



Insurance & Banking Subcommittee

**Wednesday, January 10, 2018
12:00 pm
Sumner Hall (404 HOB)**

**Richard Corcoran
Speaker**

**Danny Burgess
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Insurance & Banking Subcommittee

Start Date and Time: Wednesday, January 10, 2018 12:00 pm
End Date and Time: Wednesday, January 10, 2018 03:00 pm
Location: Sumner Hall (404 HOB)
Duration: 3.00 hrs

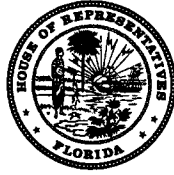
Consideration of the following bill(s):

HB 271 Bankruptcy Matters in Foreclosure Proceedings by Rommel
HB 483 Unfair Insurance Trade Practices by Yarborough
HB 533 Unfair Insurance Trade Practices by Hager
HB 953 Consumer Report Security Freezes by Harrison
HB 1011 Hurricane Flood Insurance by Cruz

Pursuant to Rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, January 9, 2018.

By request of Chair Burgess, all Insurance & Banking Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, January 9, 2018.

NOTICE FINALIZED on 01/08/2018 4:02PM by Locke.Lindsey



The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Richard Corcoran
Speaker

Danny Burgess
Chair

AGENDA

January 10, 2018
404 House Office Building
12:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Consideration of the following bills:

- A. HB 271 Bankruptcy Matters in Foreclosure Proceedings by Rommel
- B. HB 483 Unfair Insurance Trade Practices by Yarborough
- C. HB 533 Unfair Insurance Trade Practices by Hager
- D. HB 953 Consumer Report Security Freezes by Harrison
- E. HB 1011 Hurricane Flood Insurance by Cruz

III. Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 271 Bankruptcy Matters in Foreclosure Proceedings

SPONSOR(S): Rommel

TIED BILLS: None **IDEN./SIM. BILLS:** SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee	14 Y, 0 N	Tuszyński	Bond
2) Insurance & Banking Subcommittee		Hinshelwood <i>PH</i>	Luczynski <i>ML</i>
3) Judiciary Committee			

SUMMARY ANALYSIS

A mortgage foreclosure is an action by a lender against a borrower to force the sale of the real property that secures the loan as a means of enforcing the debt. Often, a borrower subject to foreclosure will file for bankruptcy as a means of obtaining an automatic stay of the foreclosure action plus a discharge of the mortgage debt.

In bankruptcy, a debtor may claim certain property as exempt from the bankruptcy estate. When a resident of Florida files for bankruptcy, Florida law provides a base exemption of \$1,000 in personal property. A debtor may choose to exempt an additional \$4,000 in personal property should the debtor agree to surrender the homestead property to the lender. In some cases, however, debtors have stated an intention to surrender real property in bankruptcy proceedings but subsequently actively contested the completion of foreclosure proceedings in state court.

This bill provides that a lienholder in a mortgage foreclosure case may use any document filed under penalty of perjury in bankruptcy court as an admission by the defendant. The bill provides that the lienholder's submission of a document the defendant filed in the defendant's bankruptcy case that evidences intention to surrender the property to the lienholder, together with the submission of a final order entered in the bankruptcy case, creates a rebuttable presumption in favor of the lienholder that the defendant has waived any defense to the foreclosure. The bill requires the court, upon the request of a lienholder, to take judicial notice of the final order in a bankruptcy case. A debtor/defendant may still raise a defense based on actions taken by the lienholder after the filing of the document in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

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

The bill has an effective date of October 1, 2018, and applies to any mortgage foreclosure filed on or after that date.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Mortgage Foreclosure

A foreclosure is initiated by the lender or servicer, known as the mortgagee, when the borrower, or mortgagor, fails to perform the terms of his or her mortgage, usually by defaulting on payments. Most mortgages contain an "acceleration clause," which gives the mortgagee the authority to declare the entire mortgage obligation due and payable immediately upon default. If the borrower is not able to pay the entire mortgage obligation upon proper notice, the holder of the note or its servicing agent may begin the foreclosure process in a court of proper jurisdiction.

The following is a brief outline of the judicial foreclosure process, with the caveat that litigation is driven by the parties, so the process may be slightly different from case to case:

- Upon proper notice of default to the defendant, the mortgage servicer files a foreclosure complaint,¹ which must allege that the plaintiff is the present owner and holder of the note and mortgage,² contain a copy of the note and mortgage,³ and allege a statement of default,⁴ along with a filing fee⁵ and a *lis pendens*, which serves to cut off the rights of any person whose interest arises after filing.⁶
- Service of process must be made on defendants within 120 days after the filing of the initial pleadings.⁷
- If a defendant has not filed an answer or another paper indicating an intent to respond to the suit, then the plaintiff is entitled to an entry of default against the defendant.⁸
- If an answer is filed (thus negating the possibility of a default judgment), the plaintiff may then file a motion for summary judgment or proceed to trial; however, the vast majority of plaintiffs file a motion for summary judgment.⁹
- Following the proper motions, answers, affidavits, and other evidence being filed with the court, the judge holds a summary judgment hearing, and if he or she finds in favor of the plaintiff, the court renders a final judgment.¹⁰
- If summary judgment is denied, the foreclosure proceeds to a trial without a jury.¹¹
- The court schedules a judicial sale of the property not less than 20 days, but no more than 35 days after the judgment if the plaintiff prevails at summary judgment or trial.¹²
- A notice of sale must be published once a week, for 2 consecutive weeks, in a publication of general circulation, and the second publication must be at least five days prior to the sale.¹³

¹ Fla. R. Civ. P. 1.944.

² *Edason v. Cent. Farmers Trust Co.*, 129 So. 698, 700 (Fla. 1930).

³ Fla. R. Civ. P. 1.130(a).

⁴ *Siahpoosh v. Nor Props.*, 666 So. 2d 988, 989 (Fla. 4th DCA 1996).

⁵ The filing fee for foreclosure actions depends on the value of the claim. When the claim is for \$50,000 or less, the fee is \$395; when the claim is over \$50,000 but less than \$250,000, the fee is \$900; and when the claim is \$250,000 or more, the fee is \$1900, according to s. 28.241(1)(c), F.S.

⁶ s. 48.23, F.S.

⁷ Fla. R. Civ. P. 1.070(j). See also chs. 48 and 49, F.S.

⁸ Fla. R. Civ. P. 1.500.

⁹ Fla. R. Civ. P. 1.510(a).

¹⁰ s. 45.031, F.S.

¹¹ s. 702.01, F.S. The summary judgment motion is optional. A plaintiff can elect to go to trial without the filing of a summary judgment motion.

¹² s. 45.031(1)(a), F.S.

¹³ s. 45.031(2), F.S.

- The winning bid at a public judicial sale is conclusively presumed to be sufficient consideration for the sale.¹⁴
- Parties have 10 days to file a verified objection to the amount of the bid or the sale procedure.¹⁵
- After the 10 days has expired with no objection, the sale is confirmed by the clerk's issuance of the certificate of title to the purchaser, sale proceeds are disbursed in accordance with the statutory procedure,¹⁶ and the court may, in its discretion, enter a deficiency decree for the difference between the fair market value of the security received and the amount of the debt.¹⁷
- Also after the 10 days has expired, the clerk may issue a writ of possession giving possession of the real property to the purchaser and directing the sheriff to assist that purchaser with obtaining possession. Up to the point that a writ of possession is served on the property, the debtor who was foreclosed has the legal right to stay in possession of the real property.

Bankruptcy Proceedings

In general, the two purposes of bankruptcy are to convert the estate of the debtor into cash and distribute it among creditors, and to give the debtor a fresh start with such exemptions and rights as the bankruptcy statute leaves untouched.¹⁸ The filing of a bankruptcy petition operates as an automatic stay on most legal actions against a debtor, including foreclosure.¹⁹ The automatic stay is in effect from the time the petition is filed until discharge of the debtor, unless sooner lifted by the bankruptcy court.

There are two primary forms of bankruptcy an individual may file.²⁰ In a proceeding under Chapter 7 of the bankruptcy code, the debtor surrenders his or her assets to a trustee who then liquidates the assets and distributes proceeds to the creditors.²¹ A petition filed pursuant to Chapter 7 of the bankruptcy code is used when the rehabilitative chapters of the code would not be applicable, such as there being no nonexempt property to protect.²² A Chapter 13 petition allows the debtor to stay creditor actions and propose a plan to pay creditors, rehabilitating the debtor financially.²³

In Chapter 7 bankruptcy, the debtor must file a statement of intention regarding secured property. A debtor has three options: surrender the property and be discharged of the debt; reaffirm the debt, meaning the debtor keeps the property but is liable for the debt in the future (the debt is not discharged by bankruptcy); or redeem the property by paying cash to pay off the security interest.²⁴ The statement of intention is made under penalty of perjury. It must be filed by the debtor within 30 days of the filing of the Chapter 7 petition or on or before the date of the meeting of the creditors to appoint a trustee for the estate, whichever date is earlier.²⁵ Within 30 days after the first set date for the meeting of the creditors, the debtor must perform his intention with respect to each piece of secured property.²⁶

In Chapter 13 bankruptcy, the debtor must create a plan to restructure and repay his debt.²⁷ For this plan to be confirmed by the court, the plan must describe how the debtor is responding to each secured claim.²⁸ The debtor must make a plan for the secured property that the holder of the claim accepts; or the debtor must surrender the property securing the claim to the claim holder; or the plan must provide

¹⁴ s. 45.031(8), F.S.

¹⁵ *Id.*

¹⁶ s. 45.031, F.S.

¹⁷ s. 702.06, F.S.

¹⁸ 9 Am Jur 2d Bankruptcy § 5.

¹⁹ 11 U.S.C. § 362(a)(4).

²⁰ An individual can file a petition under Chapter 11, but it is rare.

²¹ 11 U.S.C. §§ 704 & 726.

²² 9 Am Jur 2d Bankruptcy § 68.

²³ 9 Am Jur 2d Bankruptcy § 72.

²⁴ 11 U.S.C. § 521(a)(2)(A).

²⁵ *Id.*

²⁶ 11 U.S.C. § 521(a)(2)(B).

²⁷ 11 U.S.C. §§ 1321 & 1322.

²⁸ 11 U.S.C. § 1325(a)(5).

for the holder of the claim to retain the lien securing the claim and provide that the value of property to be distributed on account of such claim is not less than the allowed amount of such claim.²⁹

In either a Chapter 7 or Chapter 13 bankruptcy, a debtor may claim certain property as exempt from the bankruptcy estate.³⁰ States may opt out of certain exemptions listed in the bankruptcy code, and Florida has chosen to do so.³¹ When a resident of Florida files for bankruptcy, Florida law provides exemptions from the bankruptcy estate, including a base \$1,000 in personal property.³² A debtor may exempt an additional \$4,000 of personal property "if the debtor does not claim or receive the benefits of a homestead exemption."³³ In other words, a debtor who is in foreclosure may elect to either save the home with a \$1,000 general personal property exemption, or may surrender the homestead property and have a \$5,000 personal property exemption.

After the debtor has fulfilled his or her duties to the bankruptcy estate, the debtor may receive a discharge.³⁴ This discharge voids any dischargeable debt of the debtor, including a deficiency judgment that might otherwise be obtained after surrender of secured property to a creditor.³⁵

Recent Cases Regarding Surrender of Real Property in Bankruptcy

Recent federal cases have dealt with the connection between federal bankruptcy law and state foreclosure law regarding what it means for a debtor to "surrender" real property. In several cases, debtors have declared an intention to surrender their home to the mortgage servicer, but then later (after discharge and the lifting of the automatic stay) actively contested a foreclosure action regarding that property.³⁶ In May 2015, the Bankruptcy Court for the Middle District of Florida held that "at a minimum, 'surrender' under the Bankruptcy Code §§ 521 and 1325, means a debtor cannot take an overt act that impedes a secured creditor from foreclosing its interest in secured property."³⁷ In October 2016, the 11th Circuit Court of Appeals, which covers Georgia, Florida, and Alabama, heard an appeal from another Florida case where the debtors surrendered the home in bankruptcy but contested the subsequent foreclosure by the lender.³⁸ The panel held that "[i]n bankruptcy, as in life, a person does not get to have his cake and eat it too.... Having chosen to surrender, the debtor must drop his opposition to the creditor's subsequent foreclosure action" or lose the benefit of the discharge.³⁹

Florida Evidence Code

The Florida Evidence Code governs what evidence may be used in court actions in the state courts.⁴⁰ The Florida Evidence Code provides for certain matters that shall or may be judicially noticed by a court.⁴¹ Judicial notice is a tool of evidence that allows a judge to accept a fact without proof because the fact is already known to him or her or is so readily ascertainable that it does not need to be

²⁹ *Id.*

³⁰ 11.U.S.C. § 522.

³¹ 11.U.S.C. § 522(b)(3)(A) & (d); s. 222.20, F.S.

³² FLA. CONST. art. X, s. 4(a)(2).

³³ s. 222.25(4), F.S.

³⁴ 11 U.S.C. § 727 & 1328.

³⁵ 11 U.S.C. § 524(a)(1).

³⁶ See, e.g., *In re Meltzer*, Case No. 8:12-bk-16792-MGW (Bankr. M.D. Fla. 2015); *In re Patel*, 8:13-bk-09736-MGW (Bankr. M.D. Fla. 2015); *In re Failla*, 838 F. 3d 1170 (11th Cir. 2016).

³⁷ *In re Meltzer*, Case No. 8:12-bk-16792-MGW (Bankr. M.D. Fla. 2015); *In re Patel*, 8:13-bk-09736-MGW (Bankr. M.D. Fla. 2015).

³⁸ *In re Failla*, 838 F. 3d 1170 (11th Cir. 2016).

³⁹ *Id.* at 1178.

⁴⁰ s. 90.103, F.S.

⁴¹ ss. 90.201 & 90.202, F.S.

proven.⁴² A court may take judicial notice of records of any court of this state or any court of record of the United States.⁴³

The Florida Evidence Code generally prohibits hearsay testimony.⁴⁴ An exception to the hearsay prohibition is the testimony or written admission of an opposing party.⁴⁵ A party to an action may prove the contents of writings of the opposing party by the testimony of that opposing party or that party's written admission.⁴⁶

Effect of the Bill

The bill creates s. 702.12, F.S., relating to mortgage foreclosures, to allow a lienholder in a foreclosure action to submit any document the defendant filed under penalty of perjury in a bankruptcy case as an admission by the defendant.

The bill creates a rebuttable presumption in favor of the lienholder that a defendant who has filed in his or her bankruptcy case an intent to surrender the property has waived any defenses to the foreclosure. The presumption is achieved by submitting a document that evidences the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure and a final order entered in the bankruptcy case that discharged the defendant's debt or confirms the defendant's repayment plan.

The bill also allows the lienholder to request that the court in the foreclosure action take judicial notice of any final order entered in a bankruptcy case.

The bill does not preclude the defendant from raising a defense based on actions taken by the lienholder after the filing of the document filed in the bankruptcy case that evidenced the defendant's intention to surrender the property to the lienholder.

The statute applies to any mortgage foreclosure filed on or after October 1, 2018.

B. SECTION DIRECTORY:

Section 1: Creates s. 702.12, F.S., relating to mortgage foreclosures.

Section 2: Provides an effective date of October 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

⁴² *Mitchum v. State*, 251 So. 2d 298, 300 (1st DCA 1971).

⁴³ s. 92.202(6), F.S.

⁴⁴ s. 90.802, F.S.

⁴⁵ s. 90.957, F.S.

⁴⁶ *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may lead to faster resolution of certain foreclosure cases and thus may reduce litigation costs for the parties involved.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to bankruptcy matters in foreclosure proceedings; creating s. 702.12, F.S.; authorizing lienholders to use certain documents as an admission in an action to foreclose a mortgage; providing that submission of certain documents in a foreclosure action creates a rebuttable presumption that the defendant has waived any defenses to the foreclosure; requiring a court to take judicial notice of orders entered in bankruptcy cases under certain circumstances; providing construction; providing applicability; providing an effective date.

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

Section 1. Section 702.12, Florida Statutes, is created to read:

702.12 Actions in foreclosure.-

(1) (a) A lienholder, in an action to foreclose a mortgage, may submit any document the defendant filed under penalty of perjury in the defendant's bankruptcy case for use as an admission by the defendant.

(b) A rebuttable presumption that the defendant has waived any defense to the foreclosure is created if a lienholder submits documents filed in the defendant's bankruptcy case

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which:

1. Evidence the defendant's intention to surrender to the lienholder the property that is the subject of the foreclosure;
2. Have not been withdrawn by the defendant; and
3. Show that a final order has been entered in the defendant's bankruptcy case which discharges the defendant's debts or confirms the defendant's repayment plan that provides for the surrender of the property.

(2) Pursuant to s. 90.203, a court shall take judicial notice of an order entered in a bankruptcy case upon the request of a lienholder.

(3) This section does not preclude the defendant in a foreclosure action from raising a defense based upon the lienholder's action or inaction subsequent to the filing of the document filed in the bankruptcy case which evidenced the defendant's intention to surrender the mortgaged property to the lienholder.

(4) This section applies to any foreclosure action filed on or after October 1, 2018.

Section 2. This act shall take effect October 1, 2018.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 483 Unfair Insurance Trade Practices
SPONSOR(S): Yarborough and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>Be...</i>	Luczynski <i>mj</i>
2) Commerce Committee			

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these are prohibitions on certain inducements to the purchase of insurance; however, there are also exceptions provided by law. Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to \$25 per gift to an insured, prospective insured, or any person, for the purpose of advertising. This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given over any period of time. The \$25 limit has been in place since 1989.

The bill expands the exception for advertising gifts to:

- Allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise,
- Authorize charitable contributions in the name of insureds or prospective insureds, up to the specified limit,
- Remove the limitation that the gifts be for advertising purposes,
- Increase the maximum allowed value from \$25 to \$100 per customer or prospective customer, and
- Limit the total value given to any customer or prospective customer to \$100 in one calendar year.

In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a \$25 per gift value limit with no annual aggregate limitation.

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,¹ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.² 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 law also describes prohibited discrimination. However, there are also many exceptions to the prohibitions defined by law.

Among the exceptions is authorization for insurers and their agents to offer and make gifts of merchandise up to \$25 per gift to an insured, prospective insured, or any person for the purpose of advertising. There are several similar limitations on advertising gifts under the Insurance Code related to the advertising practices of public adjusters, group and individual health benefit plans, and motor vehicle service agreement companies.³ This exception restricts the value of the advertising gift, but it does not limit the frequency of giving or the aggregate value of gifts given. The \$25 limit has been in place since 1989.⁴

The Insurance Code⁵ does not define the term “merchandise,” nor has the Department of Financial Services or the Office of Insurance Regulation defined this term in rules implementing their duties and obligations under the Insurance Code.⁶ The common definition of “merchandise” is “commodities or goods that are bought and sold in business.”⁷ Therefore, insurers and agents are allowed to give saleable items valued at \$25 or less to others for advertising purposes.

The bill expands the exception to allow gifting of goods, wares, store gift cards, gift certificates, event tickets, anti-fraud or loss mitigation services, and other items, in addition to merchandise. It removes the requirement that the gift be given for advertising purposes. The bill increases the allowed maximum value of the item given from \$25 to \$100 per customer or prospective customer. It also applies the value limit per customer or prospective customer to one calendar year. In relation to advertising gifts by title insurance agents, agencies, and insurers, the bill limits them to an aggregate \$25 gift value per calendar year, rather than a \$25 per gift value limit with no annual aggregate limitation.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2: Provides an effective date of July 1, 2018.

¹ part IX, ch. 626, F.S.

² s. 626.9541, F.S.

³ Public adjusters, their apprentices, and anyone acting on behalf of the public adjuster are prohibited from giving gifts of merchandise valued in excess of \$25 as an inducement to contract. s. 626.854(10), F.S. A group or individual health benefit plan may provide merchandise without limitation in value as part of an advertisement for voluntary wellness or health improvement programs. s. 626.9541(4)(a), F.S. Motor vehicle service agreement companies are prohibited from giving gifts of merchandise in excess of \$25 to agreement holders, prospective agreement holders, or others for the purpose of advertising. s. 634.282(17), F.S.

⁴ Ch. 89-360, Laws of Fla.

⁵ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

⁶ 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).

⁷ MERRIAM-WEBSTER, DICTIONARY, <https://www.merriam-webster.com/dictionary/merchandise>.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. While insurers and agents may see increased opportunities for solicitation and sales through use of higher value and new types of advertising and promotional gifts, the impact is not known.

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:

Current law and portions of the bill use the terms "insured" and "prospective insured" in relation to the exception to prohibitions on unfair and deceptive trade practices revised by the bill. On line 33 and 34, the bill uses the terms "customer" and "prospective customer" when applying a limit on gift values applicable to "insureds" and "prospective insureds." An amendment is expected to conform terminology to current statute.

On lines 44 and 45, a calendar year aggregate gifting limit is created applicable to gifts made by title agents, title agencies, and title insurers. The intent of this portion of the bill is to preserve existing law applicable to gifts made by title agents, title agencies, and title insurers. However, this annual limit is not consistent with current law. An amendment is expected to correct this issue.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to unfair insurance trade practices;
 3 amending s. 626.9541, F.S.; revising the types, value,
 4 and frequency of advertising and promotional gifts
 5 that licensed insurers or their agents may give to
 6 insureds, prospective insureds, or others; authorizing
 7 such insurers and agents to make specified charitable
 8 contributions on behalf of insureds or prospective
 9 insureds; prohibiting title insurance agents, title
 10 insurance agencies, or title insurers from giving
 11 insureds, prospective insureds, or others any article
 12 of merchandise in excess of a specified value;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (m) of subsection (1) of section
 18 626.9541, Florida Statutes, is amended to read:

19 626.9541 Unfair methods of competition and unfair or
 20 deceptive acts or practices defined.—

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

24 (m) Advertising and promotional gifts and charitable
 25 contributions permitted.—

26 1. The provisions ~~No provision~~ of paragraph (f), paragraph
 27 (g), or paragraph (h) do not ~~shall be deemed to~~ prohibit a
 28 licensed insurer or its agent from:

29 a. Giving to insureds, prospective insureds, or ~~and~~
 30 others, for the purpose of advertising, any article of
 31 merchandise, goods, wares, store gift cards, gift certificates,
 32 event tickets, anti-fraud or loss mitigation services, or other
 33 items having a total value of \$100 or less per customer or
 34 prospective customer in any calendar year ~~having a value of not~~
 35 ~~more than \$25.~~

36 b. Making charitable contributions, as defined in s.
 37 170(c) of the Internal Revenue Code, on behalf of insureds or
 38 prospective insureds, of up to \$100 per insured or prospective
 39 insured in any calendar year.

40 2. A title insurance agent or title insurance agency, as
 41 those terms are defined in s. 626.841, or a title insurer, as
 42 defined in s. 627.7711, may not give to insureds, prospective
 43 insureds, or others, for the purpose of advertising, any article
 44 of merchandise having a value of more than \$25, in any calendar
 45 year. A person or entity governed by this subparagraph is not
 46 subject to subparagraph 1.

47 Section 2. This act shall take effect July 1, 2018.

INSURANCE & BANKING SUBCOMMITTEE

HB 483 by Rep. Yarborough Unfair Insurance Trade Practices

AMENDMENT SUMMARY January 10, 2018

Amendment 1 by Rep. Yarborough (Line 40): The amendment creates an exception to the Unfair Insurance Trade Practices Act to allow insurers, in association with the sale of a group policy, to give vouchers for grief counseling and funeral services. It also removes a proposed annual gifting limitation applicable to title insurers, title agencies, and title agents, thus restoring current law.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee

3 Representative Yarborough offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 40-46 and insert:

7 2. The provisions of paragraph (f), paragraph (g), or
8 paragraph (h) do not prohibit a title insurance agent or title
9 insurance agency, as those terms are defined in s. 626.841, or a
10 title insurer, as defined in s. 627.7711, from giving to
11 insureds, prospective insureds, or others, for the purpose of
12 advertising, any article of merchandise having a value of not
13 more than \$25. A person or entity governed by this subparagraph
14 is not subject to subparagraph 1.

15 3. A licensed insurer or its agent may offer to an
16 insured, prospective insured, or others, in conjunction with the



Amendment No. 1

17 sale of a group insurance policy, complimentary grief counseling
18 or funeral planning services, or discounted rates on funeral
19 services offered by a third party provider. Such offering is not
20 an advertisement, designation, direction, rebate, or inducement
21 as described in this section, when:

22 a. The funeral planning services or funeral services are
23 rendered by funeral providers licensed under ch. 497 or licensed
24 by applicable laws in another jurisdiction in which the funeral
25 provider is located; and

26 b. The contact to such funeral providers is initiated by
27 the beneficiaries or family members of the group policy insured,
28 and not by the funeral provider.

29 A person or entity governed by this subparagraph is not subject
30 to subparagraph 1.

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34

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

35

Between lines 12 and 13, insert:

36

authorizing licensed insurers or their agents in specified

37

circumstances to give insureds, prospective insureds, or others

38

specified complimentary services or discounted rates on

39

specified services;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 533 Unfair Insurance Trade Practices
SPONSOR(S): Hager and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 756

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>Sc...</i>	Luczynski <i>MJ</i>
2) Commerce Committee			

SUMMARY ANALYSIS

The Unfair Insurance Trade Practices Act provides an extensive list of unfair methods of competition and unfair or deceptive acts prohibited in the business of insurance. Among these is a prohibition on an insurer refusing to insure anyone solely because they have not bought the following services related to the ownership and use of a motor vehicle:

- Towing service;
- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; or
- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

The bill allows an insurer to condition the sale of insurance on the purchase of motor vehicle services if such services are purchased from a membership organization affiliated with the insurer and the affiliated membership organization has maintained 1 million members in Florida continuously since January 1, 2018. The bill also corrects language used in a cross-reference.

The bill has no fiscal impact on state or local government expenditures. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Unfair Insurance Trade Practices Act,¹ among other things, defines unfair methods of competition and unfair or deceptive acts in the business of insurance.² It provides an extensive list of prohibited methods and acts. Among these are prohibitions on an insurer refusing to insure³ anyone solely because of the following reasons:⁴

- 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 automobile services;
- 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.

Effective October 1, 1982, the Legislature exempted automobile clubs from insurance regulation for the provision of "automobile services" related to motor vehicles.^{5,6} Accordingly, the provision of the following services related to the ownership, operation, use, or maintenance of a motor vehicle are not subject to the Insurance Code:⁷

- Towing service;

¹ part IX, ch. 626, F.S.

² s. 626.9541, F.S.

³ This includes a prohibition on cancelling or non-renewing a policy. s. 626.9541(1)(x), F.S.

⁴ s. 626.9541(1)(x), F.S.

⁵ Chapter 82-233, Laws of Florida., creating s. 624.21, F.S., which later became s. 624.124, F.S., as s. 4 of Chapter 82-386, Laws of Florida, also created s. 624.21, F.S., in the same session for a substantively different purpose.

⁶ Section 624.124, F.S., provides that "motor vehicle" has the same meaning specified by s. 634.011(6), F.S. Accordingly, "motor vehicle" means :

(a) A self-propelled device operated solely or primarily upon roadways to transport people or property, or the component part of such a self-propelled device, except such term does not include any self-propelled vehicle, or component part of such vehicle, which:

1. Has a gross vehicle weight rating of 10,000 pounds or more, and is not a recreational vehicle as defined by s. 320.01(1)(b);
2. Is designed to transport more than 10 passengers, including the driver; or
3. Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. ss. 1801 et seq.; or

(b) A self-propelled device operated solely or primarily upon water for noncommercial, personal use, the engine of such a vehicle, or a trailer or other device used to transport such vehicle or device.

s. 634.011(6), F.S.

⁷ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

- Procuring group coverage from an insurer for bail and arrest bonds or for accidental death and dismemberment;
- Emergency service;
- Procuring prepaid legal services, or providing reimbursement for legal services;
- Offering assistance in locating or recovering stolen or missing motor vehicles; and
- Paying emergency living and transportation expenses of the owner of a motor vehicle related to a damaged motor vehicle.

Section 626.9541(1)(x), F.S., provides that an insurer may not refuse to insure or refuse to continue to insure anyone for their failure to purchase “automobile services as defined in s. 624.124.” However, s. 624.124, F.S., does not define “automobile services”; rather, it establishes that providers of the specified “motor vehicle services” are exempt from regulation as an insurer.⁸

Effect of the Bill

The bill allows an insurer to condition the sale of insurance⁹ on the purchase of motor vehicle services if the following conditions are met:

- The motor vehicle services are purchased from a membership organization affiliated¹⁰ with the insurer; and,
- The affiliated membership organization has maintained 1 million Florida members continuously since January 1, 2018.

It is unknown which or how many Florida insurers are affiliated with a qualifying membership organization since such membership information is generally withheld by the membership organization for proprietary and trade secrecy purposes. Proponents of the bill assert that the Auto Club Group, operating in Florida as “AAA,” meets these conditions. The Office of Insurance Regulation will be responsible for approving changes to required company filings of insurers that wish to condition their sale of insurance on the purchase of motor vehicle services and auditing insurers for qualification to do so and their subsequent compliance with applicable law.

The bill also corrects language used in a cross-reference. It replaces the term “automobile services” with the term “motor vehicle services” to conform to the terminology of the target statute of the cross-reference, i.e., s. 624.124, F.S.

⁸ Section 624.124, F.S., originally described “automobile services” that were exempt from insurance regulation. Section 624.124, F.S., was amended to replace the term “automobile services” with the term “motor vehicle services” consistent with the existing body of that section. Section 626.9541(1)(x)4., F.S., which states “automobile services as defined in s. 624.124” was not amended to conform to the change in s. 624.124, F.S.

⁹ While this provision is related to the purchase of “motor vehicle services,” any insurer, without limitation of the type of insurance sold, may condition the sale of insurance in the manner allowed by the bill.

¹⁰ “Affiliate” means an entity that exercises control over or is directly or indirectly controlled by the insurer through:

- Equity ownership of voting securities;
- Common managerial control; or
- Collusive participation by the management of the insurer and affiliate in the management of the insurer or the affiliate.

s. 624.10(1), F.S. “Control,” including the terms “controlling,” “controlled by,” and “under common control with,” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10 percent or more of the voting securities of another person. s. 624.10(3), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 626.9541, F.S., relating to unfair methods of competition and unfair or deceptive acts or practices defined.

Section 2: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. Insurance purchasers may be refused coverage if they do not purchase motor vehicle services as a prerequisite to purchasing insurance. Accordingly, they may choose to incur the cost of purchasing such services or to obtain coverage from another insurer. Whether coverage from other insurers will have higher or lower cost for the same coverage level is dependent on the circumstances of the purchaser and the underwriting criteria of the other insurers.

Participation in membership organizations that sell motor vehicle services and insurance sales by their affiliated insurers may be affected. Whether this is a positive or negative influence on membership numbers or insurance purchases will be dependent upon a multitude of factors. Membership may shift from non-qualifying membership organizations to ones that qualify if the overall costs of membership and insurance are competitive. In the same manner, membership may shift away from qualifying membership organizations and their affiliated insurers may see reduced business if consumers find better coverage or lower costs from others.

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:

The bill amends s. 626.9541(1)(x), F.S., to correct a cross-reference that states "automobile services as defined in s. 624.124" whereas s. 624.124, F.S., uses the term "motor vehicle services." Section 634.095(5), F.S., also erroneously references "automobile services as specified in s. 624.124."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to unfair insurance trade practices;
 3 amending s. 626.9541, F.S.; authorizing insurers to
 4 refuse to insure or refuse to continue to insure an
 5 applicant or insured for failing to purchase certain
 6 noninsurance motor vehicle services; providing an
 7 effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraph (x) of subsection (1) of section
 12 626.9541, Florida Statutes, is amended to read:

13 626.9541 Unfair methods of competition and unfair or
 14 deceptive acts or practices defined.—

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

18 (x) *Refusal to insure.*—In addition to other provisions of
 19 this code, the refusal to insure, or continue to insure, any
 20 individual or risk solely because of:

21 1. Race, color, creed, marital status, sex, or national
 22 origin;

23 2. The residence, age, or lawful occupation of the
 24 individual or the location of the risk, unless there is a
 25 reasonable relationship between the residence, age, or lawful

26 occupation of the individual or the location of the risk and the
 27 coverage issued or to be issued;

28 3. The insured's or applicant's failure to agree to place
 29 collateral business with any insurer, unless the coverage
 30 applied for would provide liability coverage which is excess
 31 over that provided in policies maintained on property or motor
 32 vehicles;

33 4. The insured's or applicant's failure to purchase
 34 noninsurance services or commodities, including motor vehicle
 35 ~~automobile~~ services as defined in s. 624.124 except for motor
 36 vehicle services purchased from a membership organization that,
 37 since January 1, 2018, has more than 1 million members in this
 38 state and is affiliated with an admitted insurer;

39 5. The fact that the insured or applicant is a public
 40 official; or

41 6. The fact that the insured or applicant had been
 42 previously refused insurance coverage by any insurer, when such
 43 refusal to insure or continue to insure for this reason occurs
 44 with such frequency as to indicate a general business practice.

45 Section 2. This act shall take effect July 1, 2018.

INSURANCE & BANKING SUBCOMMITTEE

**HB 533 by Rep. Hager
Unfair Insurance Trade Practices**

**AMENDMENT SUMMARY
January 10, 2018**

Amendment 1 by Rep. Hager (Line 38): The amendment limits the exception created by the bill to property and casualty insurers, rather than all insurers.



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		

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee
 3 Representative Hager offered the following:

Amendment (with title amendment)

6 Remove line 38 and insert:
 7 state and is affiliated with an admitted property and casualty
 8 insurer;

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

12 Remove line 3 and insert:
 13 amending s. 626.9541, F.S.; authorizing property and casualty
 14 insurers to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 953 Consumer Report Security Freezes
SPONSOR(S): Harrison and others
TIED BILLS: IDEN./SIM. BILLS: SB 1302

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood <i>(jmt)</i>	Luczynski <i>MJ</i>
2) Commerce Committee			

SUMMARY ANALYSIS

Florida law allows a consumer to place a security freeze on his or her consumer report. Florida law also contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate) who does not have an existing consumer report. The request for a security freeze must be made to each consumer reporting agency, which may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identifier. The fees are the same in relation to the placement or removal of a security freeze for a protected consumer; a temporary lift is not available for a protected consumer. A consumer reporting agency is prohibited from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and is prohibited from charging any fee to a victim of identity theft.

Most states permit fees for placing a security freeze, and fees generally range from \$2 to \$10. Among the states that do not permit fees for placing a security freeze, the majority permit some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report. Only two states currently prohibit fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer. Bills have been filed in Congress with the goal of creating a security freeze process under federal law and prohibiting or limiting associated fees.

The bill would prohibit a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected consumer. However, the bill would still permit a consumer reporting agency to charge up to a \$10 fee for replacing a lost unique personal identifier.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Federal Fair Credit Reporting Act (FCRA)

The federal Fair Credit Reporting Act (FCRA) governs the collection, assembly, and use of consumer report information and establishes the framework for the credit reporting system in the United States.¹ The FCRA was enacted to (1) prevent the misuse of sensitive consumer information by limiting access to those with a legitimate need for the information; (2) improve the accuracy and integrity of consumer reports; and (3) promote the efficiency of the nation's banking and consumer credit systems.²

Most significantly, the FCRA regulates the practices of consumer reporting agencies (e.g., Equifax, Experian, TransUnion, etc.) that collect and compile consumer information into consumer reports, which are often referred to as credit reports.³ Consumer reports are used by credit grantors, insurance companies, employers, and other entities in determining a consumer's eligibility for certain products and services.⁴ Information included in consumer reports may include a consumer's credit and payment history, demographic and identifying information, and public record information (e.g., arrests, judgments, and bankruptcies).⁵

In 2003, the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) amended the FCRA.⁶ The FACT Act added a number of provisions to help consumers and businesses combat identity theft and reduce the damage when identity theft occurs.⁷ Among these provisions, the FACT Act established a national fraud alert system, required federal agencies to adopt rules for the disposition of consumer report information and how companies should respond to the "red flag" indicators of identity theft, and required that information placed on a consumer report due to identity theft be blocked from the report.⁸

The FCRA, as amended by the FACT Act, allows a consumer or the consumer's representative to assert a good-faith suspicion to a consumer reporting agency that he or she has been or is about to become the victim of identity theft.⁹ This requires the agency to place an initial fraud alert on the consumer report for at least 90 days at no charge to the consumer.¹⁰ A consumer or the consumer's representative can also file for an extended fraud alert that lasts up to seven years if an identity theft report is submitted to the consumer reporting agency.¹¹ However, fraud alerts do not prevent a potential creditor from obtaining the consumer report and may not prevent the opening of new credit accounts.¹²

¹ 15 U.S.C. § 1681 *et seq.*

² Federal Trade Commission, *40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations*, 1 (July 2011), available at <http://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ P.L. 108-159, H.R. 2622, 108th Cong. (Dec. 4, 2003), available at <https://www.gpo.gov/fdsys/pkg/STATUTE-117/pdf/STATUTE-117-Pg1952.pdf>.

⁷ Federal Trade Commission, *supra* note 2, at 3.

⁸ *Id.*

⁹ 15 U.S.C. § 1681c-1(a)(1).

¹⁰ *Id.*

¹¹ 15 U.S.C. § 1681c-1(b).

¹² 15 U.S.C. §§ 1681c-1 and 1681m(e).

Florida Statutes Relating to Consumer Report Security Freezes

In response to concerns regarding identity theft, Florida and the majority of states have adopted laws that allow a consumer to freeze access to his or her consumer report and prevent anyone from trying to open a new account or new credit. A consumer can place a “security freeze” on his or her consumer report by sending a written request by certified mail to a consumer reporting agency.¹³ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the consumer report, credit score, or any information contained within the consumer report to a third party without the express authorization of the consumer.¹⁴ Additionally, while a security freeze is in effect, a consumer reporting agency cannot change a consumer’s name, address, date of birth, or social security number in a consumer report without sending the consumer written confirmation of the change.¹⁵

A consumer reporting agency must place a security freeze within five business days after receiving a request and must provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the removal of a security freeze.¹⁶ A consumer reporting agency may charge a fee up to \$10 when a consumer elects to place, temporarily lift, or remove a security freeze or when the consumer reporting agency reissues a lost personal identification number or password.¹⁷ However, the law prohibits a consumer reporting agency from charging a fee to a consumer 65 years or older for the placement or removal of a security freeze and prohibits a consumer reporting agency from charging any fee to a victim of identity theft.¹⁸

Any written consumer disclosures that are required by the federal FCRA and that are provided to a consumer residing in this state must include a written summary of all rights the consumer has under Florida law relating to security freezes.¹⁹

While this law on security freezes has been in place in Florida since 2006, the law did not contain a mechanism for “freezing” the credit for individuals who do not have an existing credit report. Therefore, in 2014, the Keeping I.D. Safe (KIDS) Act became law in Florida, and Florida law now contains a process by which a security freeze may be placed on a record created to identify a protected consumer (i.e., a person younger than 16 years of age or a person represented by a guardian or other advocate).²⁰ To place the “security freeze”, a representative of the protected consumer must submit a request to the consumer reporting agency and provide sufficient proof of authority and identification.²¹ With some exceptions, the security freeze prohibits the consumer reporting agency from releasing the protected consumer’s record.²² Additionally, while a security freeze is in effect, a consumer reporting agency must send the protected consumer’s representative written confirmation of a change to the protected consumer’s name, address, date of birth, or social security number.²³

¹³ s. 501.005(2), F.S.

¹⁴ s. 501.005(1), (12), (15). Subsection 501.005(12), F.S., allows for the release of information otherwise protected by a security freeze to the existing creditors of the consumer, state agencies acting within their lawful investigatory or regulatory authority, law enforcement agencies, persons maintaining credit monitoring services or who provide consumer reports to consumers on their request, persons designated by court order, for credit prescreening or insurance underwriting purposes, and to certain other specified persons. Subsection 501.005(15), F.S., allows for the release of information otherwise protected by a security freeze to a check services company, a deposit account information service company, a consumer reporting agency that acts only as a reseller of credit information, and a fraud prevention services company.

¹⁵ s. 501.005(14), F.S.

¹⁶ s. 501.005(3), (4), F.S.

¹⁷ s. 501.005(13)(a), (c), F.S.

¹⁸ s. 501.005(13)(b), F.S.

¹⁹ s. 501.005(17), F.S.

²⁰ Ch. 2014-66, Laws of Fla.; s. 501.0051, F.S.

²¹ s. 501.0051(2), F.S.

²² s. 501.0051(1)(f)2., (8), F.S. Subsection 501.0051(8), F.S., allows for the release of information otherwise protected by a security freeze to persons and entities similar to those listed in s. 501.005(12) and (15), F.S. See *supra* note 14.

²³ s. 501.0051(10), F.S.

A consumer reporting agency must place a security freeze within 30 days after confirming the authenticity of a security freeze request and must provide the protected consumer's representative with a unique personal identifier to be used by the protected consumer's representative when providing authorization for the removal of a security freeze.²⁴ A consumer reporting agency may charge a fee up to \$10 when a security freeze is placed or removed or when the consumer reporting agency reissues a lost unique personal identifier.²⁵ However, the law prohibits a consumer reporting agency from charging a fee to the representative of a protected consumer who is a victim of identity theft.²⁶

Any written consumer disclosures that are required by the federal FCRA and that are provided to a protected consumer and his or her representative residing in this state must include a written summary of all rights the protected consumer and his or her representative have under Florida law relating to security freezes.²⁷

Regardless of whether a security freeze is requested on an existing consumer report or on a record created to identify a protected consumer, the request for a security freeze must be made to each consumer reporting agency. For example, when a request to place a security freeze is made to three consumer reporting agencies, the consumer or protected consumer's representative would be charged up to \$10 by each, for a total of up to \$30.²⁸ Additionally, the consumer or protected consumer's representative incurs fees of up to \$10 by each consumer reporting agency when there is a need to temporarily lift a security freeze, remove a security freeze, or replace a lost unique personal identifier.

Other States' Statutes Relating to Consumer Report Security Freezes

Most states permit fees for placing a security freeze, and fees generally range from \$2 to \$10.²⁹ Among the states that do not permit fees for placing a security freeze, the majority permit some combination of fees for temporarily lifting a security freeze, removing a security freeze, or creating a record to identify a protected consumer who does not have an existing consumer report.³⁰ Only two states currently prohibit fees for placing, temporarily lifting, or removing security freezes on an existing consumer report and prohibit fees associated with creating a record to identify a protected consumer.³¹

Federal Legislation to Prohibit or Limit Fees for Consumer Report Security Freezes

The following are bills that have been filed in Congress with the goal of creating a security freeze process under federal law and prohibiting or limiting associated fees:

- *Comprehensive Consumer Credit Reporting Reform Act of 2017, H.R. 3755*:³² This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file. The consumer reporting agency may not charge a fee if the consumer is the victim of identity theft, active duty military, 65 years of age or older, or a member of a class established by the Consumer Financial Protection Bureau. For all other

²⁴ s. 501.0051(4), (5), F.S.

²⁵ s. 501.0051(9)(a) and (b), F.S.

²⁶ s. 501.0051(9)(c), F.S.

²⁷ s. 501.0051(14), F.S.

²⁸ However, Equifax is waiving its fees for placing, temporarily lifting, or removing a security freeze through January 31, 2018. EQUIFAX, *Place, Temporarily Lift or Permanently Remove a Security Freeze*, https://www.freeze.equifax.com/Freeze/jsp/SFF_PersonalIDInfo.jsp (last visited Jan. 4, 2018).

²⁹ EQUIFAX, *What are the security freeze fees in my state?*, <https://help.equifax.com/s/article/What-are-the-security-freeze-fees-in-my-state> (last visited Jan. 4, 2018); EXPERIAN, *Security Freeze*, <https://www.experian.com/blogs/ask-experian/credit-education/preventing-fraud/security-freeze/> (last visited Jan. 4, 2018); TRANSUNION, *Credit Freeze Information by State*, <https://www.transunion.com/credit-freeze/credit-freeze-information-by-state> (last visited Jan. 4, 2018).

³⁰ *Id.*

³¹ *Id.* The two states are Indiana and South Carolina.

³² *Comprehensive Consumer Credit Reporting Reform Act of 2017, H.R. 3755*, 115th Cong. (introduced Sept. 13, 2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/3755>.

consumers, a consumer reporting agency may charge up to \$3, as adjusted annually for inflation.

- *Credit Information Protection Act of 2017, H.R. 3766*.³³ This bill amends the FCRA to require that, after a data security breach, a consumer reporting agency provide a security freeze to a consumer upon request. The consumer reporting agency must, without a fee, place a freeze on any consumer's report and provide unlimited security freezes and freeze removals to a consumer affected by the breach.
- *Free Credit Freeze Act, H.R. 3878*.³⁴ This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file at no charge.
- *Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, H.R. 4028*.³⁵ This bill amends the FCRA to allow a consumer to request that a consumer reporting agency place, temporarily lift, or remove a security freeze on an existing consumer report. The bill also allows a protected consumer's representative to request that a consumer reporting agency place or remove a security freeze on a record created to identify the protected consumer. The bill permits the consumer reporting agency to charge up to \$5 for each placement, temporary lift, or removal of a security freeze, except that fees are prohibited or limited for consumers who are victims of identity theft, minors, 65 years of age or older, or active duty military.
- *Consumer Data Protection Act, H.R. 4544*.³⁶ This bill amends the FCRA to require a consumer reporting agency that has experienced a data breach to provide affected individuals, upon their request and at no charge for their lifetime, a credit freeze, including imposing, lifting, or permanently removing a credit freeze.
- *Free Credit Freeze Act, S. 1810*.³⁷ This bill amends the FCRA in a manner similar to H.R. 3878 discussed above.
- *Freedom from Equifax Exploitation Act, S. 1816*.³⁸ This bill amends the FCRA to allow a consumer or a consumer's representative to place, temporarily lift, or remove a credit freeze on the consumer's file at no charge. The bill also requires a consumer reporting agency to issue a refund to any consumer who requested a credit freeze from September 7, 2017 until the day before the enactment of this bill.
- *Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, S. 1982*.³⁹ This bill amends the FCRA in a manner similar to H.R. 4028 discussed above.
- *Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155*.⁴⁰ This bill amends the FCRA to allow a consumer to request that a consumer reporting agency place or remove a security freeze on an existing consumer report and to allow a representative of a minor to request that a consumer reporting agency place or remove a security freeze on a record

³³ Credit Information Protection Act of 2017, H.R. 3766, 115th Cong. (introduced Sept. 13, 2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/3766?r=971>.

³⁴ Free Credit Freeze Act, H.R. 3878, 115th Cong. (introduced Sept. 28, 2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/3878>.

³⁵ Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, H.R. 4028, 115th Cong. (introduced Oct. 12, 2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/4028?r=709>.

³⁶ Consumer Data Protection Act, H.R. 4544, 115th Cong. (introduced Dec. 4, 2017), available at <https://www.congress.gov/bill/115th-congress/house-bill/4544/text?r=13>.

³⁷ Free Credit Freeze Act, S. 1810, 115th Cong. (introduced Sept. 14, 2017), available at <https://www.congress.gov/bill/115th-congress/senate-bill/1810>.

³⁸ Freedom from Equifax Exploitation Act, S. 1816, 115th Cong. (introduced Sept. 14, 2017), available at <https://www.congress.gov/bill/115th-congress/senate-bill/1816>.

³⁹ Promoting Responsible Oversight of Transactions and Examinations of Credit Technology (PROTECT) Act of 2017, S. 1982, 115th Cong. (introduced Oct. 18, 2017), available at <https://www.congress.gov/bill/115th-congress/senate-bill/1982?r=6432>.

⁴⁰ Economic Growth, Regulatory Relief, and Consumer Protection Act, S. 2155, 115th Cong. (introduced Nov. 16, 2017), available at <https://www.congress.gov/bill/115th-congress/senate-bill/2155?r=6259>.

created to identify the minor. The placement and removal of a security freeze must be free of charge.

- *Consumer Data Protection Act, S. 2188*:⁴¹ This bill amends the FCRA in a manner similar to H.R. 4544 discussed above.

Effect of the Bill

The bill would prohibit a consumer reporting agency from charging a fee for placing, temporarily lifting, or removing a security freeze on an existing credit report or on a record created to identify a protected consumer. However, the bill would still permit a consumer reporting agency to charge up to a \$10 fee for replacing a lost unique personal identifier.

B. SECTION DIRECTORY:

Section 1. Amends s. 501.005, F.S., relating to consumer report security freeze.

Section 2. Amends s. 501.0051, F.S., relating to protected consumer report security freeze.

Section 3. Provides an effective date of July 1, 2018.

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 elimination of fees for placing, temporarily lifting, or removing a security freeze would decrease revenues for consumer reporting agencies. The elimination of fees would decrease costs for consumers and may increase the occurrence and frequency of these activities by consumers. The use of security freezes may reduce the prevalence of identity theft, which would have a positive impact on consumers as well as creditors and other businesses. It is unknown how much revenue consumer reporting agencies currently earn from Florida residents or how the elimination of fees may affect consumer behavior and the prevalence of identity theft. Therefore, the impact to the private sector is indeterminate.

⁴¹ Consumer Data Protection Act, S. 2188, 115th Cong. (introduced Dec. 4, 2017), available at <https://www.congress.gov/bill/115th-congress/senate-bill/2188>.

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 does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to consumer report security freezes;
 3 amending s. 501.005, F.S.; prohibiting a consumer
 4 reporting agency from charging any fee to a consumer
 5 for placing, removing, or temporarily lifting a
 6 security freeze on his or her consumer report;
 7 amending s. 501.0051, F.S.; prohibiting a consumer
 8 reporting agency from charging any fee to the
 9 representative of a protected consumer for placing,
 10 removing, or temporarily lifting a security freeze on
 11 the protected consumer's consumer report; providing an
 12 effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Paragraph (c) of subsection (2), paragraph (d)
 17 of subsection (5), paragraph (c) of subsection (11), subsection
 18 (13), and paragraph (c) of subsection (17) of section 501.005,
 19 Florida Statutes, are amended to read:

20 501.005 Consumer report security freeze.—

21 (2) A consumer may place a security freeze on his or her
 22 consumer report by:

23 ~~(c) Paying a fee authorized under this section.~~

24 (5) A consumer may allow his or her consumer report to be
 25 accessed for a designated period of time while a security freeze

26 is in effect by contacting the consumer reporting agency and
 27 requesting that the freeze be temporarily lifted. The consumer
 28 must provide the following information to the consumer reporting
 29 agency as part of the request:

30 ~~(d) Payment of a fee authorized by this section.~~

31 (11) A security freeze shall remain in place until the
 32 consumer requests that it be removed. A consumer reporting
 33 agency shall remove a security freeze within 3 business days
 34 after receiving a request for removal from the consumer, who,
 35 upon making the request for removal, must provide the following:

36 ~~(e) Payment of a fee authorized by this section.~~

37 (13) (a) A consumer reporting agency may not charge any a
 38 ~~reasonable fee, not to exceed \$10,~~ to a consumer who elects to
 39 place, remove, or temporarily lift a security freeze on his or
 40 her consumer report.

41 ~~(b) A consumer reporting agency shall not charge any fee:~~

42 ~~1. To a consumer 65 years of age or older for the initial~~
 43 ~~placement or removal of a security freeze; or~~

44 ~~2. To a victim of identity theft who has submitted, at the~~
 45 ~~time the security freeze is requested, a copy of a valid~~
 46 ~~investigative or incident report or complaint with a law~~
 47 ~~enforcement agency about the unlawful use of the victim's~~
 48 ~~identifying information by another person.~~

49 (b) ~~(e)~~ A consumer reporting agency may charge a reasonable
 50 fee, not to exceed \$10, if the consumer fails to retain the

51 original personal identification number or password provided by
 52 the consumer reporting agency and the agency must reissue the
 53 personal identification number or password or provide a new
 54 personal identification number or password to the consumer.

55 (17) Any written disclosure by a consumer reporting
 56 agency, pursuant to 15 U.S.C. s. 1681g, to any consumer residing
 57 in this state shall include a written summary of all rights the
 58 consumer has under this section, and, in the case of a consumer
 59 reporting agency which compiles and maintains consumer reports
 60 on a nationwide basis, a toll-free telephone number which the
 61 consumer can use to communicate with the consumer reporting
 62 agency. The information set forth in paragraph (b) of the
 63 written summary of rights must be in at least 12-point boldface
 64 type. The written summary of rights required under this section
 65 is sufficient if it is substantially in the following form:

66 (c) When you place a security freeze on your consumer
 67 report, you will be provided a personal identification number or
 68 password to use if you choose to remove the freeze on your
 69 consumer report or authorize the release of your consumer report
 70 for a designated period of time after the security freeze is in
 71 place. To provide that authorization, you must contact the
 72 consumer reporting agency and provide all of the following:

- 73 1. The personal identification number or password.
- 74 2. Proper identification to verify your identity.
- 75 3. Information specifying the period of time for which the

76 report shall be made available.

77 ~~4. Payment of a fee authorized by this section.~~

78 Section 2. Paragraph (c) of subsection (2), paragraph (a)
 79 of subsection (7), subsection (9), and paragraph (c) of
 80 subsection (14) of section 501.0051, Florida Statutes, are
 81 amended to read:

82 501.0051 Protected consumer report security freeze.—

83 (2) A representative may place a security freeze on a
 84 protected consumer's consumer report by:

85 ~~(c) Paying the agency a fee as authorized under this~~
 86 ~~section.~~

87 (7) A consumer reporting agency shall remove a security
 88 freeze from a protected consumer's consumer report or record
 89 only under either of the following circumstances:

90 (a) Upon the request of a representative or a protected
 91 consumer. A consumer reporting agency shall remove a security
 92 freeze within 30 days after receiving a request for removal from
 93 a protected consumer or his or her representative.

94 1. A representative submitting a request for removal must
 95 provide all of the following:

96 a. Sufficient proof of identification of the
 97 representative and sufficient proof of authority as determined
 98 by the consumer reporting agency.

99 b. The unique personal identifier provided by the consumer
 100 reporting agency pursuant to subsection (5).

101 ~~e. A fee as authorized under this section.~~

102 2. A protected consumer submitting a request for removal
103 must provide all of the following:

104 a. Sufficient proof of identification of the protected
105 consumer as determined by the consumer reporting agency.

106 b. Documentation that the sufficient proof of authority of
107 the protected consumer's representative to act on behalf of the
108 protected consumer is no longer valid.

109 ~~e. A fee as authorized under this section.~~

110 (9)(a) A consumer reporting agency may not charge any a
111 ~~reasonable fee, not to exceed \$10,~~ to place or remove a security
112 freeze.

113 (b) A consumer reporting agency may ~~also~~ charge a
114 reasonable fee, not to exceed \$10, if the representative fails
115 to retain the original unique personal identifier provided by
116 the consumer reporting agency and the agency must reissue the
117 unique personal identifier or provide a new unique personal
118 identifier to the representative.

119 ~~(c) A consumer reporting agency may not charge a fee under
120 this section to the representative of a protected consumer who
121 is a victim of identity theft if the representative submits, at
122 the time the security freeze is requested, a copy of a valid
123 investigative report, an incident report, or a complaint with a
124 law enforcement agency about the unlawful use of the protected
125 consumer's identifying information by another person.~~

126 (14) A written disclosure by a consumer reporting agency,
 127 pursuant to 15 U.S.C. s. 1681g, to a representative and
 128 protected consumer residing in this state must include a written
 129 summary of all rights that the representative and protected
 130 consumer have under this section and, in the case of a consumer
 131 reporting agency that compiles and maintains records on a
 132 nationwide basis, a toll-free telephone number that the
 133 representative can use to communicate with the consumer
 134 reporting agency. The information provided in paragraph (b) must
 135 be in at least 12-point boldfaced type. The written summary of
 136 rights required under this section is sufficient if it is
 137 substantially in the following form:

138 (c) To remove the security freeze on the protected
 139 consumer's record or report, you must contact the consumer
 140 reporting agency and provide all of the following:

- 141 1. Proof of identification as required by the consumer
- 142 reporting agency.
- 143 2. Proof of authority over the protected consumer as
- 144 required by the consumer reporting agency.
- 145 3. The unique personal identifier provided by the consumer
- 146 reporting agency.
- 147 ~~4. Payment of a fee.~~

148 Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1011 Hurricane Flood Insurance
SPONSOR(S): Cruz
TIED BILLS: IDEN./SIM. BILLS: SB 1282

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Lloyd <i>bc</i>	Luczynski <i>ML</i>
2) Commerce Committee			

SUMMARY ANALYSIS

The Insurance Code requires that insurance policies, depending on the type of coverage, include specific content to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. Such provisions may establish requirements regarding content, print type or size, and appearance (e.g., bold type or all capitalized text). Homeowner’s property insurance policies must include the following statement in bold 18-point type:

“LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”

Flood insurance is a separate line of insurance from homeowner’s property insurance and is not included in such a policy. In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner’s property insurance policy does not cover the flood damage. If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will not be covered.

The bill expands the required notice applicable to homeowner’s property insurance policies to include notice that the policy does not include flood insurance. It also requires the acknowledgement of the insured that the policy does not include flood insurance. The new requirements will apply to policies issued or renewed on or after July 1, 2018.

The bill has indeterminate fiscal impact on state government expenses, no fiscal impact on state government revenues, and no fiscal impact on local government. The bill has indeterminate impacts on the private sector.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Insurance Policy Form and Content Requirements

The Insurance Code¹ requires that insurance policies, depending on the type of coverage, include specific content to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. Such provisions may establish requirements regarding content, print type or size, and appearance (e.g., bold type or all capitalized text). Examples include the following:

- Structured settlement transfers must include a disclosure statement in no less than 14-point type with specified elements;²
- Life insurance policies and health insurance policies must be in a light faced type of a style in general use in a uniform size of at least 10-point type with a lowercase alphabet spacing of not less than 120 points.³

- Sinkhole policies must include the following statement in bold 14-point type:

“YOUR POLICY PROVIDES COVERAGE FOR A CATASTROPHIC GROUND COVER COLLAPSE THAT RESULTS IN THE PROPERTY BEING CONDEMNED AND UNINHABITABLE. OTHERWISE, YOUR POLICY DOES NOT PROVIDE COVERAGE FOR SINKHOLE LOSSES. YOU MAY PURCHASE ADDITIONAL COVERAGE FOR SINKHOLE LOSSES FOR AN ADDITIONAL PREMIUM.”⁴

- Homeowner’s property insurance policies must include the following statement in bold 18-point type:

“LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT.”⁵

If the policy includes a separate hurricane deductible, it must include the following in bold 18-point type:

“THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR HURRICANE LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.”⁶

If the policy contains a hurricane coinsurance provision, it must include the following in bold 18-point type:

“THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU.”⁷

¹ Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the “Florida Insurance Code.” s. 624.01, F.S.

² s. 626.99296(3)(a)2., F.S.

³ ss. 627.452(4) and 627.602(1)(d), F.S.

⁴ s. 627.706(3), F.S.

⁵ s. 627.7011(4), F.S.

⁶ s. 627.701(4)(a), F.S.

⁷ *Id.*

- Motor vehicle policies must include the following statement in bold 12-point type:

“You are electing not to purchase certain valuable coverage which protects you and your family or you are purchasing uninsured motorist limits less than your bodily injury liability limits when you sign this form. Please read carefully.”⁸

- Premium finance agreements must include the following in bold 10-point type:

“PREMIUM FINANCE AGREEMENT”

in addition, the following in bold 8-point type:

“NOTICE:

1. Do not sign this agreement before you read it or if it contains any blank space.
2. You are entitled to a completely filled-in copy of this agreement.
3. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.”⁹

Flood Insurance

National Flood Insurance Program

The National Flood Insurance Program (NFIP or program) was created by the passage of the National Flood Insurance Act of 1968 to offer federally subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The federal government will make flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.¹⁰

Nationally, the NFIP insured almost \$1.29 trillion in assets in 2014 and \$1.27 trillion in assets in 2015. Total earned premium for NFIP coverage for 2014 was \$3.56 billion and for 2015 was \$3.45 billion.¹¹

Private Market Flood Insurance in Florida

In response to changes to the NFIP, the 2014 Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.¹² “Flood” is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.¹³

⁸ s. 627.727(1), F.S.

⁹ s. 627.839(2)(b), F.S. Also, premium finance agreements that include coverage required by the Financial Responsibility Law of 1955, ch. 324, F.S., must include the following statement in 12-point type: “proof of financial responsibility is required to be maintained continuously for a period of 3 years, pursuant to chapter 324, and the operation of a vehicle without such financial responsibility is unlawful.” s. 627.848(1)(b), F.S.

¹⁰ FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), <https://www.fema.gov/media-library/assets/documents/1150?id=1480> (last visited Jan. 7, 2018).

¹¹ FEMA, *Total Coverage by Calendar Year*, <http://www.fema.gov/statistics-calendar-year> (last visited Jan. 7, 2018).

¹² Ch. 2014-80, Laws of Fla.

¹³ s. 627.715(1)(b), F.S.

The Legislature amended the law in 2015¹⁴ and 2017.¹⁵ Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in such a policy.¹⁶ In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the homeowner's property insurance policy does not cover the flood damage.¹⁷ If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

Effect of the Bill

The bill expands the required notice applicable to homeowner's property insurance policies to include notice that the policy does not include flood insurance. It also requires the acknowledgement of the insured that the policy does not include flood insurance. The new requirements will apply to policies issued or renewed on or after July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.7011, F.S., relating to homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.

Section 2: Provides for the applicability of the provisions of the bill.

Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. In order to comply with the bill, insurers will have to file updated forms for Office of Insurance Regulation (OIR) approval.¹⁸ It is unknown whether OIR can respond to the required insurer action within current resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

¹⁴ Ch. 2015-69, Laws of Fla.

¹⁵ Ch. 2017-142, Laws of Fla.

¹⁶ part X, ch. 627, F.S.

¹⁷ Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

¹⁸ As of Jan. 7, 2018, OIR has not provided an agency bill analysis of HB 1011.

Indeterminate. Insurers will incur form-filing costs. Flood insurers may see more consumers purchasing flood insurance coverage. Consumers may seek flood insurance coverage, thus avoiding related losses in case of covered flood damage during their policy period.

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:

Property insurers will have to make form filings to comply with the bill. This requires time to develop, file, and implement new forms. The bill provides an effective date that would provide a short time between becoming law and its effective date, July 1, 2018. A later effective date would give insurers more time to comply with the bill.

The bill uses the term "hurricane insurance." This departs from the conventional terminology for this type of coverage. An amendment changing the term to "windstorm insurance" while also preserving the sponsor's intent to convey information to consumers about the interaction of windstorm coverage and flood insurance following hurricane damage would correct this issue.

The current homeowner's notice found in s. 627.7011(4), F.S., regarding flood insurance references the NFIP. Subsequent to the creation of this form language requirement, the Legislature passed measures to foster a Florida flood insurance market. It would be consistent with this recent legislative activity to add a reference to "Florida flood insurers" to the required notice.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to hurricane flood insurance; amending
 3 s. 627.7011, F.S.; revising a mandatory homeowner's
 4 insurance policy disclosure regarding the absence of
 5 flood coverage; providing disclosure requirements;
 6 providing applicability; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (4) of section 627.7011, Florida
 11 Statutes, is amended to read:

12 627.7011 Homeowners' policies; offer of replacement cost
 13 coverage and law and ordinance coverage.-

14 (4) A homeowner's insurance policy must include in bold
 15 type no smaller than 18 points the following statement and the
 16 homeowner must place his or her initials in the space indicated:

17 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU
 18 MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE
 19 OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM.
 20 HURRICANE INSURANCE DOES NOT INCLUDE FLOOD INSURANCE. WITHOUT
 21 THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS
 22 THESE COVERAGES WITH YOUR INSURANCE AGENT.

23 ...(insert initials)...I UNDERSTAND THAT IF I PURCHASE HURRICANE
 24 INSURANCE, IT DOES NOT INCLUDE FLOOD INSURANCE."

25 The intent of this subsection is to encourage policyholders to

26 purchase sufficient coverage to protect them in case events
 27 excluded from the standard homeowners policy, such as law and
 28 ordinance enforcement and flood, combine with covered events to
 29 produce damage or loss to the insured property. The intent is
 30 also to encourage policyholders to discuss these issues with
 31 their insurance agent.

32 Section 2. The amendments made by this act to s. 627.7011,
 33 Florida Statutes, apply to policies issued or renewed on or
 34 after July 1, 2018.

35 Section 3. This act shall take effect July 1, 2018.

INSURANCE & BANKING SUBCOMMITTEE

HB 1011 by Rep. Cruz
Hurricane Flood Insurance

AMENDMENT SUMMARY January 10, 2018

Amendment 1 by Rep. Cruz (strike-all): The amendment makes technical and clarifying changes to the bill. It provides for an acknowledgement of a flood insurance notice at the time of application for a policy, rather than on the face of the policy. It clarifies that a homeowner's insurance policy providing windstorm coverage does not include flood insurance coverage protecting against losses due to rising water. In addition, it corrects cross-references and changes the effective date to January 1, 2019, rather than July 1, 2018.



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	_____	

1 Committee/Subcommittee hearing bill: Insurance & Banking
 2 Subcommittee

3 Representative Cruz offered the following:

4
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsections (2) through (5) of section
 8 627.7011, Florida Statutes, are renumbered as subsections (3)
 9 through (6), respectively, present subsection (4) is amended,
 10 and a new subsection (2) is added to that section, to read:

11 627.7011 Homeowners' policies; offer of replacement cost
 12 coverage and law and ordinance coverage.-

13 (2) Prior to issuing a homeowner's insurance policy, the
 14 insurer must obtain the applicant's written acknowledgement of
 15 the following statement: "I UNDERSTAND THAT IF I PURCHASE A
 16 HOMEOWNER'S PROPERTY INSURANCE POLICY PROVIDING WINDSTORM



Amendment No. 1

17 COVERAGE, WHICH I MAY KNOW AS HURRICANE INSURANCE, THAT THE
18 POLICY DOES NOT INCLUDE FLOOD INSURANCE COVERAGE FOR DAMAGE FROM
19 RISING WATER AND MY PROPERTY WILL NOT BE COVERED FOR FLOOD
20 DAMAGE UNLESS I SEPARATELY PURCHASE FLOOD INSURANCE COVERAGE."

21 (5)-(4) A homeowner's insurance policy must include in bold
22 type no smaller than 18 points the following statement:
23 "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU
24 MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE
25 OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM OR
26 AN ADMITTED FLORIDA FLOOD INSURER. AS YOU ACKNOWLEDGED AT THE
27 TIME OF APPLICATION, THIS POLICY DOES NOT INCLUDE FLOOD
28 INSURANCE. FLOOD INSURANCE COVERS DAMAGE FROM RISING WATER. IF
29 THIS POLICY PROVIDES WINDSTORM COVERAGE, WHICH YOU MAY KNOW AS
30 HURRICANE INSURANCE, IT DOES NOT COVER DAMAGE FROM RISING WATER.
31 WITHOUT FLOOD INSURANCE THIS COVERAGE, YOU MAY HAVE UNCOVERED
32 LOSSES RESULTING FROM RISING WATER. PLEASE DISCUSS THESE
33 COVERAGES WITH YOUR INSURANCE AGENT."

34 The intent of this subsection is to encourage policyholders to
35 purchase sufficient coverage to protect them in case events
36 excluded from the standard homeowners policy, such as law and
37 ordinance enforcement and flood, combine with covered events to
38 produce damage or loss to the insured property. The intent is
39 also to encourage policyholders to discuss these issues with
40 their insurance agent.

41 Section 2. Section 627.7142, Florida Statutes, is amended

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Amendment No. 1

42 to read:

43 627.7142 Homeowner Claims Bill of Rights.—An insurer
44 issuing a personal lines residential property insurance policy
45 in this state must provide a Homeowner Claims Bill of Rights to
46 a policyholder within 14 days after receiving an initial
47 communication with respect to a claim, unless the claim follows
48 an event that is the subject of a declaration of a state of
49 emergency by the Governor. The purpose of the bill of rights is
50 to summarize, in simple, nontechnical terms, existing Florida
51 law regarding the rights of a personal lines residential
52 property insurance policyholder who files a claim of loss. The
53 Homeowner Claims Bill of Rights is specific to the claims
54 process and does not represent all of a policyholder's rights
55 under Florida law regarding the insurance policy. The Homeowner
56 Claims Bill of Rights does not create a civil cause of action by
57 any individual policyholder or class of policyholders against an
58 insurer or insurers. The failure of an insurer to properly
59 deliver the Homeowner Claims Bill of Rights is subject to
60 administrative enforcement by the office but is not admissible
61 as evidence in a civil action against an insurer. The Homeowner
62 Claims Bill of Rights does not enlarge, modify, or contravene
63 statutory requirements, including, but not limited to, ss.
64 626.854, 626.9541, 627.70131, 627.7015, and 627.7074, and does
65 not prohibit an insurer from exercising its right to repair
66 damaged property in compliance with the terms of an applicable

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67 policy or ss. 627.7011(6)~~(5)~~(e) and 627.702(7). The Homeowner
68 Claims Bill of Rights must state:

69 HOMEOWNER CLAIMS

70 BILL OF RIGHTS

71 This Bill of Rights is specific to the claims process and does
72 not represent all of your rights under Florida law regarding
73 your policy. There are also exceptions to the stated timelines
74 when conditions are beyond your insurance company's control.
75 This document does not create a civil cause of action by an
76 individual policyholder, or a class of policyholders, against an
77 insurer or insurers and does not prohibit an insurer from
78 exercising its right to repair damaged property in compliance
79 with the terms of an applicable policy.

80 YOU HAVE THE RIGHT TO:

- 81 1. Receive from your insurance company an acknowledgment
82 of your reported claim within 14 days after the time you
83 communicated the claim.
- 84 2. Upon written request, receive from your insurance
85 company within 30 days after you have submitted a complete
86 proof-of-loss statement to your insurance company,
87 confirmation that your claim is covered in full, partially
88 covered, or denied, or receive a written statement that
89 your claim is being investigated.
- 90 3. Within 90 days, subject to any dual interest noted in

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91 the policy, receive full settlement payment for your claim
92 or payment of the undisputed portion of your claim, or your
93 insurance company's denial of your claim.

94 4. Free mediation of your disputed claim by the Florida
95 Department of Financial Services, Division of Consumer
96 Services, under most circumstances and subject to certain
97 restrictions.

98 5. Neutral evaluation of your disputed claim, if your
99 claim is for damage caused by a sinkhole and is covered by
100 your policy.

101 6. Contact the Florida Department of Financial Services,
102 Division of Consumer Services' toll-free helpline for
103 assistance with any insurance claim or questions pertaining
104 to the handling of your claim. You can reach the Helpline
105 by phone at...(toll-free phone number)..., or you can seek
106 assistance online at the Florida Department of Financial
107 Services, Division of Consumer Services' website
108 at...(website address)....

109 YOU ARE ADVISED TO:

110 1. Contact your insurance company before entering into any
111 contract for repairs to confirm any managed repair policy
112 provisions or optional preferred vendors.

113 2. Make and document emergency repairs that are necessary
114 to prevent further damage. Keep the damaged property, if



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115 feasible, keep all receipts, and take photographs of damage
116 before and after any repairs.

117 3. Carefully read any contract that requires you to pay
118 out-of-pocket expenses or a fee that is based on a
119 percentage of the insurance proceeds that you will receive
120 for repairing or replacing your property.

121 4. Confirm that the contractor you choose is licensed to
122 do business in Florida. You can verify a contractor's
123 license and check to see if there are any complaints
124 against him or her by calling the Florida Department of
125 Business and Professional Regulation. You should also ask
126 the contractor for references from previous work.

127 5. Require all contractors to provide proof of insurance
128 before beginning repairs.

129 6. Take precautions if the damage requires you to leave
130 your home, including securing your property and turning off your
131 gas, water, and electricity, and contacting your insurance
132 company and provide a phone number where you can be reached.

133 Section 3. Paragraph (a) of subsection (1) of section
134 627.715, Florida Statutes, is amended to read:

135 627.715 Flood insurance.—An authorized insurer may issue
136 an insurance policy, contract, or endorsement providing personal
137 lines residential coverage for the peril of flood or excess
138 coverage for the peril of flood on any structure or the contents
139 of personal property contained therein, subject to this section.

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140 This section does not apply to commercial lines residential or
141 commercial lines nonresidential coverage for the peril of flood.
142 An insurer may issue flood insurance policies, contracts,
143 endorsements, or excess coverage on a standard, preferred,
144 customized, flexible, or supplemental basis.

145 (1)(a) Except for excess flood insurance policies,
146 policies issued under this section include:

147 1. Standard flood insurance, which must cover only losses
148 from the peril of flood, as defined in paragraph (b), equivalent
149 to that provided under a standard flood insurance policy under
150 the National Flood Insurance Program. Standard flood insurance
151 issued under this section must provide the same coverage,
152 including deductibles and adjustment of losses, as that provided
153 under a standard flood insurance policy under the National Flood
154 Insurance Program.

155 2. Preferred flood insurance, which must include the same
156 coverage as standard flood insurance but:

157 a. Include, within the definition of "flood," losses from
158 water intrusion originating from outside the structure that are
159 not otherwise covered under the definition of "flood" provided
160 in paragraph (b).

161 b. Include coverage for additional living expenses.

162 c. Require that any loss under personal property or
163 contents coverage that is repaired or replaced be adjusted only
164 on the basis of replacement costs up to the policy limits.

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165 3. Customized flood insurance, which must include coverage
166 that is broader than the coverage provided under standard flood
167 insurance.

168 4. Flexible flood insurance, which must cover losses from
169 the peril of flood, as defined in paragraph (b), and may also
170 include coverage for losses from water intrusion originating
171 from outside the structure which is not otherwise covered by the
172 definition of flood. Flexible flood insurance must include one
173 or more of the following provisions:

174 a. An agreement between the insurer and the insured that
175 the flood coverage is in a specified amount, such as coverage
176 that is limited to the total amount of each outstanding mortgage
177 applicable to the covered property.

178 b. A requirement for a deductible in an amount authorized
179 under s. 627.701, including a deductible in an amount authorized
180 for hurricanes.

181 c. A requirement that flood loss to a dwelling be adjusted
182 in accordance with s. 627.7011(4)~~(3)~~ or adjusted only on the
183 basis of the actual cash value of the property.

184 d. A restriction limiting flood coverage to the principal
185 building defined in the policy.

186 e. A provision including or excluding coverage for
187 additional living expenses.

188 f. A provision excluding coverage for personal property or
189 contents as to the peril of flood.

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190 5. Supplemental flood insurance, which may provide
191 coverage designed to supplement a flood policy obtained from the
192 National Flood Insurance Program or from an insurer issuing
193 standard or preferred flood insurance pursuant to this section.
194 Supplemental flood insurance may provide, but need not be
195 limited to, coverage for jewelry, art, deductibles, and
196 additional living expenses.

197 Section 4. The amendments made by this act to s. 627.7011,
198 Florida Statutes, apply to policies issued or renewed on or
199 after January 1, 2019.

200 Section 5. This act shall take effect January 1, 2019.

201
202 -----

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

204 Remove everything before the enacting clause and insert:

205 A bill to be entitled
206 An act relating to hurricane flood insurance; amending
207 s. 627.7011, F.S.; creating a required acknowledgement
208 upon application regarding the absence of flood
209 coverage; revising a mandatory homeowner's insurance
210 policy disclosure regarding the absence of flood
211 coverage; providing disclosure requirements; amending
212 ss. 627.7142 and 627.715, F.S.; correcting cross-
213 references; providing applicability; providing an
214 effective date.