The department shall

approve and appoint to the board persons recommended by the member HMOs or other persons with experience in health insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). ~~In the event the department finds that any recommended person does not meet the qualifications for service on the board, the department shall request the member HMOs to recommend another person.~~ Each member shall serve for a 4-year term and may be reappointed, except that terms may be staggered as defined in the plan of operation. Vacancies on the board shall be filled for the remaining period of the term in the same manner as initial appointments. In determining voting rights, each HMO is entitled to vote on the basis of cumulative weighted voting based on the net written premium for non-Medicare and non-Medicaid policies.

(8) The Chief Financial Officer may remove a board member from office for misconduct, malfeasance, misfeasance, or neglect of duty. Any vacancy so created shall be filled as provided in subsection (1).

(9) Board members are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of directors, those persons are considered public officers and the

plan is considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that he or she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(10) Notwithstanding s. 112.3148, s. 112.3149, or any other law, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the plan or which is under consideration for a contract.

(11) A board member who fails to comply with subsection (9) or subsection (10) is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 41. Subsection (1) of section 631.912, Florida

Statutes, is amended, and subsections (4), (5), and (6) are added to that section, to read:

631.912 Board of directors.—

(1) The board of directors of the corporation shall consist of 11 persons, 1 of whom is the insurance consumer advocate appointed under s. 627.0613 or designee and 1 of whom is designated by the Chief Financial Officer. The department shall appoint to the board 6 persons selected by private carriers from among the 20 workers' compensation insurers with the largest amount of direct written premium as determined by the department, and 2 persons selected by the self-insurance funds or other persons with experience in workers' compensation insurance as determined by the Chief Financial Officer. These appointments are deemed to be within the scope of the exemption provided in s. 112.313(7)(b). The Governor shall appoint one person who has commercial insurance experience. At least two of the private carriers shall be foreign carriers authorized to do business in this state. The board shall elect a chairperson from among its members. The Chief Financial Officer may remove any board member for cause. Each board member shall be appointed to serve a 4-year term and may be reappointed. A vacancy on the board shall be filled for the remaining period of the term in the same manner by which the original appointment was made.

(4) Board members are subject to the code of ethics under part III of chapter 112, including, but not limited to, the code

of ethics and public disclosure and reporting of financial interests, pursuant to s. 112.3145. For purposes of applying part III of chapter 112 to activities of members of the board of directors, those persons are considered public officers and the corporation is considered their agency. Notwithstanding s. 112.3143(2), a board member may not vote on any measure that he or she knows would inure to his or her special private gain or loss; that he or she knows would inure to the special private gain or loss of any principal by which he or she is retained, other than an agency as defined in s. 112.312; or that he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Before the vote is taken, such member shall publicly state to the board the nature of his or her interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes.

(5) Notwithstanding s. 112.3148, s. 112.3149, or any other law, a board member may not knowingly accept, directly or indirectly, any gift or expenditure from a person or entity, or an employee or representative of such person or entity, which has a contractual relationship with the corporation or which is under consideration for a contract.

(6) A board member who fails to comply with subsection (4) or subsection (5) is subject to the penalties provided under ss. 112.317 and 112.3173.

Section 42. Section 633.1423, Florida Statutes, is created to read:

633.1423 State Fire Marshal direct-support organization.—

(1) DEFINITION.—As used in this section, the term "organization" means the direct-support organization established under this section.

(2) ORGANIZATION ESTABLISHED.—The division may establish a direct-support organization, to be known as the "State Fire Marshal Safety and Training Force," whose sole purpose is to support the safety and training of firefighters and to recognize exemplary service. The organization must:

(a) Be a not-for-profit corporation incorporated under chapter 617 and approved by the Department of State.

(b) Be organized and operated to raise funds; request and receive grants, gifts, and bequests of money; conduct programs and activities; acquire, receive, hold, invest, and administer, in its own name, securities, funds, or property; and make grants and expenditures to or for the direct or indirect benefit of the division. Grants and expenditures may include the cost of education or training of firefighters, or the recognition of exemplary service of firefighters.

(c) Be determined by the division to operate in a manner

that is:

1. Consistent with the goals of the division and laws relating to the safety and training of firefighters.

2. In the best interest of the state.

3. In accordance with the adopted goals and mission of the division.

(d) Use all of its grants and expenditures solely for the purpose of educating, training, and recognizing firefighters, and not for advertising using the likeness or name of any elected official nor for the purpose of lobbying as defined in s. 11.045(1).

(e) Be subject to an annual financial audit in accordance with s. 215.981.

(3) CONTRACT.—The organization shall operate under written contract with the division. The contract must provide for:

(a) Certification by the division that the organization is complying with the terms of the contract and in a manner consistent with the goals and purposes of the department and in the best interest of the state. Such certification must be made annually and reported in the official minutes of a meeting of the organization.

(b) The reversion of moneys and property held by the organization for firefighter safety, training, and recognition to the division if the organization is no longer approved to operate by the division or if the organization ceases to exist,

or to the state if the division ceases to exist.

(4) BOARD OF DIRECTORS.—The organization shall be governed by a board of directors. The State Fire Marshal, or his or her designee, shall appoint a president of the board. The board of directors shall be appointed by the president of the board.

(5) USE OF PROPERTY.—The division may authorize, without charge, appropriate use of fixed property and facilities of the division by the organization, subject to this subsection.

(a) The department may prescribe any condition with which the organization must comply in order to use the division's property or facilities.

(b) The department may not authorize the use of the division's property or facilities if the organization does not provide equal membership and employment opportunities to all persons regardless of race, religion, sex, age, or national origin.

(c) The department shall adopt rules prescribing the procedures by which the organization is governed and any conditions with which the organization must comply to use the division's property or facilities.

(6) DEPOSITORY ACCOUNT.—Any moneys received by the organization may be held in a separate depository account in the name of the organization and subject to the contract with the division.

(7) ANNUAL BUDGETS AND REPORTS.—The organization shall

submit to the division its annual budget and financial reports, its federal Internal Revenue Service Application for Recognition of Exemption Form 1023, and its federal Internal Revenue Service Return of Organization Exempt from Income Tax Form 990.

(8) ANNUAL AUDIT.—The organization shall provide for an annual financial audit in accordance with s. 215.981.

(9) DIVISION'S RECEIPT OF PROCEEDS.—Proceeds received by the division from the organization shall be deposited into the Insurance Regulatory Trust Fund.

(10) REPEAL.—This section is repealed October 1, 2028, unless reviewed and saved from repeal by the Legislature.

Section 43. Section 634.181, Florida Statutes, is amended to read:

634.181 Grounds for compulsory refusal, suspension, or revocation of license or appointment of salespersons.—

(1) The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any such salesperson if it finds that as to the salesperson any one or more of the following applicable grounds exist:

(a) ~~(1)~~ Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain the license or appointment.

(b) ~~(2)~~ If the license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part, any applicable provision of the Florida Insurance Code, or rule of the department or commission.

(c) ~~(3)~~ Willful misrepresentation of any service agreement or willful deception with regard to any agreement, done either in person or by any form of dissemination of information or advertising.

(d) ~~(4)~~ If in the adjustment of claims arising out of service agreements, she or he has materially misrepresented to a service agreement holder or other interested party the terms and coverage of a service agreement with intent and for the purpose of effecting settlement of the claim on less favorable terms than those provided in and contemplated by the service agreement.

(e) ~~(5)~~ For demonstrated lack of fitness or trustworthiness to engage in the service agreement business.

(f) ~~(6)~~ For demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(g) ~~(7)~~ Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(h) ~~(8)~~ Misappropriation, conversion, or unlawful withholding of moneys belonging to a service agreement company, insurer, or service agreement holder or to others and received in the conduct of business under the license or appointment.

(i) ~~(9)~~ For unlawfully rebating, or attempt thereat, or for unlawfully dividing or offering to divide her or his commission with another.

(j) ~~(10)~~ Willful failure to comply with, or willful violation of any proper order of the department or office, or willful violation of any provision of this part, or of any applicable provision of the insurance code, or applicable rule of the department or commission.

(k) ~~(11)~~ Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.

(l) ~~(12)~~ Failure to refund unearned pro rata commission to the agreement holder or the service agreement company, if the service agreement company is making a full unearned pro rata refund to the agreement holder.

(m) Having been the subject of, or having had a license, permit, appointment, registration, or other authority to conduct business subject to, any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or options exchange, or national securities, commodities, or options association involving a violation of any federal or state

securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

(2) When a licensee is charged with a felony enumerated in s. 626.207(2), the department shall, immediately upon receipt of information on or indictment for the felony, temporarily suspend a license or appointment issued under this chapter. Such suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of his or her license or appointment.

(3) The department may adopt rules to administer this section.

Section 44. Section 634.191, Florida Statutes, is amended to read:

634.191 Grounds for discretionary refusal, suspension, or revocation of license or appointment of salespersons.—

(1) The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any salesperson if it finds that as to the salesperson any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.181:

(a)~~(1)~~ For any cause for which granting of the license or appointment could have been refused had it then existed and been known to the department.

(b)~~(2)~~ Violation of any provision of this part or of any other law applicable to the business of service agreements in the course of dealings under the license or appointment.

(c)~~(3)~~ Violation of ~~Has violated~~ any lawful order or rule of the department or commission.

(d)~~(4)~~ Failure or refusal, upon demand, to pay over to any company or insurer the salesperson represents or has represented any money coming into her or his hands belonging to the company or insurer.

(e)~~(5)~~ If, in the conduct of business under the license or appointment, the salesperson has engaged in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part, or has otherwise shown herself or himself to be a source of injury or loss to the public or detrimental to the public interest.

(f)~~(6)~~ Failure to report to the department within 30 days the final disposition of an administrative action taken against a salesperson by a governmental agency or other regulatory agency in this state or any other state or jurisdiction relating to the business of insurance, the sale of securities, or an activity involving fraud, dishonesty, trustworthiness, or breach

of a fiduciary duty. The salesperson must submit a copy of the order, consent to order, or other relevant legal documents to the department ~~Having been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases~~.

(2) The department may adopt rules to administer this section.

Section 45. Section 634.320, Florida Statutes, is amended to read:

634.320 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—

(1) The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(a) ~~(1)~~ Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain a license or appointment.

(b) ~~(2)~~ The license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(c) ~~(3)~~ Willful misrepresentation of any warranty contract

or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(d) ~~(4)~~ In the adjustment of claims arising out of warranties, material misrepresentation to a warranty holder or other interested party of the terms and coverage of a contract, with the intent and for the purpose of effecting settlement of such claim on less favorable terms than those provided in and contemplated by the contract.

(e) ~~(5)~~ Demonstrated lack of fitness or trustworthiness to engage in the business of home warranty.

(f) ~~(6)~~ Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(g) ~~(7)~~ Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(h) ~~(8)~~ Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of business under the license or appointment.

(i) ~~(9)~~ Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, her or his commission with another.

(j) ~~(10)~~ Willful failure to comply with, or willful violation of, any proper order or rule of the department or

commission or willful violation of any provision of this part.

(k) ~~(11)~~ Being found guilty of or pleading guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country ~~involving moral turpitude~~, without regard to whether judgment of conviction has been entered by the court.

(l) Having been the subject of, or having had a license, permit, appointment, registration, or other authority to conduct business subject to, any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or options exchange, or national securities, commodities, or options association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

(2) When a licensee is charged with a felony enumerated in s. 626.207(2), the department shall, immediately upon receipt of information on or indictment for the felony, temporarily suspend a license or appointment issued under this chapter. Such suspension shall continue if the licensee is found guilty of, or

pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of his or her license or appointment.

(3) The department may adopt rules to administer this section.

Section 46. Section 634.321, Florida Statutes, is amended to read:

634.321 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—

(1) The department may, in its discretion, deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.320:

(a) ~~(1)~~ Any cause for which granting of the license or appointment could have been refused had it then existed and been known to the department.

(b) ~~(2)~~ Violation of any provision of this part, or of any other law applicable to the business of warranties, in the course of dealings under the license or appointment.

(c) ~~(3)~~ Violation of any lawful order or rule of the department or commission.

(d) ~~(4)~~ Failure or refusal to pay over, upon demand, to any home warranty association or insurer the sales representative represents or has represented any money coming into her or his hands which belongs to the association or insurer.

(e) ~~(5)~~ In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part, or otherwise showing herself or himself to be a source of injury or loss to the public or detriment to the public interest.

(f) ~~(6)~~ Failure to report to the department within 30 days the final disposition of an administrative action taken against a sales representative by a governmental agency or other regulatory agency in this state or any other state or jurisdiction relating to the business of insurance, the sale of securities, or an activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty. The sales representative must submit a copy of the order, consent to order, or other relevant legal documents to the department ~~Being found guilty of or pleading guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country, without regard to whether a judgment of conviction has been entered by the court~~.

(2) The department may adopt rules to administer this

section.

Section 47. Section 634.419, Florida Statutes, is amended to read:

634.419 License and appointment required.—No person or entity shall solicit, negotiate, advertise, or effectuate service warranty contracts in this state unless such person or entity is licensed and appointed as a sales representative. Sales representatives shall be responsible for the actions of persons under their supervision. However, a service warranty association licensed as such under this part shall not be required to be licensed and appointed as a sales representative to solicit, negotiate, advertise, or effectuate its products. Sections 501.021-501.055 do not apply to persons or entities licensed and appointed under this section, or their affiliates, which solicit the sale of a service warranty or related service or product in connection with a prearranged appointment at the request of the consumer.

Section 48. Section 634.422, Florida Statutes, is amended to read:

634.422 Grounds for compulsory refusal, suspension, or revocation of license or appointment of sales representatives.—

(1) The department shall deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist:

(a) ~~(1)~~ Material misstatement, misrepresentation, or fraud in obtaining or attempting to obtain a license or appointment.

(b) ~~(2)~~ The license or appointment is willfully used, or to be used, to circumvent any of the requirements or prohibitions of this part.

(c) ~~(3)~~ Willful misrepresentation of any service warranty contract or willful deception with regard to any such contract, done either in person or by any form of dissemination of information or advertising.

(d) ~~(4)~~ In the adjustment of claims arising out of warranties, material misrepresentation to a service warranty holder or other interested party of the terms and coverage of a contract with the intent and for the purpose of effecting settlement of the claim on less favorable terms than those provided in and contemplated by the contract.

(e) ~~(5)~~ Demonstrated lack of fitness or trustworthiness to engage in the business of service warranty.

(f) ~~(6)~~ Demonstrated lack of adequate knowledge and technical competence to engage in the transactions authorized by the license or appointment.

(g) ~~(7)~~ Fraudulent or dishonest practices in the conduct of business under the license or appointment.

(h) ~~(8)~~ Misappropriation, conversion, or unlawful withholding of moneys belonging to an association, insurer, or warranty holder, or to others, and received in the conduct of

business under the license or appointment.

(i) ~~(9)~~ Unlawfully rebating, or attempting to unlawfully rebate, or unlawfully dividing, or offering to divide, her or his commission with another.

(j) ~~(10)~~ Willful failure to comply with, or willful violation of, any proper order or rule of the department or commission, or willful violation of any provision of this part.

(k) ~~(11)~~ Being found guilty of or pleading nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country ~~involving moral turpitude~~, without regard to whether judgment of conviction has been entered by the court having jurisdiction of the case.

(l) Having been the subject of, or having had a license, permit, appointment, registration, or other authority to conduct business subject to, any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or options exchange, or national securities, commodities, or options association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or

national securities, commodities, or options association.

(2) When a licensee is charged with a felony enumerated in s. 626.207(2), the department shall, immediately upon receipt of information on or indictment for the felony, temporarily suspend a license or appointment issued under this chapter. Such suspension shall continue if the licensee is found guilty of, or pleads guilty or nolo contendere to, the crime, regardless of whether a judgment or conviction is entered, during a pending appeal. A person may not transact insurance business after suspension of his or her license or appointment.

(3) The department may adopt rules to administer this section.

Section 49. Section 634.423, Florida Statutes, is amended to read:

634.423 Grounds for discretionary refusal, suspension, or revocation of license or appointment of sales representatives.—

(1) The department may deny, suspend, revoke, or refuse to renew or continue the license or appointment of any sales representative if it is found that any one or more of the following grounds applicable to the sales representative exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 634.422:

(a) ~~(1)~~ Any cause for which granting of the license or appointment could have been refused had it then existed and been known to the department.

(b) ~~(2)~~ Violation of any provision of this part, or of any other law applicable to the business of service warranties, in the course of dealings under the license or appointment.

(c) ~~(3)~~ Violation of any lawful order or rule of the department or commission.

(d) ~~(4)~~ Failure or refusal to pay over, upon demand, to any service warranty association or insurer the sales representative represents or has represented any money coming into her or his hands which belongs to the association or insurer.

(e) ~~(5)~~ In the conduct of business under the license or appointment, engaging in unfair methods of competition or in unfair or deceptive acts or practices, as such methods, acts, or practices are or may be defined under this part, or otherwise showing herself or himself to be a source of injury or loss to the public or detriment to the public interest.

(f) ~~(6)~~ Failure to report to the department within 30 days the final disposition of an administrative action taken against a sales representative by a governmental agency or other regulatory agency in this state or any other state or jurisdiction relating to the business of insurance, the sale of securities, or an activity involving fraud, dishonesty, trustworthiness, or breach of a fiduciary duty. The sales representative must submit a copy of the order, consent to order, or other relevant legal documents to the department ~~Being found guilty of or pleading guilty or nolo contendere to a~~

~~felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or any state thereof or under the law of any other country, without regard to whether judgment of conviction has been entered by the court having jurisdiction of such case~~.

(2) The department may adopt rules to administer this section.

Section 50. Section 648.25, Florida Statutes, is reordered and amended to read:

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

(1) "Appointment" means the authority given by an insurer or the managing general agent of an insurer through the department to a licensee to transact insurance or adjust claims on behalf of the insurer or managing general agent.

(2)~~(1)~~ "Bail bond agency" means:

(a) The building where a licensee maintains an office and where all records required by ss. 648.34 and 648.36 are maintained; or

(b) An entity that:

1. Charges a fee or premium to release an accused defendant or detainee from jail; or

2. Engages in or employs others to engage in any activity that may be performed only by a licensed and appointed bail bond agent.

(3)~~(2)~~ "Bail bond agent" means a limited surety agent or a

professional bail bond agent as hereafter defined.

(7) ~~(3)~~ "Managing general agent" means any individual, partnership, association, or corporation appointed or employed by an insurer to supervise or manage the bail bond business written in this state by limited surety agents appointed by the insurer.

(5) ~~(4)~~ "Insurer" means any domestic, foreign, or alien surety company which has been authorized to transact surety business in this state.

(6) ~~(5)~~ "Limited surety agent" means any individual appointed by an insurer by power of attorney to execute or countersign bail bonds in connection with judicial proceedings who receives or is promised money or other things of value therefor.

(4) ~~(6)~~ "~~Primary~~ Bail bond agent in charge" means a licensed bail bond agent who is responsible for the overall operation and management of a bail bond agency location and whose responsibilities include hiring and supervising all individuals within that location. A bail bond agent may be designated as the ~~primary~~ bail bond agent in charge for only one bail bond agency location.

(8) ~~(7)~~ "Professional bail bond agent" means any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is

promised therefor money or other things of value.

(9) ~~(8)~~ "Temporary bail bond agent" means a person licensed before January 1, 2024, who is employed by a bail bond agent or agency, insurer, or managing general agent, and such licensee has the same authority as a licensed bail bond agent, including presenting defendants in court; apprehending, arresting, and surrendering defendants to the proper authorities, while accompanied by a supervising bail bond agent or an agent from the same agency; and keeping defendants under necessary surveillance. However, a temporary licensee may not execute or sign bonds, handle collateral receipts, or deliver bonds to appropriate authorities. A temporary licensee may not operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed. This does not affect the right of a bail bond agent or insurer to hire counsel or to obtain the assistance of law enforcement officers. A temporary bail bond agent license expires 18 months after issuance and is no longer valid on or after June 30, 2025.

Section 51. Subsection (3) of section 648.26, Florida Statutes, is amended to read:

648.26 Department of Financial Services; administration.—

(3) The papers, documents, reports, or any other investigatory records of the department are confidential and exempt from ~~the provisions of~~ s. 119.07(1) until such

investigation is completed or ceases to be active. For the purpose of this section, an investigation is considered active ~~"active"~~ while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency. This subsection does not prevent the department or office from disclosing the content of a complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

Section 52. Subsection (5) of section 648.27, Florida Statutes, is amended to read:

648.27 Licenses and appointments; general.—

(5)~~(a)~~ The license of a bail bond agent shall continue in force, without further examination unless deemed necessary by the department, until suspended, revoked, or otherwise terminated.

~~(b) The license of a temporary bail bond agent shall continue in force until suspended, revoked, or otherwise terminated.~~

Section 53. Section 648.285, Florida Statutes, is amended to read:

648.285 Bond agency; ownership requirements; applications for bail bond agency licenses.—

(1) A person may not own, control, manage, or otherwise have a pecuniary interest in a bail bond agency unless such individual is ~~a~~ licensed pursuant to s. 648.27, ~~and~~ appointed through the department, and actively engaged as a bail bond agent for at least the preceding 24 months. Any agency that is not in compliance with this subsection is ~~shall be~~ subject to the issuance of an immediate final order of suspension of its license and all operations until the agency achieves compliance.

(2) Effective January 1, 2024, the department may issue a bail bond agency license to any person only after such person files a written application with the department and qualifies for such license.

(3) An application for a bail bond agency license must be signed by an individual required to be listed in the application under paragraph (a). A bail bond agency license may permit a third party to complete, submit, and sign an application on the bail bond agency's behalf; however, the bail bond agency is responsible for ensuring that the information on the application is true and correct, and the bail bond agency is accountable for any misstatements or misrepresentations. The application for a bail bond agency license must include:

(a) The name and license number of each owner, partner, officer, director, president, senior vice president, secretary, treasurer, and limited liability company member who directs or participates in the management or control of the bail bond agency, whether through ownership of voting securities, by contract, by ownership of any agency bank account, or otherwise.

(b) The residence address of each person required to be listed in the application under paragraph (a).

(c) The name, principal business street address, and valid e-mail address of the bail bond agency and the name, address, and e-mail address of the agency's registered agent or person or company authorized to accept service on behalf of the bail bond agency.

(d) The physical address of each branch bail bond agency, including its name, e-mail address, and telephone number, and the date that the branch location began transacting bail bond business.

(e) The name of the full-time bail bond agent in charge of the agency office, including branch locations, and his or her corresponding location.

(f) Such additional information as the department requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the department may not require that credit or character

reports be submitted for persons required to be listed on the application.

(4) The department must issue a license to each agency upon approval of the application, and each agency location must display the license prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency location.

(5) A bail bond agency that holds a current and valid registration number with the department shall have its registration automatically converted to a license on July 1, 2024.

(6) Section 112.011 does not apply to bail bond agencies or to applicants for licensure as owners of bail bond agencies.

(7)~~(2)~~ If the owner of a bail bond agency dies or becomes mentally incapacitated, a personal representative or legal guardian may be issued a temporary permit to manage the affairs of the bail bond agency. Such person must appoint or maintain the appointment of a ~~primary~~ bail bond agent in charge, as provided in s. 648.387, and may not engage in any activities as a licensed bail bond agent but must comply with s. 648.387 during the administration of the estate or guardianship. A temporary permit is valid for a maximum of 24 months.

(8)~~(3)~~ Application for a temporary permit must be made by the personal representative or legal guardian upon statements and affidavits filed with the department on forms prescribed and

furnished by it. The applicant must meet the qualifications for licensure as a bail bond agent, except for the residency, examination, education, and experience requirements.

Section 54. Subsection (1) of section 648.30, Florida Statutes, is amended to read:

648.30 Licensure and appointment required; prohibited acts; penalties.—

(1)(a) A person or entity may not act in the capacity of a bail bond agent or ~~temporary~~ bail bond agency ~~agent~~ or perform any of the functions, duties, or powers prescribed for bail bond agents or ~~temporary~~ bail bond agencies ~~agents~~ under this chapter unless that person or entity is qualified, licensed, and appointed as provided in this chapter and employed by a bail bond agency.

(b) A bail bond agent may not sell a bail bond issued by an insurer for which the agent and the agent's bail bond agency do not hold a current appointment.

(c) Except as otherwise provided in this part, a person or entity, other than a bail bond agency or an employee of a bail bond agency, may not perform any of the functions of a bail bond agency without a bail bond agency license.

Section 55. Section 648.31, Florida Statutes, is amended to read:

648.31 Appointment taxes and fees.—The department shall collect in advance all appointment taxes and fees for the

issuance of any appointment to a bail bond agent ~~or temporary bail bond agent,~~ as provided in s. 624.501. There is no fee for the issuance of any appointment to a bail bond agency.

Section 56. Subsection (2) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(2) To qualify as a bail bond agent, it must affirmatively appear at the time of application and throughout the period of licensure that the applicant ~~has complied with the provisions of s. 648.355 and has obtained a temporary license pursuant to such section and~~:

(a) ~~The applicant~~ Is a natural person who has reached the age of 18 years and holds a high school diploma or its equivalent.

(b) ~~The applicant~~ Is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for license, of a license in the applicant's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that his or her resident licenses have been canceled or changed to a nonresident basis and that he

or she is in good standing.

(c) Will maintain his or her ~~The~~ place of business ~~of the applicant will be located~~ in this state and in the county where the applicant will maintain his or her records and be actively engaged in the bail bond business and work with a licensed ~~maintain an~~ agency accessible to the public which is open for reasonable business hours.

(d) ~~The applicant~~ Is vouched for and recommended upon sworn statements filed with the department by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage in the bail bond business.

(e) ~~The applicant~~ Is a person of high character and approved integrity and has not been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered.

(f) Within 2 years immediately before applying for the license, has successfully completed a basic certification course in the criminal justice system which consists of at least 120 hours of classroom instruction with a passing grade of 80 percent or higher and has successfully completed a correspondence course for bail bond agents approved by the department.

(g) ~~(f)~~ ~~The applicant~~ Has passed any required examination.

Section 57. Section 648.355, Florida Statutes, is amended to read:

648.355 ~~Temporary limited license as~~ Limited surety agents and ~~agent or~~ professional bail bond agents ~~agent~~; qualifications ~~pending examination~~.—

(1) ~~The department may, in its discretion, issue a temporary license as a limited surety agent or professional bail bond agent, subject to the following conditions:~~

~~(a) The applicant is a natural person at least 18 years of age and holds a high school diploma or its equivalent.~~

~~(b) The applicant is a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and is a resident of this state. An individual who is a resident of this state shall be deemed to meet the residence requirement of this paragraph, notwithstanding the existence, at the time of application for temporary license, of a license in the individual's name on the records of another state as a resident licensee of such other state, if the applicant furnishes a letter of clearance satisfactory to the department that the individual's resident licenses have been canceled or changed to a nonresident basis and that the individual is in good standing.~~

~~(c) The applicant is a person of high character and approved integrity and has never been convicted of or pleaded~~

~~guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction is entered.~~

~~(d) Within 4 years prior to the date of application for a temporary license, the applicant has successfully completed a basic certification course in the criminal justice system, consisting of not less than 120 hours of classroom instruction with a passing grade of 80 percent or higher and has successfully completed a correspondence course for bail bond agents approved by the department.~~

~~(e) The applicant must be employed full time at the time of licensure, and at all times throughout the existence of the temporary license, by only one licensed and appointed supervising bail bond agent, who supervises the work of the applicant and is responsible for the licensee's conduct in the bail bond business. The applicant must be appointed by the same insurers as the supervising bail bond agent. The supervising bail bond agent shall certify monthly to the department under oath, on a form prescribed by the department, the names and hours worked each week of all temporary bail bond agents. Filing a false certification is grounds for the immediate suspension of the license and imposition of a $5,000 administrative fine. The department may adopt rules that establish standards for the employment requirements.~~

~~(f) The application must be accompanied by an affidavit verifying proposed employment and a report as to the applicant's integrity and moral character on a form prescribed by the department and executed by the proposed employer.~~

~~(g) The applicant must file with the department statements by at least three reputable citizens who are residents of the same counties in which the applicant proposes to engage as a temporary licensee.~~

~~(h) The applicant's employer is responsible for the bail bonding acts of any licensee under this section.~~

~~(2) All applicable license fees, as prescribed in s. 624.501, must be paid before issuance of the temporary license.~~

~~(3) The temporary license shall be effective for 18 months, subject to earlier termination at the request of the employer or if suspended or revoked by the department.~~

~~(4)~~ The applicant shall furnish, with the application for ~~temporary~~ license, a complete set of the applicant's fingerprints in accordance with s. 626.171(4) and a recent credential-sized, fullface photograph of the applicant. The department may ~~shall~~ not issue a ~~temporary~~ license under this section until the department has received a report from the Department of Law Enforcement and the Federal Bureau of Investigation relative to the existence or nonexistence of a criminal history report based on the applicant's fingerprints.

(2)~~(5)~~ The department may collect a fee necessary to cover

the cost of a character and credit report made by an established and reputable independent reporting service. The fee shall be deposited to the credit of the Insurance Regulatory Trust Fund.

(3) ~~(6)~~ Effective July 1, 2023, any individual licensed by the department as a temporary bail bond agent may take the required bail bond agent's licensure examination, may file an application for a bail bond agent's license if otherwise qualified for licensure, and may take the required bail bond agent's licensure examination ~~After licensure as a temporary licensee for at least 12 months, such licensee may file an application for and become eligible for a regular bail bond agent's license based on the licensee's experience in the bail bond business and education pursuant to paragraph (1)(d) and, if otherwise qualified, take the required bail bond agent's licensure examination. The applicant and supervising bail bond agent must each file an affidavit under oath, on a form prescribed by the department, verifying the required employment of the temporary agent before issuance of the license~~.

~~(7) In no event shall a temporary licensee licensed under this section perform any of the functions for which a bail bond agent's license is required after expiration of the temporary license without having passed the written examination as for a regular bail bond agent's license.~~

~~(8)(a) A temporary licensee has the same authority as a licensed bail bond agent, including presenting defendants in~~

~~court; apprehending, arresting, and surrendering defendants to the proper authorities; and keeping defendants under necessary surveillance. However, a temporary licensee must be accompanied by a supervising bail bond agent or an agent from the same agency when apprehending, arresting, or surrendering defendants to authorities.~~

~~(b) A temporary licensee may not execute or sign bonds, handle collateral receipts, deliver bonds to appropriate authorities, or operate an agency or branch agency separate from the location of the supervising bail bond agent, managing general agent, or insurer by whom the licensee is employed.~~

(4)~~(9)~~ Effective July 1, 2023, the department may not issue a temporary bail bond agent's license. An individual currently licensed as a temporary bail bond agent may continue to be licensed in accordance with this chapter. A temporary bail bond agent's license may not be reinstated if the license expires or is terminated, suspended, or revoked ~~The department shall not issue a temporary bail bond agent's license to any individual who has held such a temporary license in this state within 2 years after the expiration of such temporary bail bond agent's license~~.

Section 58. Subsections (1) through (4) of section 648.382, Florida Statutes, are amended to read:

648.382 Appointment of bail bond agents and bail bond agencies ~~temporary bail bond agents~~; effective date of

appointment.—

(1)(a) Each insurer or ~~appointing a bail bond agent and each insurer,~~ managing general agent~~, or bail bond agent~~ appointing a ~~temporary~~ bail bond agent or bail bond agency in this state must file the appointment with the department and, at the same time, pay the applicable appointment fees and taxes. A person appointed under this section must hold a valid bail bond agent's or ~~temporary~~ bail bond agency's ~~agent's~~ license. There is no fee for the issuance of any appointment of a bail bond agency.

(b) Effective July 1, 2025, each insurer or managing general agent appointing a bail bond agency in this state must file the appointment with the department. An entity appointed under this section must hold a valid bail bond agency's license.

(2) Before ~~Prior to~~ any appointment, an appropriate officer or official of the appointing insurer ~~in the case of a bail bond agent or an insurer, managing general agent, or bail bond agent in the case of a temporary bail bond agent~~ must submit:

(a) A certified statement or affidavit to the department stating what investigation has been made concerning the proposed appointee and the proposed appointee's background and the appointing person's opinion to the best of his or her knowledge and belief as to the moral character and reputation of the proposed appointee. In lieu of such certified statement or

affidavit, by authorizing the effectuation of an appointment for a licensee, the appointing entity certifies to the department that such investigation has been made and that the results of the investigation and the appointing person's opinion is that the proposed appointee is a person of good moral character and reputation and is fit to engage in the bail bond business;

(b) An affidavit under oath on a form prescribed by the department, signed by the proposed appointee, stating that premiums are not owed to any insurer and that the appointee will discharge all outstanding forfeitures and judgments on bonds previously written. If the appointee does not satisfy or discharge such forfeitures or judgments, the former insurer shall file a notice, with supporting documents, with the appointing insurer, the former agent or agency, and the department, stating under oath that the licensee has failed to timely satisfy forfeitures and judgments on bonds written and that the insurer has satisfied the forfeiture or judgment from its own funds. Upon receipt of such notification and supporting documents, the appointing insurer shall immediately cancel the licensee's appointment. The licensee may be reappointed only upon certification by the former insurer that all forfeitures and judgments on bonds written by the licensee have been discharged. The appointing insurer or former agent or agency may, within 10 days, file a petition with the department seeking relief from this paragraph. Filing of the petition stays the

duty of the appointing insurer to cancel the appointment until the department grants or denies the petition; ~~and~~

(c) Any other information that the department reasonably requires concerning the proposed appointee; and

(d) Effective January 1, 2025, a certification that the appointing entity obtained from each appointee the following sworn statement:

Pursuant to section 648.382(2)(b), Florida Statutes, I do solemnly swear that I owe no premium to any insurer or agency and that I will discharge all outstanding forfeitures and judgments on bonds that have been previously written. I acknowledge that failure to do this will result in my active appointments being canceled.

An appointed bail bond agency must have the attestation under this paragraph signed by its owner.

(3) By authorizing the effectuation of an appointment for a licensee, the appointing insurer certifies to the department that the insurer will be bound by the acts of the bail bond agent or bail bond agency acting within the scope of the agent's or agency's ~~his or her~~ appointment~~, and, in the case of a temporary bail bond agent, the appointing insurer, managing general agent, or bail bond agent, as the case may be, must~~

~~certify to the department that he or she will supervise the temporary bail bond agent's activities~~.

(4) Each appointing insurer or~~,~~ managing general agent~~, or bail bond agent~~ must advise the department in writing within 5 days after receiving notice or learning that an appointee has been arrested for, pled guilty or nolo contendere to, or been found guilty of, a felony or other offense punishable by imprisonment of 1 year or more under the law of any jurisdiction, whether judgment was entered or withheld by the court.

Section 59. Present subsections (1) through (4) of section 648.386, Florida Statutes, are redesignated as subsections (2) through (5), respectively, a new subsection (1) is added to that section, and present subsection (2) of that section is amended, to read:

648.386 Qualifications for prelicensing and continuing education schools and instructors.—

(1) DEFINITION OF "CLASSROOM INSTRUCTION".—As used in this section, the term "classroom instruction" means a course designed to be presented to a group of students by a live instructor using lecture, video, webcast, or virtual or other audio-video presentation.

(3)~~(2)~~ SCHOOLS AND CURRICULUM FOR CONTINUING EDUCATION SCHOOLS.—In order to be considered for approval and certification as an approved limited surety agent and

professional bail bond agent continuing education school, such entity must:

(a) Provide a minimum of three classroom-instruction continuing education classes per calendar year.

(b) Submit a course curriculum to the department for approval.

(c) Offer continuing education classes that comprise ~~which are comprised of~~ a minimum of 2 hours of approved classroom-instruction coursework and are taught by an approved supervising instructor or guest lecturer approved by the entity or the supervising instructor.

Section 60. Section 648.387, Florida Statutes, is amended to read:

648.387 ~~Primary~~ Bail bond agent in charge ~~agents~~; duties.—

(1) The owner or operator of a bail bond agency shall designate a ~~primary~~ bail bond agent in charge for each location, and shall file with the department the name and license number of the person and the address of the location on a form approved by the department. The designation of the ~~primary~~ bail bond agent in charge may be changed if the department is notified immediately. Failure to notify the department within 10 working days after such change is grounds for disciplinary action pursuant to s. 648.45.

(2) The ~~primary~~ bail bond agent in charge is responsible for the overall operation and management of a bail bond agency

location, whose responsibilities may include, without limitations, hiring and supervising of all individuals within the location, whether they deal with the public in the solicitation or negotiation of bail bond contracts or in the collection or accounting of moneys. A person may be designated as the ~~primary~~ bail bond agent in charge for only one agency and location.

(3) The department may suspend or revoke the license of the owner, bail bond agent in charge ~~operator~~, and ~~primary~~ bail bond agency ~~agent~~ if the ~~a~~ bail bond agency employs, contracts with, or uses the services of a person who has had a license denied or whose license is currently suspended or revoked. However, a person who has been denied a license for failure to pass a required examination may be employed to perform clerical or administrative functions for which licensure is not required.

(4) An owner, a bail bond agent in charge ~~operator~~, or a bail bond agency ~~primary agent~~ may not employ, contract with, or use the services of any person in a bail bond agency who has been charged with, found guilty of, or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of any jurisdiction, without regard to whether judgment was entered or withheld by the court.

(5) A bail bond agency location may not conduct surety business unless a ~~primary~~ bail bond agent in charge is designated by, and provides services to, the bail bond agency at

all times. If the bail bond agent in charge designated with the department ends his or her affiliation with the bail bond agency for any reason, and the bail bond agency fails to designate another bail bond agent in charge within the 10-day period under subsection (1) and such failure continues for 90 days, the bail bond agency license automatically expires on the 91st day after the date the designated bail bond agent in charge ended his or her affiliation with the agency ~~The failure to designate a primary agent on a form prescribed by the department, within 10 working days after an agency's inception or a change of primary agent, is a violation of this chapter, punishable as provided in s. 648.45~~.

Section 61. Section 648.3875, Florida Statutes, is created to read:

648.3875 Bail bond agent in charge; qualifications.—

(1) An application for designation as a bail bond agent in charge must be submitted on forms prescribed by the department. The application must include the applicant's full name and the applicant's license number issued pursuant to s. 648.27.

(2) To qualify as a bail bond agent in charge, it must affirmatively appear that, at the time of application and throughout the period of licensure, the applicant has complied with s. 648.285 and that the applicant has been licensed as a bail bond agent for the 24 months immediately preceding the appointment as the bail bond agent in charge.

Section 62. Section 648.39, Florida Statutes, is amended to read:

648.39 Termination of appointment of managing general agents, bail bond agents, and ~~temporary~~ bail bond agencies ~~agents~~.—

(1) An insurer that ~~who~~ terminates the appointment of a managing general agent, bail bond agent, or ~~temporary~~ bail bond agency ~~agent~~ shall, within 10 days after such termination, file written notice thereof with the department together with a statement that it has given or mailed notice to the terminated agent or agency. Such notice filed with the department must state the reasons, if any, for such termination. Information so furnished to the department is confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(2) Each insurer shall, within 5 days after terminating the appointment of any managing general agent, bail bond agent, or ~~temporary~~ bail bond agency ~~agent~~, give written notice thereof to each clerk of the circuit court and sheriff with whom such person is registered.

(3) An insurer that terminates the appointment of a managing general agent or~~,~~ bail bond agent~~, or temporary bail bond agent~~ may authorize such person to continue to attempt the arrest and surrender of a defendant for whom a surety bond had been written by the bail bond agent before ~~prior to~~ termination and to seek discharge of forfeitures and judgments as provided

in chapter 903.

Section 63. Section 648.41, Florida Statutes, is repealed.

Section 64. Section 648.42, Florida Statutes, is amended to read:

648.42 Registration of bail bond agents.—A bail bond agent may not become a surety on an undertaking unless he or she has registered in the office of the sheriff and with the clerk of the circuit court in the county in which the bail bond agent resides. The bail bond agent may register in a like manner in any other county, and any bail bond agent shall file a certified copy of his or her appointment by power of attorney from each insurer which he or she represents as a bail bond agent with each of such officers. Registration and filing of a certified copy of renewed power of attorney shall be performed by April 1 of each odd-numbered year. The clerk of the circuit court and the sheriff may ~~shall~~ not permit the registration of a bail bond agent unless such bail bond agent is currently licensed by the department and appointed by an insurer ~~the department~~. ~~Nothing in this section shall prevent the registration of a temporary licensee at the jail for the purposes of enabling the licensee to perform the duties under such license as set forth in this chapter.~~

Section 65. Subsections (1) and (2) and paragraphs (c) and (d) of subsection (8) of section 648.44, Florida Statutes, are amended to read:

648.44 Prohibitions; penalty.—

(1) A bail bond agent or ~~temporary~~ bail bond agency ~~agent~~ may not:

(a) Suggest or advise the employment of, or name for employment, any particular attorney or attorneys to represent his or her principal.

(b) Directly or indirectly solicit business in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court. The term "solicitation" includes the distribution of business cards, print advertising, or other written or oral information directed to prisoners or potential indemnitors, unless a request is initiated by the prisoner or a potential indemnitor. Permissible print advertising in the jail is strictly limited to a listing in a telephone directory and the posting of the bail bond agent's or agency's name, address, e-mail address, web address, and telephone number in a designated location within the jail.

(c) Initiate in-person or telephone solicitation after 9:00 p.m. or before 8:00 a.m.~~, in the case of domestic violence cases,~~ at the residence of the detainee or the detainee's family. Any solicitation ~~not prohibited by this chapter~~ must comply with the telephone solicitation requirements in ss. 501.059(2) and (4), 501.613, and 501.616(6).

(d) Wear or display any identification other than the

department issued or approved license or approved department identification, which includes a citation of the licensee's arrest powers, in or on the property or grounds of a jail, prison, or other place where prisoners are confined or in or on the property or grounds of any court.

(e) Pay a fee or rebate or give or promise anything of value to a jailer, police officer, peace officer, or committing trial court judge or any other person who has power to arrest or to hold in custody or to any public official or public employee in order to secure a settlement, compromise, remission, or reduction of the amount of any bail bond or estreatment thereof.

(f) Pay a fee or rebate or give anything of value to an attorney in a bail bond matter, except in defense of any action on a bond.

(g) Pay a fee or rebate or give or promise anything of value to the principal or anyone in his or her behalf.

(h) Participate in the capacity of an attorney at a trial or hearing of one on whose bond he or she is surety.

(i) Loiter in or about a jail, courthouse, or where prisoners are confined.

(j) Accept anything of value from a principal for providing a bail bond except the premium and transfer fee authorized by the office, except that the bail bond agent or bail bond agency may accept collateral security or other indemnity from the principal or another person in accordance

with ~~the provisions of~~ s. 648.442, together with documentary stamp taxes, if applicable. No fees, expenses, or charges of any kind shall be permitted to be deducted from the collateral held or any return premium due, except as authorized by this chapter or rule of the department or commission. A bail bond agent or bail bond agency may, upon written agreement with another party, receive a fee or compensation for returning to custody an individual who has fled the jurisdiction of the court or caused the forfeiture of a bond.

(k) Write more than one power of attorney per charge on a bond, except in the case of a cosurety, unless the power of attorney prohibits a cosurety.

(l) Execute a bond in this state on his or her own behalf.

(m) Execute a bond in this state if a judgment has been entered on a bond executed by the bail bond agent or the bail bond agency is a named party on the judgment, which has remained unpaid for 35 days, unless the full amount of the judgment is deposited with the clerk in accordance with s. 903.27(5).

(n) Make a statement or representation to a court, unless such statement or representation is under oath. Such statement or representation may not be false, misleading, or deceptive.

(o) Attempt to collect, through threat or coercion, amounts due for the payment of any indebtedness related to the issuance of a bail bond in violation of s. 559.72.

(p) Conduct bail bond business with any person, other than

the defendant, on the grounds of the jail or courthouse for the purpose of executing a bond.

(2) The following persons or classes may ~~shall~~ not be bail bond agents~~, temporary bail bond agents,~~ or employees of a bail bond agent or a bail bond agency ~~business~~ and may ~~shall~~ not directly or indirectly receive any benefits from the execution of any bail bond:

(a) Jailers or persons employed in any jail.

(b) Police officers or employees of any police department or law enforcement agency.

(c) Committing trial court judges, employees of a court, or employees of the clerk of any court.

(d) Sheriffs and deputy sheriffs or employees of any sheriff's department.

(e) Attorneys.

(f) Persons having the power to arrest or persons who have authority over or control of federal, state, county, or municipal prisoners.

(8)

(c) Any law enforcement agency, state attorney's office, court clerk, or insurer that is aware that a bail bond agent ~~or temporary bail bond agent~~ has been convicted of or who has pleaded guilty or no contest to a crime as described in paragraph (a) shall notify the department of this fact.

(d) Upon the filing of an information or indictment

against a bail bond agent ~~or temporary bail bond agent~~, the state attorney or clerk of the circuit court shall immediately furnish the department a certified copy of the information or indictment.

Section 66. Subsection (1) of section 648.441, Florida Statutes, is amended to read:

648.441 Furnishing supplies to unlicensed bail bond agent prohibited; civil liability and penalty.—

(1) An insurer, managing general agent, bail bond agent, or ~~temporary~~ bail bond agency ~~agent~~ appointed under this chapter may not furnish to any person any blank forms, applications, stationery, business card, or other supplies to be used in soliciting, negotiating, or effecting bail bonds until such person has received from the department a license to act as a bail bond agent and is appointed by the insurer. This section does not prohibit an unlicensed employee, under the direct supervision and control of a licensed and appointed bail bond agent, from possessing or executing in the bail bond agency, any forms, except for powers of attorney, bond forms, and collateral receipts, while acting within the scope of his or her employment.

Section 67. Subsection (3) of section 648.46, Florida Statutes, is amended to read:

648.46 Procedure for disciplinary action against licensees.—

(3) The complaint and all information obtained pursuant to the investigation of the department are confidential and exempt from the provisions of s. 119.07(1) until such investigation is completed or ceases to be active. For the purpose of this section, an investigation is considered "active" while the investigation is being conducted by the department with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the department is proceeding with reasonable dispatch and there is good faith belief that action may be initiated by the department or other administrative or law enforcement agency. This subsection does not prevent the department or office from disclosing the complaint or such information as it deems necessary to conduct the investigation, to update the complainant as to the status and outcome of the complaint, or to share such information with any law enforcement agency or other regulatory body.

Section 68. Section 648.50, Florida Statutes, is amended to read:

648.50 Effect of suspension, revocation upon associated licenses and licensees.—

(1) Upon the suspension, revocation, or refusal to renew or continue any license or appointment or the eligibility to hold a license or appointment of a bail bond agent or ~~temporary~~ bail bond agency ~~agent~~, the department shall at the same time

likewise suspend or revoke all other licenses or appointments and the eligibility to hold any other such licenses or appointments which may be held by the licensee under the Florida Insurance Code.

(2) In case of the suspension or revocation of the license or appointment, or the eligibility to hold a license or appointment, of any bail bond agent, the license, appointment, or eligibility of any and all bail bond agents who are members of a bail bond agency, whether incorporated or unincorporated, ~~and any and all temporary bail bond agents employed by such bail bond agency,~~ who knowingly are parties to the act which formed the ground for the suspension or revocation may likewise be suspended or revoked.

(3) A ~~No~~ person whose license as a bail bond agent ~~or temporary bail bond agent~~ has been revoked or suspended may not ~~shall~~ be employed by any bail bond agent, have any ownership interest in any business involving bail bonds, or have any financial interest of any type in any bail bond business during the period of revocation or suspension.

Section 69. Subsections (4) and (6) of section 717.135, Florida Statutes, are amended to read:

717.135 Recovery agreements and purchase agreements for claims filed by a claimant's representative; fees and costs.—

(4) A claimant's representative must use the Unclaimed Property Recovery Agreement or the Unclaimed Property Purchase

Agreement as the exclusive means of entering into an agreement or a contract ~~engaging~~ with a claimant or seller to file a claim with the department.

(6) A claimant's representative may not use or distribute any other agreement of any type, conveyed by any method, ~~form, or other media~~ with respect to the claimant or seller which relates, directly or indirectly, to unclaimed property accounts held by the department or the Chief Financial Officer other than the agreements authorized by this section. Any engagement, authorization, recovery, or fee agreement that is not authorized by this section is void. A claimant's representative is subject to administrative and civil enforcement under s. 717.1322 if he or she uses an agreement that is not authorized by this section. This subsection does not prohibit lawful nonagreement, noncontractual, or advertising communications between or among the parties.

Section 70. Paragraph (a) of subsection (4) of section 843.021, Florida Statutes, is amended to read:

843.021 Unlawful possession of a concealed handcuff key.—

(4)(a) It is a defense to a charge of violating this section that the person in custody and in possession of a concealed handcuff key is:

1. A federal, state, or local law enforcement officer, including a reserve or auxiliary officer, a licensed security officer, or a private investigator as defined in s. 493.6101; or

2. A professional bail bond agent~~, temporary bail bond agent, runner,~~ or limited surety agent as defined in s. 648.25.

Section 71. Subsection (4) of section 631.152, Florida Statutes, is amended to read:

631.152 Conduct of delinquency proceeding; foreign insurers.—

(4) Section 631.141(10)(b) ~~631.141(9)(b)~~ applies to ancillary delinquency proceedings opened for the purpose of obtaining records necessary to adjudicate the covered claims of Florida policyholders.

Section 72. Paragraph (b) of subsection (3) of section 631.398, Florida Statutes, is amended to read:

631.398 Prevention of insolvencies.—To aid in the detection and prevention of insurer insolvencies or impairments:

(3)

(b) For an insolvency involving a domestic property insurer, the department shall:

1. Begin an analysis of the history and causes of the insolvency once the department is appointed by the court as receiver.

2. Submit an initial report analyzing the history and causes of the insolvency to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the office. The initial report must be submitted no later than 4 months after the department is appointed as receiver. The

initial report shall be updated at least annually until the submission of the final report. The report may not be used as evidence in any proceeding brought by the department or others to recover assets on behalf of the receivership estate as part of its duties under s. 631.141(9) ~~s. 631.141(8)~~. The submission of a report under this subparagraph shall not be considered a waiver of any evidentiary privilege the department may assert under state or federal law.

3. Provide a special report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the office, within 10 days upon identifying any condition or practice that may lead to insolvency in the property insurance marketplace.

4. Submit a final report analyzing the history and causes of the insolvency and the review of the Office of Insurance Regulation's regulatory oversight of the insurer to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the office within 30 days of the conclusion of the insolvency proceeding.

5. Review the Office of Insurance Regulation's regulatory oversight of the insurer.

Section 73. Subsection (2) of section 903.09, Florida Statutes, is amended to read:

903.09 Justification of sureties.—

(2) A bond agent, as defined in s. 648.25 ~~s. 648.25(2)~~,

shall justify her or his suretyship by attaching a copy of the power of attorney issued by the company to the bond or by attaching to the bond United States currency, a United States postal money order, or a cashier's check in the amount of the bond; but the United States currency, United States postal money order, or cashier's check cannot be used to secure more than one bond. Nothing herein shall prohibit two or more qualified sureties from each posting any portion of a bond amount, and being liable for only that amount, so long as the total posted by all cosureties is equal to the amount of bond required.

Section 74. (1) The following rule is ratified for the sole and exclusive purpose of satisfying any condition on the effectiveness imposed under s. 120.541(3), Florida Statutes: Rule 69L-7.020, Florida Administrative Code, titled "Florida Workers' Compensation Health Care Provider Reimbursement Manual" as filed for adoption with the Department of State pursuant to the certification package dated October 22, 2021.

(2) This section serves no other purpose and may not be codified in the Florida Statutes. After this section becomes law, its enactment and effective dates shall be noted in the Florida Administrative Code, the Florida Administrative Register, or both, as appropriate. This section does not alter rulemaking additions delegated by prior law, does not constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is

intended to preserve the status of any cited rule as a rule under chapter 120, Florida Statutes. This section does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

(3) This section takes effect July 1, 2023.

Section 75. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

PCS for CS/CS/HB 799

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/CS/HB 799 Property Insurance
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

The bill makes changes related to property insurance, including:

Windstorm Coverage

- Establishing that a property insurer's residential rate filing with the Office of Insurance Regulation must allow for appropriate discounts for mitigation measures that reduce the potential for windstorm losses.
- Adding wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance. Wind uplift is the upward-acting pressure on parts of a roof caused by wind traveling across it.

Citizens Property Insurance Corporation

- Providing that the "glidepath" normally imposed on Citizens rates does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.
- Making technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. It does not change flood coverage requirements enacted in December 2022.
- Establishing that, in addition to any other method of alternative dispute resolution authorized by law, Citizens may adopt policy forms that allow both Citizens and Citizens' policyholders to request a hearing by DOAH to resolve claims disputes.

Flood Coverage Required by Windstorm Policies

- Requiring that, if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage.
- Providing that, if insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage.
- Establishing that a master flood policy issued to someone other than the insured or applicant, and that includes the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

The bill provides a $750,000 nonrecurring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The bill has no impact on local government revenues or expenditures. It will likely have a positive direct economic impact on the private sector.

The bill is effective on July 1, 2023, except as otherwise provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Windstorm Coverage

Background

APPROVAL OF INSURANCE RATE FILINGS

In general, insurers must file a copy of rates, rating schedules, rating manuals, premium credits or discount schedules, and surcharge schedules, and changes to these documents, for approval by the Office of Insurance Regulation (OIR).[1] OIR must review insurers' rate filings to determine whether rates are excessive, inadequate, or unfairly discriminatory.[2] In doing so, OIR must consider factors including, but not limited to, the following:

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

Rate filings must also account for factors that should result in premium discounts or credited for policyholders. A residential property insurance rate filing must account for mitigation measures that policyholders undertake to reduce hurricane losses.[3]

MITIGATION CREDITS IN RESIDENTIAL PROPERTY INSURANCE RATE FILINGS

Residential property insurers must provide credits, discounts, other rate differentials, or appropriate reductions in deductibles to reduce insurance premiums for properties with mitigation features.[4] Mitigation features are construction techniques used or items installed to protect a structure against windstorm damage or loss.[5] These features must be accounted for in residential property insurance rate filings submitted to OIR for approval.[6] Such features include, but are not limited to, measures that enhance roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to foundation strength, or appropriate protection, window, door, and skylight strength.[7] Examples of items that might be installed to protect a structure include hurricane shutters, a hip roof, or a specific type of roof covering.

WIND UPLIFT

[1] S. 627.062(2)(a), F.S.
[2] S. 627.062(1), F.S.
[3] S. 627.062(2)(j), F.S.
[4] *See* s. 627.0629, F.S.
[5] *See id.*
[6] S. 627.0629(1), F.S.
[7] *Id.*

Wind uplift is the upward-acting pressure on the parts of a roof caused by wind traveling across the roof.[8] It is a force measure in pounds per square foot and occurs when the pressure below a roof exceeds the pressure above it.[9] Wind uplift can intensify during high winds, as air enters a building, causing an increase in the air pressure below the roof, while the speed of wind over the roof reduces the pressure above the roof.[10] When wind uplift exceeds the limits of a building system design, a roof deck could detach from a supporting structure.[11] Engineers and builders follow the applicable building code for each jurisdiction to attempt to prevent wind uplift.[12] The standards vary based on building location and likelihood of exposure to high winds.[13]

Effect of the Bill

The bill establishes that, in addition to mitigation measures to reduce hurricane losses, an insurer's rate filing must allow for appropriate discounts for mitigation measures that policyholders undertake to reduce the potential for windstorm losses.

The bill adds wind uplift prevention to the list of fixtures or construction techniques for which an actuarially reasonable discount, credit, or other rate differential, or appropriate reduction in deductibles, must be included in a rate filing for residential property insurance.

The bill also provides an appropriation for OIR to procure a wind-loss mitigation study. The study is required to evaluate roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protections, and window, door, and skylight strength. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

Citizens Property Insurance Corporation (Citizens)

General Background

Citizens Property Insurance Corporation (Citizens or corporation) is a state-created, not-for-profit, tax-exempt governmental entity whose public purpose is to provide property insurance coverage to those unable to find affordable coverage in the voluntary admitted market.[14] Citizens is not a private insurance company.[15] Citizens was statutorily created in 2002 when the Florida 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).[16]

POLICIES ASSUMED FROM OTHER INSURERS

Background

From 2007 until 2010, Citizens' rates were frozen by statute at the level that had been established in 2006. In 2010, the Legislature established a "glidepath" to impose annual rate increases up to a level that is actuarially sound. Under the original established glidepath, Citizens had to implement an annual rate increase which, except for sinkhole coverage, does not exceed 10 percent above the previous year

[8] Certified Commercial Property Inspectors Association, *How Wind Uplift can Affect a Commercial Building's Roof*, https://ccpia.org/how-wind-uplift-can-affect-a-commercial-buildings-roof/ (last visited Mar. 6, 2023).
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.* Changes to Florida's treatment of wind load were made in the 7th edition of the Florida Building Code in 2020. *See* Wind Loads- Impacts from ASCE 7-16 (June 2020), https://floridabuilding.org/fbc/thecode/2020_7edition/ASCE_7-16_Fact_Sheet_final_2_column_format052820final.pdf (last visited Mar. 6, 2023).
[14] The term "admitted market" means insurance companies licensed to transact insurance in Florida.
[15] Section 627.351(6)(a)1., F.S.
[16] Section 2, ch. 2002-240, Laws of Fla.

for any individual policyholder, adjusted for coverage changes and surcharges. In 2021, the Legislature revised this glidepath to increase it one percent per year to 15 percent, as follows: [17]

- 11 percent for 2022.
- 12 percent for 2023.
- 13 percent for 2024.
- 14 percent for 2025.
- 15 percent for 2026 and all subsequent years.

Citizens' rate cap, also known as the "glidepath," is not closing the gap between Citizens rates and private market rates. Instead, because of the rate cap and the increasing rates of private property insurance, the gap is growing and making Citizens more like a competitor to private insurers than an insurer of last resort. Because Citizens' rates are often well below those of private carriers, Citizens may be more competitive than otherwise intended. Due to Citizens' structure, its rates do not contain certain elements that the rates of private insurers contain. Citizens does not pay taxes like private insurers and does not need to purchase as much reinsurance as private insurers because of Citizens' higher levels of capital and surplus.

Until December 2022, Citizens' rates did not differ based upon whether the property that is a policyholder's primary residence, a policyholder's second home (e.g., a vacation home), or occupied by a long-term tenant.[18] During Special Session 2022A, the Legislature removed the glidepath rate limitations for any new or renewal personal lines policy for non-primary residences written on or after November 1, 2023. The rate for these residences must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage. However, current law does not provide any similar exception for risks previously insured by an unsound or insolvent insurer.

Effect of the Bill

The bill provides that, in addition to non-primary residences, the "glidepath" normally imposed on Citizens year-to-year rate growth does not apply to policies where coverage for the risk insured by Citizens was last provided by an insurer determined by OIR to be unsound or placed into receivership due to impairment or insolvency.[19] Instead, these risks must be no more than 50% above, but not less than, the established rate for Citizens which was in effect one year before the date of the application for coverage.

CITIZENS ELIGIBILITY REQUIREMENTS

Background

Until December 2022, Citizens Property Insurance Corporation could not require a policyholder or applicant to obtain flood insurance as a condition of coverage from Citizens if a policyholder or applicant signed a form affirming that Citizens does not provide flood insurance coverage, and that, if the policyholder or applicant did not obtain flood coverage in addition to a policy from Citizens, the risk was not covered for flood damage.[20] A Citizens policyholder who did not obtain flood coverage and executed such a form, and who made a claim for water damage against Citizens, had the burden of proving the damage was not caused by flooding.[21] Additionally, Citizens could deny coverage to a policyholder or applicant who refuses to execute the form.[22]

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[17] S. 627.351(6)(n)5., F.S.

[18] Citizens would not issue a personal lines policy to someone using a home as a short-term vacation rental as that is considered a business use of the home.

[19] In practical effect, this means that such policyholders might continue to pay the premium amount that they paid their prior insurer, not a lower premium that they might otherwise be charged by Citizens if subject to the rate increase limitations.

[20] S. 627.351(6)(aa), F.S. (2021).

[21] *Id.*

[22] *Id.*

Under s. 627.715, F.S., authorized insurers may issue personal lines residential flood coverage. Such coverage includes, but is not limited to, standard flood insurance, which is equivalent to that provided by the National Flood Insurance Program (NFIP), and preferred and customized flood insurance, which provide additional coverage from that provided by standard flood coverage.[23]

A bill passed on December 2022 (SB 2-A) mandated that Citizens require personal lines residential policyholders and applicants to purchase and maintain flood insurance coverage that is at least equivalent to the coverage provided by the NFIP. The policyholder or applicant must execute a form affirming that Citizens does not provide flood insurance and that if the policyholder or applicant does not obtain flood insurance, his or her risk will not be eligible for coverage from Citizens. Citizens may deny coverage to a personal lines residential policyholder or applicant who refuses to purchase and maintain flood insurance.

SB 2-A implemented the purchase of flood coverage by personal lines residential policyholders and applicants as follows:

- Policyholders whose Citizens' policies do not provide wind coverage are not required to purchase flood coverage as a condition of maintaining their Citizens' policies.
- All policyholders whose property insured by Citizens is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:
    - At the time of initial policy issuance for all new policies issued by Citizens on or after April 1, 2023.
    - By the time of policy renewal for all personal lines residential policies renewing on or after July 1, 2023.
- All other policyholders must have flood coverage in place for policies effective on or after:
    - January 1, 2024, for property valued at $600,000 or more.
    - January 1, 2025, for property valued at $500,000 or more.
    - January 1, 2026, for property valued at $400,000 or more.
    - January 1, 2027, for all other personal lines residential property insured by Citizens.

Citizens has expressed concerns with the ability to implement the flood coverage requirements for the policyholders who must have flood coverage in place on or after January 1, 2024, because of the way in which dwelling value is calculated for issuance of policies.[24]

Effect of the Bill

The bill makes technical changes to the statutory language establishing when certain Citizens policyholders must obtain flood coverage so that Citizens can implement the flood coverage requirements. It does not change the flood coverage requirements that were signed into law in December 2022.

REFERRAL OF CASES TO THE DIVISION OF ADMINISTRATIVE HEARINGS (DOAH)

Background

The Division of Administrative Hearings (DOAH) is a state agency that employs full-time Administrative Law Judges to conduct hearings in most cases in which the substantial interests of a person are determined by an agency and which involve a disputed issue of material fact.[25] When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.[26] Requests for hearings are initially made to the appropriate state agency.[27] If the case does not involve disputed facts, the agency itself will conduct

[23] Current NFIP personal lines flood policies have limits of $250,000 per claim.
[24] Current law used the phrase "property valued at . . .," but Citizens issues policies based on the replacement cost of a structure or unit (e.g. single-family home or condominium).
[25] Ch. 120, F.S.
[26] s. 120.68(1), F.S.
[27] See Uniform Rule 28-106.201(2).

a proceeding and subsequently render a decision.[28] If the request for hearing indicates that the affected person disputes facts upon which the proposed action is based, the agency ordinarily refers the case to DOAH for a hearing.[29]

DOAH provides a hearing conducted by an independent and neutral Administrative Law Judge who thereafter enters a Recommendation or Final Order, which is provided to the state agency and the parties in the case. In the case of a Recommended Order, the agency reviews the Recommended Order and issues a Final Order which usually adopts the Judge's factual findings, but, under certain circumstances, the agency may reject or modify certain legal conclusions of the Judge or the recommended penalty, if any. If the Final Order is adverse to the non-agency party, an appeal may be taken within a limited time to a District Court of Appeal.[30]

Currently, disputes between Citizens and a Citizens policyholder that are not resolved via informal negotiations or alternative dispute resolution may result in the filing of a civil suit in circuit court.[31]

Effect of the Bill

The bill provides that, in addition to any other method of alternative dispute resolution authorized by law, Citizens may adopt policy forms that allow both Citizens and Citizens' policyholders to request a hearing by DOAH to resolve claims disputes.

Flood Coverage Required by Windstorm Policies

Background

Property insurance policies generally do not include flood coverage. Damage from flooding, including flooding from hurricane-generated storm surge, is not covered under a standard commercial policy, including a Commercial Package Policy or a Business Owners Policy.[32] Standard homeowners, condominium owners, and renters insurance policies do not provide flood coverage, including damage from storm surge.[33] However, some property insurers include language in property insurance policies providing windstorm coverage that requires that an insured or applicant maintain flood coverage in order for the windstorm coverage to be valid if a claim is made for windstorm damage. Compliance with this requirement may be problematic if an insurance agent has not made an insured or applicant aware of it at the time a property insurance policy is purchased.

Effect of the Bill

For residential and commercial property insurance policies issued or renewed on or after October 1, 2023, the bill establishes that if the insurer requires an insured or applicant to have flood coverage when the insurer issues a policy containing wind coverage, the insurer must verify that the insured or applicant has flood coverage at the time of policy issuance or renewal. If the insurer fails to verify that the insured or applicant has flood coverage, the insurer may not issue a policy containing wind coverage.

Prior to issuing a policy containing wind coverage, but after verifying that the insured or applicant has flood coverage, the insurer must obtain a written acknowledgment from the insured or applicant that he

[28] s. 120.57(2), F.S.
[29] s. 120.57(1), F.S.
[30] s. 120.68(2)(a), F.S.
[31] Bid protest resolutions involving Citizens are currently handled by the Division of Administrative Hearings. *See* Citizens, *Board of Governors Procedure Protests*, https://www.citizensfla.com/documents/20702/42664/Procurement+Protest+Procedure/816d9bfb-e636-40ec-a9f5-34873d053bf7 (last visited Apr. 15, 2023).
[32] Insurance Information Institute, *Does my Business Need Flood Insurance?*, https://www.iii.org/article/does-my-business-need-flood-insurance (last visited Mar. 7, 2023).
[33] Insurance Information Institute, *Hurricane Insurance FAQ: What Your Insurance Does–and does not–Cover*, https://www.iii.org/article/hurricane-insurance-faq (last visited Mar. 7, 2023).

or she understands that the policy containing wind coverage requires that the insured or applicant maintain flood coverage.

In addition to flood coverage directly obtained by the insured or applicant, the bill establishes that a master flood policy issued to someone other than the insured or applicant, but that covers the insured or applicant as an intended third-party beneficiary is acceptable proof of flood coverage.

B. SECTION DIRECTORY:

Section 1. Amends s. 627.062, F.S., relating to rate standards.

Section 2. Amends s. 627.0629, F.S., relating to residential property insurance; rate filings.

Section 3. Amends s. 627.351, F.S., relating to insurance risk apportionment plans.

Section 4. Creates s. 627.7155, F.S., relating to wind and flood coverage in residential and commercial property insurance policies.

Section 5. Provides an appropriation.

Section 6. Provides an effective date of July 1, 2023, except as otherwise provided.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill provides a $750,000 nonreccuring appropriation from the Insurance Regulatory Trust Fund to the Office of Insurance Regulation to conduct a wind-loss mitigation study. The findings of the study shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a positive direct economic impact on the private sector if rates are reduced due to the consideration required by the bill.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property insurance; amending s. 627.062, F.S.; requiring residential property insurance rate filings to account for windstorm mitigation measures undertaken by policyholders; amending s. 627.0629, F.S.; requiring wind uplift prevention to be included in windstorm damage mitigation techniques for residential property insurance rate filings; amending s. 627.351, F.S.; revising rate change limitations for specified policies written by the Citizens Property Insurance Corporation; revising the applicability of flood coverage requirements for personal lines residential policyholders of the corporation; revising flood insurance coverage requirements for Citizens Property Insurance Corporation; authorizing the corporation to adopt policy forms that provide for the resolution of certain disputes in proceedings before the Division of Administrative Hearings; providing that such policies are not subject to mandatory binding arbitration provisions; authorizing the corporation to contract with the division to conduct proceedings; creating s. 627.7155, F.S.; requiring property insurers to verify coverage for the peril of flood in certain circumstances; prohibiting issuance of coverage for

the peril of wind in certain circumstances; requiring an acknowledgement; specifying a type of acceptable proof of coverage; providing an appropriation; requiring a wind-loss mitigation study conducted by the Office of Insurance Regulation; providing requirements for the study; providing reporting requirements; providing an effective date.

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

Section 1. Paragraph (j) of subsection (2) of section 627.062, Florida Statutes, is amended to read:

627.062 Rate standards.—

(2) As to all such classes of insurance:

(j) With respect to residential property insurance rate filings, the rate filing must account for mitigation measures undertaken by policyholders to reduce hurricane losses and windstorm losses.

The provisions of this subsection do not apply to workers' compensation, employer's liability insurance, and motor vehicle insurance.

Section 2. Subsection (1) of section 627.0629, Florida Statutes, is amended to read:

627.0629 Residential property insurance; rate filings.—

(1) It is the intent of the Legislature that insurers

provide savings to consumers who install or implement windstorm damage mitigation techniques, alterations, or solutions to their properties to prevent windstorm losses. A rate filing for residential property insurance must include actuarially reasonable discounts, credits, or other rate differentials, or appropriate reductions in deductibles, for properties on which fixtures or construction techniques demonstrated to reduce the amount of loss in a windstorm have been installed or implemented. The fixtures or construction techniques must include, but are not limited to, fixtures or construction techniques that enhance wind uplift prevention, roof strength, roof covering performance, roof-to-wall strength, wall-to-floor-to-foundation strength, opening protection, and window, door, and skylight strength. Credits, discounts, or other rate differentials, or appropriate reductions in deductibles, for fixtures and construction techniques that meet the minimum requirements of the Florida Building Code must be included in the rate filing. The office shall determine the discounts, credits, other rate differentials, and appropriate reductions in deductibles that reflect the full actuarial value of such revaluation, which may be used by insurers in rate filings.

Section 3. Effective upon becoming a law, paragraphs (n) and (aa) of subsection (6) of section 627.351, Florida Statutes, are amended, and paragraph (ll) is created, to read:

627.351 Insurance risk apportionment plans.—

(6) CITIZENS PROPERTY INSURANCE CORPORATION.—

(n)1. Rates for coverage provided by the corporation must be actuarially sound pursuant to s. 627.062 and not competitive with approved rates charged in the admitted voluntary market so that the corporation functions as a residual market mechanism to provide insurance only when insurance cannot be procured in the voluntary market, except as otherwise provided in this paragraph. The office shall provide the corporation such information as would be necessary to determine whether rates are competitive. The corporation shall file its recommended rates with the office at least annually. The corporation shall provide any additional information regarding the rates which the office requires. The office shall consider the recommendations of the board and issue a final order establishing the rates for the corporation within 45 days after the recommended rates are filed. The corporation may not pursue an administrative challenge or judicial review of the final order of the office.

2. In addition to the rates otherwise determined pursuant to this paragraph, the corporation shall impose and collect an amount equal to the premium tax provided in s. 624.509 to augment the financial resources of the corporation.

3. After the public hurricane loss-projection model under s. 627.06281 has been found to be accurate and reliable by the Florida Commission on Hurricane Loss Projection Methodology, the model shall be considered when establishing the windstorm

portion of the corporation's rates. The corporation may use the public model results in combination with the results of private models to calculate rates for the windstorm portion of the corporation's rates. This subparagraph does not require or allow the corporation to adopt rates lower than the rates otherwise required or allowed by this paragraph.

4. The corporation must make a recommended actuarially sound rate filing for each personal and commercial line of business it writes.

5. Notwithstanding the board's recommended rates and the office's final order regarding the corporation's filed rates under subparagraph 1., the corporation shall annually implement a rate increase which, except for sinkhole coverage, does not exceed the following for any single policy issued by the corporation, excluding coverage changes and surcharges:

a. Twelve percent for 2023.

b. Thirteen percent for 2024.

c. Fourteen percent for 2025.

d. Fifteen percent for 2026 and all subsequent years.

6. The corporation may also implement an increase to reflect the effect on the corporation of the cash buildup factor pursuant to s. 215.555(5)(b).

7. The corporation's implementation of rates as prescribed in subparagraphs 5. and 8. shall cease for any line of business written by the corporation upon the corporation's implementation

of actuarially sound rates. Thereafter, the corporation shall annually make a recommended actuarially sound rate filing that is not competitive with approved rates in the admitted voluntary market for each commercial and personal line of business the corporation writes.

8. The following ~~For any~~ new or renewal personal lines policies ~~policy~~ written on or after November 1, 2023, are ~~which does not cover a primary residence, the rate to be applied in calculating premium is~~ not subject to the rate increase limitations in subparagraph 5., but ~~However, the policyholder~~ may not be charged more than 50 percent above, and may not be charged less than, the established rate for the corporation which was in effect 1 year before the date of the application:

a. Policies that do not cover a primary residence; or

b. Policies where coverage for the insured risk, prior to the date of application with the corporation, was last provided by an insurer determined by the office to be unsound or an insurer placed in receivership under chapter 631.

9. As used in this paragraph, the term "primary residence" means the dwelling that is the policyholder's primary home or is a rental property that is the primary home of the tenant, and which the policyholder or tenant occupies for more than 9 months of each year.

(aa) Except as otherwise provided in this paragraph, the corporation shall require the securing and maintaining of flood

insurance as a condition of coverage of a personal lines residential risk. The insured or applicant must execute a form approved by the office affirming that flood insurance is not provided by the corporation and that if flood insurance is not secured by the applicant or insured from an insurer other than the corporation and in addition to coverage by the corporation, the risk will not be eligible for coverage by the corporation. The corporation may deny coverage of a personal lines residential risk to an applicant or insured who refuses to secure and maintain flood insurance. The requirement to purchase flood insurance shall be implemented as follows:

1. Except as provided in subparagraphs 2. and 3., all personal lines residential policyholders must have flood coverage in place for policies effective on or after:

a. January 1, 2024, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $600,000 or more.

b. January 1, 2025, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $500,000 or more.

c. January 1, 2026, for a structure or unit that has a dwelling replacement cost of ~~property valued at~~ $400,000 or more.

d. January 1, 2027, for all other personal lines residential property insured by the corporation.

2. All personal lines residential policyholders whose property insured by the corporation is located within the special flood hazard area defined by the Federal Emergency Management Agency must have flood coverage in place:

a. At the time of initial policy issuance for all new personal lines residential policies issued by the corporation on or after April 1, 2023.

b. By the time of the policy renewal for all personal lines residential policies renewing on or after July 1, 2023.

3. Policyholders whose policies issued by the corporation do not provide coverage for the peril of wind are not required to purchase flood insurance as a condition for maintaining their policies with the corporation.

The flood insurance required under this paragraph must meet, at a minimum, the coverage available from the National Flood Insurance Program or the requirements of subparagraphs s. 627.715(1)(a)1., 2., and 3.

(ll)1. In addition to any other method of alternative dispute resolution authorized by state law, the corporation may adopt policy forms that provide for the resolution of disputes regarding its claim determinations, including disputes regarding coverage for, or the scope and value of, a claim, in a proceeding before the Division of Administrative Hearings. Any such policies are not subject to s. 627.70154.

2. The corporation may contract with the Division of Administrative Hearings to conduct proceedings to resolve disputes regarding its claim determinations as may be provided for in the applicable policies of insurance.

Section 4. Effective October 1, 2023, section 627.7155, Florida Statutes, is created to read:

627.7155 Wind and flood coverage in residential and commercial property insurance policies.—For residential and commercial property insurance policies issued or renewed on or after October 1, 2023:

(1) If a residential or commercial property insurer requires that an insured or applicant have coverage for the peril of flood when the insurer issues a policy covering the peril of wind, the insurer must verify that the insured or applicant has coverage for the peril of flood at the time the policy is issued or renewed. If the insurer fails to verify that the insured or applicant has coverage for the peril of flood, the insurer may not issue or renew a policy containing coverage for the peril of wind. Before issuance of coverage for the peril of wind under this subsection and upon verification of coverage for the peril of flood, the insurer must obtain a written acknowledgment from the insured or applicant that the insured or applicant understands that the policy covering the peril of wind requires that coverage for the peril of flood must be maintained by the insured or applicant.

(2) In addition to coverage for the peril of flood directly secured by the insured or applicant, a master flood policy that is issued to someone other than the insured or applicant and that includes the insured or applicant as an intended or third-party beneficiary under the master flood policy is acceptable proof of coverage for the peril of flood for the purposes of this section.

Section 5. For the 2023-2024 fiscal year, the nonrecurring sum of $750,000 from the Insurance Regulatory Trust Fund is appropriated to the Office of Insurance Regulation to competitively procure a wind-loss mitigation study. The office, in consultation with the Department of Business and Professional Regulation and the Florida Building Commission, shall conduct a residential wind-loss mitigation study to evaluate the windstorm loss relativities for construction features, including, but not limited to, those that enhance roof strength; roof covering performance; roof-to-wall strength; wall-to-floor-to-foundation strength; opening protections; and window, door, and skylight strength. The study must include single-family and multifamily homes, mobile homes, and manufactured housing. In addition, the study must include, but need not be limited to, an analysis of developed hurricane loss data for hurricanes since June 1, 2018. The office may use a portion of the funds appropriated to contract separately with building code experts in order to implement this act and adopt rules. The findings of the study

shall be reported to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Commissioner of Insurance Regulation no later than July 1, 2024.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2023.

PCS for CS/HB 1111

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 1111 Non-coverage-related Regulation of Insurance
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Fortenberry	Hamon

SUMMARY ANALYSIS

Life Insurance Agents: Florida law sets forth pre-licensure education and experience requirements for life insurance agents. Among other specified requirements, applicants must have successfully completed 40 hours of coursework in life insurance, annuities, and variable contracts, three of which must be on ethics.

The bill reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete from 40 hours to 30 hours.

Value-added Insurance Services (VAS): The Unfair Insurance Trade Practices Act (Act) defines unfair methods of competition and unfair or deceptive acts in the business of insurance. It provides an extensive list of prohibited methods and acts, including prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to a prospective insurance purchaser. The Act describes prohibited discrimination and prohibits sliding.

Value-added insurance products or services are provided with the sale of insurance, but extend beyond simply providing insurance coverage. Examples of VAS include risk control or claims management services, funeral planning, or financial planning. Depending on how VAS are structured or offered, there is a concern that by providing them to policyholders, insurers may violate the Act.

The bill also establishes that certain actions by insurers related to VAS are not discrimination or unlawful rebates under the Act. All of these criteria regarding the VAS must be met for the actions to be excluded:

- Offered at no cost or reduced cost by an insurer, insurance agent, or employee, affiliate, or third-party representative of the insurer or insurance agent;
- Not specified in the insurance policy; and
- Primarily designed to do one or more of the following:
  - Provide loss mitigation or control;
  - Reduce claim or claim settlement costs;
  - Provide education about liability risks or risk of loss to people or property;
  - Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk;
  - Enhance health;
  - Enhance financial wellness through items such as education or financial planning services;
  - Provide post-loss services;
  - Incentivize behavioral changes to improve the health, or reduce the risk of death or disability; or
  - Assist in the administration of employee or retiree benefit insurance coverage.

The VAS cost must be reasonable in comparison to the customer's premiums or insurance coverage. VAS availability must be based on specified factors. VAS that do not meet such factors may be provided as part of a pilot or testing program implemented for up to one year. An insurer, agent, or representative may not: offer to provide insurance or inducement to the purchase of another policy; or use the words "free" or "no cost," or similar words in an advertisement.

The bill has no impact on local or state government revenues or expenditures. It has an indeterminate direct economic impact on the private sector.

The bill is effective July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pre-Licensure Requirements for Life Insurance Agents

A life insurance agent is an individual who represents an insurer as to life insurance and annuity contracts, including agents appointed to transact life insurance, fixed-dollar annuity contracts, or variable contracts by the same insurer.[1] Currently, 23 states have no pre-licensure education or experience requirements for life insurance agents.

An applicant for a Florida license as a life insurance agent is not qualified for licensure unless, within the 4 years immediately preceding the date of the application for a license, such applicant has:[2]

- Successfully completed 40 hours of coursework in life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Successfully completed at least 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, 3 hours of which must be on ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;
- Earned or maintained an active designation as Chartered Financial Consultant from the American College of Financial Services; or Fellow, Life Management Institute from the Life Management Institute;
- Held an active license in life insurance in another state, where such state grants reciprocal treatment to Florida licensees; or
- Been employed full time by the Department of Financial Services (DFS) or the Office of Insurance Regulation (OIR) in life insurance regulatory matters for at least one year, if the application for the examination is made within 4 years after leaving employment and if the employee was not terminated for cause.

Unfair Methods of Competition and Unfair or Deceptive Acts

The Unfair Insurance Trade Practices Act (Act),[3] among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.[4] It provides an extensive list of prohibited methods and acts. Among these are prohibitions on certain inducements to the purchase of insurance, including rebates, dividends, stock, and contracts that promise to return profits to the prospective insurance purchaser. The Act describes prohibited discrimination, which includes refusal to insure anyone solely because of the following reasons:[5]

- The insured's race, color, creed, marital status, sex, or national origin;
- The residence, age, or lawful occupation of the individual or the location of the risk, unless there is a reasonable relationship between the residence, age, or lawful occupation of the individual or the location of the risk and the coverage issued or to be issued;
- The insured's or applicant's failure to agree to place collateral business with any insurer, unless the coverage applied for would provide liability coverage which is excess over that provided in policies maintained on property or motor vehicles;
- The insured's or applicant's failure to purchase noninsurance services or commodities, including motor vehicle services;

[1] S. 626.015(12), F.S.
[2] S. 626.7851, F.S.
[3] Ch. 626, F.S., part IX.
[4] S. 626.9541, F.S.
[5] S. 626.9541(1)(x), F.S.

- The fact that the insured or applicant is a public official; or
- The fact that the insured or applicant had been previously refused insurance coverage by any insurer, when such refusal to insure or continue to insure for this reason occurs with such frequency as to indicate a general business practice.

The Act also prohibits sliding, which includes:

- Representing to an applicant that a specific ancillary coverage or product is required by law when it is not;
- Representing to an applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge where there is a charge for it; and
- Charging an applicant for a specific ancillary coverage or product, in addition to the cost of insurance applied for, without informing the applicant.[6]

There are many exceptions to the prohibitions defined by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of charitable contributions, merchandise, goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items up to $100 per calendar year to an insured, prospective insured, or any person for the purpose of advertising.[7]

Value-added Insurance Products or Services

Value-added insurance products or services (VAS) are provided with the sale of insurance, but extend beyond simply providing insurance coverage.[8] When selecting between competing insurers, the type of quality of these services provided by an agent or insurer may be important factors in an applicant's decision making.[9] VAS may include risk control or claims management services.[10] For example, those VAS provided with employer practices liability insurance attempt to prevent and control claims covered by this type of insurance and include: [11]

- Human resource audits;
- Training and reference manuals;
- Sample employee handbooks;
- Loss prevention software; and
- Access to hotlines manned by human resource professionals.

VAS are also often included with life insurance to provide extra support for decisions that must be made shortly after the loss of a loved one or at other difficult times.[12] These VAS include:[13]

- Will and funeral preparation services;
- Counseling services; and
- Accelerated benefit cash advances.

Depending on how VAS are structured or offered, there is a concern that by providing them to policyholders, insurers may violate the Act. In 2021, The National Association of Insurance Commissioners (NAIC) created a model Unfair Trade Practices Act, that, among other provisions, addresses these concerns regarding VAS and clarifies the circumstances under which VAS are not unfair trade practices.

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[6] S. 626.9541(1)(z), F.S.

[7] Rule 69B-186.010, F.A.C., Unlawful Inducements Related to Title Insurance Transactions, governs inducements related to title insurance, but exempts gifts within the value limitation of s. 626.9541(1)(m), F.S. However, federal law prohibits any fee, kickback or thing of value given for referral of real estate settlement services on mortgage loans related to federal programs. 12 U.S.C. §2607 (2017).

[8] *See* IRMI, *Value-added services*, https://www.irmi.com/term/insurance-definitions/value-added-services (last visited Mar. 19, 2023).

[9] *Id.*

[10] *Id.* VAS help to prevent or mitigate covered losses.

[11] *Id.*

[12] *The Hartford*, *Protecting and Preparing Employees with the Value-added Services of Life Insurance*, https://www.thehartford.com/insights/employee-benefits/value-added-services-life-insurance (last visited Mar. 19, 2023).

[13] *Id.*

Effect of the Bill

The bill reduces the number of hours of prelicensure coursework a life insurance agent applicant must complete in life insurance, annuities, and variable contracts from 40 hours to 30 hours.

The bill also codifies certain portions of the NAIC Unfair Trade Practices Act. It establishes that certain actions by insurers related to VAS are not discrimination or unlawful rebates under the Act. All of these criteria regarding the value-added insurance products or services must be met for the provision of VAS to be excluded:

- Offered at no cost or reduced cost;
- Not specified in the insurance policy;
- Offered or provided by an insurer, insurance agent, or employee, affiliate, or third-party representative of the insurer or insurance agent; and
- Primarily designed to do one or more of the following:
    - Provide loss mitigation or control;
    - Reduce claim or claim settlement costs;
    - Provide education about liability risks or risk of loss to people or property;
    - Monitor or assess risk, identify sources of risk, or develop strategies to eliminate or reduce risk;
    - Enhance health;
    - Enhance financial wellness through items such as education or financial planning services;
    - Provide post-loss services;
    - Incentivize behavioral changes to improve the health, or reduce the risk of death or disability; or
    - Assist in the administration of employee or retiree benefit insurance coverage.

Under the bill, the cost to the insurer or agent offering the product or service must be reasonable in comparison to the customer's premiums or insurance coverage for the type of policy. The insurer or agent must ensure the customer receives the contact information necessary to assist the customer with the product or service. The bill specifies that the availability of the product or service must be based on documented objective evidence maintained by the insurer or agent and produced to OIR or DFS upon request.

If an insurer or agent has a good faith believe, but lacks sufficient evidence to demonstrate, that the product or service meets the criteria explained above, the insurer or agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program implemented for a maximum of one year. The bill requires that the insurer or agent notify OIR or DFS, as applicable, of the pilot or testing program before beginning the program. After providing notification, the insurer or agent may begin the program unless OIR or DFS objects to it within 21 days after receiving the notice.

The bill establishes that an insurer, agent, or representative may not:

- Offer to provide insurance or inducement to the purchase of another policy;
- Use the words "free" or "no cost," or similar words in an advertisement.

B. SECTION DIRECTORY:

Section 1. Amends s. 626.7851, relating to requirement as to knowledge, experience, or instruction.

Section 2. Amends s. 626.9541, F.S. relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 3. 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, but VAS may lead to reduced claim costs to the extent they fulfill their intended purpose.[14]

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Financial Services Commission with the authority to adopt rules necessary to administer the statutory changes set forth in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

[14] A bill analysis has been requested from OIR, but has not been received at the time of publication of this analysis.

A bill to be entitled

An act relating to non-coverage-related regulation of insurance; amending s. 626.7851, F.S.; revising a minimum coursework qualification for licensure as a life agent; amending s. 626.9541, F.S.; providing that certain restrictions against unfair discrimination or unlawful rebates do not include value-added products or services offered or provided by life or health insurers or their agents if certain conditions are met; providing requirements for and restrictions on life or health insurers or life or health agents offering or providing such products or services; authorizing life or health insurers or life or health agents to provide such products or services as part of a pilot or testing program under certain circumstances; authorizing the Financial Services Commission to adopt rules; providing an effective date.

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

Section 1. Section 626.7851, Florida Statutes, is amended to read:

626.7851 Requirement as to knowledge, experience, or instruction.—An applicant for a license as a life agent, except for a chartered life underwriter (CLU), shall not be qualified

or licensed unless within the 4 years immediately preceding the date the application for a license is filed with the department he or she has:

(1) Successfully completed 30 ~~40~~ hours of coursework in life insurance, annuities, and variable contracts approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(2) Successfully completed a minimum of 60 hours of coursework in multiple areas of insurance, which included life insurance, annuities, and variable contracts, approved by the department, 3 hours of which shall be on the subject matter of ethics. Courses must include instruction on the subject matter of unauthorized entities engaging in the business of insurance;

(3) Earned or maintained an active designation as Chartered Financial Consultant (ChFC) from the American College of Financial Services; or Fellow, Life Management Institute (FLMI) from the Life Management Institute;

(4) Held an active license in life insurance in another state. This provision may not be used unless the other state grants reciprocal treatment to licensees formerly licensed in the state; or

(5) Been employed by the department or office for at least 1 year, full time in life insurance regulatory matters and who

was not terminated for cause, and application for examination is made within 4 years after the date of termination of his or her employment with the department or office.

Prelicensure coursework is not required for an applicant who is a member or veteran of the United States Armed Forces or the spouse of such a member or veteran. A qualified individual must provide a copy of a military identification card, military dependent identification card, military service record, military personnel file, veteran record, discharge paper, or separation document that indicates such member is currently in good standing or such veteran is honorably discharged.

Section 2. Paragraph (h) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

(h) Unlawful rebates.—

1. Except as otherwise expressly provided by law, or in an applicable filing with the office, knowingly:

a. Permitting, or offering to make, or making, any contract or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon;

b. Paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance contract, any unlawful rebate of premiums payable on the contract, any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract;

c. Giving, selling, or purchasing, or offering to give, sell, or purchase, as inducement to such insurance contract or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the insurance contract.

2. Nothing in paragraph (g) or subparagraph 1. of this paragraph shall be construed as including within the definition of discrimination or unlawful rebates:

a. In the case of any contract of life insurance or life annuity, paying bonuses to all policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance; provided that any such bonuses or abatement of premiums is fair and equitable to all policyholders and for the best interests of the company and its policyholders.

b. In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who

have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

c. Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year.

d. Issuance of life insurance policies or annuity contracts at rates less than the usual rates of premiums for such policies or contracts, as group insurance or employee insurance as defined in this code.

e. Issuing life or disability insurance policies on a salary savings, bank draft, preauthorized check, payroll deduction, or other similar plan at a reduced rate reasonably related to the savings made by the use of such plan.

3.a. No title insurer, or any member, employee, attorney, agent, or agency thereof, shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as inducement to title insurance, or after such insurance has been effected, any rebate or abatement of the premium or any other charge or fee, or provide any special favor or advantage, or any monetary consideration or inducement whatever.

b. Nothing in this subparagraph shall be construed as prohibiting the payment of fees to attorneys at law duly

licensed to practice law in the courts of this state, for professional services, or as prohibiting the payment of earned portions of the premium to duly appointed agents or agencies who actually perform services for the title insurer. Nothing in this subparagraph shall be construed as prohibiting a rebate or abatement of an attorney fee charged for professional services, or that portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), or any other agent charge or fee to the person responsible for paying the premium, charge, or fee.

c. No insured named in a policy, or any other person directly or indirectly connected with the transaction involving the issuance of such policy, including, but not limited to, any mortgage broker, real estate broker, builder, or attorney, any employee, agent, agency, or representative thereof, or any other person whatsoever, shall knowingly receive or accept, directly or indirectly, any rebate or abatement of any portion of the title insurance premium or of any other charge or fee or any monetary consideration or inducement whatsoever, except as set forth in sub-subparagraph b.; provided, in no event shall any portion of the attorney fee, any portion of the premium that is not required to be retained by the insurer pursuant to s. 627.782(1), any agent charge or fee, or any other monetary consideration or inducement be paid directly or indirectly for the referral of title insurance business.

4.a. Paragraph (g) or subparagraph 1. may not be construed as including within the definition of discrimination or unlawful rebates the offer or provision by a life or health insurer or a life or health agent of the life or health insurer, including by or through employees, affiliates, or third-party representatives, of value-added products or services at no or reduced cost when such products or services are not specified in the insurance policy, if the product or service relates to the insurance coverage and is primarily designed to do one or more of the following:

(I) Provide loss mitigation or loss control;

(II) Reduce claim costs or claim settlement costs;

(III) Provide education about liability risks or risk of loss to persons or property;

(IV) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;

(V) Enhance health;

(VI) Enhance financial wellness through items such as education or financial planning services;

(VII) Provide post-loss services;

(VIII) Incentivize behavioral changes to improve the health or reduce the risk of death or disability of a policyholder, potential policyholder, certificateholder, potential certificateholder, insured, potential insured, or applicant; or

(IX) Assist in the administration of employee or retiree benefit insurance coverage.

b. The cost to the life or health insurer or life or health agent offering the product or service to a customer must be reasonable in comparison to the customer's premiums or insurance coverage for the policy class.

c. If the life or health insurer or life or health agent is providing the product or service, the life or health insurer or life or health agent must ensure that the customer is provided with contact information to assist the customer with questions regarding the product or service.

d. The availability of the product or service must be based on documented objective evidence, and the product or service must be offered in a manner that is not unfairly discriminatory. The documented evidence must be maintained by the life or health insurer or life or health agent and produced upon request by the office or the department.

e. If a life or health insurer or life or health agent has a good faith belief, but does not have sufficient evidence to demonstrate, that the product or service meets any of the criteria in sub-sub-subparagraphs a.(I)-(IX), the life or health insurer or life or health agent may provide the product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program for up to 1 year. A life or health insurer or life or health agent must notify the office or

department, as applicable, of such pilot or testing program offered to consumers in this state before commencing the program. The life or health insurer or life or health agent may commence the program unless the office or department, as applicable, objects to the program within 21 days after receiving the notice.

f. A life or health insurer, life or health agent, or representative thereof may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use the words "free," "no cost," or similar words in an advertisement.

g. The commission may adopt rules to administer this subparagraph to ensure consumer protection. Such rules, consistent with applicable law, may address, among other issues, consumer data protections and privacy, consumer disclosure, and unfair discrimination.

Section 3. This act shall take effect July 1, 2023.

PCS for HB 7045

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7045 Human Trafficking, Prostitution, and Lewdness
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Larkin	Hamon

SUMMARY ANALYSIS

Human trafficking is a form of modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.

A victim of human trafficking has a federal cause of action under 18 U.S.C. § 1595, which may be brought against any perpetrator of trafficking or any person who knowingly benefits from the trafficking of a victim. Victims of human trafficking also have a state civil cause of action under ch. 772, F.S., related to civil remedies for criminal practices. Under s. 772.104, F.S., any person who demonstrates by clear and convincing evidence that he or she has been injured by a person who, with criminal intent, received and utilized proceeds from human trafficking has a cause of action for threefold the amount gained from the human trafficking, and for reasonable attorney fees and court costs. Alternatively, under s. 796.09, F.S., a person has a cause of action for compensatory and punitive damages against a person who coerced that person into prostitution; a person who coerces that person to remain in prostitution; or a person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.

The PCS creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking against an adult theater, as defined in s. 847.001(2)(b), F.S., or an owner, operator, or manager of such theater, that knowingly allows a victim of human trafficking to work, perform, or dance at the adult theater. The PCS allows a victim to recover economic and noneconomic damages; punitive damages; reasonable attorney fees; and costs. The PCS provides limitations on the commencement of actions brought under this new section and amends s. 95.11, F.S., to clarify that an action brought under the PCS's civil remedy provision may be brought within the same time period as is allowed for intentional torts based on abuse or, if applicable, sexual battery offenses on victims under age 16.

The PCS also amends s. 450.045, F.S., to increase the offense for failure of an owner, operator, or manager of an adult theater to comply with the proof of age and identify verification requirements from a first-degree misdemeanor to a third-degree felony; and removes the language indicating that the owner, operator, or manager must violate s. 450.045, F.S. knowingly. The PCS amends s. 796.07, F.S., to require an offender convicted for soliciting another person to commit prostitution to pay for and attend an educational program relating to human trafficking and commercial sex, if one is available, in addition to any other penalty imposed.

The PCS amends s. 943.17297, F.S., to require that each certified law enforcement officer successfully complete four hours of training in identifying and investigating human trafficking as part of the basic recruit training or additional required training.

The PCS may have an indeterminate positive impact on jail and prison beds by increasing the offense level for failure of an adult theater owner, operator, or manager to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions. The PCS may also have an indeterminate, but likely insignificant, fiscal impact on state expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Human Trafficking

Human trafficking is a form of modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.[1] It is the intent of the Legislature that the perpetrators of human trafficking be penalized for their illegal conduct and that the victims of trafficking be protected and assisted by this state and its agencies.[2]

A person who knowingly, or in reckless disregard of the facts, engages in or attempts to engage in human trafficking, or benefits financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor,[3] or services: [4]

- By coercing an adult, commits a first-degree felony.[5, 6]
- With or of a child younger than 18 years of age or a person believed to be a child younger than 18, commits a first-degree felony.[7]
- For commercial sexual activity with a mentally defective[8] or mentally incapacitated[9] person, commits a life felony.[10]

"Coercion" includes:

- Using or threatening to use force against a person.
- Restraining, isolating, or confining a person without lawful authority and against his or her will, or threatening to do so.
- Using lending or other credit methods to establish a debt by a person when labor or services are pledged as a security for the debt, if the reasonably assessed value of the labor or services is not applied toward the liquidation of the debt.
- Destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, other immigration document, or government identification document.
- Causing or threatening to cause financial harm.
- Enticing or luring a person by fraud or deceit.
- Providing a Schedule I or II controlled substance[11] to a person for the purpose of exploiting that person.[12]

"Commercial sexual activity" means any prostitution, lewdness, or assignation offense or attempt to

[1] S. 787.06(2)(d), F.S.
[2] S. 787.06(1)(d), F.S.
[3] "Labor" means work of economic or financial value. S. 787.06(2)(e), F.S.
[4] "Services" means any act committed at the behest of, under the supervision of, or for the benefit of another. The term includes, but is not limited to, forced marriage, servitude, or the removal of organs. S. 787.06(2)(h), F.S.
[5] S. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.
[6] A first-degree felony is punishable by up to 30 years' imprisonment and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S
[7] S. 787.06(3)(a)1., (c)1., (e)1., and (f)1., F.S.
[8] "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(c), F.S.
[9] "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(d), F.S.
[10] S. 787.06(3)(g), F.S.; A life felony is punishable by up to life imprisonment and a $15,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[11] S. 893.03, F.S.
[12] S. 787.06(2)(a), F.S.

commit such an offense, and includes a sexually explicit performance[13] and the production of pornography.[14]

If, during the commission of any first-degree felony offense listed above, the offender causes great bodily harm, permanent disability, or permanent disfigurement to another person, the offense is reclassified as a life felony.[15] Any person who for the purpose of committing or facilitating an offense of human trafficking, permanently brands,[16] or directs to be branded, a victim of human trafficking, commits a second-degree felony.[17]

Additionally, a parent, legal guardian, or a person with custody over a minor, who sells or transfers custody or control of the minor, or offers to sell or transfer custody or control of the minor, with knowledge or in reckless disregard of the fact that the child will be subject to human trafficking after the sale or transfer, commits a life felony.[18]

An offender's ignorance of a victim's age, a victim's misrepresentation of his or her age, or an offender's bona fide belief of a victim's age cannot be raised as a defense in the prosecution for a human trafficking offense.[19] A person convicted of human trafficking for commercial sexual activity must register as a sexual offender.[20]

Under the Federal Trafficking Victim Protections Act, "severe forms of trafficking in persons" means:

- Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which a person induced to perform such an act has not attained 18 years of age; or
- The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.[21]

Soliciting or Purchasing Prostitution

Section 796.07, F.S., defines prostitution as the giving or receiving of the body for sexual activity for hire.[22]

Under s. 796.07(2)(a)-(e) and (g)-(i), F.S., it is a second-degree misdemeanor:[23]

- To own, establish, maintain, or operate any place, structure, building, or conveyance for the purpose of lewdness,[24] assignation,[25] or prostitution;
- To offer, or to offer or agree to secure, another for the purpose of prostitution or for any other lewd or indecent act;
- To receive, or to offer or agree to receive, any person into any place, structure, building, or conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose;
- To direct, take, or transport, or to offer or agree to direct, take, or transport, any person to any place, structure, or building, or to any other person, with knowledge or reasonable cause to

[13] A sexually explicit performance is an act or show, whether public or private, that is live, photographed, recorded, or videotaped and intended to arouse or satisfy sexual desires or appeal to the prurient interest. S. 787.06(2)(i), F.S.
[14] S. 787.06(2)(b), F.S.
[15] S. 787.06(8)(b), F.S.
[16] "Permanently branded" means a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure. S. 787.06(4)(b), F.S.
[17] S. 787.06(4)(b), F.S.; A second-degree felony is punishable by a term of imprisonment not exceeding 15 years and a $10,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[18] S. 787.06(4)(a), F.S.
[19] S. 787.06(9), F.S.
[20] S. 943.0435, F.S.
[21] 22 U.S.C. § 7102(11).
[22] This definition excludes sexual activity between spouses. S. 796.07(1)(b), F.S.
[23] A second-degree misdemeanor is punishable by up to 60 days in county jail and a fine not exceeding $500. Ss. 775.082(4)(b) and 775.083(1)(e), F.S.
[24] "Lewdness" means any indecent or obscene act. S. 796.07(1)(c), F.S.
[25] "Assignation" means the making of any appointment or engagement for prostitution or lewdness, or any act in furtherance of such appointment or engagement. S. 796.07(1)(d), F.S.

believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;
- For a person 18 years of age or older to offer to commit, or to commit, or to engage in, prostitution, lewdness, or assignation;
- To reside in, enter, or remain in, any place, structure, or building, or to enter or remain in any conveyance, for the purpose of prostitution, lewdness, or assignation;
- To aid, abet, or participate in any of the acts or things listed above; or
- To purchase the services of any person engaged in prostitution.[26]

The penalty for a violation listed above is reclassified to a first-degree misdemeanor[27] for a second violation, and a third-degree felony[28] for any third or subsequent violation.[29]

Additionally, under s. 796.07(2)(f), F.S., a person who solicits, induces, entices, or procures another person to commit prostitution, lewdness, or assignation commits a first-degree misdemeanor for a first violation, a third-degree felony for a second violation, and a second-degree felony for a third or subsequent violation.[30] An offender convicted for soliciting another person to commit prostitution is also subject to additional penalties including:
- One hundred hours of community service;[31]
- Being required to pay for and attend an educational program about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers, if such a program is offered in the circuit in which the offender is sentenced;[32]
- A 10-day mandatory minimum jail sentence for a second or subsequent violation;[33]
- Vehicle impoundment up to 60 days if the offender used a car to commit the violation;[34]
- Inclusion of the offender's name on the Soliciting for Prostitution Public Database;[35] and
- A $5,000 civil fine.[36]

Statutes of Limitations

A statute of limitations is an absolute bar to the filing of a lawsuit after a date set by law. A statute of limitations specifies when such time period begins, how long the limitation period runs, and the circumstances by which the running of the statute may be "tolled," or suspended. A statute of limitations usually begins to run when a cause of action accrues, which generally, is when the harm occurs.

Section 95.11, F.S., provides limitations on the commencement of actions other than for recovery of real property, including actions founded on abuse or related to an offense of sexual battery.
An action founded on alleged abuse[37] may be commenced at the latest of the following times:
- At any time within seven years after the age of majority;
- Within four years after the injured person leaves the dependency of the abuser; or
- Within four years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse.[38]

[26] S. 796.07(2), F.S.
[27] A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a $1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.
[28] A third-degree felony is punishable by a term of imprisonment not exceeding five years and a $5,000 fine. Ss. 775.082, 775.083, or 775.084, F.S.
[29] S. 796.07(4), F.S.
[30] S. 796.07(2)(f) and (5)(a), F.S.
[31] S. 796.07(5)(b)1., F.S.
[32] S. 796.07(5)(b)2., F.S.
[33] S. 796.07(5)(c), F.S.
[34] S. 796.07(5)(d), F.S.
[35] S. 796.07(5)(e), F.S. (if there is evidence that the offender provided a form of payment or arranged for the payment of such services).
[36] S. 796.07(6), F.S.
[37] As defined in ss. 39.01, 415.102, or 984.03, F.S.
[38] S. 95.11(7), F.S.

However, an action related to a sexual battery[39] offense involving a victim who was under the age of 16 at the time of the act may be commenced at any time, unless the action would have been time barred on or before July 1, 2010.[40]

Vicarious Liability

"Vicarious liability" means liability that a supervisory party, such as an employer, bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties.[41]

Punitive Damages

Punitive damages may be awarded in any civil action only if there is a reasonable showing by evidence in the record or proffered by the claimant to provide a reasonable basis for recovery of such damages.[42] A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence,[43] finds that the defendant was personally guilty of intentional misconduct or gross negligence.

An employer, principal, corporation, or other legal entity may be held liable for punitive damages based on a claim of vicarious liability for the conduct of an employee or agent only if the employee was found personally guilty of intentional misconduct or gross negligence and:

- The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct or engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant; or
- The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct.[44]

"Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.[45] "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.[46]

An award of punitive damages may typically not exceed the greater of:

- Three times the amount of compensatory damages awarded to each claimant; or
- $500,000.[47]

However, if the fact finder determines that the wrongful conduct proven under this section was motivated solely by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, it may award an amount of punitive damages up to the greater of:

- Four times the amount of compensatory damages awarded to each claimant; or
- $2 million.[48]

[39] S. 794.011, F.S.
[40] S. 95.11(9), F.S.
[41] *Vicarious Liability*, Black's Law Dictionary (3d pocket ed. 2006).
[42] S. 768.72(1), F.S.
[43] S. 768.725, F.S.
[44] S. 768.72(3), F.S.
[45] S. 768.72(2)(a), F.S.
[46] S. 768.72(2)(b), F.S.
[47] S. 768.73(1)(a), F.S.
[48] S. 768.73(1)(b), F.S.

Alternatively, if the fact finder determines that at the time of injury the defendant had a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on the amount of awardable punitive damages.[49]

Punitive damages generally may not be awarded against a defendant in a civil action if he or she establishes, before trial, that punitive damages have already been awarded against the defendant in any state or federal court in any action alleging harm from the same act or single course of conduct for which the claimant seeks compensatory damages.[50] However, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish the defendant's behavior, the court may permit a jury to consider an award of subsequent punitive damages.[51]

Civil Causes of Action for Human Trafficking Victims

A victim of human trafficking has a federal cause of action under 18 U.S.C. § 1595; such action may be brought against any perpetrator of trafficking or any person who knowingly benefits from the trafficking of a victim.

Victims of human trafficking also have a state statutory cause of action under ch. 772, F.S., a chapter that provides civil remedies for criminal practices. Section 772.103, F.S., makes it unlawful for any person:

- Who has, with criminal intent, received any proceeds derived, directly or indirectly, from a pattern of criminal activity or through the collection of an unlawful debt, to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of criminal activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of criminal activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the actions listed above.

In turn, s. 772.104, F.S., provides a cause of action for any person who proves by clear and convincing evidence that he or she has been injured by reason of any violation of s. 772.103, F.S., due to human trafficking. Such injured person is entitled to recover, from the violator, threefold the amount gained from the human trafficking, or a minimum of $200, and reasonable attorneys fees and court costs.[52] However, no punitive damages may be awarded and the defendant is entitled to attorney fees and costs if the claim was unsupported.[53]

The statute of limitations for an action pursuant to 18 U.S.C. § 1595 is 10 years.[54] The statute of limitations for an action pursuant to s. 772.104, F.S., due to human trafficking is 5 years.[55]

Civil Cause of Action for A Person Coerced into Prostitution

Under s. 796.09, F.S., a person has a cause of action for compensatory and punitive damages against:

- A person who coerced that person into prostitution;[56]
- A person who coerces that person to remain in prostitution; or

[49] S. 768.73(1)(c), F.S.
[50] S. 768.73(2)(a), F.S.
[51] S. 768.73(2)(b), F.S. (any subsequent punitive damages must be reduced by the amount of any earlier punitive damage awards rendered in state or federal court).
[52] S. 772.104(2), F.S.
[53] S. 772.104(3), F.S.
[54] 18 U.S.C. § 1595(2)(c).
[55] S. 772.17, F.S.
[56] Prostitution has the same meaning as in s. 796.07, F.S.

- A person who uses coercion to collect or receive any part of that person's earnings derived from prostitution.[57]

For purposes of s. 796.09, F.S., "coercion" means any practice of domination, restraint, or inducement for the purpose of, or with the reasonably foreseeable effect of, causing another person to engage in or remain in prostitution or to relinquish earnings derived from prostitution, and includes, but is not limited to:

- Physical force or threats of physical force.
- Physical or mental torture.
- Kidnapping.
- Blackmail.
- Extortion or claims of indebtedness.
- Threat of legal complaint or report of delinquency.
- Threat to interfere with parental rights or responsibilities, whether by judicial or administrative action or otherwise.
- Promise of legal benefit.
- Promise of greater financial rewards.
- Promise of marriage.
- Restraint of speech or communication with others.
- Exploitation of a condition of developmental disability, cognitive limitation, affective disorder, or substance dependency.
- Exploitation of victimization by sexual abuse.
- Exploitation of pornographic performance.
- Exploitation of human needs for food, shelter, safety, or affection.[58]

It is not a defense to a complaint under s. 796.09, F.S., that:

- The plaintiff was paid or otherwise compensated for acts of prostitution;
- The plaintiff engaged in acts of prostitution prior to any involvement with the defendant; or
- The plaintiff made no attempt to escape, flee, or otherwise terminate contact with the defendant.[59]

Adult Theater Proof of Age and Identity Requirements

An "adult theater" is an enclosed building, or an enclosed space within a building, used for presenting either films, live plays, dances, or other performances that are distinguished or characterized by an emphasis on matter relating to specific sexual activities for observation by patrons, and which restricts admission only to adults, or any business that features a person who engages in specific sexual activities for observation by a patron, and which restricts admission to only adults.[60]

Section 450.045, F.S., requires an adult theater to obtain proof of age and identity from each of its employees or independent contractors and to verify the validity of the identification and age verification documents with the issuer before the employee or contractor's employment commences.[61] The theater must keep on record a copy of the employee or contractor's driver license or state or federal government-issued photo identification card, along with a record of the verification of the validity of the identification and age verification document, during the entire period of employment or business relationship with the independent contractor, and for at least three years after the employee or independent contractor ceases employment or the provision of services.[62]

[57] S. 796.09(1), F.S.
[58] S. 796.09(3), F.S.
[59] S. 796.09(5), F.S.
[60] S. 847.001(2)(b), F.S.
[61] S. 450.045(3)(a), F.S.
[62] S. 450.045(3)(b), F.S.

The Department of Business and Professional Regulation and its agents have the authority to enter and inspect an adult theater at any time during operating hours, unannounced and without prior notice, and to have access to identification and age verification documents kept on file by the adult theater.[63]

An adult theater owner, operator, or manager who knowingly violates s. 450.045, F.S., commits a first-degree misdemeanor.[64]

Criminal Punishment Code

Felony offenses which are subject to the Criminal Punishment Code[65] are listed in a single offense severity ranking chart (OSRC),[66] which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense listed in the OSRC is assigned a level according to the severity of the offense.[67, 68] A person's primary offense, any other current offenses, and prior convictions are scored using the points designated for the offense severity level of each offense.[69, 70] The final score calculation, following the scoresheet formula, determines the lowest permissible sentence that a trial court may impose, unless there is a valid reason for departure.[71]

Law Enforcement Training

Basic Recruit Training

Section 943.13, F.S., requires all law enforcement officer applicants to complete a Criminal Justice Standards and Training Commission (Commission)- approved basic recruit training program.[72]

An applicant may seek an exemption from completing a basic recruit training program if:

- He or she has previously completed a comparable basic recruit training program in this state or another state or for the federal government and served as a full-time sworn officer in this state or another state or for the federal government for at least one year, provided there is no more than an eight-year break in employment; or
- He or she served in the special operations forces for a minimum of five years, provided there is no more than a four-year break from the applicant's special operations forces experience.[73]

The Commission may require any applicant who qualifies for an exemption to complete additional training as it deems appropriate based on the applicant's prior training and experience.[74] The applicant must complete any such additional training within one year after receiving an exemption.[75]

Training in Identifying and Investigating Human Trafficking

[63] S. 450.045(3)(c), F.S.
[64] S. 450.045(3)(d), F.S.; A first-degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a $1,000 fine. Ss. 775.082(4)(a) and 775.083(1)(d), F.S.
[65] All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code. S. 921.002, F.S.
[66] S. 921.0022, F.S.
[67] S. 921.0022(2), F.S.
[68] Felony offenses that are not listed in the OSRC default to statutorily assigned levels, as follows: an unlisted third-degree felony defaults to a level 1; an unlisted second-degree felony defaults to a level 4; an unlisted first-degree felony defaults to a level 7; an unlisted first-degree felony punishable by life defaults to a level 9; and an unlisted life felony defaults to a level 10. S. 921.0023, F.S.
[69] Ss. 921.0022 and 921.0024, F.S.
[70] A person may also accumulate points for factors such as victim injury points, community sanction violation points, and certain sentencing multipliers. S. 921.0024(1), F.S.
[71] If a person scores more than 44 points, the lowest permissible sentence is a specified term of months in state prison, determined by a formula. If a person scores 44 points or fewer, the court may impose a nonprison sanction, such as a county jail sentence, probation, or community control. S. 921.0024(2), F.S.
[72] S. 943.13(9), F.S.
[73] Ss. 943.13(9)(a-b) and 943.131(2), F.S.
[74] S. 943.131(3), F.S.
[75] S. 943.131(4)(a), F.S.

Within one year after beginning employment, each certified law enforcement officer must successfully complete four hours of training in identifying and investigating human trafficking.[76] The training must be developed by the Commission in consultation with the Department of Legal Affairs and the Statewide Council on Human Trafficking. If an officer fails to complete the required training, his or her certification is placed on inactive status until the employing agency notifies the Commission that the officer has completed the training.[77]

Effect of Proposed Changes

PCS for HB 7045 creates s. 787.061, F.S., to provide a civil cause of action for victims of human trafficking to recover damages against an adult theater, as defined in s. 847.001(2)(b), F.S., or an owner, operator, or manager of such theater, that knowingly allows a victim of human trafficking to work, perform, or dance at the adult theater. The PCS includes specific legislative findings to support the creation of the cause of action. The PCS allows the action to be brought in any circuit court in the state.

The PCS defines a "victim of human trafficking" as a person subjected to coercion, as defined in s. 787.06(2), F.S., or by any other means, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

Damages Recoverable

Under the PCS, a victim may recover economic and noneconomic damages; punitive damages, as provided in ss. 768.72, 768.725, and 768.73, F.S.; reasonable attorney fees; and costs. Under the PCS, economic damages include, but are not limited to:

- Past and future medical and mental health expenses;
- Repatriation expenses, when a victim elects repatriation; and
- All other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

Under the PCS, noneconomic damages are nonfinancial losses that would not have occurred but for the victimization, and include:

- Pain and suffering;
- Inconvenience;
- Physical impairment;
- Mental anguish;
- Disfigurement;
- Loss of capacity for enjoyment of life; and
- Other nonfinancial losses.

The PCS provides that the civil remedies provided for in this new section of law do not preempt any other remedy or cause of action provided by law, but that a victim may not recover under both this section and s. 772.104(2), F.S.

Prohibition on Recovery

The PCS provides that if the factfinder determines a parent or legal guardian knowingly trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, the court may not allow such parent or legal guardian to receive any distribution of damages awarded under this section.

Consolidation

[76] Completion of the training may count toward the 40 hours of instruction for continued employment or appointment. S. 943.17297, F.S.
[77] *Id.*

The PCS authorizes a court to consolidate civil actions for the same defendant for the purpose of case resolution and aggregate jurisdiction.

Statute of Limitations

The PCS amends s. 95.11, F.S., to provide that an action under this section may be brought as specified in s. 95.11(7) or (9), F.S., as follows, whichever occurs later:

- Within 7 years after the victim reaches the age of majority;
- Within 4 years after the victim leaves the abuser;
- Within 4 years from the time of discovery by the victim of both the injury and the causal relationship between the injury and abuse; or
- For victims that were under the age of 16 at the time of the trafficking, at any time.

Criminal Provisions

The PCS amends s. 450.045, F.S., to increase the offense for failure of an owner, operator, or manager of an adult theater to comply with the proof of age and identify verification requirements from a first-degree misdemeanor to a third-degree felony and removes the language indicating that the violation must be done "knowingly." The PCS does not rank this offense, and as such, it is ranked as a level 1 offense on the Criminal Punishment Code OSRC.

The PCS amends s. 796.07, F.S., to require an offender convicted of soliciting another person to commit prostitution, in addition to any other penalty imposed, to pay for and attend an educational program, if one exists in the judicial circuit in which the offender is sentenced, that provides education on the following:

- The relationship between demand for commercial sex and human trafficking.
- The impact of human trafficking on victims.
- Coercion, consent, and sexual violence.
- The health and legal consequences of commercial sex.
- The negative impact of commercial sex on prostituted persons and the community.
- The reasons and motivations for engaging in prostitution.

The PCS authorizes a judicial circuit to establish such a program and allows such a program to be offered by a faith-based provider.

Law Enforcement Human Trafficking Training

The PCS amends s. 943.17297, F.S., to require that each certified law enforcement officer successfully complete four hours of training in identifying and investigating human trafficking as part of the basic recruit training of the officer as required pursuant to s. 943.13(9), F.S., or additional training pursuant to s. 943.131(4), F.S. The training must be developed by the Criminal Justice Standards and Training Commission in consultation with the Department of Legal Affairs and the Statewide Council on Human Trafficking.

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

B. SECTION DIRECTORY:

Section 1: Amends s. 95.11, F.S., relating to limitations other than for the recovery of real property.
Section 2: Amends and republishes s. 450.045, F.S., relating to proof of identity and age; posting of notices.
Section 3: Creates s. 787.061, F.S., relating to civil actions by victims of human trafficking.
Section 4: Amends and republishes s. 796.07, F.S., relating to prohibiting prostitution and related acts.
Section 5: Amends s. 943.17297, F.S., relating to continuing employment training in identifying and investigating human trafficking.
Section 6: 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:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS may have an indeterminate positive impact on the revenues of private entities who offer educational programs relating to human trafficking and commercial sex to the extent they receive payment from offenders to attend such programs.

D. FISCAL COMMENTS:

The PCS may have an indeterminate positive impact on jail and prison beds by increasing the offense level for failure of an adult theater owner, operator, or manager to comply with proof of age and identity requirements to a third-degree felony, which may result in more jail and prison admissions.

The PCS may also have an indeterminate negative impact on state expenditures due to costs required to establish educational programs relating to human trafficking and commercial sex. However, some costs may be offset by the requirement for offenders to pay for their attendance in the program. The PCS does not require the establishment of any new education programs.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This PCS 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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to human trafficking, prostitution, and lewdness; amending s. 95.11, F.S.; conforming provisions to changes made by the act; amending s. 450.045, F.S.; increasing criminal penalties for specified offenses involving adult theaters; creating s. 787.061, F.S.; providing legislative findings; providing definitions; providing a civil cause of action for victims of human trafficking against certain entities; providing procedures and requirements for claims; providing for damages, penalties, punitive damages, attorney fees, expenses, and costs; providing a statute of limitations; amending s. 796.07, F.S.; authorizing judicial circuits to establish educational programs for persons convicted of or charged with certain violations; specifying contents of such programs; providing that such programs may be offered by faith-based providers; amending s. 943.17297, F.S.; revising requirements for law enforcement training in identifying and investigating human trafficking; providing an effective date.

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

Section 1. Subsections (7) and (9) of section 95.11, Florida Statutes, are amended to read:

95.11 Limitations other than for the recovery of real property.—Actions other than for recovery of real property shall be commenced as follows:

(7) FOR INTENTIONAL TORTS BASED ON ABUSE.—An action founded on alleged abuse, as defined in s. 39.01, s. 415.102, or s. 984.03;~~,~~ ~~or~~ incest, as defined in s. 826.04;~~,~~ or an action brought pursuant to s. 787.061, may be commenced at any time within 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse, whichever occurs later.

(9) SPECIFIED ~~SEXUAL BATTERY~~ OFFENSES ON VICTIMS UNDER AGE 16.—An action related to an act constituting a violation of s. 794.011 or an action brought pursuant to s. 787.061 involving a victim who was under the age of 16 at the time of the act may be commenced at any time. This subsection applies to any such action other than one which would have been time barred on or before July 1, 2010.

Section 2. Paragraph (d) of subsection (3) of section 450.045, Florida Statutes, is amended, and paragraphs (a), (b), and (c) of that subsection are republished, to read:

450.045 Proof of identity and age; posting of notices.—

(3)(a) In order to provide the department and law enforcement agencies the means to more effectively identify, investigate, and arrest persons engaging in human trafficking, an adult theater, as defined in s. 847.001(2)(b), shall obtain proof of the identity and age of each of its employees or independent contractors, and shall verify the validity of the identification and age verification document with the issuer, before his or her employment or provision of services as an independent contractor.

(b) The adult theater shall obtain and keep on record a photocopy of the person's driver license or state or federal government-issued photo identification card, along with a record of the verification of the validity of the identification and age verification document with the issuer, during the entire period of employment or business relationship with the independent contractor and for at least 3 years after the employee or independent contractor ceases employment or the provision of services.

(c) The department and its agents have the authority to enter during operating hours, unannounced and without prior notice, and inspect at any time a place or establishment covered by this subsection and to have access to age verification documents kept on file by the adult theater and such other records as may aid in the enforcement of this subsection.

(d) A person who owns, operates, or manages an adult

theater ~~owner, operator, or manager~~ who ~~knowingly~~ violates this subsection commits a felony of ~~misdemeanor in~~ the third ~~first~~ degree, punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s. 775.084.

Section 3. Section 787.061, Florida Statutes, is created to read:

787.061 Civil actions by victims of human trafficking.—

(1) FINDINGS.-The Legislature finds that it is necessary to provide a civil cause of action for the recovery of specified damages and costs in order to achieve the intent of the Legislature relating to human trafficking as expressed in s. 787.06(1)(d).

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

(a) "Human trafficking" has the same meaning as provided in s. 787.06(2).

(b) "Victim of human trafficking" means a person subjected to coercion, as defined in s. 787.06(2), or by any other means, for the purpose of being used in human trafficking; a child under 18 years of age subjected to human trafficking; or an individual subjected to human trafficking as defined by federal law.

(3) CIVIL CAUSE OF ACTION.—

(a) A victim of human trafficking has a civil cause of action against an adult theater, as defined in s. 847.001(2)(b), or an owner, operator, or manager of such theater, that

knowingly allows a victim of human trafficking to work, perform, or dance at the adult theater. Such victim may recover damages as provided in this section.

(b) The action may be brought in any circuit court of competent jurisdiction in this state.

(c) A victim who prevails in any such action may recover economic and noneconomic damages; punitive damages, as provided in ss. 768.72, 768.725, and 768.73; reasonable attorney fees; and costs.

1. Economic damages include, but are not limited to, past and future medical and mental health expenses; repatriation expenses, when a victim elects repatriation; and all other reasonable costs and expenses incurred by the victim in the past or estimated to be incurred by the victim in the future as a result of the human trafficking.

2. Noneconomic damages are nonfinancial losses that would not have occurred but for the victimization, and include pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of capacity for enjoyment of life, and other nonfinancial losses.

(d) The civil remedies provided for in this section do not preempt any other remedy or cause of action provided by law, except that a victim may not recover against the same defendant under both this section and s. 772.104(2).

(e) If the factfinder determines a parent or legal

guardian knowingly trafficked the victim, facilitated such trafficking, or otherwise participated in the human trafficking of the victim, the court may not allow such parent or legal guardian to receive any distribution of damages awarded under this section.

(f) The court shall have specific authority to consolidate civil actions for the same defendant for the purpose of case resolution and aggregate jurisdiction.

(4) STATUTE OF LIMITATIONS.—The statute of limitations as specified in s. 95.11(7) or (9), as applicable, governs an action brought under this section.

Section 4. Paragraph (b) of subsection (5) of section 796.07, Florida Statutes, is amended, subsection (8) is added to that section, and paragraph (f) of subsection (2) and paragraph (a) of subsection (5) of that section are republished, to read:

796.07 Prohibiting prostitution and related acts.—

(2) It is unlawful:

(f) To solicit, induce, entice, or procure another to commit prostitution, lewdness, or assignation.

(5)(a) A person who violates paragraph (2)(f) commits:

1. A misdemeanor of the first degree for a first violation, punishable as provided in s. 775.082 or s. 775.083.

2. A felony of the third degree for a second violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. A felony of the second degree for a third or subsequent

violation, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) In addition to any other penalty imposed, the court shall order a person convicted of a violation of paragraph (2)(f) to:

1. Perform 100 hours of community service.~~; and~~

2. Pay for and attend an educational program as described in subsection (8), ~~about the negative effects of prostitution and human trafficking, such as a sexual violence prevention education program, including such programs offered by faith-based providers,~~ if such a program exists ~~programs exist~~ in the judicial circuit in which the offender is sentenced.

(8)(a) A judicial circuit may establish an educational program for persons convicted of or charged with a violation of paragraph (2)(f), to include education on:

1. The relationship between demand for commercial sex and human trafficking.

2. The impact of human trafficking on victims.

3. Coercion, consent, and sexual violence.

4. The health and legal consequences of commercial sex.

5. The negative impact of commercial sex on prostituted persons and the community.

6. The reasons and motivations for engaging in prostitution.

(b) An educational program may include a program offered

by a faith-based provider.

Section 5. Section 943.17297, Florida Statutes, is amended to read:

943.17297 ~~Continuing employment~~ Training in identifying and investigating human trafficking.~~ Within 1 year after beginning employment,~~ Each certified law enforcement officer must successfully complete 4 hours of training in identifying and investigating human trafficking as part of the basic recruit training of the officer required in s. 943.13(9) or additional training required in s. 943.131(4). ~~Completion of the training component may count toward the 40 hours of instruction for continued employment or appointment as a law enforcement officer required under s. 943.135. This training component must be completed by current law enforcement officers by July 1, 2022.~~ The training must be developed by the commission in consultation with the Department of Legal Affairs and the Statewide Council on Human Trafficking. ~~If an officer fails to complete the required training, his or her certification must be placed on inactive status until the employing agency notifies the commission that the officer has completed the training.~~

Section 6. This act shall take effect July 1, 2023.

COMMERCE COMMITTEE

PCS for HB 7045 by Rep. Overdorf
Human Trafficking, Prostitution, and Lewdness

AMENDMENT SUMMARY
April 17, 2023

Amendment 1 by Rep. Overdorf (lines 195-196):

- Establishes the Statewide Data Repository for Anonymous Human Trafficking Data within the University of South Florida's (USF) Trafficking in Persons – Risk to Resilience Lab.
- Details the purposes of and specifies USF's duties in relation to the repository.
- Requires specified agencies to report on a specified schedule, and describes the type of data to be collected.
- Provides a sunset date of July 1, 2026, for the data repository unless reviewed and reenacted by the Legislature before that date.

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: Commerce Committee

Representative Overdorf offered the following:

Amendment (with title amendment)

Remove lines 195-196 and insert:

Section 6. Section 1004.343, Florida Statutes, is created to read:

1004.343 Statewide Data Repository for Anonymous Human Trafficking Data.—

(1) The University of South Florida Trafficking in Persons - Risk to Resilience Lab shall house and operate the state's unified Statewide Data Repository for Anonymous Human Trafficking Data.

(a) The purposes of the data repository are to:

1. Collect and analyze anonymous human trafficking data to better understand the magnitude and trends in human trafficking in the state over time.

2. Help evaluate the effectiveness of various state-funded initiatives to combat human trafficking to determine the impact of such initiatives and to use evidence-based decision-making in the determination of state investments in such initiatives.

3. To inform statewide efforts among law enforcement, state agencies, and other entities to combat human trafficking and apprehend and prosecute those persons responsible for human trafficking.

4. To better serve victims of human trafficking through evidence-based interventions that have proven effective.

(b) University of South Florida faculty and staff assigned to the lab shall:

1. Design, operate, maintain, and protect the integrity of the statewide human trafficking data repository.

2. Design, in consultation with the Department of Law Enforcement and other law enforcement partners, and launch a user-friendly system for uploading anonymous human trafficking data to the repository in a manner that can be accomplished quickly and at no additional cost to the required reporting entities.

3. Analyze such data to identify initiatives and interventions that worked best in combatting human trafficking,

prosecuting individuals conducting human trafficking, and assisting victims of human trafficking.

4. Work with law enforcement and state agencies to report data on human trafficking investigations and prosecutions that can aid those agencies in combatting human trafficking and prosecuting those individuals responsible for human trafficking.

(2)(a) The following agencies and organizations are considered required reporting entities under this section:

1. Law enforcement agencies operating with state or local government tax proceeds, including, but not limited to, municipal police departments, county sheriff's departments, county attorney's offices, and state attorney's offices.

2. The Department of Law Enforcement and any other state agencies that hold any data related to human trafficking.

3. Service providers and other nongovernmental organizations that serve victims of human trafficking through state or federal funding for such purpose.

(b) Notwithstanding paragraph (a), any required reporting entity that submits the data required under subsection (3) from its local jurisdiction to the Department of Law Enforcement's Uniform Crime Report (UCR) system or Florida Incident-Based Reporting System (FIBRS) may, but is not required to, submit any additional data to the statewide human trafficking data repository. However, the Department of Law Enforcement shall upload or otherwise share with the statewide human trafficking

data repository, at least quarterly, the relevant data required by this section that has been reported by local jurisdictions to the UCR system and the FIBRS.

(3) The following human trafficking data shall be submitted by required reporting entities to the statewide human trafficking data repository unless such entity is exempt from the reporting under paragraph (2)(b):

(a) The alleged offense that was being investigated or prosecuted and a description of the alleged prohibited conduct.

(b) The age, gender, and race or ethnicity of each suspect and victim and the case number associated with that suspect and victim.

(c) The date, time, and location of the alleged offense.

(d) The type of human trafficking involved.

(e) Any other related prosecution charges.

(f) Information regarding any victim services organization or program to which the victim was referred, if available.

(g) The disposition of the investigation or prosecution, regardless of its manner of disposition.

(4)(a) A required reporting entity located in a county with a population of more than 500,000 must begin reporting its jurisdiction's human trafficking data required by this section to the statewide human trafficking data repository, or to the UCR system or the FIBRS, on or before July 1, 2023, and at least quarterly each year thereafter.

(b) A required reporting entity located in a county with a population of 500,000 or fewer must begin reporting its jurisdiction's human trafficking data required by this section to the statewide human trafficking data repository, or to the UCR system or the FIBRS, on or before July 1, 2024, and at least biannually each year thereafter.

(5) Beginning July 1, 2024, and annually thereafter, University of South Florida Trafficking in Persons - Risk to Resilience Lab, shall submit an annual report and analysis on its findings to the Governor, the Attorney General, the President of the Senate and the Speaker of the House of Representatives.

(6) This section is repealed July 1, 2026, unless reviewed and reenacted by the Legislature before that date.

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

Remove line 21 and insert:

investigating human trafficking; creating s. 1004.343, F.S.; creating the Statewide Data Repository for Anonymous Human Trafficking Data at the University of South Florida; providing purposes of the data repository; specifying duties of university faculty and staff; designating required reporting entities;

requiring specified information to be reported;
providing for reporting; providing an