Insurance & Banking Subcommittee

Wednesday, January 17, 2018
12:30 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 17, 2018 12:30 pm
End Date and Time:	Wednesday, January 17, 2018 03:30 pm
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 857 Deferred Presentment Transactions by Grant, J., Cruz
HB 935 Mortgage Lending by Nuñez

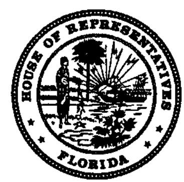
Consideration of the following bill(s) with proposed committee substitute(s):

PCS for HB 465 -- Insurance

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 16, 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 16, 2018.

NOTICE FINALIZED on 01/12/2018 4:26PM by Locke.Lindsey



The Florida House of Representatives

Commerce Committee

Insurance & Banking Subcommittee

Richard Corcoran
Speaker

Danny Burgess
Chair

AGENDA

January 17, 2018
404 House Office Building
12:30 PM – 3:30 PM

I. Call to Order & Roll Call

II. Consideration of the following bills:

A. HB 857 Deferred Presentment Transactions by Grant, J.

B. HB 935 Mortgage Lending by Nunez

C. PCS for HB 465 Insurance

III. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4871 Fax: (850) 413-0419

HB 857

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Deferred Presentment Transactions
SPONSOR(S): Grant; Cruz and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 920

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee		Hinshelwood	Luczynski
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida law currently authorizes deferred presentment transactions, also known as payday loans, for a maximum loan amount of $500 (exclusive of fees), a term of at least seven days to a maximum of 31 days, and fees of up to 10 percent of the loan amount plus up to a $5 verification fee. Deferred presentment transactions in Florida will be affected by the Consumer Financial Protection Bureau's (CFPB) rule governing payday, vehicle title, and certain high-cost installment loans because they would fall under the rule's definition of a "covered short-term loan." Effective August 19, 2019, deferred presentment providers will have to comply with the underwriting requirements of the rule or conform their business practices to meet the exemption to underwriting.

The bill authorizes deferred presentment installment transactions that have a maximum loan amount of $1,000 (exclusive of fees) and a term of at least 60 days to a maximum of 90 days. The permissible fees are (1) up to $5 for a verification fee, and (2) up to eight percent of the outstanding transaction balance on a biweekly basis, which must be earned according to a simple interest calculation and may not be applied to the verification fee. Prepayment penalties are prohibited. A deferred presentment installment transaction must be fully amortizing and repayable in substantially equal and consecutive installments. The time between installment payments must generally be at least 13 days but not greater than one calendar month. The provider of a deferred presentment installment transaction must provide one opportunity for the borrower to defer a scheduled payment for no additional fee or charge. The deferred payment is due after the last scheduled installment payment, at an interval which is no less than the intervals between the originally scheduled payments.

The bill retains current law that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours. In order to enforce this restriction, the Office of Financial Regulation (OFR) currently maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.

Deferred presentment transactions made pursuant to the bill would be exempt from the underwriting requirement of the CFPB rule because such loans would fall under the rule's definition of a "covered longer-term loan." However, deferred presentment transactions made pursuant to the bill would still be required to comply with provisions of the rule relating to payment practices, record retention, and compliance requirements.

The bill has no impact on local governments. The bill has an indeterminate fiscal impact on the private sector and the state. The OFR indicates that it would likely need to procure a new contract to administer the deferred presentment transaction database.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Florida Law on Deferred Presentment Transactions (Payday Loans)

A deferred presentment transaction means providing currency or a payment instrument in exchange for a drawer's (borrower's) check and agreeing to hold the check for a number of days until depositing, presenting, or redeeming the payment instrument.[1] The transactions are commonly referred to as "payday loans." These transactions are governed by part IV of ch. 560, F.S. The only persons who may engage in deferred presentment transactions are financial institutions as defined in s. 655.005, F.S.,[2] and money services business licensed under part II[3] or part III[4] of ch. 560, F.S.

Florida law contains provisions designed to prevent consumers from being caught in a "debt trap" wherein the consumer has to continuously enter into lending transactions to pay off the principal and fees from previous transactions. The face amount of a check taken for deferred presentment may not exceed $500, exclusive of fees.[5] Fees may not exceed 10 percent of payment provided to the drawer plus up to a $5 verification fee.[6] The term of a deferred presentment agreement may not be less than seven days or greater than 31 days.[7] A deferred presentment provider may not enter into a deferred presentment transaction with a drawer who has an outstanding deferred presentment transaction with any provider or within 24 hours of the termination of a previous transaction.[8] In order to enforce this restriction, the OFR maintains a database against which a deferred presentment provider must verify each transaction before entering into the deferred presentment agreement.[9] A deferred presentment provider also may not engage in the rollover of a deferred presentment agreement and may not redeem, extend, or otherwise consolidate a deferred presentment agreement with the proceeds of another deferred presentment transaction made by it or an affiliate.[10]

If the drawer, by the end of the deferment period, informs the deferred presentment provider in person that the drawer cannot redeem or pay in full in cash the amount due, the drawer must be given a grace period that extends the term of the agreement for 60 additional days.[11] As a condition of receiving the grace period, the drawer must make an appointment with a consumer credit counseling agency within seven days after the end of the deferment period and complete counseling by the end of the grace period.

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[1] s. 560.402(2), (3), F.S.
[2] Section 655.005, F.S., defines a "financial institution" to mean a state or federal savings or thrift association, bank, savings back, trust company, international bank agency, international banking corporation, international branch, international representative office, international administrative office, international trust entity, international trust company representative office, qualified limited service affiliate, credit union, or an agreement corporation operating pursuant to s. 25 of the Federal Reserve Act, 12 U.S.C. ss. 601 et seq. or Edge Act corporation organized pursuant to s. 25(a) of the Federal Reserve Act, 12 U.S.C. ss. 611 et Seq.
[3] Licensure as a money transmitter. A money transmitter is defined by s. 560.103(23), F.S., as a corporation, limited liability company, limited liability partnership, or foreign entity qualified to do business in this state which receives currency, monetary value, or payment instruments for the purpose of transmitting the same by any means, including transmission by wire, facsimile, electronic transfer, courier, the Internet, or through bill payment services or other businesses that facilitate such transfer within this country, or to or from this country. Money transmitters may engage in check cashing under part III of ch. 560, F.S.
[4] Licensure as a check casher. Section 560.103(6), F.S., defines a "check casher" to mean a person who sells currency in exchange for payment instruments received, except travelers checks.
[5] s. 560.404(5), F.S.
[6] s. 560.404(6), F.S.
[7] s. 560.404(8), F.S.
[8] s. 560.404(19), F.S.
[9] s. 560.404(19)(a), (23), F.S.
[10] s. 560.404(18), F.S.
[11] s. 560.404(22), F.S.

The deferred presentment provider may not include in the agreement a hold harmless clause, a confession of judgment clause, an assignment of or order for payment of wages or other compensation for services, or a provision in which the drawer waives any claim or defense arising out of the agreement or any provision of part IV, ch. 560, F.S.[12] The deferred presentment provider must comply with state and federal disclosure requirements.[13]

As of June 30, 2017, there were 923 licensed locations in Florida that engage in deferred presentment transactions.[14] Between July 2016 and June 2017, approximately 7.7 million deferred presentment transactions were conducted in Florida, representing a total advance amount of $3.09 billion with total advance fees of $306 million.[15] The average transaction from July 2016 to June 2017 was $400.77 and the average transaction fee was 9.9 percent of the advance plus an average verification fee of $3.09.[16] Of all consumers who entered into a deferred presentment transaction from July 2016 to June 2017, 31.8 percent engaged in one to three transactions, 30.7 percent engaged in four to nine transactions, and 37.6 percent engaged in ten or more transactions.[17] The loan loss rate is 1.8 percent of total transactions representing a total outstanding advance amount of approximately $50.4 million.[18] Grace periods were used for approximately 0.71 percent of transactions from July 2016 to June 2017.[19]

Background: Bureau of Consumer Financial Protection Rule Governing Payday, Vehicle Title, and Certain High-Cost Installment Loans

On November 17, 2017, the Bureau of Consumer Financial Protection (CFPB) published in the Federal Register a final rule governing payday, vehicle title, and certain high-cost installment loans.[20] The CFPB has stated that the rule is aimed at stopping payday debt traps by requiring lenders to determine upfront whether consumers have the ability to repay their loans.[21] Lender compliance with the relevant portions of the rule is required by August 19, 2019.[22] The key provisions of the rule are as follows:[23]

The Lender Must Determine the Consumer's Ability to Repay

The rule makes it an unfair and abusive practice for a lender to make covered short-term[24] or longer-term balloon-payment loans,[25] including payday and vehicle title loans, without reasonably determining

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[12] s. 560.404(10), F.S.
[13] s. 560.404(13), (20), F.S.
[14] Veritec Solutions, *Florida Trends in Deferred Presentment – State of Florida Deferred Presentment Program Through June 2017*, June 2017, at 4.
[15] *Id.* at 5.
[16] *Id.*at 6 and 16.
[17] *Id.* at 10.
[18] *Id.* at 14.
[19] *Id.* at 15.
[20] Payday, Vehicle Title, and Certain High-Cost Installment Loans, 82 Fed. Reg. 54472 (Nov. 17, 2017) (to be codified at 12 C.F.R. pt. 1041), available at https://www.federalregister.gov/documents/2017/11/17/2017-21808/payday-vehicle-title-and-certain-high-cost-installment-loans.
[21] Bureau of Consumer Financial Protection, *CFPB Finalizes Rule to Stop Payday Debt Traps* (Oct. 5, 2017), https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-stop-payday-debt-traps (last visited Jan. 13, 2018).
[22] Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 20, at 54814.
[23] The summary of key provisions of the CFPB rule is taken from 82 Fed. Reg. 54472 at pages 54472-54474, unless otherwise indicated.
[24] A "covered short-term loan" includes closed-end credit that does not provide for multiple advances to consumers, wherein the consumer is required to repay substantially the entire amount of the loan within 45 days of consummation. 12 C.F.R. §§ 1041.2(a)(10) and 1041.3(b)(1).
[25] A "covered longer-term balloon-payment loan" includes closed-end credit that does not provide for multiple advances to consumers, wherein the consumer is required to repay substantially the entire balance of the loan in a single payment more than 45 days after consummation or to repay such loan through at least one payment that is more than twice as large as any other payment(s). 12 C.F.R. §§ 1041.2(a)(7) and 1041.3(b)(2).

that consumer have the ability to repay the loans according to their terms. The ability to repay standard requires a reasonable determination by the lender that the consumer would be able to make loan payments and also meet the consumer's basic living expenses and other major financial obligations without needing to re-borrow over the ensuing 30 days. The lender must:

- Verify the consumer's net monthly income using a reliable record of income payment, unless a reliable record is not reasonably available;
- Verify the consumer's monthly debt obligations using a national consumer report and a consumer report from a registered information system[26] as defined by the rule;
- Verify the consumer's monthly housing costs using a national consumer report if possible, or otherwise rely on the consumer's written statement of monthly housing expenses;
- Forecast a reasonable amount for basic living expenses, other than debt obligations and housing costs; and
- Determine the consumer's ability to repay the loan based on the lender's projections of the consumer's residual income or debt-to-income ratio.

If a consumer has already taken out three covered short-term or longer-term balloon-payment loans within 30 days of each other, a lender is prohibited from making a covered short-term loan to such consumer for 30 days after the third loan is no longer outstanding.

The rule exempts certain loans from the underwriting criteria prescribed in the rule if they have specific consumer protections. Under the exemption, the loan must satisfy certain prescribed terms; the lender must confirm that the consumer meets specified borrowing history conditions; and the lender must provide required disclosures to the consumer. Among other conditions, under this alternative approach, a lender may make up to three covered short-term loans in short succession, provided that the first loan has a principal amount no larger than $500, the second loan has a principal amount at least one-third smaller than the principal amount on the first loan, and the third loan has a principal amount at least two-thirds smaller than the principal amount on the first loan. A lender may not make a covered short-term loan under the exemption if it would result in the consumer having more than six covered short-term loans during a consecutive 12-month period or being in debt for more than 90 days on covered short-term loans during a consecutive 12-month period.

Payment Practices

The rule makes it an unfair and abusive practice for a lender to attempt to withdraw payment from consumers' accounts after two consecutive failed payments, unless the consumer provides a new, specific authorization to do so. This applies to the same loan types as under the ability to repay requirement, and also applies to specified high-cost longer-term loans. Lenders must provide notices to consumers when the prohibition has been triggered and follow certain procedures in obtaining new authorizations.

Lenders must also provide written notice, depending on means of delivery, a certain number of days before its first attempt to withdraw payment for a covered loan from a consumer's checking, savings, or prepaid account. Notice is also required before the lender attempts to withdraw a payment in a different amount than the regularly scheduled payment amount, on a date other than the regularly scheduled payment date, by a different payment channel than the prior payment, or to re-initiate a returned prior transfer. The notice must contain specified information about the upcoming payment attempt and, if applicable, alert the consumer to unusual payment attempts. The notice may be provided electronically with the consumer's consent.

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[26] The rule creates a process and eligibility criteria for entities to become a provisionally registered or registered information system. Payday, Vehicle Title, and Certain High-Cost Installment Loans, *supra* note 20, at 54473. The rule provides for a registration process that will allow information systems to be registered, and lenders to be ready to furnish required information, at the time the furnishing obligation in the rule takes effect. *Id.*

Lender Reporting, Record Retention, and Compliance Requirements

The rule requires lenders to furnish to registered information systems certain information concerning covered short-term and longer-term balloon-payment loans. Information must be submitted at loan consummation, during the period that the loan is outstanding, and when the loan ceases to be outstanding. The registered information systems will provide consumer reports that include a reasonably comprehensive record of a consumer's recent and current use of covered short-term and longer-term balloon-payment loans addressed by the rule. Before making such loans, a lender must obtain and consider a consumer report from a registered information system.

Lenders for all loans covered by the rule must also develop and follow written policies and procedures that are reasonably designed to ensure compliance with the rule. Lenders must also retain the loan agreement, documentation obtained for any covered loan, and electronic records regarding origination calculations and determinations, the type of loan, and the loan terms.

The CFPB rule provides the minimum consumer protections and allows State and local jurisdictions to adopt further regulatory measures to protect consumers.

Background: Effect of the CFPB Rule on Deferred Presentment Transactions Under Florida Law

Deferred presentment transactions in Florida will be affected by the rule because they would fall under the rule's definition of a "covered short-term loan."[27] Effective August 19, 2019, deferred presentment providers will have to comply with the underwriting requirements of the rule or conform their business practices to meet the exemption to underwriting. Deferred presentment transactions made pursuant to the bill would be exempt from the underwriting requirement of the CFPB rule because such loans would fall under the rule's definition of a "covered longer-term loan."[28] However, deferred presentment transactions made pursuant to the bill would still be required to comply with provisions of the rule relating to payment practices, record retention, and compliance requirements, as described above.

Effect of Proposed Changes

The bill creates a new type of deferred presentment transaction that is repayable in installments and is called a "deferred presentment installment transaction." The face amount of a check taken for a deferred presentment installment transaction may not exceed $1,000, exclusive of permissible fees. The permissible fees are (1) up to $5 for a verification fee, and (2) up to eight percent of the outstanding transaction balance on a biweekly basis, which must be earned according to a simple interest calculation and may not be applied to the verification fee. Prepayment penalties are prohibited. The term of a deferred presentment installment transaction may not be less than 60 days or more than 90 days.

A deferred presentment installment transaction must be fully amortizing (i.e., the balance due will be entirely paid after the last payment is made) and repayable in substantially equal and consecutive installments. The time between installment payments must be at least 13 days but not greater than one calendar month. However, the first installment period may be longer than the remaining installment periods by not more than 15 days, and the first installment payment may be larger than the remaining installment payments by the amount of charges applicable to the extra days.

If the drawer informs the deferred presentment installment transaction provider in writing or in person by noon of the business day before a scheduled payment that the drawer cannot pay in full the

[27] *See* definition of "covered short-term loan", *supra* note 24.

[28] A "covered longer-term loan" means that the loan is neither a "covered short-term loan" nor a "covered longer-term balloon-payment loan"; the cost of credit for the loan exceeds 36 percent per annum; and the lender or service provider obtains a leveraged payment mechanism (e.g., a check or automated clearing house authorization). 12 C.F.R. §§ 1041.2(a)(8) and 1041.3(b)(3).

scheduled payment, the provider must provide one opportunity to defer a scheduled payment for no additional fee or charge. The deferred payment is due after the last scheduled installment payment, at an interval which is no less than the intervals between the originally scheduled payments. Thus, for a deferred presentment installment transaction in which payments are due once every two weeks, the deferred payment would be due at least two weeks after the final installment payment is due.

The bill amends the notice that must be prominently posted by the provider and included in the deferred presentment agreement such that it details the availability of a single deferred payment option for a deferred presentment installment transaction.

In order to pay for the deferred presentment transaction database in relation to deferred presentment installment transactions, the bill permits the Financial Services Commission to impose a fee on a deferred presentment provider up to $1 for each month that a balance is scheduled to be outstanding.

The bill retains current law in s. 560.404(19), F.S., that a provider may not enter into a deferred presentment transaction with any person who has an outstanding deferred presentment transaction or whose previous transaction has been terminated for less than 24 hours.

B. SECTION DIRECTORY:

Section 1. Amends s. 560.402, F.S., relating to definitions.

Section 2. Amends s. 560.404, F.S., relating to requirements for deferred presentment transactions.

Section 3. Amends s. 560.405, F.S., relating to deposit; redemption.

Section 4. Amends s. 560.111, F.S., relating to prohibited acts.

Section 5. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The OFR indicates that the bill may impact collected revenues that are assessed for deferred presentment transactions.[29] Currently, $1 is assessed for each deferred presentment transaction.[30] The office indicates that there may need to be rule modification to require $1 per month for each outstanding deferred presentment installment transaction, $2 for each 60-day term, and $3 for each 90-day term.[31] According to the office, $7,657,486 was collected in Fiscal Year 2016-17 for the current $1 transaction fee.[32] It is unknown how many deferred presentment installment transactions will result from the bill's passage, what the length of their terms will be, and what the decline will be in the number of current deferred presentment transactions. Therefore, the impact to state revenues is indeterminate.

2. Expenditures:

   Currently, the OFR contracts with a vendor to host and maintain the existing deferred presentment provider transaction database.[33] The OFR paid the vendor $2,656,269 in Fiscal Year 2016-17 for

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[29] Office of Financial Regulation, Agency Analysis of 2018 House Bill 857 (Dec. 28, 2017).
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] *Id.*

the database.[34] Based on modifications of the loan product proposed in the bill, the OFR indicates that it would likely need to procure a new contract.[35] An increased appropriation may be required if current funding is insufficient to pay for a new contract.[36] It is unknown how much a newly procured contract would cost. Therefore, the impact to state expenditures is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have an impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact to the private sector is indeterminate. Many deferred presentment providers assert that the CFPB rule on payday, vehicle title, and certain high-cost installment loans imposes additional costs and administrative burdens that will result in a reduction of the availability of deferred presentment transactions. Some consumer advocates assert that the CFPB rule provides necessary safeguards to prevent consumers from being caught in debt traps. The bill will reduce the cost of deferred presentment transactions to some consumers but will increase the cost to others. If the finance fee under current law were expressed as an annual percentage rate, assuming a $500 loan, it would be between 129.52 percent [37] and 573.57 percent.[38] Under the bill, the annual percentage rate would be 208 percent,[39] excluding the $5 verification fee which would increase the annual percentage rate slightly depending on the amount of the loan and length of the term.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Financial Services Commission with rulemaking authority to impose a fee on a deferred presentment provider up to $1 for each month that a balance is scheduled to be outstanding on a deferred presentment installment transaction. The bill will also result in the OFR, through the Financial Services Commission, amending certain existing rules relating to deferred presentment transactions.

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[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] $55/$500 x 365 days/31 days x 100 = 129.52%
[38] $55/$500 x 365 days/7 days x 100 = 573.57%
[39] 8% x 26 = 208%

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill introduces the concept of "outstanding transaction balance" but does not provide a definition. The bill omits portions of part IV of ch. 560, F.S., that should be amended to accommodate the new deferred presentment installment transaction product. Certain statutes that are contained in the bill should be amended to make various technical and clarifying changes and to better accommodate the new deferred presentment installment transaction product. In the event that the OFR's existing deferred presentment transaction database is not modified to accept this new product before the bill takes effect, the bill does not provide a process by which the new product could still be offered. The bill requires that deferred presentment installment transactions be repayable in installments that are "substantially equal", a term which the OFR has indicated would be difficult to enforce. The effective date of the bill does not provide sufficient time for the OFR to engage in rulemaking and to modify the existing deferred presentment transaction database to accommodate deferred presentment installment transactions. The sponsor has indicated an intent to amend the bill in order to address the preceding concerns.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to deferred presentment transactions;
3 amending s. 560.402, F.S.; defining the term "deferred
4 presentment installment transaction"; amending s.
5 560.404, F.S.; specifying the maximum face amount of
6 checks which may be taken for deferred presentment
7 installment transactions, exclusive of fees;
8 specifying the maximum rate and frequency of fees that
9 deferred presentment providers or their affiliates may
10 charge on deferred presentment installment
11 transactions; specifying when fees are earned for
12 certain deferred presentment transactions; specifying
13 the calculation of fees earned for deferred
14 presentment installment transactions; prohibiting
15 prepayment penalties; specifying the minimum and
16 maximum terms of a deferred presentment installment
17 transaction; providing an exception to a prohibition
18 against the acceptance or holding of undated checks or
19 checks with certain dates by a preferred presentment
20 provider or its affiliate; conforming a cross-
21 reference; revising a notice in deferred presentment
22 agreements; providing an exception to a prohibition,
23 under certain circumstances, against a deferred
24 presentment provider's deposit or presentment of a
25 drawer's check; requiring a provider of a deferred

26 presentment installment transaction to allow a drawer
27 to defer a scheduled payment under certain
28 circumstances; providing requirements for the deferred
29 payment; specifying the frequency a certain fee may be
30 imposed by Financial Services Commission rule for data
31 on certain transactions submitted by deferred
32 presentment providers to a certain database; providing
33 an exception to a limitation on a deferred presentment
34 provider's acceptance of a certain check or
35 authorization; specifying requirements for
36 amortization, installment repayments, and calculation
37 of charges for deferred presentment installment
38 transactions; conforming provisions to changes made by
39 the act; amending s. 560.405, F.S.; providing an
40 exception to a prohibition against a deferred
41 presentment provider's or its affiliate's presentment
42 of a drawer's check before the end of the deferment
43 period; revising a condition under which a deferred
44 presentment provider may allow the check to be
45 redeemed in lieu of presentment; revising a
46 prohibition against requiring a drawer to redeem his
47 or her check before the agreed-upon date; reenacting
48 s. 560.111(5), F.S., relating to prohibited acts, to
49 incorporate the amendments made to ss. 560.404 and
50 560.405, F.S., in references thereto; providing an

51 effective date.
52
53 Be It Enacted by the Legislature of the State of Florida:
54
55 Section 1. Present subsections (3) through (7) of section
56 560.402, Florida Statutes, are redesignated as subsections (4)
57 through (8), respectively, and a new subsection (3) is added to
58 that section, to read:
59 560.402 Definitions.—For the purposes of this part, the
60 term:
61 (3) "Deferred presentment installment transaction" means a
62 deferred presentment transaction that is repayable in
63 installments.
64 Section 2. Subsections (5), (6), (8), and (14), paragraph
65 (b) of subsection (19), and subsections (20), (21), and (22) of
66 section 560.404, Florida Statutes, are amended, present
67 subsections (23) and (24) of that section are redesignated as
68 subsections (24) and (25), respectively, and amended, and a new
69 subsection (23) and subsection (26) are added to that section,
70 to read:
71 560.404 Requirements for deferred presentment
72 transactions.—
73 (5) The face amount of a check taken for deferred
74 presentment may not exceed $500, exclusive of the fees allowed
75 under this part. The face amount of a check taken for a deferred

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

76 presentment installment transaction may not exceed $1,000,
77 exclusive of fees allowed under this part.
78 (6)(a) A deferred presentment provider or its affiliate
79 may not charge fees that exceed 10 percent of the currency or
80 payment instrument provided. A deferred presentment provider or
81 its affiliate may not charge fees on any deferred presentment
82 installment transaction which exceed 8 percent of the
83 outstanding transaction balance on a biweekly basis.
84 (b) Notwithstanding paragraph (a) ~~However~~, a verification
85 fee may be charged as provided in s. 560.309(8). The fees in
86 paragraph (a) ~~The 10-percent fee~~ may not be applied to the
87 verification fee.
88 (c) Fees are earned at the time of origination for a
89 deferred presentment transaction scheduled to be paid off in 31
90 days or less; however, fees for a deferred presentment
91 installment transaction are earned using a simple interest
92 calculation. A deferred presentment provider may charge only
93 those fees specifically authorized in this section. Prepayment
94 penalties are prohibited.
95 (8) A deferred presentment agreement may not be for a term
96 longer than 31 days or less than 7 days, except for a deferred
97 presentment installment transaction, which may not be for a term
98 longer than 90 days or less than 60 days.
99 (14) A deferred presentment provider or its affiliate may
100 not accept or hold an undated check or a check dated on a date

101 other than the date on which the deferred presentment provider
102 agreed to hold the check and signed the deferred presentment
103 transaction agreement, except when a customer provides a new
104 payment instrument reflecting the new outstanding transaction
105 balance and anticipated fees upon making a payment on a deferred
106 presentment installment transaction.
107 (19) A deferred presentment provider may not enter into a
108 deferred presentment transaction with a drawer who has an
109 outstanding deferred presentment transaction with that provider
110 or with any other deferred presentment provider, or with a
111 person whose previous deferred presentment transaction with that
112 provider or with any other provider has been terminated for less
113 than 24 hours. The deferred presentment provider must verify
114 such information as follows:
115 (b) The deferred presentment provider shall access the
116 office's database established pursuant to subsection (24) ~~(23)~~
117 and shall verify whether any other deferred presentment provider
118 has an outstanding deferred presentment transaction with a
119 particular person or has terminated a transaction with that
120 person within the previous 24 hours. If a provider has not
121 established a database, the deferred presentment provider may
122 rely upon the written verification of the drawer as provided in
123 subsection (20).
124 (20) A deferred presentment provider shall provide the
125 following notice in a prominent place on each deferred

126 presentment agreement in at least 14-point type in substantially
127 the following form and must obtain the signature of the drawer
128 where indicated:
129
130 NOTICE
131
132 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
133 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
134 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
135 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
136 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
137 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
138 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.
139
140 YOU MUST SIGN THE FOLLOWING STATEMENT:
141
142 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
143 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
144 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
145 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.
146 (Signature of Drawer)
147
148 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
149 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
150 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE

151 PURSUED AGAINST YOU.
152
153 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT
154 PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL
155 OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS
156 MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN
157 ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT
158 OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.
159
160 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT PAYABLE
161 IN INSTALLMENTS: IF YOU INFORM THE PROVIDER IN PERSON
162 THAT YOU CANNOT COVER THE CHECK OR PAY IN FULL THE
163 AMOUNT OWING AT THE END OF THE TERM OF THIS AGREEMENT,
164 YOU WILL RECEIVE A GRACE PERIOD EXTENDING THE TERM OF
165 THE AGREEMENT FOR AN ADDITIONAL 60 DAYS AFTER THE
166 ORIGINAL TERMINATION DATE, WITHOUT ANY ADDITIONAL
167 CHARGE. THE DEFERRED PRESENTMENT PROVIDER SHALL
168 REQUIRE THAT YOU, AS A CONDITION OF OBTAINING THE
169 GRACE PERIOD, COMPLETE CONSUMER CREDIT COUNSELING
170 PROVIDED BY AN AGENCY INCLUDED ON THE LIST THAT WILL
171 BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY ALSO
172 AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT PLAN
173 APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY WITH AND
174 ADHERE TO A REPAYMENT PLAN APPROVED BY THAT AGENCY, WE
175 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND

176 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
177 THE DEBT AT THE END OF THE 60-DAY GRACE PERIOD.
178
179 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
180 IF YOU INFORM THE PROVIDER IN PERSON THAT YOU CANNOT
181 PAY IN FULL THE SCHEDULED AMOUNT OWING BEFORE THE DUE
182 DATE AS PROVIDED BY THE AGREEMENT, YOU MAY DEFER THE
183 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
184 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
185 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
186 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
187 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
188 DUE AT AN INTERVAL NO LESS THAN THE INTERVALS BETWEEN
189 THE SCHEDULED PAYMENTS.
190
191 (21) The deferred presentment provider may not deposit or
192 present the drawer's check if the drawer informs the provider in
193 person that the drawer cannot redeem or pay in full in cash the
194 amount due and owing the deferred presentment provider without
195 first complying with subsection (23). No additional fees or
196 penalties may be imposed on the drawer by virtue of any
197 misrepresentation made by the drawer as to the sufficiency of
198 funds in the drawer's account. Additional fees may not be added
199 to the amounts due and owing to the deferred presentment
200 provider.

201 (22) As to deferred presentment transactions not payable
202 in installments, if, by the end of the deferment period, the
203 drawer informs the deferred presentment provider in person that
204 the drawer cannot redeem or pay in full in cash the amount due
205 and owing the deferred presentment provider, the deferred
206 presentment provider shall provide a grace period extending the
207 term of the agreement for an additional 60 days after the
208 original termination date, without any additional charge.
209 (a) The provider shall require ~~that~~ as a condition of
210 providing a grace period, that the drawer make an appointment
211 with a consumer credit counseling agency within 7 days after the
212 end of the deferment period and complete the counseling by the
213 end of the grace period. The drawer may agree to, comply with,
214 and adhere to a repayment plan approved by the counseling
215 agency. If the drawer agrees to comply with and adhere to a
216 repayment plan approved by the counseling agency, the provider
217 must also comply with and adhere to that repayment plan. The
218 deferred presentment provider may not deposit or present the
219 drawer's check for payment before the end of the 60-day grace
220 period unless the drawer fails to comply with such conditions or
221 the drawer fails to notify the provider of such compliance.
222 Before each deferred presentment transaction, the provider may
223 verbally advise the drawer of the availability of the grace
224 period consistent with the written notice in subsection (20),
225 and may not discourage the drawer from using the grace period.

226 (b) At the commencement of the grace period, the deferred
227 presentment provider shall provide the drawer:
228 1. Verbal notice of the availability of the grace period
229 consistent with the written notice in subsection (20).
230 2. A list of approved consumer credit counseling agencies
231 prepared by the office. The office list shall include nonprofit
232 consumer credit counseling agencies affiliated with the National
233 Foundation for Credit Counseling which provide credit counseling
234 services to state residents in person, by telephone, or through
235 the Internet. The office list must include phone numbers for the
236 agencies, the counties served by the agencies, and indicate the
237 agencies that provide telephone counseling and those that
238 provide Internet counseling. The office shall update the list at
239 least once each year.
240 3. The following notice in at least 14-point type in
241 substantially the following form:
242
243 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
244 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
245 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
246 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
247 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
248 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
249 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
250 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN

251 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
252 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
253 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
254 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
255 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
256 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
257 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
258 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
259 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
260 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
261 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
262 THE DEBT.
263
264 (c) If a drawer completes an approved payment plan, the
265 deferred presentment provider shall pay one-half of the drawer's
266 fee for the deferred presentment agreement to the consumer
267 credit counseling agency.
268 (23) As to deferred presentment installment transactions,
269 if a drawer informs the deferred presentment installment
270 transaction provider in writing or in person by noon of the
271 business day before a scheduled payment that the drawer cannot
272 pay in full the scheduled payment amount due and owing the
273 deferred presentment installment provider, the deferred
274 presentment installment provider must provide the drawer the
275 opportunity to defer the scheduled payment, at no additional fee

276 or charges, until after the last scheduled payment. Such
277 deferred payment must be due at an interval after the last
278 scheduled payment which is no less than the intervals between
279 the originally scheduled payments.
280 (24)~~(23)~~ The office shall implement a common database with
281 real-time access through an Internet connection for deferred
282 presentment providers, as provided in this subsection. The
283 database must be accessible to the office and the deferred
284 presentment providers in order to verify whether any deferred
285 presentment transactions are outstanding for a particular
286 person. Deferred presentment providers shall submit such data
287 before entering into each deferred presentment transaction in
288 such format as required by rule, including the drawer's name,
289 social security number or employment authorization alien number,
290 address, driver license number, amount of the transaction, date
291 of transaction, the date that the transaction is closed, and
292 such additional information as is required by rule. The
293 commission may by rule impose a fee of up to $1 per transaction,
294 or for each month that a balance is scheduled to be outstanding
295 on transactions that have multiple scheduled payments, for data
296 that must be submitted by a deferred presentment provider. A
297 deferred presentment provider may rely on the information
298 contained in the database as accurate and is not subject to any
299 administrative penalty or civil liability due to relying on
300 inaccurate information contained in the database. A deferred

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

301 presentment provider must notify the office, in a manner as
302 prescribed by rule, within 15 business days after ceasing
303 operations or no longer holding a license under part II or part
304 III of this chapter. Such notification must include a
305 reconciliation of all open transactions. If the provider fails
306 to provide notice, the office shall take action to
307 administratively release all open and pending transactions in
308 the database after the office becomes aware of the closure. This
309 section does not affect the rights of the provider to enforce
310 the contractual provisions of the deferred presentment
311 agreements through any civil action allowed by law. The
312 commission may adopt rules to administer this subsection and to
313 ensure that the database is used by deferred presentment
314 providers in accordance with this section.
315 (25)~~(24)~~ A deferred presentment provider may not accept
316 more than one check or authorization to initiate more than one
317 automated clearinghouse transaction to collect on a deferred
318 presentment transaction for a single deferred presentment
319 transaction, except for deferred presentment installment
320 transactions in which such checks or authorizations represent
321 multiple scheduled payments.
322 (26) A deferred presentment installment transaction must
323 be fully amortizing and repayable in substantially equal and
324 consecutive installments according to a payment schedule agreed
325 upon by the parties with no less than 13 days and not more than

326 1 calendar month between payments, except that the first
327 installment period may be longer than the remaining installment
328 periods by not more than 15 days, and the first installment
329 payment may be larger than the remaining installment payments by
330 the amount of charges applicable to the extra days. In
331 calculating charges under this subsection, when the first
332 installment period is longer than the remaining installment
333 periods, the amount of the charges applicable to the extra days
334 may not exceed those that would accrue under a simple interest
335 calculation based on the rates allowed under subsection (6).
336 Section 3. Subsections (1), (3), and (4) of section
337 560.405, Florida Statutes, are amended to read:
338 560.405 Deposit; redemption.—
339 (1) The deferred presentment provider or its affiliate may
340 not present the drawer's check before the end of the deferment
341 period, except for a missed scheduled payment for a deferred
342 presentment installment transaction, as reflected and described
343 in the deferred presentment transaction agreement.
344 (3) Notwithstanding subsection (1), in lieu of
345 presentment, a deferred presentment provider may allow the check
346 to be redeemed at any time upon payment of the outstanding
347 transaction balance and earned fees ~~face amount of the drawer's~~
348 ~~check~~. However, payment may not be made in the form of a
349 personal check. Upon redemption, the deferred presentment
350 provider shall return the drawer's check and provide a signed,

351 dated receipt showing that the drawer's check has been redeemed.
352 (4) A drawer may not be required to redeem his or her
353 check in full before the agreed-upon date; however, the drawer
354 may choose to redeem the check before the agreed-upon
355 presentment date.
356 Section 4. For the purpose of incorporating the amendments
357 made by this act to sections 560.404 and 560.405, Florida
358 Statutes, in references thereto, subsection (5) of section
359 560.111, Florida Statutes, is reenacted to read:
360 560.111 Prohibited acts.—
361 (5) Any person who willfully violates any provision of s.
362 560.403, s. 560.404, or s. 560.405 commits a felony of the third
363 degree, punishable as provided in s. 775.082, s. 775.083, or s.
364 775.084.
365 Section 5. This act shall take effect July 1, 2018.

INSURANCE & BANKING SUBCOMMITTEE

HB 857 by Rep. Grant
Deferred Presentment Transactions

AMENDMENT SUMMARY
January 17, 2018

Amendment 1 by Rep. Grant (Strike-all): The strike all:

- Defines the term "outstanding transaction balance," which is a term the bill introduces to part IV of ch. 560, F.S.
- Adds portions of part IV of ch. 560, F.S., that should be amended to accommodate the new deferred presentment installment transaction product.
- Amends portions of the bill to make various technical and clarifying changes and to better accommodate the new deferred presentment installment transaction product.
- Provides a process by which the new deferred presentment installment transaction product could still be offered in the event that the OFR's existing deferred presentment transaction database is not modified to accept this new product before the bill takes effect.
- Requires that deferred presentment installment transactions be repayable in installments that are "as nearly equal as mathematically practicable" rather than "substantially equal."
- Amends the effective date of the bill in order to provide additional time for the OFR to engage in rulemaking and to modify the existing deferred presentment transaction database to accommodate deferred presentment installment transactions.
- Makes technical changes to current law.

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	___	

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1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee
3 Representative Grant, J. offered the following:
4
5 **Amendment (with title amendment)**
6 Remove everything after the enacting clause and insert:
7 Section 1. Subsections (3) through (5) and (6) of section
8 560.402, Florida Statutes, are renumbered as subsections (4)
9 through (6) and (8), respectively, present subsection (7) is
10 amended, and new subsections (3) and (7) are added to that
11 section, to read:
12 560.402 Definitions.—For the purposes of this part, the
13 term:
14 (3) "Deferred presentment installment transaction" means a
15 deferred presentment transaction that is repayable in
16 installments.

17 (7) "Outstanding transaction balance" means the amount
18 received by the drawer from the deferred presentment provider
19 that is due and owing, exclusive of the fees allowed under this
20 part, in a deferred presentment transaction.
21 (9) ~~(7)~~ "Termination of a deferred presentment agreement"
22 means that all checks ~~the check~~ that are ~~is~~ the basis for the
23 agreement are ~~is~~ redeemed by the drawer by payment in full in
24 cash, or are ~~is~~ deposited and the deferred presentment provider
25 has evidence that such checks have ~~check has~~ cleared.
26 Verification of sufficient funds in the drawer's account by the
27 deferred presentment provider is not sufficient evidence to deem
28 that the deferred presentment ~~deposit~~ transaction is terminated.
29 Section 2. Subsections (5), (6), (8), (12), (13), (14),
30 (19), (20), (21), and (22) and present subsections (23) and (24)
31 of section 560.404, Florida Statutes, are amended, and new
32 subsection (23) and subsection (26) are added to that section,
33 to read:
34 560.404 Requirements for deferred presentment
35 transactions.—
36 (5) The face amount of a check taken for deferred
37 presentment transactions not repayable in installments may not
38 exceed $500, exclusive of the fees allowed under this part. For
39 a deferred presentment installment transaction, neither the face
40 amount of a check nor the outstanding transaction balance may
41 exceed $1,000, exclusive of the fees allowed under this part.

42 (6)(a) A deferred presentment provider or its affiliate
43 may not charge fees that exceed 10 percent of the currency or
44 payment instrument provided for a deferred presentment
45 transaction not repayable in installments. A deferred
46 presentment provider or its affiliate may not charge fees on any
47 deferred presentment installment transaction which exceed 8
48 percent of the outstanding transaction balance on a biweekly
49 basis.
50 (b) Notwithstanding paragraph (a) ~~However~~, a verification
51 fee may be charged as provided in s. 560.309(8). The fees in
52 paragraph (a) ~~The 10-percent fee~~ may not be applied to the
53 verification fee.
54 (c) Fees are earned at the time of origination for a
55 deferred presentment transaction scheduled to be paid off in 31
56 days or less; however, fees for a deferred presentment
57 installment transaction are earned using a simple interest
58 calculation. A deferred presentment provider may charge only
59 those fees specifically authorized in this section. Prepayment
60 penalties are prohibited.
61 (8) A deferred presentment agreement may not be for a term
62 longer than 31 days or fewer ~~less~~ than 7 days, except for a
63 deferred presentment installment transaction, which may not be
64 for a term longer than 90 days or fewer than 60 days.
65 (12) The deferred presentment agreement and the drawer's
66 initial check must bear the same date, and the number of days of

67 the deferment period must ~~shall~~ be calculated from that date.
68 For deferred presentment installment transactions, the deferred
69 presentment provider may accept additional checks, subject to
70 the limitations in subsection (5), each bearing the date that
71 the check was given to the provider, and the deferred
72 presentment agreement must include the deferment period
73 applicable to each check. The deferred presentment provider and
74 the drawer may not alter or delete the date on any written
75 agreement or check held by the deferred presentment provider.
76 (13) For each deferred presentment transaction, the
77 deferred presentment provider must comply with the disclosure
78 requirements of 12 C.F.R. part 226, relating to the federal
79 Truth-in-Lending Act, and Regulation Z of the Bureau of Consumer
80 Financial Protection ~~Board of Governors of the Federal Reserve~~
81 ~~Board~~. A copy of the disclosure must be provided to the drawer
82 at the time the deferred presentment transaction is initiated.
83 (14) A deferred presentment provider or its affiliate may
84 not accept or hold an undated check or a check dated on a date
85 other than the date on which the deferred presentment provider
86 agreed to hold the check and signed the deferred presentment
87 transaction agreement, except when a customer provides a new
88 payment instrument reflecting the new outstanding transaction
89 balance and anticipated fees upon making a payment on a deferred
90 presentment installment transaction.

91 (19) A deferred presentment provider may not enter into a
92 deferred presentment transaction with a drawer who has an
93 outstanding deferred presentment transaction with that provider
94 or with any other deferred presentment provider, or with a
95 person whose previous deferred presentment transaction with that
96 provider or with any other provider has been terminated for less
97 than 24 hours. The deferred presentment provider must verify
98 such information as follows:
99 (a) The deferred presentment provider must ~~shall~~ maintain
100 a common database and must ~~shall~~ verify whether the provider or
101 an affiliate has an outstanding deferred presentment transaction
102 with a particular person or has terminated a transaction with
103 that person within the previous 24 hours. If a provider has not
104 established a database, the provider may rely upon the written
105 verification of the drawer as provided in subsection (20).
106 (b) The deferred presentment provider must ~~shall~~ access
107 the office's database established pursuant to subsection (24)
108 ~~(23)~~ and must ~~shall~~ verify whether any other deferred
109 presentment provider has an outstanding deferred presentment
110 transaction with a particular person or has terminated a
111 transaction with that person within the previous 24 hours.
112 Before the office has implemented a database to include deferred
113 presentment installment transactions ~~If a provider has not~~
114 ~~established a database~~, the deferred presentment provider must
115 access the office's current database pursuant to this paragraph

116 and may rely upon the written verification of the drawer as
117 provided in subsection (20).
118 (20) A deferred presentment provider must ~~shall~~ provide
119 the following notice in a prominent place on each deferred
120 presentment agreement in at least 14-point type in substantially
121 the following form and ~~must~~ obtain the signature of the drawer
122 where indicated:
123
124 NOTICE
125
126 1. STATE LAW PROHIBITS YOU FROM HAVING MORE THAN ONE
127 DEFERRED PRESENTMENT AGREEMENT AT ANY ONE TIME. STATE
128 LAW ALSO PROHIBITS YOU FROM ENTERING INTO A DEFERRED
129 PRESENTMENT AGREEMENT WITHIN 24 HOURS AFTER
130 TERMINATING ANY PREVIOUS DEFERRED PRESENTMENT
131 AGREEMENT. FAILURE TO OBEY THIS LAW COULD CREATE
132 SEVERE FINANCIAL HARDSHIP FOR YOU AND YOUR FAMILY.
133
134 YOU MUST SIGN THE FOLLOWING STATEMENT:
135
136 I DO NOT HAVE AN OUTSTANDING DEFERRED PRESENTMENT
137 AGREEMENT WITH ANY DEFERRED PRESENTMENT PROVIDER AT
138 THIS TIME. I HAVE NOT TERMINATED A DEFERRED
139 PRESENTMENT AGREEMENT WITHIN THE PAST 24 HOURS.
140 (Signature of Drawer)

141

142 2. YOU CANNOT BE PROSECUTED IN CRIMINAL COURT FOR A
143 CHECK WRITTEN UNDER THIS AGREEMENT, BUT ALL LEGALLY
144 AVAILABLE CIVIL MEANS TO ENFORCE THE DEBT MAY BE
145 PURSUED AGAINST YOU.
146
147 3. STATE LAW PROHIBITS A DEFERRED PRESENTMENT
148 PROVIDER (THIS BUSINESS) FROM ALLOWING YOU TO "ROLL
149 OVER" YOUR DEFERRED PRESENTMENT TRANSACTION. THIS
150 MEANS THAT YOU CANNOT BE ASKED OR REQUIRED TO PAY AN
151 ADDITIONAL FEE IN ORDER TO FURTHER DELAY THE DEPOSIT
152 OR PRESENTMENT OF YOUR CHECK FOR PAYMENT.
153
154 4. FOR DEFERRED PRESENTMENT TRANSACTIONS NOT
155 REPAYABLE IN INSTALLMENTS: IF YOU INFORM THE PROVIDER
156 IN PERSON THAT YOU CANNOT COVER THE CHECK OR PAY IN
157 FULL THE AMOUNT OWING AT THE END OF THE TERM OF THIS
158 AGREEMENT, YOU WILL RECEIVE A GRACE PERIOD EXTENDING
159 THE TERM OF THE AGREEMENT FOR AN ADDITIONAL 60 DAYS
160 AFTER THE ORIGINAL TERMINATION DATE, WITHOUT ANY
161 ADDITIONAL CHARGE. THE DEFERRED PRESENTMENT PROVIDER
162 MUST ~~SHALL~~ REQUIRE THAT YOU, AS A CONDITION OF
163 OBTAINING THE GRACE PERIOD, COMPLETE CONSUMER CREDIT
164 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
165 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY

166 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
167 PLAN APPROVED BY THAT AGENCY. IF YOU DO NOT COMPLY
168 WITH AND ADHERE TO A REPAYMENT PLAN APPROVED BY THAT
169 AGENCY, WE MAY DEPOSIT OR PRESENT YOUR CHECK FOR
170 PAYMENT AND PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS
171 TO ENFORCE THE DEBT AT THE END OF THE 60-DAY GRACE
172 PERIOD.
173
174 5. FOR DEFERRED PRESENTMENT INSTALLMENT TRANSACTIONS:
175 IF YOU INFORM THE PROVIDER IN WRITING OR IN PERSON BY
176 NOON [TIME ZONE] OF THE BUSINESS DAY BEFORE A
177 SCHEDULED PAYMENT THAT YOU CANNOT PAY IN FULL THE
178 SCHEDULED AMOUNT DUE AND OWING, YOU MAY DEFER THE
179 SCHEDULED PAYMENT, WITHOUT ANY ADDITIONAL FEES OR
180 CHARGES, AND THE PROVIDER MAY NOT DEFAULT THE ACCOUNT
181 AND ACCELERATE THE FULL BALANCE. YOU MAY REQUEST ONLY
182 ONE DEFERRED PAYMENT PER LOAN. THE DEFERRED PAYMENT
183 WILL BE ADDED AFTER THE LAST SCHEDULED PAYMENT AND IS
184 DUE AT AN INTERVAL NO SHORTER THAN THE INTERVALS
185 BETWEEN THE ORIGINALLY SCHEDULED PAYMENTS.
186
187 (21) The deferred presentment provider may not deposit or
188 present the drawer's check if the drawer informs the provider in
189 writing or in person that the drawer cannot redeem or pay in
190 full in cash the amount due and owing the deferred presentment

191 provider, unless the drawer fails to comply with subsection (22)
192 or subsection (23), as applicable. No additional fees or
193 penalties may be imposed on the drawer by virtue of any
194 misrepresentation made by the drawer as to the sufficiency of
195 funds in the drawer's account. Additional fees may not be added
196 to the amounts due and owing to the deferred presentment
197 provider.
198 (22) For deferred presentment transactions not repayable
199 in installments, if, by the end of the deferment period, the
200 drawer informs the deferred presentment provider in writing or
201 in person that the drawer cannot redeem or pay in full in cash
202 the amount due and owing the deferred presentment provider, the
203 deferred presentment provider must ~~shall~~ provide a grace period
204 extending the term of the agreement for an additional 60 days
205 after the original termination date, without any additional
206 charge.
207 (a) The provider must ~~shall~~ require, ~~that~~ as a condition
208 of providing a grace period, that the drawer make an appointment
209 with a consumer credit counseling agency within 7 days after the
210 end of the deferment period and complete the counseling by the
211 end of the grace period. The drawer may agree to, comply with,
212 and adhere to a repayment plan approved by the counseling
213 agency. If the drawer agrees to comply with and adhere to a
214 repayment plan approved by the counseling agency, the provider
215 must also comply with and adhere to that repayment plan. The

216 deferred presentment provider may not deposit or present the
217 drawer's check for payment before the end of the 60-day grace
218 period unless the drawer fails to comply with such conditions or
219 the drawer fails to notify the provider of such compliance.
220 Before each deferred presentment transaction, the provider may
221 verbally advise the drawer of the availability of the grace
222 period consistent with the written notice in subsection (20),
223 and may not discourage the drawer from using the grace period.
224 (b) At the commencement of the grace period, the deferred
225 presentment provider must ~~shall~~ provide the drawer:
226 1. Verbal notice of the availability of the grace period
227 consistent with the written notice in subsection (20).
228 2. A list of approved consumer credit counseling agencies
229 prepared by the office. The office list must ~~shall~~ include
230 nonprofit consumer credit counseling agencies affiliated with
231 the National Foundation for Credit Counseling which provide
232 credit counseling services to state residents in person, by
233 telephone, or through the Internet. The office list must include
234 phone numbers for the agencies, the counties served by the
235 agencies, and indicate the agencies that provide telephone
236 counseling and those that provide Internet counseling. The
237 office must ~~shall~~ update the list at least once each year.
238 3. The following notice in at least 14-point type in
239 substantially the following form:
240

241 AS A CONDITION OF OBTAINING A GRACE PERIOD EXTENDING
242 THE TERM OF YOUR DEFERRED PRESENTMENT AGREEMENT FOR AN
243 ADDITIONAL 60 DAYS, UNTIL [DATE], WITHOUT ANY
244 ADDITIONAL FEES, YOU MUST COMPLETE CONSUMER CREDIT
245 COUNSELING PROVIDED BY AN AGENCY INCLUDED ON THE LIST
246 THAT WILL BE PROVIDED TO YOU BY THIS PROVIDER. YOU MAY
247 ALSO AGREE TO COMPLY WITH AND ADHERE TO A REPAYMENT
248 PLAN APPROVED BY THE AGENCY. THE COUNSELING MAY BE IN
249 PERSON, BY TELEPHONE, OR THROUGH THE INTERNET. YOU
250 MUST NOTIFY US WITHIN 7 DAYS, BY [DATE], THAT YOU HAVE
251 MADE AN APPOINTMENT WITH A CONSUMER CREDIT COUNSELING
252 AGENCY. YOU MUST ALSO NOTIFY US WITHIN 60 DAYS, BY
253 [DATE], THAT YOU HAVE COMPLETED THE CONSUMER CREDIT
254 COUNSELING. WE MAY VERIFY THIS INFORMATION WITH THE
255 AGENCY. IF YOU FAIL TO PROVIDE THE 7-DAY OR 60-DAY
256 NOTICE, OR IF YOU HAVE NOT MADE THE APPOINTMENT OR
257 COMPLETED THE COUNSELING WITHIN THE TIME REQUIRED, WE
258 MAY DEPOSIT OR PRESENT YOUR CHECK FOR PAYMENT AND
259 PURSUE ALL LEGALLY AVAILABLE CIVIL MEANS TO ENFORCE
260 THE DEBT.
261
262 (c) If a drawer completes an approved payment plan, the
263 deferred presentment provider must ~~shall~~ pay one-half of the
264 drawer's fee for the deferred presentment agreement to the
265 consumer credit counseling agency.

266 (23) For deferred presentment installment transactions, if
267 a drawer informs the deferred presentment provider in writing or
268 in person by noon of the business day before a scheduled payment
269 that the drawer cannot pay in full the scheduled payment amount
270 due and owing the provider, the deferred presentment provider
271 must provide the drawer the opportunity to defer the scheduled
272 payment, at no additional fee or charge, until after the last
273 scheduled payment. The phrase "by noon" means 12:00 p.m. of the
274 same time zone in which the deferred presentment agreement was
275 entered into. Only one deferred payment is permitted for each
276 deferred presentment installment transaction. The deferred
277 payment must be due at an interval after the last scheduled
278 payment which is no shorter than the intervals between the
279 originally scheduled payments.
280 (24)(a) ~~(23)~~ The office must ~~shall~~ implement a common
281 database with real-time access through an Internet connection
282 for deferred presentment providers, as provided in this
283 subsection. The database must be accessible to the office and
284 the deferred presentment providers in order to verify whether
285 any deferred presentment transactions are outstanding for a
286 particular person. Deferred presentment providers must ~~shall~~
287 submit such data before entering into each deferred presentment
288 transaction in such format as required by rule, including the
289 drawer's name, social security number or employment
290 authorization alien number, address, driver license number,

291 amount of the transaction, date of transaction, the date that
292 the transaction is closed, and such additional information as is
293 required by rule.
294 (b) For data that must be submitted by a deferred
295 presentment provider, the commission may by rule impose a fee of
296 up to $1 per transaction for deferred presentment transactions
297 not repayable in installments, and the commission may impose a
298 fee of up to $1 for each full or partial 30-day period that a
299 balance is scheduled to be outstanding for a deferred
300 presentment installment transaction ~~for data that must be~~
301 ~~submitted by a deferred presentment provider~~.
302 (c) A deferred presentment provider may rely on the
303 information contained in the database as accurate and is not
304 subject to any administrative penalty or civil liability due to
305 relying on inaccurate information contained in the database.
306 (d) A deferred presentment provider must notify the
307 office, in a manner as prescribed by rule, within 15 business
308 days after ceasing operations or no longer holding a license
309 under part II or part III of this chapter. Such notification
310 must include a reconciliation of all open transactions. If the
311 provider fails to provide notice, the office must ~~shall~~ take
312 action to administratively release all open and pending
313 transactions in the database after the office becomes aware of
314 the closure.

315 (e) This section does not affect the rights of the
316 provider to enforce the contractual provisions of the deferred
317 presentment agreements through any civil action allowed by law.
318 (f) The commission may adopt rules to administer this
319 subsection and to ensure that the database is used by deferred
320 presentment providers in accordance with this section.
321 (25) ~~(24)~~ A deferred presentment provider may not accept
322 more than one check or authorization to initiate more than one
323 automated clearinghouse transaction to collect on a deferred
324 presentment transaction for a single deferred presentment
325 transaction, except for deferred presentment installment
326 transactions in which such checks or authorizations represent
327 multiple scheduled payments.
328 (26) A deferred presentment installment transaction must
329 be fully amortizing and repayable in consecutive installment
330 periods as nearly equal as mathematically practicable according
331 to a payment schedule agreed upon by the parties with no fewer
332 than 13 days and not more than 1 calendar month between
333 payments, except that the first installment period may be longer
334 than the remaining installment periods by not more than 15 days,
335 and the first installment payment may be larger than the
336 remaining installment payments by the amount of charges
337 applicable to the extra days. In calculating charges under this
338 subsection, when the first installment period is longer than the
339 remaining installment periods, the amount of the charges

340 applicable to the extra days may not exceed those that would
341 accrue under a simple interest calculation based on the rate
342 allowed under subsection (6).
343 Section 3. Subsections (1), (3), and (4) of section
344 560.405, Florida Statutes, are amended to read:
345 560.405 Deposit; redemption.—
346 (1) The deferred presentment provider or its affiliate may
347 not present the drawer's check before the end of the deferment
348 period, except for a missed scheduled payment for a deferred
349 presentment installment transaction that has not been otherwise
350 deferred pursuant to s. 560.404(23), as reflected and described
351 in the deferred presentment transaction agreement.
352 (3) Notwithstanding subsection (1), in lieu of
353 presentment, a deferred presentment provider may allow the check
354 to be redeemed at any time upon payment of the outstanding
355 transaction balance and earned fees ~~face amount of the drawer's~~
356 ~~check~~. However, payment may not be made in the form of a
357 personal check. Upon redemption, the deferred presentment
358 provider must ~~shall~~ return the drawer's check and provide a
359 signed, dated receipt showing that the drawer's check has been
360 redeemed.
361 (4) A drawer may not be required to redeem his or her
362 check in full before the agreed-upon date; however, the drawer
363 may choose to redeem the check before the agreed-upon
364 presentment date.

365 Section 4. For the purpose of incorporating the amendments
366 made by this act to sections 560.404 and 560.405, Florida
367 Statutes, in references thereto, subsection (5) of section
368 560.111, Florida Statutes, is reenacted to read:
369 560.111 Prohibited acts.—
370 (5) Any person who willfully violates any provision of s.
371 560.403, s. 560.404, or s. 560.405 commits a felony of the third
372 degree, punishable as provided in s. 775.082, s. 775.083, or s.
373 775.084.
374 Section 5. This act shall take effect July 1, 2019.
375
376 ---
377 **T I T L E A M E N D M E N T**
378 Remove everything before the enacting clause and insert:
379 An act relating to deferred presentment transactions;
380 amending s. 560.402, F.S.; providing and revising
381 definitions; amending s. 560.404, F.S.; specifying the
382 maximum face amount of checks that may be taken for
383 deferred presentment installment transactions,
384 exclusive of fees; specifying the maximum rate and
385 frequency of fees that deferred presentment providers
386 or their affiliates may charge on deferred presentment
387 installment transactions; specifying when fees are
388 earned for certain deferred presentment transactions;
389 specifying the calculation of fees earned for deferred

390 presentment installment transactions; prohibiting
391 prepayment penalties; specifying the minimum and
392 maximum terms of a deferred presentment installment
393 transaction; specifying dates that checks must bear;
394 authorizing providers of deferred presentment
395 installment transactions to accept additional checks
396 subject to certain limitations; requiring the deferred
397 presentment agreement to include the deferment period
398 applicable to each check; correcting a reference to
399 federal law; providing an exception to a prohibition
400 against the acceptance or holding of undated checks or
401 checks with certain dates by a deferred presentment
402 provider or its affiliate; conforming a cross-
403 reference; providing a verification process that may
404 be relied upon under certain conditions; revising a
405 notice in deferred presentment agreements; authorizing
406 a drawer to inform a provider in writing that the
407 drawer cannot redeem or pay in full the amount due and
408 owing to the provider; providing an exception to a
409 prohibition, under certain circumstances, against a
410 deferred presentment provider's deposit or presentment
411 of a drawer's check; requiring a provider of a
412 deferred presentment installment transaction to allow
413 a drawer to defer one scheduled payment under certain
414 circumstances; providing requirements for the deferred

415 payment; specifying the frequency a certain fee may be
416 imposed by Financial Services Commission rule for data
417 on certain transactions submitted by deferred
418 presentment providers to a certain database; providing
419 an exception to a limitation on a deferred presentment
420 provider's acceptance of a certain check or
421 authorization; specifying requirements for
422 amortization, installment repayments, and calculation
423 of charges for deferred presentment installment
424 transactions; conforming provisions to changes made by
425 the act; amending s. 560.405, F.S.; providing an
426 exception to a prohibition against a deferred
427 presentment provider's or its affiliate's presentment
428 of a drawer's check before the end of the deferment
429 period; revising a condition under which a deferred
430 presentment provider may allow the check to be
431 redeemed in lieu of presentment; revising a
432 prohibition against requiring a drawer to redeem his
433 or her check before the agreed-upon date; reenacting
434 s. 560.111(5), F.S., relating to prohibited acts, to
435 incorporate the amendments made to ss. 560.404 and
436 560.405, F.S., in references thereto; providing an
437 effective date.

HB 935

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 935 Mortgage Lending
SPONSOR(S): Nuñez
TIED BILLS: **IDEN./SIM. BILLS:** SB 894

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

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) licenses and regulates various aspects of non-depository mortgage businesses, including mortgage loan originators, mortgage brokers, and mortgage lenders. Unless otherwise exempt, a person acting in such capacity must be licensed if the person takes part in making a "mortgage loan." For residential mortgage loans, licensure is required where the mortgage is primarily for personal, family, or household use; licensure is not required where the residential mortgage loan is made for a business purpose. The exclusion of business purpose residential mortgage loans under Florida law is consistent with the federal law that regulates mortgage loan originators and the federal laws that regulate mortgage disclosures.

Two current exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender, so long as the individual does not "hold himself or herself out to the public as being in the mortgage lending business." However, this phrase is currently undefined.

The bill makes the following changes:

- Amends the definition of "mortgage loan" such that a residential mortgage loan made for a business purpose will fall under the definition of a "mortgage loan." Persons originating, brokering, or lending for such loans will be subject to licensure by the OFR, unless they are otherwise exempt.
- Provides a definition of the phrase "hold himself or herself out to the public as being in the mortgage lending business," as that phrase is used in two current licensing exemptions.

The bill has no impact on local governments, an indeterminate fiscal impact on the private sector, and a positive but indeterminate impact on state revenues. The bill would increase expenditures to the state. The OFR has estimated that it will need two additional full-time employee positions at a cost of $62,242 each, for a total of $124,484, in order to perform licensing and regulatory functions.

The bill provides an effective date of January 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background: Federal Regulation of the Mortgage Industry

Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act)

The SAFE Act[1] was enacted on July 30, 2008, and was designed to enhance consumer protection and reduce fraud through the setting of minimum standards for the licensing and registration of mortgage loan originators.[2] Mortgage loan originators who work for an insured depository institution (e.g., a bank or credit union) or its owned or controlled subsidiary that is regulated by a federal banking agency, or for an institution regulated by the Farm Credit Administration, must comply with federal registration requirements; all other mortgage loan originators are licensed by the states so long as minimum requirements for licensing and renewal are maintained.[3] Both federal registration and state licensing must be accomplished through the same online registration system, the Nationwide Mortgage Licensing System and Registry (NMLS).[4]

The SAFE Act defines a "residential mortgage loan" as "any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling . . . or residential real estate upon which is constructed or intended to be constructed a dwelling . . . ."[5] Because the SAFE Act's definition of "residential mortgage loan" includes the requirement that it be made "primarily for personal, family, or household use", residential mortgage loans made for business purposes are excluded from the scope of the SAFE Act's regulation.

Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA)

The TILA's regulations[6] are intended to:[7]

- Promote the informed use of consumer credit by requiring disclosures about its terms and cost,
- Ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and
- Effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs.

TILA affords consumers certain protections, including:

- Giving consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling. [8]
- Requiring a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. [9]

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[1] 12 U.S.C. §§ 5101 *et seq.*
[2] 12 C.F.R. § 1008.1(b).
[3] Nationwide Multistate Licensing System & Registry, *SAFE Mortgage Licensing Act of 2008*, http://mortgage.nationwidelicensingsystem.org/safe/Pages/default.aspx (last visited Jan. 12, 2018); 12 C.F.R. §§ 1008.101 – 1008.203.
[4] Consumer Financial Protection Bureau, *CFPB Consumer Laws and Regulations: SAFE Act*, http://files.consumerfinance.gov/f/201203_cfpb_update_SAFE_Act_Exam_Procedures.pdf, at 1 (last visited Jan. 12, 2018).
[5] 12 C.F.R. § 1008.23. The term "dwelling" has the same meaning under ch. 494, F.S., and the federal SAFE Act, as both rely on the definition of "dwelling" that is provided in TILA. s. 494.001(24)(a), F.S., and 12 C.F.R. § 1008.23.
[6] 12 C.F.R. Part 1026.
[7] 12 C.F.R. § 1026.1(b).
[8] *Id.*
[9] *Id.*

- Imposing limitations on open-end credit plans secured by the consumer's dwelling and on "high-cost" mortgages secured by the consumer's principal dwelling.[10]
- Requiring that a loan estimate be provided within three business days from application.[11]
- Requiring that a closing disclosure be provided to consumers three business days before loan consummation.[12]

RESPA's regulations[13] are intended to require certain timely disclosures regarding the nature and costs of the real estate settlement process. Due to the overlapping disclosure requirements in RESPA and TILA relating to most closed-end consumer credit transactions secured by real property, disclosures and forms for these types of transactions have been integrated and are governed by TILA regulations.[14]

Both TILA and RESPA exempt from their regulations a mortgage loan made "primarily for a business, commercial or agricultural purpose."[15] Therefore, TILA and RESPA do not cover "business purpose" mortgage loans but rather only "consumer purpose" mortgage loans. When determining whether credit is for consumer purposes, the creditor must evaluate all of the following factors:[16]

1) *Any statement obtained from the consumer describing the purpose of the proceeds.*
   - For example, a statement that the proceeds will be used for a vacation trip would indicate a consumer purpose.
   - If the loan has a mixed-purpose (e.g., proceeds will be used to buy a car that will be used for personal and business purposes), the lender must look to the primary purpose of the loan to decide whether disclosures are necessary. A statement of purpose from the consumer will help the lender make that decision.
   - A checked box indicating that the loan is for a business purpose, absent any documentation showing the intended use of the proceeds could be insufficient evidence that the loan did not have a consumer purpose.
2) *The consumer's primary occupation and how it relates to the use of the proceeds.* The higher the correlation between the consumer's occupation and the property purchased from the loan proceeds, the greater the likelihood that the loan has a business purpose. For example, proceeds used to purchase dental supplies for a dentist would indicate a business purpose.
3) *Personal management of the assets purchased from proceeds.* The lower the degree of the borrower's personal involvement in the management of the investment or enterprise purchased by the loan proceeds, the less likely the loan will have a business purpose. For example, money borrowed to purchase stock in an automobile company by an individual who does not work for that company would indicate a personal investment and a consumer purpose.
4) *The size of the transaction.* The larger the size of the transaction, the more likely the loan will have a business purpose. For example, if the loan is for a $5,000,000 real estate transaction, that might indicate a business purpose.
5) *The amount of income derived from the property acquired by the loan proceeds relative to the borrower's total income.* The lesser the income derived from the acquired property, the more likely the loan will have a consumer purpose. For example, if the borrower has an annual salary

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[10] *Id.*
[11] Consumer Financial Protection Bureau, *CFPB Consumer Laws and Regulations: TILA*, https://s3.amazonaws.com/files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf, at 4 (last visited Jan. 12, 2018).
[12] *Id.*
[13] 12 C.F.R. Part 1024.
[14] Consumer Financial Protection Bureau, *2013 Integrated Mortgage Disclosure Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, https://www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/ (last visited Jan. 12, 2018).
[15] 12 C.F.R. § 1026.3(a).
[16] Consumer Financial Protection Bureau, *CFPB Consumer Laws and Regulations: TILA*, https://s3.amazonaws.com/files.consumerfinance.gov/f/201503_cfpb_truth-in-lending-act.pdf, at 6-9 (last visited Jan. 12, 2018). RESPA states that "[p]ersons may rely on [TILA] in determining whether the [business purpose loan] exemption applies." 12 C.F.R. § 1024.5(b)(2).

of $100,000 and receives about $500 in annual dividends from the acquired property, that would indicate a consumer purpose.

All five factors must be evaluated before the lender can conclude that disclosures are not necessary. Normally, no one factor, by itself, is sufficient reason to determine the applicability of Regulation Z. In any event, the financial institution may routinely furnish disclosures to the consumer. Disclosure under such circumstances does not control whether the transaction is covered, but can assure protection to the financial institution and compliance with the law.[17]

Background: State Regulation of Non-Depository Mortgage Business

The Office of Financial Regulation (OFR) regulates banks, credit unions, other financial institutions, finance companies, and the securities industry.[18] The OFR's Division of Consumer Finance licenses and regulates various aspects of the non-depository financial services industries, including individuals and businesses engaged in the mortgage business.

Under ch. 494, F.S., the OFR licenses and regulates the following individuals and businesses engaged in the mortgage business outside of a depository financial institution:

- *Loan originator*[19] – An individual who, directly or indirectly, solicits or offers to solicit a mortgage loan, accepts or offers to accept an application for a mortgage loan, negotiates or offers to negotiate the terms or conditions of a new or existing mortgage loan on behalf of a borrower or lender, or negotiates or offers to negotiate the sale of an existing mortgage loan to a noninstitutional investor for compensation or gain. The term includes an individual who is required to be licensed as a loan originator under the S.A.F.E. Mortgage Licensing Act of 2008. The term does not include an employee of a mortgage broker or mortgage lender whose duties are limited to physically handling a completed application form or transmitting a completed application form to a lender on behalf of a prospective borrower.
- *Mortgage broker*[20] – A person conducting loan originator activities through one or more licensed loan originators employed by the mortgage broker or as independent contractors to the mortgage broker.
- *Mortgage lender*[21] – A person making a mortgage loan or servicing a mortgage loan for others, or, for compensation or gain, directly or indirectly, selling or offering to sell a mortgage loan to a noninstitutional investor. A mortgage lender may act as a mortgage broker.[22]

The conditions requiring licensure as a mortgage loan originator, mortgage broker, or mortgage lender include whether a person takes part in making a "mortgage loan," as defined under ch. 494, F.S. Currently, the definition includes a:[23]

- Residential loan primarily for personal, family, or household use which is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling for the purchase of residential real estate upon which a dwelling is to be constructed. A "dwelling" is a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.[24]
- Loan on commercial real property if the borrower is an individual or the lender is a noninstitutional investor.
- Loan on improved real property consisting of five or more dwelling units if the borrower is an individual or the lender is a noninstitutional investor.

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[17] *Id.*
[18] s. 20.121(3)(a)2., F.S.
[19] s. 494.001(17), F.S.
[20] s. 494.001(22), F.S.
[21] s. 494.001(23), F.S.
[22] s. 494.0073, F.S.
[23] s. 494.001(24), F.S.
[24] *Id.*; 15 U.S.C. § 1602(w).

Because the definition of a residential mortgage loan in ch. 494, F.S., includes the requirement that it be made "primarily for personal, family, or household use", then a person originating, brokering, or lending for a business purpose loan does not need to be licensed under ch. 494, F.S. The exclusion of business purpose residential mortgage loans under Florida law is consistent with the federal law that regulates mortgage loan originators (the SAFE Act) and the federal laws that regulate mortgage disclosures (TILA and RESPA).

In order to obtain licensure as a mortgage *loan originator*, an individual must:[25]
- Complete a 20-hour prelicensing class;[26]
- Pass a written test (cost: $110);[27]
- Submit an application form;
- Submit a nonrefundable application fee of $195 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints, the cost of which is borne by the applicant; and
- Authorize access to his or her credit report, the cost of which is borne by the applicant.

In order to obtain licensure as a *mortgage broker*, a person must:[28]
- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $425 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

In order to obtain licensure as a *mortgage lender*, a person must:[29]
- Submit an application form, which must designate a qualified principal loan originator;
- Submit a nonrefundable application fee of $500 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund;
- Submit fingerprints for each of the applicant's control persons, the cost of which is borne by the person subject to the background check;
- Submit a copy of the applicant's financial audit report for the most recent fiscal year, which must document that the applicant has a net worth of at least $63,000 if the applicant is not seeking a servicing endorsement, or at least $250,000 if the applicant is seeking a servicing endorsement; and
- Authorize access to the credit reports of each of the applicant's control persons, the cost of which is borne by the applicant.

All of the above licenses must be renewed annually by December 31.[30] In order to renew:
- A mortgage *loan originator* license, an individual must submit a renewal form and a nonrefundable renewal fee of $150 plus a $20 nonrefundable fee for the Mortgage Guaranty Trust Fund; provide documentation of completion of at least 8 hours of continuing education

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[25] s. 494.00312, F.S.

[26] The cost of prelicensing courses may vary by course provider, but one such course provider charges $349 for the required 20-hour course. *See* MortgageEducation.com, *Mortgage Loan Originator Courses*, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Jan. 12, 2018).

[27] Nationwide Multistate Licensing System & Registry, *Uniform State Test (UST) Implementation Information*, http://mortgage.nationwidelicensingsystem.org/profreq/testing/Pages/UniformStateTest.aspx (last visited Jan. 12, 2018).

[28] s. 494.00321, F.S.

[29] s. 494.00611, F.S.

[30] ss. 494.00312(7), 494.00321(7), and 494.00611, F.S.

courses;[31] and authorize access to his or her credit report, the cost of which is borne by the licensee.[32]

- A *mortgage broker* license, a person must submit a renewal form and a nonrefundable renewal fee of $375 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund; submit fingerprints for any new control persons who have not been screened; and authorize access to the credit reports of each of the mortgage broker's control persons, the cost of which is borne by the licensee.[33]
- A *mortgage lender* license, a person must submit a renewal form and a nonrefundable renewal fee of $475 plus a $100 nonrefundable fee for the Mortgage Guaranty Trust Fund; submit fingerprints for any new control persons who have not been screened; submit proof that the mortgage lender continues to meet the applicable net worth requirement; and authorize access to the credit reports of each of the mortgage lender's control persons, the cost of which is borne by the licensee.[34]

The following persons are currently exempt from regulation under ch. 494, F.S.:[35]

a) Any person operating exclusively as a registered loan originator[36] in accordance with the S.A.F.E. Mortgage Licensing Act of 2008.
b) A depository institution; certain regulated subsidiaries that are owned and controlled by a depository institution; or institutions regulated by the Farm Credit Administration.
c) The Federal National Mortgage Association; the Federal Home Loan Mortgage Corporation; any agency of the Federal Government; any state, county, or municipal government; or any quasi-governmental agency that acts in such capacity under the specific authority of the laws of any state or the United States.
d) An attorney licensed in this state who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client.
e) A person involved solely in the extension of credit relating to the purchase of a timeshare plan.
f) A person who performs only real estate brokerage activities and is licensed or registered in this state under part I of chapter 475, F.S., unless the person is compensated by a lender, a mortgage broker, or other loan originator or by an agent of such lender, mortgage broker, or other loan originator.

The following persons are currently exempt from the mortgage lender licensing requirements of ch. 494, F.S.:

a) A person acting in a fiduciary capacity conferred by the authority of a court.
b) A person who, as a seller of his or her own real property, receives one or more mortgages in a purchase money transaction.
c) A person who acts solely under contract and as an agent for federal, state, or municipal agencies for the purpose of servicing mortgage loans.
d) A person who makes only nonresidential mortgage loans and sells loans only to institutional investors.
e) An individual making or acquiring a mortgage loan using his or her own funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

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[31] The cost of continuing education courses may vary by course provider, but one such course provider charges $159 for the required 8-hour course. *See* MortgageEducation.com, *Mortgage Loan Originator Courses*, https://www.mortgage-education.com/StatePage.aspx?StateCode=FL (last visited Jan. 12, 2018).

[32] s. 494.00313, F.S.

[33] s. 494.00322, F.S.

[34] s. 494.00612, F.S.

[35] s. 494.00115(1), F.S.

[36] A "registered loan originator" is "a loan originator who is employed by a depository institution, by a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency, or by an institution regulated by the Farm Credit Administration, and who is registered with and maintains a unique identifier through the [Nationwide Mortgage Licensing System and Registry]." A registered loan originator must comply with federal registration requirements rather than the loan originator licensing requirements under ch. 494, F.S.

f) An individual selling a mortgage that was made or purchased with that individual's funds for his or her own investment, and who does not hold himself or herself out to the public as being in the mortgage lending business.

Each ch. 494, F.S., licensee is subject to:

- Certain requirements for the maintenance of books and records relating to the licensee's compliance with the chapter, with regard to expenses paid by the licensee on behalf of the borrower, and relating to its advertisements.[37]
- The OFR's investigation and examination authority.[38]
- The OFR's enforcement authority such as injunctions, cease and desist orders, suspension or revocation of licensure, and administrative fines.[39]

As part of the administrative penalties and fines available to the OFR under ch. 494, F.S., a violation of the RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action.[40]

Effect of the Bill

The bill amends the definition of "mortgage loan" by removing the requirement that a residential mortgage loan be used primarily for personal, family, or household purposes. As a result, a residential mortgage loan made for a business purpose will fall under the definition of a "mortgage loan." Persons originating, brokering, or lending for such loans will be subject to licensure by the OFR, unless otherwise exempt under s. 494.00115, F.S.

Two current exemptions in ch. 494, F.S., permit an individual investor to make or acquire a mortgage loan with his or her own funds, or to sell such mortgage loan, without being licensed as a mortgage lender under ch. 494, F.S., so long as the individual does not "hold himself or herself out to the public as being in the mortgage lending business." The bill specifies that the phrase "hold himself or herself out to the public as being in the mortgage lending business," includes the following:

- Representing to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or promotional items, by any method, that such individual can or will perform the activities described in the definition of "mortgage lender."
- Soliciting in a manner that would lead the intended audience to reasonably believe that such individual is in the business of performing the activities described in the definition of "mortgage lender."
- Maintaining a commercial business establishment at which, or premises from which, such individual regularly performs the activities described in the definition of "mortgage lender" or regularly meets with current or prospective mortgage borrowers.
- Advertising, soliciting, or conducting business through the use of a name, trademark, service mark, trade name, Internet address, or logo that indicates or reasonably implies that the business being advertised, solicited, or conducted is of the kind or character of business transacted or conducted by a licensed mortgage lender or is likely to lead any person to believe that such business is that of a licensed mortgage lender.

B. SECTION DIRECTORY:

Section 1. Amends s. 494.001, F.S., relating to definitions.

Section 2. Amends s. 494.00115, F.S., relating to exemptions.

[37] ss. 494.0016 and 494.00165(2), F.S.
[38] s. 494.0012, F.S.
[39] ss. 494.0013, 494.0014, and 494.00255, F.S.
[40] s. 494.00255(1)(m), F.S.

Section 3. Provides an effective date of January 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill would have a positive impact on revenue to the state because the addition of any new licensees will result in an increase in licensing fees received by the OFR. However, as it is unknown how many new licensees will result from the bill's passage, the impact on state revenues is indeterminate.

2. Expenditures:

   The bill would increase expenditures to the state. The addition of any new licensees has a corresponding impact on the responsibility of the OFR to provide regulatory oversight of the additional licensees. The OFR has estimated that it will need two additional full-time employee positions at a cost of $62,242 each, for a total of $124,484, in order to perform licensing and regulatory functions.[41]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have an impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Consumers who take out a residential mortgage loan, regardless of the loan's purpose, will have to utilize the services of a licensed loan originator, mortgage broker, or mortgage lender. To the extent that such licensed mortgage professionals comply with TILA and RESPA mortgage disclosures as a matter of course, even on business purpose mortgage loans, the consumer is afforded more protection in the form of disclosures regarding the terms and costs of the mortgage loan.

Persons who are currently involved in making residential mortgage loans for a business purpose but are not licensed will be required to become licensed under ch. 494, F.S., in order to continue such activity. However, as it is unknown how many new licensees will result from the bill's passage, the fiscal impact to the private sector is indeterminate.

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.

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[41] Office of Financial Regulation, Agency Analysis of 2018 House Bill 935 (Dec. 28, 2017).

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:

A violation of RESPA, TILA, or any regulations adopted thereunder committed in any mortgage transaction, is a ground for disciplinary action under ch. 494, F.S. Both RESPA and TILA exclude business purpose loans from the scope of their regulation. Therefore, a person may be subject to licensure under ch. 494, F.S., but would not necessarily be required to provide the disclosures required under RESPA and TILA if the residential mortgage loan is made for a business purpose.

The body of this bill is substantially similar to language that was included in CS/CS/HB 747 (2017) as enrolled and sent to the Governor. The Governor vetoed the 2017 bill on June 26, 2017, for reasons relating to portions of the 2017 bill that are contained in this bill.[42] Relating to the language that is contained in this bill, the Governor's veto letter noted that the legislation "expands the regulatory environment on residential mortgages and adds overly prescriptive regulations pertaining to mortgage lending. These requirements would make Florida one of the most restrictive states in the nation in the residential mortgage lending arena."[43]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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[42] Letter from Rick Scott, Governor of the state of Fla., to Ken Detzner, Sec'y of State (June 26, 2017), http://www.flgov.com/wp-content/uploads/2017/06/HB-747-Veto-Letter.pdf (last visited Jan. 12, 2018).

[43] *Id.*

1 A bill to be entitled
2 An act relating to mortgage lending; amending s.
3 494.001, F.S.; revising the definition of the term
4 "mortgage loan"; amending s. 494.00115, F.S.;
5 providing a definition for the term "hold himself or
6 herself out to the public as being in the mortgage
7 lending business"; providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (24) of section 494.001, Florida
12 Statutes, is amended to read:
13 494.001 Definitions.—As used in this chapter, the term:
14 (24) "Mortgage loan" means any:
15 (a) Residential loan that ~~primarily for personal, family,~~
16 ~~or household use which~~ is secured by a mortgage, deed of trust,
17 or other equivalent consensual security interest on a dwelling,
18 as defined in s. 103(w) ~~s. 103(v)~~ of the federal Truth in
19 Lending Act, or for the purchase of residential real estate upon
20 which a dwelling is to be constructed;
21 (b) Loan on commercial real property if the borrower is an
22 individual or the lender is a noninstitutional investor; or
23 (c) Loan on improved real property consisting of five or
24 more dwelling units if the borrower is an individual or the
25 lender is a noninstitutional investor.

26 Section 2. Subsection (4) is added to section 494.00115,
27 Florida Statutes, to read:
28 494.00115 Exemptions.—
29 (4) As used in this section, the term "hold himself or
30 herself out to the public as being in the mortgage lending
31 business" includes any of the following:
32 (a) Representing to the public, through advertising or
33 other means of communicating or providing information, including
34 the use of business cards, stationery, brochures, signs, rate
35 lists, or promotional items, by any method, that such individual
36 can or will perform the activities described in s. 494.001(23).
37 (b) Soliciting in a manner that would lead the intended
38 audience to reasonably believe that such individual is in the
39 business of performing the activities described in s.
40 494.001(23).
41 (c) Maintaining a commercial business establishment at
42 which, or premises from which, such individual regularly
43 performs the activities described in s. 494.001(23) or regularly
44 meets with current or prospective mortgage borrowers.
45 (d) Advertising, soliciting, or conducting business
46 through the use of a name, trademark, service mark, trade name,
47 Internet address, or logo that indicates or reasonably implies
48 that the business being advertised, solicited, or conducted is
49 of the kind or character of business transacted or conducted by
50 a licensed mortgage lender or is likely to lead any person to

51 believe that such business is that of a licensed mortgage
52 lender.
53 Section 3. This act shall take effect January 1, 2019.

PCS for HB 465

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 465 Insurance
SPONSOR(S): Insurance & Banking Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The bill makes the following changes regarding insurance:

- **Consumer Complaint Ratio Calculation** – specifies that third-party vendors, as an assignee of policy benefits, are not insurance consumers and will not be used for purposes of calculating complaint ratios.
- **Foreign Insurer Stock Valuation** – provides that the stock of a subsidiary corporation or related entity of a foreign insurer is exempt from certain limitations on valuation and investment requirements for solvency evaluation purposes in certain circumstances, including permissibility in the insurer's domicile state.
- **Surplus Lines Export Eligibility** – lowers the home value threshold from $1,000,000 to $700,000 for exporting a homeowner's property insurance for a residential dwelling to a surplus lines insurer following a single coverage rejection.
- **Personal Financial and Health Information Privacy** – incorporates a recent amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable certain notices required by rules adopted by the Department of Financial Services and the Financial Services Commission.
- **Execution of Insurance Policies** – provides that an insurer may elect to issue an insurance policy without being executed by one of several specified insurer representatives and the policy is not invalid despite not being executed.
- **Notice of Policy Change** – requires that a property and casualty insurer summarize policy changes on the required Notice of Change in Policy Terms that is issued at policy renewal, rather than merely issuing a notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").
- **Property Insurance Claim Mediation** – provides that a third-party assignee may request mediation of a property insurance claim; except, an insurer is not required to participate in a mediation requested by the third-party assignee.
- **Proof of Mailing** – permits motor vehicle insurers to use the Intelligent Mail barcode, or similar method approved by the United States Postal Service, to document proof of mailing of certain required notices.
- **Transportation Network Company Related Automobile Liability Insurance Exclusions** – allows private passenger motor vehicle insurers to generally exclude coverage of transportation network services provided by a named insured, rather than limiting the exclusion to specific motor vehicles.
- **Confidentiality of Documents Submitted to the Office of Insurance Regulation** – expands the confidentiality of documents submitted to the Office of Insurance Regulation (OIR) under Own-Risk and Solvency Assessment requirements to make them inadmissible as evidence in any private civil action, regardless of from whom they were obtained, rather than only when they are obtained from OIR.
- **Reciprocal Insurer Reserve Requirements** – revises unearned premium reserve requirements applicable to reciprocal insurers.
- **Exception to Required Insurance Licensure** – expands a licensure exemption that relieves sellers of travel insurance from required health insurance agent licensing to allow anyone to sell such prepaid limited health service contracts without licensure, if the contract only relates to air ambulance coverage.

The bill has no impact on state or local government revenues or expenditures. It has positive and negative impacts on the private sector.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Consumer Complaint Ratio Calculation

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serves as the chief fiscal officer of the State of Florida[1] and is designated as the State Fire Marshal.[2] The CFO is the head of the Department of Financial Services (DFS). Effective January 2003, the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance merged into DFS. DFS consists of many divisions and several specialized offices.[3] Among these is the Division of Consumer Services (Division). The division deals with consumer issues and complaints related to the jurisdiction of DFS and the Office of Insurance Regulation (OIR). The division:

- Receives insurance inquiries and complaints from consumers;
- Prepares and disseminates information as DFS deems appropriate to inform or assist consumers;
- Provides direct assistance and advocacy for consumers;
- Reports potential violations of law or applicable rules by a person or entity licensed by DFS or OIR to the appropriate division within DFS or OIR, as appropriate; and
- Designates an employee of the division as the primary contact for consumers on issues relating to sinkholes.[4]

Any person licensed by DFS or OIR, including insurance companies, are required to respond to the division within 20 days after written receipt of a request for information relevant to a consumer complaint. The response must address the issues and allegations raised in the consumer complaint. The licensee is subject to the following administrative fines for failure to comply with the response requirement:

- For licensed entities (e.g., insurers):
  - Up to $2,500, per violation.
- For individuals licensees:
  - $250, for the first violation;
  - $500, for the second violation; and
  - $1,000, for the third or subsequent violation.

Among other reporting requirements, OIR is required to publish a complaint ratio each year for the top 10 insurers according to market share in each line of insurance based upon information provided to OIR by DFS.[5]

Generally, an agreement assigning contract benefits allows a third party to collect and enforce collection of insurance proceeds owed to the policyholder directly from the insurance company. Consequently, the proceeds are not paid to the policyholder. Assignment agreements are commonly used in health insurance and personal injury protection insurance. In health insurance, a policyholder typically assigns his or her benefits for a covered medical service to the health care provider. Thus, the treating physician is paid directly from the insurer. Assignment agreements are becoming more common in property insurance claims, particularly in water damage claims where a homeowner assigns his or her benefits from the property insurance policy to a contractor, water remediation company, or roofer who repairs the damaged property. These assignees are "third-party vendors."

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[1] FLA. CONST. art. IV, s. 4.
[2] s. 633.104(1), F.S.
[3] s. 20.121, F.S.
[4] s. 624.307(10)(a), F.S.
[5] s. 624.313(1)(i), F.S.

Assignment agreements used by some vendors attempt to transfer broad rights under the policy and combine the assignment with authorization to perform services described only in general terms.[6] "When a party assigns a contract, the party assigns all equitable and legal interest in the contract to the assignee. The assignee thereafter stands in the shoes of the assignor and may enforce the contract against the original obligor in the assignee's own name." [7] Thus, assignment of the right to receive payment under an insurance contract necessarily assigns the right to enforce payment.

Effect of the Bill

The bill specifies that third-party vendors, as assignees of policy benefits, are not insurance consumers and will not be used for purposes of calculating complaint ratios.

Foreign Insurer Stock Valuation

Chapter 625, F.S., regulates the financial dealings of insurers admitted to do insurance business in this state and empowers OIR to regulate and oversee their financial conduct. Among other things, the law provides for the valuation of a variety of assets held by insurer, which contribute to the insurer's financial stability and, in the event of troubled assets, possible instability or insolvency.

Assets held in the form of stock in a subsidiary corporation are subject to maximum percentages of investments by the insurer, as follows:

- If the insurer's surplus, including investments in subsidiaries, does not exceed $100 million, the maximum percentage of investment in the subsidiaries may not exceed the lesser of:
  - 10 percent of admitted assets;[8] or,
  - 50 percent of the surplus in excess of minimum required surplus.[9]
- If the insurer's surplus, including investments in subsidiaries, is $100 million, or more, the maximum percentage investment in the subsidiaries may not exceed:
  - 25 percent of admitted assets.

The valuation of the stock held in the subsidiary may not exceed the net value established using only the assets of the subsidiary eligible under part II of ch. 625, F.S. The valuation of stocks and securities must be consistent with methods published by the National Association of Insurance Commissioners (NAIC).[10]

Part II of ch. 625, F.S., regulates the valuation of investments by domestic insurers and commercially domiciled insurers.[11] However, the law also provides that "[t]he investment portfolio of a foreign or alien insurer shall be as permitted by the laws of its domicile if of a quality substantially as high as that required under [ch. 625, F.S.] for similar funds of like domestic insurers."[12]

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[6] *See, e.g.*, ERICKSON'S, *Contract for Services, Assignment of Benefits*, http://ericksonsdrying.com/contact-us/contract-for-services-assignment-of-benefits/ (last visited Jan. 14, 2018) (assigning "any and all insurance rights, benefits, and proceeds under applicable insurance policies …; authorizing release of any and all information requested by Erickson's its representative, or its attorney to [sic] the direct purpose of obtaining actual benefits to be paid …; waiv[ing] privacy rights …; appointing Erickson's as attorney-in-fact, authorizing Erickson's to endorse [insured's] name, and to deposit insurance checks ….").

[7] 3A Fla. Jur 2d *Assignments* § 34 (Nov. 2015).

[8] "Admitted assets" are "assets recognized and accepted by state insurance laws in determining the solvency of insurers and reinsurers. To make it easier to assess an insurance company's financial position, state statutory accounting rules do not permit certain assets to be included on the balance sheet. Only assets that can be easily sold in the event of liquidation or borrowed against, and receivables for which payment can be reasonably anticipated, are included in admitted assets." https://www.iii.org/resource-center/iii-glossary/A (last visited Jan. 15, 2018).

[9] s. 625.151(3)(a), F.S.

[10] s. 625.151(4), F.S.

[11] s. 625.301, F.S

[12] s. 625.340, F.S.

There are multiple private organizations that engage in the evaluation and rating of insurance companies for the purposes of identifying the financial strength of insurers.[13] These financial strength ratings allow potential investors to make informed decisions regarding possible investment in the rated insurer. The rating companies use similar terminology, but each has a proprietary method to establish their rating results. While the rating results are similar, it is necessary to review the rating organization's own explanation of its approach and methods to understand the subtle differences that occur when a particular insurer is rated by multiple rating organizations. A.M. Best's Financial Strength Rating is divided between "Secure," with ratings between A++ and B+, or "Vulnerable," with ratings of B or lower. Among the "Secure" ratings, A++ and A+ are described as "Superior," A and A- are described as "Excellent," and B++ and B+ are described as "Good" in terms of A.M. Best's opinion of the company's ability to meet financial obligations.[14]

Effect of the Bill

The bill provides that the stock of a subsidiary corporation or related entity of a foreign insurer are exempt from the limitations on valuation and investment requirements ss. 625.151(3) and 625.325, F.S., for solvency evaluation purposes. The exemption applies if the investment is allowed under the laws of the insurer's domicile state if that state is a member of NAIC. In addition, the subsidiary's stock must be valued by NAIC's Securities Valuation Office (SVO)[15] with a rating of 1, 2, or 3 or be exempt from NAIC filing and carry a rating assigned by a nationally recognized statistical rating organization that is equivalent to SVO's rating.[16]

Surplus Lines Export Eligibility

Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.[17] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks which are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Insurance Code,[18] which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[19] Rather, surplus lines insurers are "unauthorized" insurers,[20] but may transact surplus lines insurance if they are made eligible by OIR.

"To export" a policy means to place it with an unauthorized insurer under the Surplus Lines Law.[21] Unless an exception applies, before an insurance agent can place insurance in the surplus lines market, the insurance agent must make a diligent effort to procure the desired coverage from admitted insurers.[22] "Diligent effort" means seeking and coverage being rejected from at least three authorized insurers in the admitted market; however, if the cost to replace a residential dwelling is $1,000,000 or

[13] Financial strength rating organizations include: A.M. Best (www.ambest.com), Fitch (www.fitchratings.com), Moody's Investor Services (www.moodys.com), Standard & Poor's (www.standardandpoors.com), and Demotech (www.demotech.com).
[14] See A.M. BEST COMPANY, Guide to Best's Financial Strength Ratings, http://www.ambest.com/ratings/guide.pdf (Last visited Jan. 15, 2018).
[15] http://www.naic.org/svo.htm (last visited Jan. 14, 2018).
[16] NAIC has published tables of equivalent ratings comparing SVO ratings to ratings published by nationally recognized statistical rating organizations. http://www.naic.org/documents/svo_naic_aro.pdf (last visited Jan. 14, 2018).
[17] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. s. 626.921, F.S.
[18] The Insurance Code is chapters 624-632, 634, 635, 636, 641, 642, 648, and 651, F.S. s. 624.01, F.S.
[19] s. 624.09(1), F.S.
[20] s. 624.09(2), F.S.
[21] s. 626.914(3), F.S.
[22] s. 626.916(1)(a), F.S.

more, then only one coverage rejection is needed prior to export. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.[23] The law further specifies that:[24]

- The premium rate for policies written by a surplus lines insurer cannot be less than the premium rate used by a majority of authorized insurers for the same coverage on similar risks;
- The policy exported cannot provide coverage or rates that are more favorable than those that are used by the majority of authorized insurers actually writing similar coverages on similar risks;
- The deductibles must be the same as those used by one or more authorized insurers, unless the coverage is for fire or windstorm; and
- For personal residential property risks,[25] the policyholder must be advised in writing that coverage may be available and less expensive from Citizens Property Insurance Corporation (Citizens).

As of January 1, 2017, Citizens decreased the maximum coverage limit for dwellings from $1,000,000 to $700,000 statewide, except for Miami-Dade and Monroe counties.[26]

Effect of the Bill

The bill allows homeowner's property insurance for a residential dwelling with a replacement cost of $700,000 or more to be exported to a surplus lines insurer following a single coverage rejection. This reduces, from three to one, the number of coverage rejections required prior to exportation for homes valued between $700,000 and $1,000,000.

Personal Financial and Health Information Privacy

DFS and the Financial Services Commission (Commission) are required to adopt rules governing the use of a consumer's non-public personal financial and health information by regulated entities.[27] The rules must be consistent with and not more restrictive than the requirements of Title V of the Gramm-Leach-Bliley Act of 1999. However, in December 2015, the Gramm-Leach-Bliley Act was amended by the Fixing America's Surface Transportation (FAST) Act.[28] The law governing DFS and Commission rules on privacy of consumer's non-public personal financial and health information does not yet incorporate this change. FAST added the following exception to the annual notice requirement found in Section 503 of the Gramm-Leach-Bliley Act:[29]

> (f) Exception to Annual Notice Requirement.--A financial institution that--
>
> (1) provides nonpublic personal information only in accordance with the provisions of subsection (b)(2) or (e) of section 502 or regulations prescribed under section 504(b), and
> (2) has not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed in the most recent disclosure sent to consumers in accordance with this section,
>
> shall not be required to provide an annual disclosure under this section until such time as the financial institution fails to comply with any criteria described in paragraph (1) or (2).

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[23] s. 626.914(4), F.S.
[24] s. 626.916(1), F.S.
[25] Personal residential policies include homeowners, mobile homeowners, dwelling fire, tenants, condominium unit owners, and similar policies.
[26] https://www.citizensfla.com/-/20160726-maximum-coverage-limit-decreased (last visited Jan. 14, 2018).
[27] s. 626.9651, F.S.
[28] https://www.congress.gov/bill/114th-congress/house-bill/22/text (last visited Jan. 14, 2018).
[29] 15 U.S.C. §6803.

Effect of the Bill

The bill incorporates FAST's amendment of the Gramm-Leach-Bliley Act for purposes of privacy standards applicable to rules adopted by DFS and the Commission. This makes ineffectual and prohibits any rule that would require an annual notice that would be exempted by FAST.

Execution of Insurance Policies

Part II of ch. 627, F.S., specifies numerous requirements applicable to insurance contracts.[30] These requirements apply to all aspects of the insurance transaction from the initial application to the cancellation, non-renewal, or lapse of the policy. This includes requirements concerning the execution of the policy.[31] The policy must be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer. A facsimile signature of one of the specified persons is acceptable and the policy cannot be made invalid because the facsimile signature is that of an individual who did not have the authority to execute the policy on the date of issuance.

Effect of the Bill

The bill provides that an insurer may elect to issue an insurance policy without being executed by one of the specified insurer representatives. If such a policy is issued, it is not invalid despite not being executed.

Notice of Policy Change

An insurer is prohibited from changing policy terms at renewal, unless they issue a notice of change in policy terms.[32] A change in policy terms includes, the modification, addition, or deletion of any term, coverage, duty, or condition from the previous policy, not including typographical or scrivener's errors or the application of mandated legislative changes. The notice may not be used to add optional coverages that increase premium, unless the policyholder affirmatively accepts the optional coverage.

The policyholder must receive advance written notice of the change.[33] If the insurer fails to issue the notice, coverage continues until the next renewal occurs (with proper service of notice) or replacement coverage is obtained. The notice is required to be titled a "Notice of Change in Policy Terms." However, there is no explicit requirement for any other specific content of the notice. OIR has not adopted a rule interpreting the applicable statute.

Section 627.43141(7), F.S., states that the intent of the law is to:

- Allow an insurer to make a change in policy terms without nonrenewing those policyholders that the insurer wishes to continue insuring;
- Alleviate concern and confusion to the policyholder caused by the required policy nonrenewal for the limited issue if an insurer intends to renew the insurance policy, but the new policy contains a change in policy terms; and,
- Encourage policyholders to discuss their coverages with their insurance agents.

Despite the stated intent, it is arguable that a bare notice with the title "Notice of Change in Policy Terms" and containing no meaningful explanation of the change in policy terms complies with the law.

[30] Section 627.401, F.S., provides limited exceptions to the applicability of part II of ch. 627, F.S.
[31] s. 627.416, F.S.
[32] s. 627.43141(2), F.S.
[33] The written notice may be issued with the notice of renewal premium or consistent with the timeline for issuing a notice of non-renewal provided by law. *Id.*

Effect of the Bill

The bill requires that an insurer summarize policy changes on the required notice upon renewal, rather than merely issuing a properly titled notice (i.e., requires content more informative than merely the phrase "Notice of Change in Policy Terms").

Property Insurance Claim Mediation

DFS administers alternative dispute resolution programs for various types of insurance. DFS has mediation programs for property insurance[34] and automobile insurance[35] claims. DFS has a neutral evaluation program, similar to mediation, for sinkhole insurance claims.[36] DFS approves mediators used in the two mediation programs and certifies the neutral evaluators used in neutral evaluations for sinkhole insurance claims.[37]

For property insurance claims[38] involving personal lines and commercial residential claims, only the policyholder, as a first-party claimant, or the insurer may request mediation under DFS' program.[39] This means that third parties cannot utilize the program. This is true even if the policyholder assigns their policy benefit rights to the third party.[40] The insurer must notify the policyholder of the right to mediation under the program upon receipt of the claim. The mediation costs are generally the responsibility of the insurer.

Effect of the Bill

The bill provides that a third party who receives rights to policy benefits through an assignment may request mediation of a property insurance claim; except, an insurer is not required to participate in a mediation requested by the third-party assignee. It also conforms terminology in the applicable section of law to change the term "insured" to the term "policyholder." The terms are currently used interchangeably in the statute. This makes it clear that the purchaser of the policy is the one with mediation rights, except as provided by the bill.

Proof of Mailing

When cancelling or non-renewing a policy, motor vehicle insurers are required to mail the cancellation or non-renewal to the first named insured on the policy and the applicable insurance agent at least 45 days prior to the effective date of the cancellation or non-renewal. In the case of non-payment of premium, only a 10-day notice is required. A policy that has been in effect for less than 60 days cannot be cancelled. The reason for the cancellation must be included in the notice. The insurer may also transfer the policy to an insurer under the same ownership or management upon proper notice. For each of these required notices the insurer must use United States postal proof of mailing, certified mail, or registered mail.[41]

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[34] s. 627.7015, F.S.

[35] s. 626.745, F.S.

[36] s. 627.7074, F.S.

[37] ss. 627.7015, 627.7074, and 627.745, F.S.

[38] An eligible claim is one that does not involve: suspected fraud; there is no coverage under the policy; one where the insurer reasonably believes the policyholder has made material misrepresentations relevant to the claim and request for payment has been denied for that reason; one for less than $500 (unless agreed to by the parties); or, windstorm or hurricane loss if the required notice of claim was not issued in compliance with law. s. 627.7015(9), F.S.

[39] Policyholders may have the assistance of legal counsel during the mediation process. Litigants in the county and circuit court may be referred to the program. Commercial coverages, private passenger motor vehicle coverages, and liability coverages of property insurance policies are not eligible for the property insurance mediation program. s. 627.7015(1), F.S.

[40] s. 627.7015(1), F.S.

[41] s. 627.728, F.S. While certified mail and registered mail are both services currently offered by the United States Postal Service (USPS), "proof of mailing" is not a service offered. https://www.usps.com/ship/insurance-extra-services.htm (last visited Jan. 14, 2018). However, "certificate of mailing" is a service offered that documents presentment of the item to USPS.

Effect of the Bill

The bill permits use of the Intelligent Mail barcode,[42] or similar method approved by the United States Postal Service, to be used to establish proof that required motor vehicle insurance notices of cancellation, non-renewal, or transfer of insurer were mailed.

Transportation Network Company Related Automobile Liability Insurance Exclusions

While a transportation network company (TNC) driver[43] is logged on to the TNC's digital network but is not engaged in a prearranged ride, a TNC[44] (i.e., a ridesharing company like Uber, Lyft, and Sidecar) or TNC driver must have automobile insurance that provides:

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.[45] The amount of insurance required is $10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death.[46]

A TNC driver is required to secure coverage while they are logged on to the TNC's digital network, but if the driver fails to do so, the TNC is required to provide coverage for the driver and vehicle. An insurer that provides an automobile liability insurance policy under part XI of ch. 627, F.S.,[47] may exclude any and all coverage afforded under the policy issued to an owner or operator of a TNC vehicle for any loss or injury that occurs while a TNC driver is logged on to a digital network or while a TNC driver provides a prearranged ride.[48] This right to exclude all coverage may apply to any coverage included in an automobile insurance policy, including, but not limited to:

- Liability coverage for bodily injury and property damage;
- Uninsured and underinsured motorist coverage;
- Medical payments coverage;
- Comprehensive physical damage coverage;
- Collision physical damage coverage; and
- Personal injury protection.

The exclusions apply notwithstanding any requirement under the Financial Responsibility Law of 1955.[49] An automobile insurer that excludes the coverage described above does not have a duty to defend or indemnify any claim expressly excluded thereunder. Some insurers offer policy addendums for the driver to purchase coverage of TNC activities.

Automobile liability insurance policies cover automobiles identified on the policy and the policyholder when operating other motor vehicles. However, s. 627.728(8)(b)1., F.S., arguably limits TNC related exclusions to specific motor vehicles. It uses the specific term "that vehicle" rather than a general term

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[42] https://postalpro.usps.com/ (last visited Jan. 14, 2018).

[43] A "TNC driver" means an individual who: 1. Receives connections to potential riders and related services from a transportation network company; and 2. In return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. s. 627.728(1)(f), F.S.

[44] "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section. s. 627.728(1)(e), F.S.

[45] ss. 627.730-627.7405, F.S.

[46] s. 627.736, F.S.

[47] Part XI of Ch. 627, F.S., relates to motor vehicle and casualty insurance contracts.

[48] s. 627.728(8)(b), F.S.

[49] ch. 324, F.S.

like "a vehicle." Arguably, current law allows a coverage exclusion applicable to a particular vehicle during use its as a TNC vehicle, but it does not explicitly allow a coverage exclusion applicable to the named insured(s) when operating as TNC driver using another vehicle, which is not listed on policy. In other words, a question arises over the coverage exclusion applies to a vehicle that the insured borrows and uses as a TNC vehicle.

Effect of the Bill

The bill allows private passenger motor vehicle liability insurers to generally exclude coverage of TNC related activities provided by a named insured, rather than limiting the exclusion to a specific motor vehicle.

Confidentiality of Documents Submitted to the Office of Insurance Regulation

In 2011, as part of NAIC's Solvency Modernization Initiative, NAIC adopted a new insurance regulatory tool: the U.S. Own Risk and Solvency Assessment (ORSA). ORSA requires insurance companies to issue their own assessment of their current and future risk through an internal risk self-assessment process and allows regulators to form an enhanced view of an insurer's ability to withstand financial stress, particularly on a holding company's level.[50] In essence, an ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA requires insurers to analyze all reasonably foreseeable and relevant material risks (i.e., underwriting, credit, market, operational, liquidity risks, etc.) that could have an impact on an insurer's ability to meet its policyholder obligations.

The "O" in ORSA represents the insurer's "own" assessment of their current and future risks. Insurers and insurance groups are required to articulate their own judgment about risk management and the adequacy of their capital position. This is meant to encourage management to anticipate potential capital needs and to take action proactively, and serves as an early warning mechanism for insurance regulators. ORSA is not a one-off exercise - it is a continuous evolving process and should be a component of an insurer's enterprise risk-management framework. Moreover, there is no mechanical way of conducting an ORSA; how to conduct the ORSA is left to each insurer to decide, and actual results and contents of an ORSA report will vary from company to company. The output is a set of documents that demonstrate the results of management's self-assessment.

Effective January 1, 2018, ORSA is an NAIC accreditation standard for state insurance regulators. During the 2016 Regular Session, the Legislature passed CS/CS/HB 1422[51] and CS/CS/HB 1416[52] adopting ORSA requirements for Florida regulated insurers and providing a public record exemption for information produced to OIR in required ORSA filings, respectively.

The law requires insurers or insurance groups to:

- Maintain a risk management framework for identifying, assessing, monitoring, managing, and reporting on its material, relevant risks;
    - This requirement may be satisfied by being a member of an insurance group with a risk management framework applicable to the insurer's operations.
- Conduct an ORSA at least annually (and whenever there have been significant changes to the risk profile of the insurer or the insurance group), consistent with and comparable to the process in the ORSA Guidance Manual;[53] and

[50] NAIC, *Own Risk and Solvency Assessment (ORSA)*, at http://www.naic.org/cipr_topics/topic_own_risk_solvency_assessment.htm (last visited Jan. 15, 2018).
[51] Ch. 2016-206, Laws of Fla.
[52] Ch. 2016-205, Laws of Fla.
[53] The bill defines "ORSA guidance manual" as the ORSA manual developed and adopted by NAIC. *See* NAIC, *ORSA Guidance Manual* (Jul. 2014), at http://www.naic.org/store/free/ORSA_manual.pdf (last visited Jan. 15, 2018).

- File an ORSA summary report, based on the ORSA Guidance Manual with their domestic regulator or lead state (for an insurance group), beginning in 2017, which must:
  - Be submitted once every calendar year;
  - Include notification to OIR of its proposed annual submission date by December 1, 2016; initial ORSA summary report must be submitted by December 31, 2017;
  - Include a brief description of material changes and updates from the prior year's report;
  - Be signed by the chief risk officer or chief executive officer responsible for overseeing the enterprise risk management process; provide a copy to the board of directors or appropriate board committee; and
  - Be prepared in accordance with the ORSA Guidance Manual; the insurer must maintain and make documentation and supporting information available for OIR examination.

The law provides that an ORSA summary report and certain other related information are confidential and exempt public record information. In addition, that information in required ORSA filings is privileged, may not be produced by OIR in response to a subpoena or discovery request directed to OIR, and, if such information is obtained from OIR, it is not admissible in evidence in any private civil action.[54]

Effect of the Bill

The bill expands the confidentiality of documents submitted to OIR under ORSA requirements to prohibit these documents from being admitted as evidence in a private civil action regardless of the source of the ORSA documents, rather than only when they are obtained from OIR.

Reciprocal Insurer Reserve Requirements

Reciprocal insurance is a risk-pooling alternative to stock or mutual insurance.[55] Reciprocal insurance involves an exchange of reciprocal agreements of indemnity among participants who are known as "subscribers."[56] The subscribers generally have something in common; for example, USAA is a well-known reciprocal insurer for U.S. military service members and their families.[57]

The agreements of indemnity are exchanged through an attorney-in-fact, whose powers are set forth by the subscribers.[58] "In general, the attorney in fact manages the reciprocal's finances and handles underwriting, claims administration and investments."[59]

Twenty-five or more persons domiciled in Florida may organize a domestic reciprocal insurer and apply to OIR for authority to transact insurance.[60] Reciprocal insurers may transact any kind of insurance other than life or title.[61]

Reciprocal insurers offering property insurance are required to maintain an unearned premium[62] reserve consistent with the requirement generally applicable to property insurers under the Insurance Code.[63] This reserve requirement ensures the availability of funds for transfer to loss reserves when losses are incurred during the policy period or refunds that become due before the premium is earned,

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[54] s. 628.8015(4), F.S.
[55] *See* Kevin Moriarty, *Twenty Things You'd Always Wanted to Know about Reciprocals (But May Not Have Thought to Ask)*, THE RISK RETENTION REPORTER, July 2003.
[56] ss. 629.011 and 629.021, F.S.
[57] *See* USAA, https://www.usaa.com/inet/pages/g_old_PC_Insurance_index (last visited Jan. 13, 2018).
[58] ss. 629.011 and 629.101, F.S.
[59] Moriarty, *supra* note 55.
[60] s. 629.081(1), F.S.
[61] s. 629.041(1), F.S.
[62] "Unearned premium" is the portion of a premium already received by the insurer under which protection has not yet been provided. The entire premium is not earned until the policy period expires, even though premiums are typically paid in advance. https://www.iii.org/resource-center/iii-glossary (last visited Jan. 13, 2018).
[63] s. 625.051, F.S. This section does not apply to title insurers. s. 625.051(5), F.S.

among other things. Premiums ceded to reinsurers for the purchase of reinsurance may be deducted from unearned premiums.

Property insurers are required to retain unearned premiums on reserve in the following proportions based upon the length of the policy period, as follows:

Policy Term	Proportion Required to be Reserved	
1 year or less		1/2
2 years	1st year	3/4
	2nd year	1/4
3 years	1st year	5/6
	2nd year	1/2
	3rd year	1/6
4 years	1st year	7/8
	2nd year	5/8
	3rd year	3/8
	4th year	1/8
5 years	1st year	9/10
	2nd year	7/10
	3rd year	1/2
	4th year	3/10
	5th year	1/10
Over 5 years		pro rata

In the alternative, insurers are allowed to calculate unearned premium reserves on monthly or more frequent pro rata basis. In other words, the insurer may reduce unearned premium reserves on a one-year policy at the rate of 1/12 per month or, for a two-year policy at 1/24 per month, and so on. Reciprocal insurers must calculate unearned premium reserves on a monthly or more frequent basis.[64]

NAIC has developed a model act for regulation of reciprocals. Section 7., Reserves, of NAIC Model Act 356, Model Indemnity Contracts Act,[65] provides for an unearned premium reserve, as follows:

> There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to fifty percent (50%) of the net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro rata on those for longer periods. Net annual deposits shall be construed to mean the advance payments of subscribers after deducting the amounts specifically provided in the subscribers' agreements, for expenses. The sum shall at no time be less than $25,000, and if at any time fifty percent (50%) of the deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency.

Effect of the Bill

The bill revises the unearned premium reserve requirement that must be met by a reciprocal insurer, regardless of the line of insurance underwritten. The reciprocal insurer must retain 50 percent of "net

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[64] s. 629.401(6)(b)24., F.S. OIR may require reciprocal insurers to calculate unearned premium reserves on a different time basis. Marine and transportation risk premiums are not earned until the trip is completed.

[65] http://www.naic.org/store/free/MDL-356.pdf (last visited Jan. 13, 2018).

written premiums" on policies having a policy period of one year or less. "Net written premiums" means premium payments made or due from subscribers after deducting subscriber fees. To take the deduction from "net written premiums" for subscriber fees, the power of attorney agreement must contain an explicit provision to return subscriber fees on a pro rata basis for cancelled policies. The bill requires an unearned premium reserve of $100,000, at all times, and provides a mechanism to return the reserve to that amount if it is not maintained at the required amount.

Exception to Required Insurance Licensure

Part I of ch. 636, F.S., requires OIR to license and regulate prepaid limited health service organizations (PLHSOs). These organizations are similar to health maintenance organizations (HMOs), but are limited to providing the following services: ambulance services, dental care services, vision care services, mental health services, substance abuse services, chiropractic services, podiatric care services, and pharmaceutical services.[66] A PLHSO may not offer inpatient or surgical hospital services or emergency services, except as such services are incidental to a limited health service. PLHSO enrollees are under a prepayment arrangement (i.e., either a prepaid per capita sum or a prepaid aggregate fixed sum) and receive services from an exclusive panel of providers such as physicians, dentists, health providers or other persons or institutions that are licensed in Florida to deliver limited health services.[67]

There are 23 authorized prepaid limited health service organizations which have received a certificate of authority to operate in Florida.[68] Only licensed and appointed health insurance agents may sell PLHSO contracts.[69]

The Department of Agriculture and Consumer Services (DACS) is responsible for registering "sellers of travel," which is any resident or nonresident who offers for sale, at wholesale or retail, prearranged travel or tour-guide services for individuals or groups.[70] Sellers of travel must annually register with DACS, pay a fee of $50, and receive a certificate evidencing proof of registration. If the seller of travel offers vacation certificates, the seller must obtain a performance bond in the amount specified in s. 559.929, F.S.

Air ambulance services are regulated by the Department of Health (DOH).[71] An "air ambulance" is any fixed-wing or rotary-wing aircraft used for transporting sick or injured persons requiring, or likely to require, medical attention during transport.[72] An "air ambulance service" is a publicly or privately owned service, licensed by DOH, which operates air ambulances to transport persons requiring medical attention during transport.[73] To be licensed, an air ambulance service must apply to DOH, pay fees, meet specified standards and obtain insurance. To be permitted by DOH, each transport vehicle is required to meet specified safety standards, have an appropriate communication system, and be furnished with essential medical supplies and equipment.

The United States Center for Disease Control and Prevention estimates that between 22 percent and 64 percent of U.S. travelers heading to developing countries will experience some kind of health problem.[74] International medical evacuation and air ambulance cost anywhere between $30,000 and $150,000, per incident.[75] Air ambulances are sometimes the only way to transport a patient safely. The

[66] s. 636.003(5), F.S.
[67] s. 636.003(7), F.S.
[68] https://www.floir.com/CompanySearch/ (last visited Jan. 14, 2018). Select *Pre-paid Limited Health Service Organization* under *Company Type.*
[69] s. 636.044, F.S.
[70] s. 559.928, F.S.
[71] part III, ch. 401, F.S.
[72] s. 401.23(3), F.S.
[73] s. 401.23(4), F.S.
[74] https://wwwnc.cdc.gov/travel/yellowbook/2018/post-travel-evaluation/general-approach-to-the-returned-traveler (last visited Jan. 14, 2018).
[75] https://medjetassist.com (last visited Jan. 14, 2018).

aircraft are "specially equipped for a patient that requires extensive or urgent medical assistance and a fast and safe method of transport of a distance of 100 miles or more."[76]

Law provides that a person registered as a seller of travel may engage in the solicitation and sale of prepaid limited health service contracts covering the cost of transportation by an air ambulance when that air ambulance service is licensed under s. 401.251, F.S.[77] However, the contract for such coverage is subject to all applicable provisions pertaining to prepaid limited health service organizations under ch. 636, F.S. This allows any travel agent to sell a prepaid limited health service contract to any person to cover the cost of transportation provided by an air ambulance service without being licensed as a health insurance agent.

Effect of the Bill

The bill expands a licensure exemption that relieves sellers of travel insurance from required health insurance agent licensing to allow anyone to sell prepaid limited health service contracts without licensure, if the contract only relates to air ambulance coverage. The contract remains regulated by law.

B. SECTION DIRECTORY:

Section 1. Amends s. 624.307, F.S., relating to general powers; duties.

Section 2. Amends s. 625.151, F.S., relating to valuation of other securities.

Section 3. Amends s. 625.325, F.S., relating to investments in subsidiaries and related corporations.

Section 4. Amends s. 626.914, F.S., relating to definitions.

Section 5. Amends s. 626.9651, F.S., relating to privacy.

Section 6. Amend s. 627.416, F.S., relating to execution of policies.

Section 7. Amend s. 627.43141, F.S., relating to notice of change in policy terms.

Section 8. Amends s. 627.7015, F.S., relating to alternative procedure for resolution of disputed property insurance claims.

Section 9. Amends s. 627.728, F.S., relating to cancellations; nonrenewals.

Section 10. Amends s. 627.748, F.S., relating to transportation network companies.

Section 11. Amends s. 628.8015, F.S., relating to own-risk and solvency assessment; corporate governance annual disclosure.

Section 12. Amends s. 629.401, F.S., relating to insurance exchange.

Section 13. Amends s. 636.044, F.S., relating to agent licensing.

Section 14. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[76] www.usairambulance.net
[77] s. 636.044(5), F.S.

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:

Reducing the number of coverage rejections required prior to exportation of a residential dwelling valued between $700,000 and $1,000,000 to the surplus lines market may remove some of these risks from the admitted market in the state. Owners in this home value range may find it easier to obtain coverage at a price acceptable to them.

Changes to the proof of mailing requirements may create savings for insurers.

Allowing private passenger motor vehicle insurers to generally exclude motor vehicles used to provide transportation network services will reduce losses incurred by the insurer. Since the transportation network company is required to provide coverage when the driver fails to do so, a general exclusion applicable to the driver's policy may increase losses incurred by the company's insurer.

Exempting certain monies from a reciprocal insurer's reserve requirements will reduce the amount of funds that must be retained in reserves and allow it to be utilized by the reciprocal insurer for other purposes. However, drafting issues discussed in Section III.C., Drafting Comments, may require increases in net unearned premium reserves, which would reduce usable capital for the time that it is retained in the required reserve.

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:

There may be an unintended consequence regarding reciprocal insurers and the change in unearned premium reserves made to s. 629.401, F.S. (section 12 of the bill). Currently, reciprocal insurers carrying property risks are required to maintain unearned premium reserves consistent with the general

requirements of s. 625.051, F.S. The only modification to this general requirement relates to the calculation of the proportion of the unearned premium to be kept by the reciprocal in reserve. The general requirement is calculated annually. Section 629.401(6)(b)24., F.S., provides a specific requirement applicable to reciprocal insurers without limitation based on the lines underwritten. A reciprocal insurer must calculate the unearned premium reserve on a monthly or more frequent basis, unless modified in the discretion of OIR.

Section 625.051, F.S., also provides a general provision allowing the deduction of reinsurance from the premiums subject to the reserve requirement. The bill expands s. 629.401(6)(b)24., F.S., to provide more specific requirements. In particular, the bill specifies what can be deducted from unearned premiums for the purposes of the reserve requirement. This provision only allows deduction of subscriber fees from "net written premiums." These premiums form the only basis for the reciprocal's unearned premium reserves. "Net written premiums" under the provided definition does not reference s. 625.051, F.S., or reinsurance." "Net written premiums" is not otherwise defined by the Insurance Code.

For policies with a period of one year or less, the specific provisions of the amendment to s. 629.401(6)(b)24., F.S., may predominate over the general requirements of s. 625.051, F.S., to the exclusion of any deductions from "unearned premiums" or "net written premiums" such that premiums ceded to reinsurers for the purchase of reinsurance may not be deducted when calculating the unearned premium reserve.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to insurance; amending s. 624.307,
3 F.S.; specifying certain persons are not consumers for
4 purposes of calculating complaint ratios; amending s.
5 625.151, F.S.; providing an exception from valuation
6 rules for stocks in subsidiaries for certain foreign
7 insurers under certain conditions; amending s.
8 625.325, F.S.; exempting foreign insurers from
9 investment requirements relating to subsidiaries and
10 corporations under certain conditions; amending s.
11 626.914, F.S.; revising the definition of the term
12 "diligent effort" to decrease the replacement cost
13 threshold for a residential structure for purposes of
14 proving rejection of coverage by authorized insurers;
15 amending s. 626.9651, F.S.; revising requirements for
16 rules adopted by the Department of Financial Services
17 and the Financial Services Commission relating to the
18 privacy of certain consumer information; amending s.
19 627.416, F.S.; revising requirements for execution of
20 insurance policies; amending s. 627.43141, F.S.;
21 revising requirements for insurance renewal notice of
22 policy change; amending s. 627.7015, F.S.; authorizing
23 insurers to participate in mediations requested by
24 third parties; revising terminology; revising the
25 definition of the term "claim" to specify that any

26 material issue of fact must relate to a loss arising
27 from a declared state of emergency; amending s.
28 627.728, F.S.; providing that an Intelligent Mail
29 barcode or a similar United States Postal Service
30 tracking method are sufficient proof of notice for
31 certain motor vehicle insurance notices; amending s.
32 627.748, F.S.; revising circumstances in which
33 insurers may exclude coverage for owners or operators
34 of transportation network company vehicles; amending
35 s. 628.8015, F.S.; revising the type of documents that
36 are confidential; amending s. 629.401, F.S.; revising
37 reserve requirements for reciprocal insurers; amending
38 s. 636.044, F.S.; providing an exemption from
39 licensing requirements for a person who sells certain
40 prepaid limited health service contracts; providing an
41 effective date.
42
43 Be It Enacted by the Legislature of the State of Florida:
44
45 Section 1. Paragraph (e) is added to subsection (10) of
46 section 624.307, Florida Statutes, to read:
47 624.307 General powers; duties.—
48 (10)
49 (e) For purposes of this subsection, a third-party vendor,
50 as an assignee of policy benefits, is not a consumer. Inquiries

51 or complaints from a third-party vendor, as an assignee of
52 policy benefits, may not be used when calculating a complaint
53 ratio pursuant to s. 624.313.
54 Section 2. Paragraph (c) is added to subsection (3) of
55 section 625.151, Florida Statutes, to read:
56 625.151 Valuation of other securities.—
57 (3) Stock of a subsidiary corporation of an insurer may
58 ~~shall~~ not be valued at an amount in excess of the net value
59 thereof as based upon those assets only of the subsidiary which
60 would be eligible under part II for investment of the funds of
61 the insurer directly.
62 (c) This subsection does not apply to stock of a
63 subsidiary corporation or related entities of a foreign insurer
64 that is permissible under the laws of its state of domicile if
65 the state of domicile is a member of the National Association of
66 Insurance Commissioners.
67 Section 3. Subsection (7) is added to section 625.325,
68 Florida Statutes, to read:
69 625.325 Investments in subsidiaries and related
70 corporations.—
71 (7) APPLICABILITY.-This section does not apply to a
72 foreign insurer's investments in its subsidiaries or related
73 corporations if:
74 (a) The foreign insurer is domiciled in a state that is a
75 member of the National Association of Insurance Commissioners

76 (NAIC).
77 (b) Such investments in the foreign insurer's subsidiaries
78 or related corporations are:
79 1. Permitted under the laws of the foreign insurer's state
80 of domicile.
81 2.a. Assigned a rating of 1, 2, or 3 by the NAIC's
82 Securities Valuation Office (SVO); or
83 b. Qualify for the NAIC's filing exemption rule and
84 assigned a rating by a nationally recognized statistical rating
85 organization that would be equivalent to a rating of 1, 2, or 3
86 by the SVO.
87 Section 4. Subsection (4) of section 626.914, Florida
88 Statutes, is amended to read:
89 626.914 Definitions.—As used in this Surplus Lines Law,
90 the term:
91 (4) "Diligent effort" means seeking coverage from and
92 having been rejected by at least three authorized insurers
93 currently writing this type of coverage and documenting these
94 rejections. However, if the residential structure has a dwelling
95 replacement cost of $700,000 ~~$1 million~~ or more, the term means
96 seeking coverage from and having been rejected by at least one
97 authorized insurer currently writing this type of coverage and
98 documenting this rejection.
99 Section 5. Section 626.9651, Florida Statutes, is amended
100 to read:

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

101 626.9651 Privacy.—The department and commission must ~~shall~~
102 each adopt rules consistent with other provisions of the Florida
103 Insurance Code to govern the use of a consumer's nonpublic
104 personal financial and health information. These rules must be
105 based on, consistent with, and not more restrictive than the
106 Privacy of Consumer Financial and Health Information Regulation,
107 adopted September 26, 2000, by the National Association of
108 Insurance Commissioners; however, the rules must permit the use
109 and disclosure of nonpublic personal health information for
110 scientific, medical, or public policy research, in accordance
111 with federal law. In addition, these rules must be consistent
112 with, and not more restrictive than, the standards contained in
113 Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-
114 102, as amended in Title LXXV of the Fixing America's Surface
115 Transportation (FAST) Act, Pub. L. No. 114-94. If the office
116 determines that a health insurer or health maintenance
117 organization is in compliance with, or is actively undertaking
118 compliance with, the consumer privacy protection rules adopted
119 by the United States Department of Health and Human Services, in
120 conformance with the Health Insurance Portability and
121 Affordability Act, that health insurer or health maintenance
122 organization is in compliance with this section.
123 Section 6. Subsection (1) of section 627.416, Florida
124 Statutes, is amended and subsection (4) is added to read:
125 627.416 Execution of policies.—

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

126 (1) Except as set forth in subsection (4), ~~every~~ insurance
127 policy shall be executed in the name of and on behalf of the
128 insurer by its officer, attorney in fact, employee, or
129 representative duly authorized by the insurer.
130 (4) An insurer may elect to issue an insurance policy that
131 is not executed by an officer, attorney in fact, employee, or
132 representative, provided that such policy may not be rendered
133 invalid by reason of the lack of execution thereof.
134 Section 7. Subsection (2) of section 627.43141, Florida
135 Statutes, is amended to read:
136 627.43141 Notice of change in policy terms.—
137 (2) A renewal policy may contain a change in policy terms.
138 If such change occurs, the insurer shall give the named insured
139 advance written notice summarizing ~~of~~ the change, which may be
140 enclosed along with the written notice of renewal premium
141 required under ss. 627.4133 and 627.728 or sent separately
142 within the timeframe required under the Florida Insurance Code
143 for the provision of a notice of nonrenewal to the named insured
144 for that line of insurance. The insurer must also provide a
145 sample copy of the notice to the named insured's insurance agent
146 before or at the same time that notice is provided to the named
147 insured. Such notice shall be entitled "Notice of Change in
148 Policy Terms."
149 Section 8. Subsections (1), (3), (6), and (9) of section
150 627.7015, Florida Statutes, are amended to read:

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

151 627.7015 Alternative procedure for resolution of disputed
152 property insurance claims.—
153 (1) This section sets forth a nonadversarial alternative
154 dispute resolution procedure for a mediated claim resolution
155 conference prompted by the need for effective, fair, and timely
156 handling of property insurance claims. There is a particular
157 need for an informal, nonthreatening forum for helping parties
158 who elect this procedure to resolve their claims disputes
159 because most homeowner and commercial residential insurance
160 policies obligate policyholders to participate in a potentially
161 expensive and time-consuming adversarial appraisal process
162 before litigation. The procedure set forth in this section is
163 designed to bring the parties together for a mediated claims
164 settlement conference without any of the trappings or drawbacks
165 of an adversarial process. Before resorting to these procedures,
166 policyholders and insurers are encouraged to resolve claims as
167 quickly and fairly as possible. This section is available with
168 respect to claims under personal lines and commercial
169 residential policies before commencing the appraisal process, or
170 before commencing litigation. Mediation may be requested only by
171 the policyholder, as a first-party claimant, a third-party, as
172 an assignee of the policy benefits, or the insurer. However, an
173 insurer is not required to participate in any mediation
174 requested by a third-party assignee of the policy benefits. If
175 requested by the policyholder, participation by legal counsel is

176 permitted. Mediation under this section is also available to
177 litigants referred to the department by a county court or
178 circuit court. This section does not apply to commercial
179 coverages, to private passenger motor vehicle insurance
180 coverages, or to disputes relating to liability coverages in
181 policies of property insurance.
182 (3) The costs of mediation <u>must</u> ~~shall~~ be reasonable, and
183 the insurer <u>must</u> ~~shall~~ bear all of the cost of conducting
184 mediation conferences, except as otherwise provided in this
185 section. If <u>a policyholder</u> ~~an insured~~ fails to appear at the
186 conference, the conference <u>must</u> ~~shall~~ be rescheduled upon the
187 <u>policyholder's</u> ~~insured's~~ payment of the costs of a rescheduled
188 conference. If the insurer fails to appear at the conference,
189 the insurer <u>must</u> ~~shall~~ pay the <u>policyholder's</u> ~~insured's~~ actual
190 cash expenses incurred in attending the conference if the
191 insurer's failure to attend was not due to a good cause
192 acceptable to the department. An insurer will be deemed to have
193 failed to appear if the insurer's representative lacks authority
194 to settle the full value of the claim. The insurer shall incur
195 an additional fee for a rescheduled conference necessitated by
196 the insurer's failure to appear at a scheduled conference. The
197 fees assessed by the administrator <u>must</u> ~~shall~~ include a charge
198 necessary to defray the expenses of the department related to
199 its duties under this section and <u>must</u> ~~shall~~ be deposited in the
200 Insurance Regulatory Trust Fund.

201 (6) Mediation is nonbinding; however, if a written
202 settlement is reached, the policyholder ~~insured~~ has 3 business
203 days within which the policyholder ~~insured~~ may rescind the
204 settlement unless the policyholder ~~insured~~ has cashed or
205 deposited any check or draft disbursed to the policyholder
206 ~~insured~~ for the disputed matters as a result of the conference.
207 If a settlement agreement is reached and is not rescinded, it is
208 ~~shall be~~ binding and acts ~~act~~ as a release of all specific
209 claims that were presented in that mediation conference.
210 (9) For purposes of this section, the term "claim" refers
211 to any dispute between an insurer and a policyholder relating to
212 a material issue of fact other than a dispute:
213 (a) With respect to which the insurer has a reasonable
214 basis to suspect fraud;
215 (b) When ~~Where~~, based on agreed-upon facts as to the cause
216 of loss, there is no coverage under the policy;
217 (c) With respect to which the insurer has a reasonable
218 basis to believe that the policyholder has intentionally made a
219 material misrepresentation of fact which is relevant to the
220 claim, and the entire request for payment of a loss has been
221 denied on the basis of the material misrepresentation;
222 (d) With respect to which the amount in controversy is
223 less than $500, unless the parties agree to mediate a dispute
224 involving a lesser amount; or
225 (e) With respect to a windstorm or hurricane loss that

226 does not comply with s. 627.70132.
227 Section 9. Subsection (5) of section 627.728, Florida
228 Statutes, is amended to read:
229 627.728 Cancellations; nonrenewals.—
230 (5) United States postal proof of mailing, ~~or~~ certified or
231 registered mailing, or other mailing using the Intelligent Mail
232 barcode or other similar tracking method used or approved by the
233 United States Postal Service of notice of cancellation, of
234 intention not to renew, or of reasons for cancellation, or of
235 the intention of the insurer to issue a policy by an insurer
236 under the same ownership or management, to the first-named
237 insured at the address shown in the policy is ~~shall be~~
238 sufficient proof of notice.
239 Section 10. Paragraph (b) of subsection (8) of section
240 627.748, Florida Statutes, is amended to read:
241 627.748 Transportation network companies.—
242 (8) TRANSPORTATION NETWORK COMPANY AND INSURER;
243 DISCLOSURE; EXCLUSIONS.—
244 (b)1. An insurer that provides an automobile liability
245 insurance policy under this part may exclude any and all
246 coverage afforded under the policy issued to an owner or
247 operator of a TNC vehicle ~~while driving that vehicle~~ for any
248 loss or injury that occurs while a TNC driver is logged on to a
249 digital network and driving a motor vehicle, or when ~~while~~ a TNC
250 driver provides a prearranged ride. Exclusions imposed under

251 this subsection are limited to coverage while a TNC driver is
252 logged on to a digital network or while a TNC driver provides a
253 prearranged ride. This right to exclude all coverage may apply
254 to any coverage included in an automobile insurance policy,
255 including, but not limited to:
256 a. Liability coverage for bodily injury and property
257 damage;
258 b. Uninsured and underinsured motorist coverage;
259 c. Medical payments coverage;
260 d. Comprehensive physical damage coverage;
261 e. Collision physical damage coverage; and
262 f. Personal injury protection.
263 2. The exclusions described in subparagraph 1. apply
264 notwithstanding any requirement under chapter 324. These
265 exclusions do not affect or diminish coverage otherwise
266 available for permissive drivers or resident relatives under the
267 personal automobile insurance policy of the TNC driver or owner
268 of the TNC vehicle who are not occupying the TNC vehicle at the
269 time of loss. This section does not require that a personal
270 automobile insurance policy provide coverage while the TNC
271 driver is logged on to a digital network, while the TNC driver
272 is engaged in a prearranged ride, or while the TNC driver
273 otherwise uses a vehicle to transport riders for compensation.
274 3. This section must not be construed to require an
275 insurer to use any particular policy language or reference to

276 this section in order to exclude any and all coverage for any
277 loss or injury that occurs while a TNC driver is logged on to a
278 digital network or while a TNC driver provides a prearranged
279 ride.
280 4. This section does not preclude an insurer from
281 providing primary or excess coverage for the TNC driver's
282 vehicle by contract or endorsement.
283 Section 11. Subsection (4) of section 628.8015, Florida
284 Statutes, is amended to read:
285 628.8015 Own-risk and solvency assessment; corporate
286 governance annual disclosure.—
287 (4) CONFIDENTIALITY.—The required filings and related
288 documents submitted pursuant to subsections (2) and (3) are
289 privileged such that they may not be produced in response to a
290 subpoena or other discovery directed to the office, and any such
291 filings and related documents~~, if obtained from the office,~~ are
292 not admissible in evidence in any private civil action. However,
293 the department or office may use these filings and related
294 documents in the furtherance of any regulatory or legal action
295 brought against an insurer as part of the official duties of the
296 department or office. A waiver of any applicable claim of
297 privilege in these filings and related documents may not occur
298 because of a disclosure to the office under this section,
299 because of any other provision of the Insurance Code, or because
300 of sharing under s. 624.4212. The office or a person receiving

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301 these filings and related documents, while acting under the
302 authority of the office, or with whom such filings and related
303 documents are shared pursuant to s. 624.4212, is not permitted
304 or required to testify in any private civil action concerning
305 any such filings or related documents.
306 Section 12. Paragraph (b) of subsection (6) of section
307 629.401, Florida Statutes, is amended to read:
308 629.401 Insurance exchange.—
309 (6)
310 (b) In addition to the insurance laws specified in
311 paragraph (a), the office shall regulate the exchange pursuant
312 to the following powers, rights, and duties:
313 1. General examination powers.—The office shall examine
314 the affairs, transactions, accounts, records, and assets of any
315 security fund, exchange, members, and associate brokers as often
316 as it deems advisable. The examination may be conducted by the
317 accredited examiners of the office at the offices of the entity
318 or person being examined. The office shall examine in like
319 manner each prospective member or associate broker applying for
320 membership in an exchange.
321 2. Office approval and applications of underwriting
322 members.—No underwriting member shall commence operation without
323 the approval of the office. Before commencing operation, an
324 underwriting member shall provide a written application
325 containing:

326 a. Name, type, and purpose of the underwriting member.
327 b. Name, residence address, business background, and
328 qualifications of each person associated or to be associated in
329 the formation or financing of the underwriting member.
330 c. Full disclosure of the terms of all understandings and
331 agreements existing or proposed among persons so associated
332 relative to the underwriting member, or the formation or
333 financing thereof, accompanied by a copy of each such agreement
334 or understanding.
335 d. Full disclosure of the terms of all understandings and
336 agreements existing or proposed for management or exclusive
337 agency contracts.
338 3. Investigation of underwriting member applications.—In
339 connection with any proposal to establish an underwriting
340 member, the office shall make an investigation of:
341 a. The character, reputation, financial standing, and
342 motives of the organizers, incorporators, or subscribers
343 organizing the proposed underwriting member.
344 b. The character, financial responsibility, insurance
345 experience, and business qualifications of its proposed
346 officers.
347 c. The character, financial responsibility, business
348 experience, and standing of the proposed stockholders and
349 directors, or owners.
350 4. Notice of management changes.—An underwriting member

351 shall promptly give the office written notice of any change
352 among the directors or principal officers of the underwriting
353 member within 30 days after such change. The office shall
354 investigate the new directors or principal officers of the
355 underwriting member. The office's investigation shall include an
356 investigation of the character, financial responsibility,
357 insurance experience, and business qualifications of any new
358 directors or principal officers. As a result of the
359 investigation, the office may require the underwriting member to
360 replace any new directors or principal officers.
361 5. Alternate financial statement.—In lieu of any financial
362 examination, the office may accept an audited financial
363 statement.
364 6. Correction and reconstruction of records.—If the office
365 finds any accounts or records to be inadequate, or inadequately
366 kept or posted, it may employ experts to reconstruct, rewrite,
367 post, or balance them at the expense of the person or entity
368 being examined if such person or entity has failed to maintain,
369 complete, or correct such records or accounts after the office
370 has given him or her or it notice and reasonable opportunity to
371 do so.
372 7. Obstruction of examinations.—Any person or entity who
373 or which willfully obstructs the office or its examiner in an
374 examination is guilty of a misdemeanor of the second degree,
375 punishable as provided in s. 775.082 or s. 775.083.

376 8. Filing of annual statement.—Each underwriting member
377 shall file with the office a full and true statement of its
378 financial condition, transactions, and affairs. The statement
379 shall be filed on or before March 1 of each year, or within such
380 extension of time as the office for good cause grants, and shall
381 be for the preceding calendar year. The statement shall contain
382 information generally included in insurer financial statements
383 prepared in accordance with generally accepted insurance
384 accounting principles and practices and in a form generally
385 utilized by insurers for financial statements, sworn to by at
386 least two executive officers of the underwriting member. The
387 form of the financial statements shall be the approved form of
388 the National Association of Insurance Commissioners or its
389 successor organization. The commission may by rule require each
390 insurer to submit any part of the information contained in the
391 financial statement in a computer-readable form compatible with
392 the office's electronic data processing system. In addition to
393 information furnished in connection with its annual statement,
394 an underwriting member must furnish to the office as soon as
395 reasonably possible such information about its transactions or
396 affairs as the office requests in writing. All information
397 furnished pursuant to the office's request must be verified by
398 the oath of two executive officers of the underwriting member.
399 9. Record maintenance.—Each underwriting member shall have
400 and maintain its principal place of business in this state and

401 shall keep therein complete records of its assets, transactions,
402 and affairs in accordance with such methods and systems as are
403 customary for or suitable to the kind or kinds of insurance
404 transacted.
405 10. Examination of agents.—If the department has reason to
406 believe that any agent, as defined in s. 626.015 or s. 626.914,
407 has violated or is violating any provision of the insurance law,
408 or upon receipt of a written complaint signed by any interested
409 person indicating that any such violation may exist, the
410 department shall conduct such examination as it deems necessary
411 of the accounts, records, documents, and transactions pertaining
412 to or affecting the insurance affairs of such agent.
413 11. Written reports of office.—The office or its examiner
414 shall make a full and true written report of any examination.
415 The report shall contain only information obtained from
416 examination of the records, accounts, files, and documents of or
417 relative to the person or entity examined or from testimony of
418 individuals under oath, together with relevant conclusions and
419 recommendations of the examiner based thereon. The office shall
420 furnish a copy of the report to the person or entity examined
421 not less than 30 days prior to filing the report in its office.
422 If such person or entity so requests in writing within such 30-
423 day period, the office shall grant a hearing with respect to the
424 report and shall not file the report until after the hearing and
425 after such modifications have been made therein as the office

426 deems proper.
427 12. Admissibility of reports.—The report of an examination
428 when filed shall be admissible in evidence in any action or
429 proceeding brought by the office against the person or entity
430 examined, or against his or her or its officers, employees, or
431 agents. The office or its examiners may at any time testify and
432 offer other proper evidence as to information secured or matters
433 discovered during the course of an examination, whether or not a
434 written report of the examination has been either made,
435 furnished, or filed in the office.
436 13. Publication of reports.—After an examination report
437 has been filed, the office may publish the results of any such
438 examination in one or more newspapers published in this state
439 whenever it deems it to be in the public interest.
440 14. Consideration of examination reports by entity
441 examined.—After the examination report of an underwriting member
442 has been filed, an affidavit shall be filed with the office, not
443 more than 30 days after the report has been filed, on a form
444 furnished by the office and signed by the person or a
445 representative of any entity examined, stating that the report
446 has been read and that the recommendations made in the report
447 will be considered within a reasonable time.
448 15. Examination costs.—Each person or entity examined by
449 the office shall pay to the office the expenses incurred in such
450 examination.

451 16. Exchange costs.—An exchange shall reimburse the office
452 for any expenses incurred by it relating to the regulation of
453 the exchange and its members, except as specified in
454 subparagraph 15.
455 17. Powers of examiners.—Any examiner appointed by the
456 office, as to the subject of any examination, investigation, or
457 hearing being conducted by him or her, may administer oaths,
458 examine and cross-examine witnesses, and receive oral and
459 documentary evidence, and shall have the power to subpoena
460 witnesses, compel their attendance and testimony, and require by
461 subpoena the production of books, papers, records, files,
462 correspondence, documents, or other evidence which the examiner
463 deems relevant to the inquiry. If any person refuses to comply
464 with any such subpoena or to testify as to any matter concerning
465 which he or she may be lawfully interrogated, the Circuit Court
466 of Leon County or the circuit court of the county wherein such
467 examination, investigation, or hearing is being conducted, or of
468 the county wherein such person resides, on the office's
469 application may issue an order requiring such person to comply
470 with the subpoena and to testify; and any failure to obey such
471 an order of the court may be punished by the court as a contempt
472 thereof. Subpoenas shall be served, and proof of such service
473 made, in the same manner as if issued by a circuit court.
474 Witness fees and mileage, if claimed, shall be allowed the same
475 as for testimony in a circuit court.

476 18. False testimony.—Any person willfully testifying
477 falsely under oath as to any matter material to any examination,
478 investigation, or hearing shall upon conviction thereof be
479 guilty of perjury and shall be punished accordingly.
480 19. Self-incrimination.—
481 a. If any person asks to be excused from attending or
482 testifying or from producing any books, papers, records,
483 contracts, documents, or other evidence in connection with any
484 examination, hearing, or investigation being conducted by the
485 office or its examiner, on the ground that the testimony or
486 evidence required of the person may tend to incriminate him or
487 her or subject him or her to a penalty or forfeiture, and the
488 person notwithstanding is directed to give such testimony or
489 produce such evidence, he or she shall, if so directed by the
490 office and the Department of Legal Affairs, nonetheless comply
491 with such direction; but the person shall not thereafter be
492 prosecuted or subjected to any penalty or forfeiture for or on
493 account of any transaction, matter, or thing concerning which he
494 or she may have so testified or produced evidence, and no
495 testimony so given or evidence so produced shall be received
496 against him or her upon any criminal action, investigation, or
497 proceeding; except that no such person so testifying shall be
498 exempt from prosecution or punishment for any perjury committed
499 by him or her in such testimony, and the testimony or evidence
500 so given or produced shall be admissible against him or her upon

501 any criminal action, investigation, or proceeding concerning
502 such perjury, nor shall he or she be exempt from the refusal,
503 suspension, or revocation of any license, permission, or
504 authority conferred, or to be conferred, pursuant to the
505 insurance law.
506 b. Any such individual may execute, acknowledge, and file
507 with the office a statement expressly waiving such immunity or
508 privilege in respect to any transaction, matter, or thing
509 specified in such statement, and thereupon the testimony of such
510 individual or such evidence in relation to such transaction,
511 matter, or thing may be received or produced before any judge or
512 justice, court, tribunal, grand jury, or otherwise; and if such
513 testimony or evidence is so received or produced, such
514 individual shall not be entitled to any immunity or privileges
515 on account of any testimony so given or evidence so produced.
516 20. Penalty for failure to testify.—Any person who refuses
517 or fails, without lawful cause, to testify relative to the
518 affairs of any member, associate broker, or other person when
519 subpoenaed and requested by the office to so testify, as
520 provided in subparagraph 17., shall, in addition to the penalty
521 provided in subparagraph 17., be guilty of a misdemeanor of the
522 second degree, punishable as provided in s. 775.082 or s.
523 775.083.
524 21. Name selection.—No underwriting member shall be formed
525 or authorized to transact insurance in this state under a name

526 which is the same as that of any authorized insurer or is so
527 nearly similar thereto as to cause or tend to cause confusion or
528 under a name which would tend to mislead as to the type of
529 organization of the insurer. Before incorporating under or using
530 any name, the underwriting syndicate or proposed underwriting
531 syndicate shall submit its name or proposed name to the office
532 for the approval of the office.
533 22. Capitalization.—An underwriting member approved on or
534 after July 2, 1987, shall provide an initial paid-in capital and
535 surplus of $3 million and thereafter shall maintain a minimum
536 policyholder surplus of $2 million in order to be permitted to
537 write insurance. Underwriting members approved prior to July 2,
538 1987, shall maintain a minimum policyholder surplus of $1
539 million. After June 29, 1988, underwriting members approved
540 prior to July 2, 1987, must maintain a minimum policyholder
541 surplus of $1.5 million to write insurance. After June 29, 1989,
542 underwriting members approved prior to July 2, 1987, must
543 maintain a minimum policyholder surplus of $1.75 million to
544 write insurance. After December 30, 1989, all underwriting
545 members, regardless of the date they were approved, must
546 maintain a minimum policyholder surplus of $2 million to write
547 insurance. Except for that portion of the paid-in capital and
548 surplus which shall be maintained in a security fund of an
549 exchange, the paid-in capital and surplus shall be invested by
550 an underwriting member in a manner consistent with ss. 625.301-

551 625.340. The portion of the paid-in capital and surplus in any
552 security fund of an exchange shall be invested in a manner
553 limited to investments for life insurance companies under the
554 Florida insurance laws.
555 23. Limitations on coverage written.—
556 a. Limit of risk.—No underwriting member shall expose
557 itself to any loss on any one risk in an amount exceeding 10
558 percent of its surplus to policyholders. Any risk or portion of
559 any risk which shall have been reinsured in an assuming
560 reinsurer authorized or approved to do such business in this
561 state shall be deducted in determining the limitation of risk
562 prescribed in this section.
563 b. Restrictions on premiums written.—If the office has
564 reason to believe that the underwriting member's ratio of actual
565 or projected annual gross written premiums to policyholder
566 surplus exceeds 8 to 1 or the underwriting member's ratio of
567 actual or projected annual net premiums to policyholder surplus
568 exceeds 4 to 1, the office may establish maximum gross or net
569 annual premiums to be written by the underwriting member
570 consistent with maintaining the ratios specified in this sub-
571 subparagraph.
572 (I) Projected annual net or gross premiums shall be based
573 on the actual writings to date for the underwriting member's
574 current calendar year, its writings for the previous calendar
575 year, or both. Ratios shall be computed on an annualized basis.

576 (II) For purposes of this sub-subparagraph, the term
577 "gross written premiums" means direct premiums written and
578 reinsurance assumed.
579 c. Surplus as to policyholders.—For the purpose of
580 determining the limitation on coverage written, surplus as to
581 policyholders shall be deemed to include any voluntary reserves,
582 or any part thereof, which are not required by or pursuant to
583 law and shall be determined from the last sworn statement of
584 such underwriting member with the office, or by the last report
585 or examination filed by the office, whichever is more recent at
586 the time of assumption of such risk.
587 24. Unearned premium reserves.—There shall at all times be
588 maintained an unearned premium reserve equal to fifty percent
589 (50%) of the net written premiums of the subscribers on policies
590 having one year or less to run, and pro rata on those for longer
591 periods, ~~All unearned premium reserves for business written on~~
592 ~~the exchange shall be calculated on a monthly or more frequent~~
593 ~~basis or on such other basis as determined by the office;~~ except
594 that all premiums on any marine or transportation insurance trip
595 risk shall be deemed unearned until the trip is terminated. For
596 the purpose of this subparagraph, "net written premiums" shall
597 mean the premium payments made by subscribers plus the premiums
598 due from subscribers, after deducting the amounts specifically
599 provided in the subscribers' agreements for fees paid to the
600 attorney in fact, provided that the power of attorney agreement

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601 contains an explicit provision requiring the attorney in fact to
602 refund any unearned subscribers fees on a pro-rata basis for
603 cancelled policies. If there is no such provision, then the
604 unearned premium reserve shall be calculated without any
605 adjustment for fees paid to the attorney in fact. If the
606 unearned premium reserves at any time do not amount to $100,000,
607 then there shall be maintained on deposit at the exchange at all
608 times additional funds in cash or eligible securities which,
609 together with the unearned premium reserves, equal $100,000. In
610 calculating the foregoing reserves, the amount of the attorney's
611 bond, as filed with the office and as required by s. 629.121,
612 shall be included as part thereof. If at any time the unearned
613 premium reserves is less than the foregoing requirements, the
614 subscribers, or the attorney in fact, shall advance funds to
615 make up the deficiency. Such advances shall only be repaid out
616 of the surplus of the exchange and only after receiving written
617 approval from the office.
618 25. Loss reserves.—All underwriting members of an exchange
619 shall maintain loss reserves, including a reserve for incurred
620 but not reported claims. The reserves shall be subject to review
621 by the office, and, if loss experience shows that an
622 underwriting member's loss reserves are inadequate, the office
623 shall require the underwriting member to maintain loss reserves
624 in such additional amount as is needed to make them adequate.
625 26. Distribution of profits.—An underwriting member shall

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626 not distribute any profits in the form of cash or other assets
627 to owners except out of that part of its available and
628 accumulated surplus funds which is derived from realized net
629 operating profits on its business and realized capital gains. In
630 any one year such payments to owners shall not exceed 30 percent
631 of such surplus as of December 31 of the immediately preceding
632 year, unless otherwise approved by the office. No distribution
633 of profits shall be made that would render an underwriting
634 member either impaired or insolvent.
635 27. Stock dividends.—A stock dividend may be paid by an
636 underwriting member out of any available surplus funds in excess
637 of the aggregate amount of surplus advanced to the underwriting
638 member under subparagraph 29.
639 28. Dividends from earned surplus.—A dividend otherwise
640 lawful may be payable out of an underwriting member's earned
641 surplus even though the total surplus of the underwriting member
642 is then less than the aggregate of its past contributed surplus
643 resulting from issuance of its capital stock at a price in
644 excess of the par value thereof.
645 29. Borrowing of money by underwriting members.—
646 a. An underwriting member may borrow money to defray the
647 expenses of its organization, provide it with surplus funds, or
648 for any purpose of its business, upon a written agreement that
649 such money is required to be repaid only out of the underwriting
650 member's surplus in excess of that stipulated in such agreement.

651 The agreement may provide for interest not exceeding 15 percent
652 simple interest per annum. The interest shall or shall not
653 constitute a liability of the underwriting member as to its
654 funds other than such excess of surplus, as stipulated in the
655 agreement. No commission or promotion expense shall be paid in
656 connection with any such loan. The use of any surplus note and
657 any repayments thereof shall be subject to the approval of the
658 office.
659 b. Money so borrowed, together with any interest thereon
660 if so stipulated in the agreement, shall not form a part of the
661 underwriting member's legal liabilities except as to its surplus
662 in excess of the amount thereof stipulated in the agreement, nor
663 be the basis of any setoff; but until repayment, financial
664 statements filed or published by an underwriting member shall
665 show as a footnote thereto the amount thereof then unpaid,
666 together with any interest thereon accrued but unpaid.
667 30. Liquidation, rehabilitation, and restrictions.—The
668 office, upon a showing that a member or associate broker of an
669 exchange has met one or more of the grounds contained in part I
670 of chapter 631, may restrict sales by type of risk, policy or
671 contract limits, premium levels, or policy or contract
672 provisions; increase surplus or capital requirements of
673 underwriting members; issue cease and desist orders; suspend or
674 restrict a member's or associate broker's right to transact
675 business; place an underwriting member under conservatorship or

676 rehabilitation; or seek an order of liquidation as authorized by
677 part I of chapter 631.
678 31. Prohibited conduct.—The following acts by a member,
679 associate broker, or affiliated person shall constitute
680 prohibited conduct:
681 a. Fraud.
682 b. Fraudulent or dishonest acts committed by a member or
683 associate broker prior to admission to an exchange, if the facts
684 and circumstances were not disclosed to the office upon
685 application to become a member or associate broker.
686 c. Conduct detrimental to the welfare of an exchange.
687 d. Unethical or improper practices or conduct,
688 inconsistent with just and equitable principles of trade as set
689 forth in, but not limited to, ss. 626.951-626.9641 and 626.973.
690 e. Failure to use due diligence to ascertain the insurance
691 needs of a client or a principal.
692 f. Misstatements made under oath or upon an application
693 for membership on an exchange.
694 g. Failure to testify or produce documents when requested
695 by the office.
696 h. Willful violation of any law of this state.
697 i. Failure of an officer or principal to testify under
698 oath concerning a member, associate broker, or other person's
699 affairs as they relate to the operation of an exchange.
700 j. Violation of the constitution and bylaws of the

701 exchange.
702 32. Penalties for participating in prohibited conduct.—
703 a. The office may order the suspension of further
704 transaction of business on the exchange of any member or
705 associate broker found to have engaged in prohibited conduct. In
706 addition, any member or associate broker found to have engaged
707 in prohibited conduct may be subject to reprimand, censure,
708 and/or a fine not exceeding $25,000 imposed by the office.
709 b. Any member which has an affiliated person who is found
710 to have engaged in prohibited conduct shall be subject to
711 involuntary withdrawal or in addition thereto may be subject to
712 suspension, reprimand, censure, and/or a fine not exceeding
713 $25,000.
714 33. Reduction of penalties.—Any suspension, reprimand,
715 censure, or fine may be remitted or reduced by the office on
716 such terms and conditions as are deemed fair and equitable.
717 34. Other offenses.—Any member or associate broker that is
718 suspended shall be deprived, during the period of suspension, of
719 all rights and privileges of a member or of an associate broker
720 and may be proceeded against by the office for any offense
721 committed either before or after the date of suspension.
722 35. Reinstatement.—Any member or associate broker that is
723 suspended may be reinstated at any time on such terms and
724 conditions as the office may specify.
725 36. Remittance of fines.—Fines imposed under this section

726 shall be remitted to the office and shall be paid into the
727 Insurance Regulatory Trust Fund.
728 37. Failure to pay fines.—When a member or associate
729 broker has failed to pay a fine for 15 days after it becomes
730 payable, such member or associate broker shall be suspended,
731 unless the office has granted an extension of time to pay such
732 fine.
733 38. Changes in ownership or assets.—In the event of a
734 major change in the ownership or a major change in the assets of
735 an underwriting member, the underwriting member shall report
736 such change in writing to the office within 30 days of the
737 effective date thereof. The report shall set forth the details
738 of the change. Any change in ownership or assets of more than 5
739 percent shall be considered a major change.
740 39. Retaliation.—
741 a. When by or pursuant to the laws of any other state or
742 foreign country any taxes, licenses, or other fees, in the
743 aggregate, and any fines, penalties, deposit requirements, or
744 other material obligations, prohibitions, or restrictions are or
745 would be imposed upon an exchange or upon the agents or
746 representatives of such exchange which are in excess of such
747 taxes, licenses, and other fees, in the aggregate, or which are
748 in excess of such fines, penalties, deposit requirements, or
749 other obligations, prohibitions, or restrictions directly
750 imposed upon similar exchanges or upon the agents or

751 representatives of such exchanges of such other state or country
752 under the statutes of this state, so long as such laws of such
753 other state or country continue in force or are so applied, the
754 same taxes, licenses, and other fees, in the aggregate, or
755 fines, penalties, deposit requirements, or other material
756 obligations, prohibitions, or restrictions of whatever kind
757 shall be imposed by the office upon the exchanges, or upon the
758 agents or representatives of such exchanges, of such other state
759 or country doing business or seeking to do business in this
760 state.
761 b. Any tax, license, or other obligation imposed by any
762 city, county, or other political subdivision or agency of a
763 state, jurisdiction, or foreign country on an exchange, or on
764 the agents or representatives on an exchange, shall be deemed to
765 be imposed by such state, jurisdiction, or foreign country
766 within the meaning of sub-subparagraph a.
767 40. Agents.—
768 a. Agents as defined in ss. 626.015 and 626.914 who are
769 broker members or associate broker members of an exchange shall
770 be allowed only to place on an exchange the same kind or kinds
771 of business that the agent is licensed to place pursuant to
772 Florida law. Direct Florida business as defined in s. 626.916 or
773 s. 626.917 shall be written through a broker member who is a
774 surplus lines agent as defined in s. 626.914. The activities of
775 each broker member or associate broker with regard to an

776 exchange shall be subject to all applicable provisions of the
777 insurance laws of this state, and all such activities shall
778 constitute transactions under his or her license as an insurance
779 agent for purposes of the Florida insurance law.
780 b. Premium payments and other requirements.—If an
781 underwriting member has assumed the risk as to a surplus lines
782 coverage and if the premium therefor has been received by the
783 surplus lines agent who placed such insurance, then in all
784 questions thereafter arising under the coverage as between the
785 underwriting member and the insured, the underwriting member
786 shall be deemed to have received the premium due to it for such
787 coverage; and the underwriting member shall be liable to the
788 insured as to losses covered by such insurance, and for unearned
789 premiums which may become payable to the insured upon
790 cancellation of such insurance, whether or not in fact the
791 surplus lines agent is indebted to the underwriting member with
792 respect to such insurance or for any other cause.
793 41. Improperly issued contracts, riders, and
794 endorsements.—
795 a. Any insurance policy, rider, or endorsement issued by
796 an underwriting member and otherwise valid which contains any
797 condition or provision not in compliance with the requirements
798 of this section shall not be thereby rendered invalid, except as
799 provided in s. 627.415, but shall be construed and applied in
800 accordance with such conditions and provisions as would have

801 applied had such policy, rider, or endorsement been in full
802 compliance with this section. In the event an underwriting
803 member issues or delivers any policy for an amount which exceeds
804 any limitations otherwise provided in this section, the
805 underwriting member shall be liable to the insured or his or her
806 beneficiary for the full amount stated in the policy in addition
807 to any other penalties that may be imposed.
808 b. Any insurance contract delivered or issued for delivery
809 in this state governing a subject or subjects of insurance
810 resident, located, or to be performed in this state which,
811 pursuant to the provisions of this section, the underwriting
812 member may not lawfully insure under such a contract shall be
813 cancelable at any time by the underwriting member, any provision
814 of the contract to the contrary notwithstanding; and the
815 underwriting member shall promptly cancel the contract in
816 accordance with the request of the office therefor. No such
817 illegality or cancellation shall be deemed to relieve the
818 underwriting syndicate of any liability incurred by it under the
819 contract while in force or to prohibit the underwriting
820 syndicate from retaining the pro rata earned premium thereon.
821 This provision does not relieve the underwriting syndicate from
822 any penalty otherwise incurred by the underwriting syndicate.
823 42. Satisfaction of judgments.—
824 a. Every judgment or decree for the recovery of money
825 heretofore or hereafter entered in any court of competent

826 jurisdiction against any underwriting member shall be fully
827 satisfied within 60 days from and after the entry thereof or, in
828 the case of an appeal from such judgment or decree, within 60
829 days from and after the affirmance of the judgment or decree by
830 the appellate court.
831 b. If the judgment or decree is not satisfied as required
832 under sub-subparagraph a., and proof of such failure to satisfy
833 is made by filing with the office a certified transcript of the
834 docket of the judgment or the decree together with a certificate
835 by the clerk of the court wherein the judgment or decree remains
836 unsatisfied, in whole or in part, after the time provided in
837 sub-subparagraph a., the office shall forthwith prohibit the
838 underwriting member from transacting business. The office shall
839 not permit such underwriting member to write any new business
840 until the judgment or decree is wholly paid and satisfied and
841 proof thereof is filed with the office under the official
842 certificate of the clerk of the court wherein the judgment was
843 recovered, showing that the judgment or decree is satisfied of
844 record, and until the expenses and fees incurred in the case are
845 also paid by the underwriting syndicate.
846 43. Tender and exchange offers.—No person shall conclude a
847 tender offer or an exchange offer or otherwise acquire 5 percent
848 or more of the outstanding voting securities of an underwriting
849 member or controlling company or purchase 5 percent or more of
850 the ownership of an underwriting member or controlling company

851 unless such person has filed with, and obtained the approval of,
852 the office and sent to such underwriting member a statement
853 setting forth:
854 a. The identity of, and background information on, each
855 person by whom, or on whose behalf, the acquisition is to be
856 made; and, if the acquisition is to be made by or on behalf of a
857 corporation, association, or trust, the identity of and
858 background information on each director, officer, trustee, or
859 other natural person performing duties similar to those of a
860 director, officer, or trustee for the corporation, association,
861 or trust.
862 b. The source and amount of the funds or other
863 consideration used, or to be used, in making the acquisition.
864 c. Any plans or proposals which such person may have to
865 liquidate such member, to sell its assets, or to merge or
866 consolidate it.
867 d. The percentage of ownership which such person proposes
868 to acquire and the terms of the offer or exchange, as the case
869 may be.
870 e. Information as to any contracts, arrangements, or
871 understandings with any party with respect to any securities of
872 such member or controlling company, including, but not limited
873 to, information relating to the transfer of any securities,
874 option arrangements, or puts or calls or the giving or
875 withholding of proxies, naming the party with whom such

876 contract, arrangements, or understandings have been entered and
877 giving the details thereof.
878 f. The office may disapprove any acquisition subject to
879 the provisions of this subparagraph by any person or any
880 affiliated person of such person who:
881 (I) Willfully violates this subparagraph;
882 (II) In violation of an order of the office issued
883 pursuant to sub-subparagraph j., fails to divest himself or
884 herself of any stock obtained in violation of this subparagraph,
885 or fails to divest himself or herself of any direct or indirect
886 control of such stock, within 25 days after such order; or
887 (III) In violation of an order issued by the office
888 pursuant to sub-subparagraph j., acquires additional stock of
889 the underwriting member or controlling company, or direct or
890 indirect control of such stock, without complying with this
891 subparagraph.
892 g. The person or persons filing the statement required by
893 this subparagraph have the burden of proof. The office shall
894 approve any such acquisition if it finds, on the basis of the
895 record made during any proceeding or on the basis of the filed
896 statement if no proceeding is conducted, that:
897 (I) Upon completion of the acquisition, the underwriting
898 member will be able to satisfy the requirements for the approval
899 to write the line or lines of insurance for which it is
900 presently approved;

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

901 (II) The financial condition of the acquiring person or
902 persons will not jeopardize the financial stability of the
903 underwriting member or prejudice the interests of its
904 policyholders or the public;
905 (III) Any plan or proposal which the acquiring person has,
906 or acquiring persons have, made:
907 (A) To liquidate the insurer, sell its assets, or merge or
908 consolidate it with any person, or to make any other major
909 change in its business or corporate structure or management; or
910 (B) To liquidate any controlling company, sell its assets,
911 or merge or consolidate it with any person, or to make any major
912 change in its business or corporate structure or management
913 which would have an effect upon the underwriting member
914
915 is fair and free of prejudice to the policyholders of the
916 underwriting member or to the public;
917 (IV) The competence, experience, and integrity of those
918 persons who will control directly or indirectly the operation of
919 the underwriting member indicate that the acquisition is in the
920 best interest of the policyholders of the underwriting member
921 and in the public interest;
922 (V) The natural persons for whom background information is
923 required to be furnished pursuant to this subparagraph have such
924 backgrounds as to indicate that it is in the best interests of
925 the policyholders of the underwriting member, and in the public

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

926 interest, to permit such persons to exercise control over such
927 underwriting member;
928 (VI) The officers and directors to be employed after the
929 acquisition have sufficient insurance experience and ability to
930 assure reasonable promise of successful operation;
931 (VII) The management of the underwriting member after the
932 acquisition will be competent and trustworthy and will possess
933 sufficient managerial experience so as to make the proposed
934 operation of the underwriting member not hazardous to the
935 insurance-buying public;
936 (VIII) The management of the underwriting member after the
937 acquisition will not include any person who has directly or
938 indirectly through ownership, control, reinsurance transactions,
939 or other insurance or business relations unlawfully manipulated
940 the assets, accounts, finances, or books of any insurer or
941 underwriting member or otherwise acted in bad faith with respect
942 thereto;
943 (IX) The acquisition is not likely to be hazardous or
944 prejudicial to the underwriting member's policyholders or the
945 public; and
946 (X) The effect of the acquisition of control would not
947 substantially lessen competition in insurance in this state or
948 would not tend to create a monopoly therein.
949 h. No vote by the stockholder of record, or by any other
950 person, of any security acquired in contravention of the

951 provisions of this subparagraph is valid. Any acquisition of any
952 security contrary to the provisions of this subparagraph is
953 void. Upon the petition of the underwriting member or
954 controlling company, the circuit court for the county in which
955 the principal office of such underwriting member is located may,
956 without limiting the generality of its authority, order the
957 issuance or entry of an injunction or other order to enforce the
958 provisions of this subparagraph. There shall be a private right
959 of action in favor of the underwriting member or controlling
960 company to enforce the provisions of this subparagraph. No
961 demand upon the office that it perform its functions shall be
962 required as a prerequisite to any suit by the underwriting
963 member or controlling company against any other person, and in
964 no case shall the office be deemed a necessary party to any
965 action by such underwriting member or controlling company to
966 enforce the provisions of this subparagraph. Any person who
967 makes or proposes an acquisition requiring the filing of a
968 statement pursuant to this subparagraph, or who files such a
969 statement, shall be deemed to have thereby designated the Chief
970 Financial Officer as such person's agent for service of process
971 under this subparagraph and shall thereby be deemed to have
972 submitted himself or herself to the administrative jurisdiction
973 of the office and to the jurisdiction of the circuit court.
974 i. Any approval by the office under this subparagraph does
975 not constitute a recommendation by the office for an

976 acquisition, tender offer, or exchange offer. It is unlawful for
977 a person to represent that the office's approval constitutes a
978 recommendation. A person who violates the provisions of this
979 sub-subparagraph is guilty of a felony of the third degree,
980 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
981 The statute-of-limitations period for the prosecution of an
982 offense committed under this sub-subparagraph is 5 years.
983 j. Upon notification to the office by the underwriting
984 member or a controlling company that any person or any
985 affiliated person of such person has acquired 5 percent or more
986 of the outstanding voting securities of the underwriting member
987 or controlling company without complying with the provisions of
988 this subparagraph, the office shall order that the person and
989 any affiliated person of such person cease acquisition of any
990 further securities of the underwriting member or controlling
991 company; however, the person or any affiliated person of such
992 person may request a proceeding, which proceeding shall be
993 convened within 7 days after the rendering of the order for the
994 sole purpose of determining whether the person, individually or
995 in connection with any affiliated person of such person, has
996 acquired 5 percent or more of the outstanding voting securities
997 of an underwriting member or controlling company. Upon the
998 failure of the person or affiliated person to request a hearing
999 within 7 days, or upon a determination at a hearing convened
1000 pursuant to this sub-subparagraph that the person or affiliated

1001 person has acquired voting securities of an underwriting member
1002 or controlling company in violation of this subparagraph, the
1003 office may order the person and affiliated person to divest
1004 themselves of any voting securities so acquired.
1005 k.(I) The office shall, if necessary to protect the public
1006 interest, suspend or revoke the certificate of authority of any
1007 underwriting member or controlling company:
1008 (A) The control of which is acquired in violation of this
1009 subparagraph;
1010 (B) That is controlled, directly or indirectly, by any
1011 person or any affiliated person of such person who, in violation
1012 of this subparagraph, has obtained control of an underwriting
1013 member or controlling company; or
1014 (C) That is controlled, directly or indirectly, by any
1015 person who, directly or indirectly, controls any other person
1016 who, in violation of this subparagraph, acquires control of an
1017 underwriting member or controlling company.
1018 (II) If any underwriting member is subject to suspension
1019 or revocation pursuant to sub-sub-subparagraph (I), the
1020 underwriting member shall be deemed to be in such condition, or
1021 to be using or to have been subject to such methods or practices
1022 in the conduct of its business, as to render its further
1023 transaction of insurance presently or prospectively hazardous to
1024 its policyholders, creditors, or stockholders or to the public.
1025 l.(I) For the purpose of this sub-sub-subparagraph, the

1026 term "affiliated person" of another person means:
1027 (A) The spouse of such other person;
1028 (B) The parents of such other person and their lineal
1029 descendants and the parents of such other person's spouse and
1030 their lineal descendants;
1031 (C) Any person who directly or indirectly owns or
1032 controls, or holds with power to vote, 5 percent or more of the
1033 outstanding voting securities of such other person;
1034 (D) Any person 5 percent or more of the outstanding voting
1035 securities of which are directly or indirectly owned or
1036 controlled, or held with power to vote, by such other person;
1037 (E) Any person or group of persons who directly or
1038 indirectly control, are controlled by, or are under common
1039 control with such other person; or any officer, director,
1040 partner, copartner, or employee of such other person;
1041 (F) If such other person is an investment company, any
1042 investment adviser of such company or any member of an advisory
1043 board of such company;
1044 (G) If such other person is an unincorporated investment
1045 company not having a board of directors, the depositor of such
1046 company; or
1047 (H) Any person who has entered into an agreement, written
1048 or unwritten, to act in concert with such other person in
1049 acquiring or limiting the disposition of securities of an
1050 underwriting member or controlling company.

1051 (II) For the purposes of this section, the term
1052 "controlling company" means any corporation, trust, or
1053 association owning, directly or indirectly, 25 percent or more
1054 of the voting securities of one or more underwriting members.
1055 m. The commission may adopt, amend, or repeal rules that
1056 are necessary to implement the provisions of this subparagraph,
1057 pursuant to chapter 120.
1058 44. Background information.—The information as to the
1059 background and identity of each person about whom information is
1060 required to be furnished pursuant to sub-subparagraph 43.a.
1061 shall include, but shall not be limited to:
1062 a. Such person's occupations, positions of employment, and
1063 offices held during the past 10 years.
1064 b. The principal business and address of any business,
1065 corporation, or other organization in which each such office was
1066 held or in which such occupation or position of employment was
1067 carried on.
1068 c. Whether, at any time during such 10-year period, such
1069 person was convicted of any crime other than a traffic
1070 violation.
1071 d. Whether, during such 10-year period, such person has
1072 been the subject of any proceeding for the revocation of any
1073 license and, if so, the nature of such proceeding and the
1074 disposition thereof.
1075 e. Whether, during such 10-year period, such person has

1076 been the subject of any proceeding under the federal Bankruptcy
1077 Act or whether, during such 10-year period, any corporation,
1078 partnership, firm, trust, or association in which such person
1079 was a director, officer, trustee, partner, or other official has
1080 been subject to any such proceeding, either during the time in
1081 which such person was a director, officer, trustee, partner, or
1082 other official, or within 12 months thereafter.
1083 f. Whether, during such 10-year period, such person has
1084 been enjoined, either temporarily or permanently, by a court of
1085 competent jurisdiction from violating any federal or state law
1086 regulating the business of insurance, securities, or banking, or
1087 from carrying out any particular practice or practices in the
1088 course of the business of insurance, securities, or banking,
1089 together with details of any such event.
1090 45. Security fund.—All underwriting members shall be
1091 members of the security fund of any exchange.
1092 46. Underwriting member defined.—Whenever the term
1093 "underwriting member" is used in this subsection, it shall be
1094 construed to mean "underwriting syndicate."
1095 47. Offsets.—Any action, requirement, or constraint
1096 imposed by the office shall reduce or offset similar actions,
1097 requirements, or constraints of any exchange.
1098 48. Restriction on member ownership.—
1099 a. Investments existing prior to July 2, 1987.—The
1100 investment in any member by brokers, agents, and intermediaries

1101 transacting business on the exchange, and the investment in any
1102 such broker, agent, or intermediary by any member, directly or
1103 indirectly, shall in each case be limited in the aggregate to
1104 less than 20 percent of the total investment in such member,
1105 broker, agent, or intermediary, as the case may be. After
1106 December 31, 1987, the aggregate percent of the total investment
1107 in such member by any broker, agent, or intermediary and the
1108 aggregate percent of the total investment in any such broker,
1109 agent, or intermediary by any member, directly or indirectly,
1110 shall not exceed 15 percent. After June 30, 1988, such aggregate
1111 percent shall not exceed 10 percent and after December 31, 1988,
1112 such aggregate percent shall not exceed 5 percent.
1113 b. Investments arising on or after July 2, 1987.—The
1114 investment in any underwriting member by brokers, agents, or
1115 intermediaries transacting business on the exchange, and the
1116 investment in any such broker, agent, or intermediary by any
1117 underwriting member, directly or indirectly, shall in each case
1118 be limited in the aggregate to less than 5 percent of the total
1119 investment in such underwriting member, broker, agent, or
1120 intermediary.
1121 49. "Underwriting manager" defined.—"Underwriting manager"
1122 as used in this subparagraph includes any person, partnership,
1123 corporation, or organization providing any of the following
1124 services to underwriting members of the exchange:
1125 a. Office management and allied services, including

1126 correspondence and secretarial services.
1127 b. Accounting services, including bookkeeping and
1128 financial report preparation.
1129 c. Investment and banking consultations and services.
1130 d. Underwriting functions and services including the
1131 acceptance, rejection, placement, and marketing of risk.
1132 50. Prohibition of underwriting manager investment.—Any
1133 direct or indirect investment in any underwriting manager by a
1134 broker member or any affiliated person of a broker member or any
1135 direct or indirect investment in a broker member by an
1136 underwriting manager or any affiliated person of an underwriting
1137 manager is prohibited. "Affiliated person" for purposes of this
1138 subparagraph is defined in subparagraph 43.
1139 51. An underwriting member may not accept reinsurance on
1140 an assumed basis from an affiliate or a controlling company, nor
1141 may a broker member or management company place reinsurance from
1142 an affiliate or controlling company of theirs with an
1143 underwriting member. "Affiliate and controlling company" for
1144 purposes of this subparagraph is defined in subparagraph 43.
1145 52. Premium defined.—"Premium" is the consideration for
1146 insurance, by whatever name called. Any "assessment" or any
1147 "membership," "policy," "survey," "inspection," "service" fee or
1148 charge or similar fee or charge in consideration for an
1149 insurance contract is deemed part of the premium.
1150 53. Rules.—The commission shall adopt rules necessary for

1151 or as an aid to the effectuation of any provision of this
1152 section.
1153 Section 13. Subsection (5) of section 636.044, Florida
1154 Statutes, is amended to read:
1155 636.044 Agent licensing.—
1156 (5) A person <u>who sells</u> ~~registered as a seller of travel~~
1157 ~~under s. 559.928 is not required to be licensed under this~~
1158 ~~section in order to sell~~ prepaid limited health service
1159 contracts that <u>only</u> cover the cost of transportation provided by
1160 an air ambulance service licensed pursuant to s. 401.251 <u>is not</u>
1161 <u>required to be licensed under this section</u>. The prepaid limited
1162 health service contract for such coverage is, however, subject
1163 to all applicable provisions of this chapter.
1164 Section 14. This act shall take effect upon becoming a
1165 law.

INSURANCE & BANKING SUBCOMMITTEE

PCS for HB 465 by Rep. Santiago
Insurance

AMENDMENT SUMMARY
January 17, 2018

Amendment 1 by Rep. Santiago (Line 599): The amendment clarifies that reinsurance costs are deductible from premiums in addition to subscribers' fees in calculating "net written premiums" when reciprocal insurers determine the amount to be retained in the unearned premium reserve.

Amendment 2 by Rep. Santiago (Line 1153): The amendment deletes the section of the bill that proposed to expand the exception for licensure as a health insurance agent for the sale of prepaid limited health service contracts related to air ambulance services.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 465 (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 Santiago offered the following:
4
5 **Amendment**
6 Remove line 599 and insert:
7 provided in the subscribers' agreements for expenses, including
8 reinsurance costs and fees paid to the

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCS for HB 465 (2018)

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Insurance & Banking
2 Subcommittee
3 Representative Santiago offered the following:
4
5 **Amendment (with title amendment)**
6 Remove lines 1153-1163
7
8
9 ---
10 **T I T L E A M E N D M E N T**
11 Remove lines 37-40 and insert:
12 reserve requirements for reciprocal insurers; providing an